



# Oregon

State Board of Examiners for  
Engineering & Land Surveying  
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Minutes of Meeting  
March 13, 2012

## **CALL TO ORDER**

President Linscheid 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:**

Dan Linscheid  
Steven Burger  
Grant Davis  
Ken Hoffine  
Sue Newstetter  
John Seward  
Carl Tappert  
Amin Wahab  
James Doane (excused absence)

## **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  
Gary Cordy, Assistant Attorney General  
Michael Hardy, PE, Professional Engineers of Oregon (PEO)  
James Riemenschneider  
Johanna Riemenschneider

President Linscheid requested self-introductions for all present, including guests. Since AAG Gary Cordy was present to discuss particular matters, and James Riemenschneider was also present, the Agenda was slightly modified to accommodate their presence.

**President Linscheid took the Committee into Executive Session as provided by Oregon Revised Statute (ORS) 192.660(2)(f) to discuss the advice provided by AAG. Upon returning to open session, it was noted that no action was taken during Executive Session.**

The Board was notified through an irregularity report from the National Council of Examiners for Engineering and Surveying (NCEES) that a violation of the NCEES Candidate Agreement occurred during the October 2011 examination administration. The irregularity occurred during the Day 1 (Vertical Component) administration of the 16-hour structural engineering examination. As a result of this report and Oregon Administrative Rule (OAR) 820-020-0040(1)(k), the Board further discussed the release of results under the authority of OAR 820-

020-0040(2)(d). After discussion, it was moved and seconded (Davis/Tappert) to invalidate the results of Day 1 (Vertical Component) and release the results of Day 2 (Lateral Component) of the 16-hour structural engineering examination for James Riemenschneider. The motion passed (Burger opposed).

The Board was notified through another irregularity report from NCEES that a violation of the NCEES Candidate Agreement occurred during the October 2011 professional engineering examination administration. In this instance, the examinee had concern regarding the question on the examination and wanted to bring his concern to the attention of NCEES. Ethan Matthes inquired on the process to do so with a floor proctor and followed their instructions. Later on, the Supervising Proctor for the examination administration informed Mr. Matthes that this was not the correct process. After discussion, it was moved and seconded (Tappert/Davis) to release the results of the electrical professional engineering examination for Ethan Matthes. The motion passed unanimously.

As a result of these recent irregularity reports from NCEES, concerns were expressed. Discussion was held regarding the preparation of the irregularity reports, what examination information is provided to the examinee and the timing of the examinee receiving this information. Further, discussion was held with regard to the training of proctors utilized for the examination administration. As a result, the matter was referred to the Examination and Qualifications Committee for additional discussion, and if possible, invite a representative from NCEES to speak to the Board about these concerns.

#### **APPROVAL OF AGENDA**

It was moved and seconded (Tappert/Davis) to approve the agenda as amended. The motion passed unanimously.

#### **APPROVAL OF MINUTES**

On page 3 of the draft January Board Meeting minutes, Mr. Seward suggested revisions to the third paragraph of the *Executive Session ORS 192.660(2)(f) & (i)* section of the Executive Secretary Report. It was moved and seconded (Tappert/Newstetter) to approve the minutes of the January 10, 2012 Board Meeting as amended. The motion passed unanimously.

#### **EXECUTIVE SECRETARY'S REPORT**

As a result of a scheduling request made by Ms. Lopez during the November Board meeting, AAG Cordy was present to discuss the matter with the Board.

**President Linscheid took the Committee into Executive Session as provided by Oregon Revised Statute (ORS) 192.660(2)(f) to discuss the advice provided by AAG. Upon returning to open session, it was noted that no action was taken during Executive Session.**

Although Ms. Lopez was granted the ability to temporarily work out of the office on Thursdays and Fridays, she announced that she no longer has this need. She has been and will continue to work at the OSBEELS office, Monday through Friday during normal business hours. There was no further discussion on the matter.

### Committee Activities

Ms. Lopez reported that the Examinations and Qualifications (E&Q) Committee, External Relations Committee (ERC), Finance Committee (FC), Law Enforcement Committee (LEC), Professional Practices Committee (PPC), Rules and Regulations (R&R) Committee, and Standards of Land Surveying Practice (SOP) Committee each met during the interim. The Committee minutes were included in the packets.

### Administrative Activities

#### *Registration*

Ms. Lopez briefly noted that renewals are scheduled to be sent out in April to allow sufficient time for the registrants to organize/log their professional development hours accordingly.

#### *Oregon Specific/National Council of Examiners for Engineering and Surveying (NCEES) Examinations*

Ms. Lopez informed the members that the administration of the NCEES examinations is scheduled to be conducted in Salem on April 13-14 at the Oregon State Fairgrounds. The Oregon Specific Land Surveying 4-hour examination is scheduled to be held in Salem on April 14. This administration is generally conducted at the University of Phoenix. There are 26 approved examinees for the Oregon Specific Land Surveying 4-hour examination. Additionally, the administration of the Certified Water Right Examination is scheduled to be conducted on April 13 in conference room 124 at the Water Resources Department and also at a second site in La Grande. There are 16 approved examinees for the Certified Water Rights Examination. Lastly, there was 1 application received and approved for the Forest Engineering examination that will also be conducted on April 13.

#### *Professional Engineers of Oregon (PEO)*

On January 3, Ms. Lopez participated in a conference call with PEO President Dennis Hickman, PE, and Belinda Rasmussen, PEO Executive Director. She reported that Mr. Hickman requested the telephone meeting to discuss ideas of expanding the relationship between PEO and OSBEELS. Ms. Lopez further reported that she shared different ways OSBEELS has expanded relationships with other societies including, but not limited to various presentations, having an open dialogue to receive questions and answers, and providing articles for society communications. The Representatives of PEO shared their progress towards the event, "Day at the Capital" scheduled for February. Mr. Hardy included that 26 interviews were held; mostly with legislative staff as only a few members of the legislature were available.

Ms. Lopez also noted that PEO has requested speakers from OSBEELS. As a result, she will join Tina Sorensen, Accounts Specialist to a presentation scheduled for March 5 at the Max's Fanno Creek Brew Pub in Tigard. The presentation given will be to answer questions regarding renewals and professional development hour (PDH) requirements, and the continuing professional development (CPD) audits. Additionally, JR Wilkinson and Allen McCartt, OSBEELS Investigators are scheduled to present an *Introduction to OSBEELS Law Enforcement* during PEO's Annual Meeting scheduled for May 11.

#### *Department of Justice (DOJ) - Purchasing and Contracting Policies*

Ms. Lopez reported that on February 14, she met with Assistant Attorney General (AAG) Jack

McDonald with the Business Transactions Section of DOJ to discuss options for the Board with regard to purchasing and contracting policies. She was informed that the Board may consider adopting all or portions of Oregon Administrative Rule (OAR) 137, Division 46 (Model Rules General Provisions Related to Public Contracting) and Division 47 (Model Rules Public Procurements for Goods or Services). Copies of these Divisions will be presented to the Finance Committee in April for consideration. Upon a recommendation from the Finance Committee, AAG McDonald will review the policies for legal compliance. Subsequently, if adopted by the Board, the policies will then be distributed to the Department of Administrative Services (DAS) as required.

#### *Engineer's Week*

Ms. Lopez reported that Amanda Sloan and Jennifer O'Neill, Administration Specialists managed an OSBEELS booth at the Southwestern Oregon Community College (SOCC) on February 22, to celebrate the 6<sup>th</sup> Annual National Engineer's Week. In addition, Ms. Sloan and Ms. O'Neill gave a presentation on information about OSBEELS, the examination process, and the registration process (the pathway to engineering and/or land surveying professions).

#### *Professional Land Surveyors of Oregon (PLSO)*

Ms. Lopez stated that PLSO has again requested OSBEELS participation as a speaker during their Annual Conference on March 16. Ms. Gilbert will accompany Mr. McCartt to present an *Introduction to OSBEELS Law Enforcement*.

#### *2012 Central/Western Zone Meeting*

Ms. Lopez reported that the 2012 Central/Western Zone Meeting has been scheduled. The Snow King Resort in Jackson Hole, WY will host this occasion from May 17 – 19. For those interested, she noted that the schedule of events was included in the information and to contact Ms. Gilbert for assistance in making travel arrangements.

#### *2009-2011 Biennial Audit*

Ms. Lopez communicated that the field work by Moss Adams, LLP of Eugene has been completed. She intends to present the draft Audit Report (biennium ended June 30, 2011) to the Finance Committee for review upon receipt from the Secretary of State Audits Division.

Additionally, Ms. Lopez noted that submitting a copy of the audit is a requirement of the Report to the Governor as contained in ORS 182.472. This Report is due on April 1<sup>st</sup> of each even-numbered year. Staff is near completion of the Report and will be submitting the Report to the Governor as well as the President of the Senate, the Speaker of the House of Representatives, and the Legislative Fiscal Officer no later than Friday, March 30<sup>th</sup> to meet the deadline in statute. Mr. Tappert requested a copy of the Report for the Board members as well.

#### *Board Vacancies*

Ms. Lopez noted that the Governor's Office has yet to fill the vacancies with the Board. However, she successfully reached Pamela Larsen, Executive Appointments Program Representative on February 10 to discuss the current vacancies, the upcoming vacancies, and the enactment of SB 157 (2011 Legislative Session); ORS 672.240 provides that the Governor may appoint a registered professional photogrammetrist to the Board. Ms. Larsen assured Ms. Lopez

that she would place OSBEELS' file to the top of her list for review. Additionally, Mr. Hoffine is interested in serving on the Board for a second term and informed Ms. Lopez that he has submitted his Interest form to the Governor's Office for consideration.

### *Staffing*

Although interviews were conducted for one full-time Compliance Specialist on November 29, December 5, and 12, Ms. Lopez informed the members that Ms. Gilbert could not continue the selection process. This is due to the statewide strategic hiring freeze implemented by the Governor in December. Unfortunately, the Semi-Independent Boards were not excluded from the directive. Ms. Gilbert was also contacted by DAS with regard to the job announcement posted on the Featured Jobs section of the State Jobs page; the announcement was removed. Therefore, to continue with the recruitment at this time, OSBEELS must submit a request to the hiring review committee at DAS. Furthermore, she reported that Ross Gale submitted his resignation effective March 21.

### **PRESIDENT'S REPORT**

President Linscheid did not have anything to report at this time. There was no further discussion.

### **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

Aside from the matter discussed at the beginning of the meeting, Mr. Davis reported that the Examinations and Qualifications Committee (EQC) met on February 17, 2012 to discuss the matters contained in the Committee minutes. He gave appreciation to the Committee members for their participation and rearranging their schedules to attend. Additional discussion was held regarding the following matters:

#### *Registration*

*Comity Applications* – Mr. Davis reported that the Committee reviewed a comity application from Hugh Ezzell, including disciplinary action from the Nevada State Board of Professional Engineers and Land Surveyors and reciprocal disciplinary action by the California State Board of Professional Engineers, Land Surveyors, and Geologists. The information submitted regarding the disciplinary actions included failing to comply with a settlement agreement. As a result, it was moved and seconded (Davis/Tappert) to deny Mr. Ezzell's comity application as authorized by ORS 672.148(4). The motion passed unanimously.

Mr. Davis then directed the members' attention to the list of 80 professional applicants for registration by comity. It was moved and seconded (Davis/Tappert) to approve the list of 80 professional applicants as presented. The motion passed unanimously.

*1st Registration Applications* – Mr. Davis directed the members' attention to the 6 applicants seeking 1<sup>st</sup> registration. It was moved and seconded (Davis/Tappert) to approve the 6 applicants as presented. The motion passed unanimously.

### **EXTERNAL RELATIONS COMMITTEE**

Mr. Wahab reported that the External Relations Committee (ERC) met on February 10, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

### *Social Computing Policy and Guidelines*

It was moved and seconded (Newstetter/Wahab) to adopt the Social Computing Policy and Guidelines. The motion passed unanimously. Ms. Lopez noted that she and Ms. Gilbert are registered to attend training on March 21 regarding “Managing Social Media in the Workplace.” After a brief discussion, it was moved and seconded (Newstetter/Wahab) to proceed with an OSBEELS Facebook page, compliant with the newly adopted Social Computing Policy and Guidelines. The motion passed (Davis opposed). The target date for an OSBEELS Facebook page will not be immediate; it will occur upon hiring a replacement for Mr. Gale and upon completion of management training.

### **FINANCE COMMITTEE**

Mr. Burger reported that the Finance Committee (FC) met on February 10, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

#### *Budget Proposal*

Mr. Burger reported that the Committee reviewed the analysis of Board’s financial position and determined that the renewal fees can be reduced. After discussing the current fund balance, recent trends, the overall state of the economy, and continued prudent fiscal management, it was moved and seconded (Burger/Seward) to reduce the biennial renewal fee from \$180.00 to \$150.00 for professional registrations effective with the June 2012 biennial renewal period through a temporary rule. The motion passed unanimously. The biennial renewal fee for a CWRE will remain \$40.00. Staff was directed to submit a press release to the Daily Journal of Commerce (DJC).

Discussion was also held regarding Committee’s recommendation to also reduce the \$80.00 delinquency fee. It was moved and seconded (Burger/Seward) for the delinquent fee to remain \$80.00. The motion passed unanimously. Staff requested clarification on the assessment of the delinquent fee. The delinquent fee will be assessed for each registration or certification in which payment for the biennial renewal fee is not received and if the CPD Organizational form is not submitted, as provided in OAR 820-010-0505. In sum, the delinquent fee will be assessed, but no more than \$80.00 for each registration or certification.

#### *Disaster Recovery Plan*

It was moved and seconded (Burger/Seward) to set aside \$572,000.00 in a reserved fund for the Board’s Business Continuity Plan. The motion passed unanimously. \$30,000.00 of the \$572,000.00 is earmarked for continued disaster planning. There was no further discussion.

#### *Symposium Analysis*

It was moved and seconded (Burger/Newstetter) to hold a yearly symposium in the month of September. The motion passed unanimously.

#### *Database Work Proposals*

It was moved and seconded (Burger/Wahab) to award the database project to G-Squared

Software. The motion passed unanimously. Staff will request legal review of the contract by DOJ. The contract will include language that the project be completed within the amount not to exceed \$65,000.

#### *Review of Financial Reports*

Members reviewed the Statement of Net Assets and the Profit & Loss Budget Overview as of December 31, 2011. There was no further discussion.

### **LAW ENFORCEMENT COMMITTEE**

Mr. Hoffine reported that the Law Enforcement Committee (LEC) met on February 9, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

#### **Informal Conferences:**

Mr. Hoffine reported the Committee did not conduct any informal conferences. However, he noted that the Committee issued Notices of Intent (NOI) regarding two registrants who reside in South Korea, Yong-su Cho (case #2649) and In Ho Hong (case #2673). Mr. Hoffine informed the Board that both registrants failed to meet their CPD requirements and currently are in the delinquent status. More importantly, he added, neither respondent answered the allegations in their respective NOI nor requested informal conferences, so the Board can issue Default Final Orders. Before doing so, the Board should discuss key points the Committee identified.

The first question was the overseas delivery of Default Final Orders. AAG Tucker-Davis clarified that the statute requires service of a NOI by certified mail, which is done by the U.S. Postal Service and cannot be done overseas. She added that the Board sent the registrants their respective NOI by either FedEx or email and their files demonstrate they were received. This is the best that could be done given the requirement and circumstances. She also suggested that the Board could require foreign registrants to appoint Oregon-based agents for process serving.

The Board also discussed the statement Mr. Cho made in response to his NOI, "I'm afraid that can't respond to your telephonic informal conference because I can't speak English well." While the requirements to provide notice and to issue Default Final Orders against both registrants have been met, Mr. Wilkinson stated, the issue for the Board to consider is whether additional steps could be taken to educate registrants who have difficulty with the English language and are not in compliance with CPD requirements. Ms. Lopez suggested the Board utilize a translation service for any respondent who replies to the NOI. She observed that Mr. Cho respond by noting the language barrier and the Board can now address the issue. However, Mr. Hong has not replied and there is no way to gage whether this was an issue for him. After a lengthy review of the specifics of each case, the following occurred:

#### 2649 – Yong-su Cho / OSBEELS

Mr. Hoffine reported the Committee discussed that respondent Yong-su Cho, PE, is a South Korea resident who signed a renewal form certifying he completed the required PDH units. Mr. Cho did not respond to the audit until the second notice when the Board received a CPD Organizational Form claiming 60 PDH units. However, he provided no supporting documentation, and he subsequently failed to respond to the allegations or to the allegations

presented in the NOI. The Committee determined to issue Mr. Cho a Default Final Order to suspend registration for 90 days and to assess a \$2,000 civil penalty for failing to meet CPD requirements. The Committee recommended that the Board approve issuing Mr. Cho a Default Final Order. However, it was moved and seconded (Tappert/Davis) to offer Mr. Cho a second informal conference using a language interpreter. The motion passed unanimously.

#### 2673 – In Ho Hong / OSBEELS

Mr. Hoffine reported the Committee discussed that respondent In Ho Hong, PE, is a South Korea resident who signed a renewal form certifying he completed the required PDH units. Mr. Hong failed to respond to audit letters, or to a letter sent by FedEx. Mr. Hong responded to a subsequent email that he had since moved twice. Mr. Hong was informed of the steps necessary to gain compliance, including updated contact information, but he failed to respond to letters sent to his updated address. The Committee found Mr. Hong had not cooperated with the audit despite apparent contact. The Committee recommended the Board approve issuing Mr. Hong a Default Final Order to suspend registration for 90 days and assess a \$3,000 civil penalty for failing to comply with CPD requirements and to submit an address change. It was moved and seconded (Hoffine/Tappert) to approve issuing Mr. Hong a Default Final Order. The motion passed unanimously.

#### **Committee Meeting:**

#### 2599 – George Frauendiener / Carl Anfield

Mr. Hoffine reported the Committee discussed that complainant Carl Anfield, Anfield & Son's Metal Recyclers, alleged that respondent George Frauendiener, Hicorp Steel Buildings, Inc., offered engineering services without registration. Mr. Anfield purchased a steel building from Hicorp Steel and Mr. Frauendiener, but a professional engineer was required to design the footings and site plans. The investigation found that Mr. Frauendiener prepared two Hicorp Steel billing invoices noting "deposit for site engineering." Furthermore, Mr. Frauendiener contracted Mark Ellingson, PE, to design the foundation and the site plan, but Mr. Frauendiener added a pass-through cost that was nearly twice what Mr. Ellingson had bid. Mr. Hoffine commented there was no contact between the client and engineer and Mr. Frauendiener added to the engineering costs making it appear that Mr. Frauendiener was offering engineering services. The Committee determined to issue Mr. Frauendiener a Notice of Intent to Assess a \$1,000 civil penalty for violations of ORS 672.020(1), ORS 672.045(1)(2), and OAR 820-010-0720.

#### 2600 – Shawn Kampmann / Donald Hayes

Mr. Hoffine reported the Committee discussed that compliant Donald Hayes alleged that respondent Shawn Kampmann, PLS, was negligent and/or incompetent in his means for determining the line of Ordinary High Water (OHW) along a bank of the Rogue River where it runs adjacent to his upland Circle L Ranch property. Mr. Hayes asserted Mr. Kampmann manipulated the wording of ORS 274.005(3)<sup>1</sup> by omitting the word "annually" from his survey narrative definition of the line of OHW. He believed there was error in the OHW-determined boundary. The investigation found that the Department of State Lands (DSL) corresponded with Mr. Hayes regarding complaints that he was restricting or prohibiting public access by "trenching and planting activities" on state-owned lands fronting his Circle L Ranch along the

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<sup>1</sup> ORS 274.005(3) states, "Line of ordinary high water means the line on the bank or shore to which the high water ordinarily rises annually in season."

Rogue River. The issue became delineating the line of OHW to clarify Hayes property from state-owned property. Subsequently, Mr. Hayes hired Thomas Hoshall, PLS, and Mr. Hoshall set monuments to determine the OHW line. About two and half years later, DSL contracted Mr. Kampmann to survey and monument the meander line of OHW along the Rogue River in the vicinity of the Hayes property. Mr. Kampmann set monuments that conflicted with Mr. Hoshall's OHW line, thus affecting the location of the Hayes property boundary that borders the Rogue River.

Mr. Hoffine commented that there is wide variation in the interpretation of the line of OHW. He continued that both surveyors were competent in their work, but they arrived at different conclusions based on the available evidence. Given the time span between the surveys, he observed that a single precipitation event can come through an area and affect the course of a river or stream. Upon further discussion, it was moved and seconded (Hoffine/Newstetter) to approve closing the case as allegations unfounded. The motion passed unanimously.

#### 2601 – Rick Franklin / OSBEELS

Mr. Hoffine reported the Committee discussed that respondent Rick Franklin, President of Rick Franklin Corporation (RFC), was engaged in the unlicensed practice of engineering by advertising for and offering to perform engineering services on his company Web site without identifying the registered professional engineer that will perform the services constituting the practice of engineering. When the Committee reviewed RFC's Web site, it was found RFC advertised to design and construct heavy-duty bridges and to plan and "build roadways for private and industrial property owners." Mr. Hoffine added that RFC recently updated their Web site, but the Committee questioned the timing of such a change and had determined to issue RFC a Notice of Intent (NOI). However, questions arose with regards to issuing the NOI.

AAG Tucker-Davis reviewed OAR 820-010-0715 that requires construction contractors to disclose "in writing that the contractor is not an engineer and identifies the registered engineer or engineers that will perform the services constituting the practice of engineering." She continued that the specific issue is the RFC Web site, which makes an engineering offer. In this case, RFC has an engineer who does their work, but they did not disclose the engineer who will perform the work consistent with OAR 820-010-0715(2)(d). The Board discussed that engineering companies will bid contracts when they do not have qualified staff for the work, but then will hire someone qualified after being chosen for the project. While this is a common-place practice, particularly on large projects involving multiple professional disciplines, this practice does not comply with OAR 820-010-0715 as currently written. The practice becomes more difficult to regulate when construction contractors advertise design-build on their Web site, but do not disclose their engineer, or use multiple engineers for specific types of projects. After further discussion, the Board determined to refer OAR 820-010-0715 to the Rules & Regulations Committee for additional review and discussion.

The Board returned to the time span between when RFC was notified that their Web site was in violation and the changes that were made nearly two years later. The debate focused on the conditions set forth in OAR 820-010-0715. There was agreement that if all conditions were met, then there would be no issue. However, RFC failed to disclose their engineer as required by OAR 820-010-0715(2)(d), so the NOI was issued.

2602 – John D. Frazer / Paul Sellke

Mr. Hoffine reported the Committee discussed that complainant Paul Sellke, PE, alleged that respondent John Frazer of Advanced Engineering was engaged in the unlicensed practice of engineering by using the title “Advanced Engineering” without employing a registered professional engineer. The investigation found that Mr. Frazer was offering “materials testing and inspection services to the construction industry” through his Web site, but was not offering to or performing engineering services. The found violation was for the “Advanced Engineering” title. Mr. Hoffine informed that once Mr. Frazer was contacted he took immediate action and responded to the allegations with a copy of the Business Registry and a copy of his Web site showing a company name change. Mr. Hoffine added that the case was opened for unlicensed practice, but Mr. Frazer took steps to immediately comply. It was moved and seconded (Hoffine/Tappert) to close the case as compliance met. The motion passed unanimously.

2604 – Allan D. Brown / Brent Griffiths

Mr. Hoffine reported the Committee discussed that complainant Brent A. Griffiths, Lead Enforcement Officer for the Building Codes Division (BCD), submitted a plumbing inspector’s application from respondent Allan D. Brown, PE. Upon examination, Mr. Brown had supported his BCD application by including a copy of his State of California registration as a civil engineer and had reported living in Klamath Falls. However, he used an Oregon address with the reserved title of “P.E.” on his résumé, on a hearing request letter, and on an email sent to convey the letter of request. The investigation found that Mr. Brown was enrolled with OSBEELS as an engineering intern at the time of his BCD application; however, Mr. Brown subsequently was issued his Oregon professional engineer registration. Mr. Hoffine commented that Mr. Brown documented he was an engineer in California and therefore mistakenly believed he could call himself an engineering in Oregon albeit without registration. Since no public harm came about, it was moved and seconded (Hoffine/Tappert) to close the case with a letter of concern. The motion passed unanimously.

2605 – Daniel W. Baker / Ilah Pilaczynski

Mr. Hoffine reported the Committee discussed that complainant Ilah Pilaczynski alleged respondent Daniel Baker, PLS, was negligent in conducting a survey of her neighbor’s property. She explained several Lane County lot owners became involved in boundary line disputes with their neighbor who purchased a large tract of land south of and adjacent to their lot properties. She alleged “had Mr. Baker provided all of us with an accurate and correct survey, all these issues could have been avoided.”

The investigation found that Mr. Baker prepared a map of survey for his client and attorney who filed a quiet title action based on a deed gap Mr. Baker discovered between the lots and the large southerly tract. The first map Mr. Baker prepared depicted an existing fence as a “straight line” and as the boundary running “parallel” to the northern boundary of the southerly tract. The deed gap of 91.08 ft. was between these two “parallel” lines. The neighbors agreed to the quiet title action apparently based on Mr. Baker’s depiction of the fence line as their southerly boundary lines. When Mr. Baker returned to the property to stake the boundary between the lots and large tract for fence reconstruction, the boundary and existing fence were not in harmony. The neighbors filed suit. Mr. Baker then prepared a second map of survey that showed the fence

running in a more or less diagonal manner across the deed gap, which was contrary to how Mr. Baker depicted the fence and boundary on his first map. The investigation found Mr. Baker had not located the fence prior to depicting it and he had not sealed and signed two maps of survey.

Mr. Hoffine summarized that Mr. Baker performed preliminary work and produced a map to explain the boundaries. Once the neighbors agreed that the fence line was their boundary line and the deed gap was awarded, a subsequent survey showed the property line and fence line were not aligned. Mr. Hoffine commented that the neighbors felt deceived by the first Baker map. Mr. Tappert added that Mr. Baker led his client and attorney and the neighbors into thinking the fence line was the property line. This was a very egregious error with harm to the public. Mr. Hoffine continued that staffs recalled other instances where professionals made statements that were found later not to be true and those professionals faced revocation, but that sanction was not considered in this case. He emphasized that Mr. Baker missed the mark, so revocation should be discussed. Mr. Wilkinson clarified that in two cases professionals faced revocation for making untruthful statements. The Board settled the first case with a 6-month suspension for a registrant and a permanent retirement of registration for the other. Mr. Hoffine pointed out that after discovery of his error, Mr. Baker did not go back to straighten the matter. It was moved and seconded (Tappert/Newstetter) to issue Mr. Baker a Notice of Intent to revoke his registration and assess a \$4,000 civil penalty. Mr. Seward recused himself. The motion passed unanimously.

#### 2616 – Leland A. MacDonald / Stephanie Ames

Mr. Hoffine reported the Committee discussed that complainant Stephanie Ames alleged respondent Leland MacDonald, PLS, CWRE, failed to provide notice of right of entry after she discovered a survey monument on her side of the existing fence with wooden stakes marking the back of her property. When Ms. Ames called her neighbor about the survey, she learned they both had not received notice of right of entry. Mr. MacDonald did not dispute the allegations when he responded to the Board's inquiry. Mr. Hoffine added that this was a straight-forward survey where Mr. MacDonald failed to provide Ms. Ames notice. The Committee determined to issue Mr. MacDonald a Notice of Intent to issue a \$1,000 civil penalty for failing to provide notice of right-of-entry violating ORS 672.047(4).

#### 2677 – Chul Hwan Shim / OSBEELS

Mr. Hoffine reported the Committee discussed that respondent Chul Hwan Shim is a South Korea resident and an Oregon PE who signed his renewal form certifying he had completed the required PDH units. Mr. Shim was randomly requested to subsequently participate in an audit of documentation to support the claimed PDH units. After no response was received by the Board, Mr. Shim was sent a second notice to which OSBEELS received back marked as "vacant unable to forward." As a result, a third notice sent by FedEx to Mr. Shim's business address showed confirmation of delivery, but OSBEELS received no response.

When Mr. Shim responded to a Regulation Department email inquiry, he responded the same day by noting he changed employers in 2007. Thereafter, he submitted a Registrant Information Update form with his updated business address and a CPD Organizational form claiming 36 PDH units. However, he provided no supporting documents and thirteen of the 36 PDH units were disqualified because they were not within the specified audit period. By working with an

investigator, Mr. Shim subsequently submitted a CPD form that listed 79 PDH units with 19 units outside his audit period and 12 units without supporting documentation. Therefore, Shim provided 48 PDH units of qualified CPD credit and was compliant. Mr. Hoffine stated the LEC determined to issue Mr. Shim a Notice of Intent to assess a \$1,000 civil penalty for failing to submit a change of address violating OAR 820-010-0605.

2697 – Dale La Forest / Matthew Steele

Mr. Hoffine reported the Committee discussed that complainant Matthew Steele, PE, CWRE, alleged that respondent Dale La Forest prepared a report that represented the unlicensed practice of acoustical engineering. The investigation found that Mr. La Forest submitted reports to the City of La Pine in response to an application by Biogreen Sustainable Energy Co. to construct and operate the La Pine Biomass Power Generation Project, which is a 25 megawatt electrical generating biomass power plant designed to combust 200,000 pounds of wood per hour. Mr. La Forest reported his analyses wherein he identified a dozen homes and residential parcels that exist to the southwest of the project and “will be within audible distance of this facility.” The Committee discussed that Mr. La Forest used calibrated instruments for his acoustical measurements, analyzed his results and compared them to the regulatory standards, determined potential hazard(s), and testified as to his results and the hazards. The Committee also observed that just reporting data was not a problem, but drawing conclusions from the data and the regulations and then making recommendations to the project design was a problem.

Mr. Hoffine commented that the Committee reviewed Mr. La Forest’s response to the allegations. He observed that Mr. La Forest claimed he did not engage in professional practice because he was not representing the project proponents. Mr. Wilkinson explained that this raised additional questions for the Committee regarding professional services. As a result, the Committee directed further investigation. Mr. Tappert also noted an analogy to this case wherein someone sees a building being constructed and they believe the beam is not large enough for the structure. They produce engineering calculations to show the size of the beam. However, that person was not examined or tested by the Board, so their qualifications are unknown. By producing and presenting the calculations and conclusions, the individual engaged in the unlicensed practice of engineering.

2724 – Michael Kath / OSBEELS

Mr. Hoffine reported the Committee discussed that complainant Stephen Bryant, PE, especially qualified as a geotechnical engineer, alleged that Mikhail P. Golberg, EIT, Certified Engineering Geologist (CEG), prepared a report that provided engineering recommendations not done by a professional engineer. While Mr. Golberg signed and sealed the report’s signature page with his CEG seal, the signature page also showed Mike Kath, EIT, “Senior Engineer.” At the time, Mr. Kath was registered as an EIT with the Board and was not authorized to use the engineer title. The Committee also believed that Mr. Kath offered the engineering recommendations in the report. Due to these allegations, a separate law enforcement case from Mr. Golberg’s was opened against Mr. Kath. Mr. Hoffine stated the Committee determined to issue Mr. Kath a Notice of Intent to assess a \$2,000 civil penalty (NOI) for use of the engineer title and for engaging in the practice of engineering violating ORS 672.007(1)(a) and ORS 672.020(1).

2656 – Mikhail Golberg / Stephen Bryant

Mr. Hoffine reported the Committee discussed that complainant Stephen Bryant, PE, especially qualified as a geotechnical engineer, alleged that Mikhail P. Golberg, EIT, Certified Engineering Geologist (CEG), prepared a report that provided engineering recommendations not done by a professional engineer. Mr. Golberg sealed the report with his CEG seal under his firm name of Hydro-Geo Engineering, Inc. He also repeatedly used the term “geotechnical” in regards to his concerns, design, and construction recommendations. The Committee concluded that Mr. Golberg was using the title of engineer in his firm name without registration and was a CEG whose practice crossed into engineering. Mr. Hoffine informed that the Committee determined to issue Mr. Golberg a Notice of Intent to assess a \$2,000 civil penalty for unlicensed use of the title and for unlicensed practice. In response to a question about scheduling informal conferences, Mr. Wilkinson explained that Mr. Golberg and Mr. Kath are scheduled for back-to-back informal conferences. This would allow the Committee to question both together, if necessary.

2750 – Shaun Martin / OSBEELS

Mr. Hoffine reported the Committee discussed that respondent Shaun Martin, EI, sealed and signed a “Professional Letter of Reference – Professional Engineer” for Missouri applicant Christopher Crary. The Missouri Board contacted OSBEELS to confirm Mr. Martin’s registration and they were informed that he was an engineering intern (EI) who was not authorized to sign documents as a professional engineer. The investigation found that Mr. Martin produced and affixed an embossed seal to the reference letter using a registration date unrelated to his EI certification. Furthermore, Mr. Martin used the title of Civil Engineer and offered the Missouri Board an opinion as a professional engineer. Mr. Martin responded to the allegations by admitting to using “extremely poor judgment” and accepted full responsibility.

Mr. Hoffine clarified that Mr. Martin’s commanding officer was Mr. Crary who asked him to write the letter. He continued that this placed Mr. Martin in a difficult position. Nevertheless, Mr. Martin agreed to submit the reference and to do so he forged an embossed seal and claimed to be a professional engineer in violation of ORS 672.007, ORS 672.200, and ORS 672.045. Mr. Tappert asked if Mr. Martin had taken the professional examination. Ms. Lopez replied he had, and the results were released, but he is enrolled as an engineering intern. She explained that the Committee issued a Notice of Intent to revoke his enrollment as and EI and to assess a \$1,000 civil penalty.

**New Business:**

Preliminary Evaluation: Edsel R. Harrison notice of disciplinary action

Mr. Hoffine reported the Committee discussed that Edsel R. Harrison, Jr, PE, CWRE, submitted documentation showing disciplinary action had been taken against him and his firm Harrison Engineering, LLC, by the registration boards of South Carolina and Louisiana. The Boards issued civil penalties for offering engineering services in their state without Certificates of Authorization (COA) in place. Mr. Hoffine observed that OSBEELS does not require a COA requirement as other states (i.e., South Carolina or Louisiana). As a result, the Committee determined to not open a law enforcement case.

Preliminary Evaluation: OBAE allegations against Kevin McCormick, SE

Mr. Hoffine reported the Committee discussed that the Oregon Board of Architect Examiners (OBAE) submitted a complaint against Kevin McCormick, SE, President of Miller Consulting Engineers, Inc. (Miller). The OBAE wrote “McCormick may have acted as the ‘Professional of Record’ for the tenant improvement project at the Sand and Sea Motel in Seaside,” and alleged an “offering of engineering services without disclosing the professional of record.” Mr. Hoffine noted that OSBEELS does not have authority regarding the “professional of record” and a law enforcement case was not warranted. He also explained that investigators went further and found Miller was acting as a contract management firm to oversee an Oregon coast condominium project that replaced damaged and leaking frontal glass. The Miller contract included other work, but the investigation found Miller had an engineer on-staff and can advertise engineering services consistent with OAR 820-010-0720. The Committee determined to not open a law enforcement case.

**Unfinished Business:**

2613 – George B. Cathey request for a waiver of remaining civil penalty

Mr. Hoffine reported the Committee discussed that George B. Cathey, PLS (retired), CWRE (retired), approached the Board with a letter noting he had retired both his Oregon surveying registration and his water right examiner certificate. Furthermore, Mr. Cathey will retire from the Army Corps of Engineering (ACOE) in April and would experience an income reduction. As a result, Mr. Cathey requested to be excused from the balance of his civil penalties that stemmed from settling two law enforcement cases. Mr. Hoffine described that the Committee reviewed the cases Mr. Cathey settled and found that he had been making regular payments. Mr. Cathey has paid \$2,400 to date and owes a balance of \$2,600. The Committee agreed to meet with Mr. Cathey in April to review his ACOE retirement papers and to discuss his options. However, the Committee wanted to discuss the matter with the Board given that other respondents have approached the Board about modifying their settlement agreements and failed. Board members expressed general concerns about modifying settlement agreements. However, there was no outright rejection of the idea, so the Board left to the Committee to discuss the matter with Mr. Cathey. The Board would then review any agreement for approval. Mr. Hoffine commented this was consistent with the Committee in that they would consider a new agreement and would determine the amount to abate, if any. He added Mr. Cathey must provide documentation and attend the April Committee meeting in order to discuss an agreement the Board would review in May.

**Settlement Agreements:**

Mr. Hoffine reported the LEC reviewed the list of Cases Subject to Collections (9), Cases Subject to Monitoring (11), and Case Status Report (91 open cases) and offered no comments.

**PROFESSIONAL PRACTICES COMMITTEE**

Ms. Newstetter reported that the PPC met on February 10, 2012, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the following matters:

*Field Work Classification*

Staff was directed to remind Mr. Darling and Ms. Lescheck to submit a copy of the contract to conclude the discussion. There was no further discussion.

*ODOT Employed Land Surveyors & ORS 672.047*

A brief discussion was held regarding the recent change to ORS 672.047 and the additional step professional land surveyors employed by ODOT must perform to meet both ORS 672.047 and ORS 35.220. As a result, it was moved and seconded (Newstetter/Tappert) to waive the attorney/client privilege and share the advice with ODOT. The motion passed unanimously. AAG Tucker-Davis will communicate the waiver with the AAG assigned to ODOT and staff will communicate the waiver with Ron Singh, PLS, Geometronics Unit Manager/Chief of Surveys. There was no further discussion.

**STANDARDS OF LAND SURVEYING PRACTICES COMMITTEE**

Ms. Newstetter reported that the SOP Committee met on February 9, 2012, to discuss the matters contained in the Committee minutes. Ms. Newstetter also briefly mentioned that she is scheduled to present information regarding the Narrative section the Committee is currently working on with Lloyd Tolbert during the 2012 PLSO Annual meeting later this week. This is another opportunity to share the work in progress and collect additional feedback for the Committee to consider. There was no further discussion.

**RULES AND REGULATIONS COMMITTEE**

Mr. Seward reported that the RRC met on February 10, 2012, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the following matters:

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

Mr. Seward explained to the members that the modifications to these rules are merely housekeeping. It was moved and seconded (Seward/Tappert) to approve with the rulemaking process to amend OAR 820-010-0215 as presented. The motion passed unanimously.

*OAR 820-010-0622 – Modifying Designs or Documents*

It was moved and seconded (Wahab/Seward) to approve with the rulemaking process to amend OAR 820-010-0622 as presented. The motion passed unanimously.

*OAR 820-010-0730 – Use of Engineering Title if Registered in Another Jurisdiction*

It was moved and seconded (Wahab/Seward) to approve with the rulemaking process to adopt OAR 820-010-0730 as presented. The motion passed unanimously.

**ADJOURN**

The meeting was adjourned at 4:03 p.m.

**NEXT MEETINGS**

Next Board Meeting:

May 8, 2012

Next Committee Meetings:

LAW ENFORCEMENT:

Thursday, April 12<sup>th</sup> at 8:00 a.m.

Standards of Land Surveying Practices:

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

RULES & REGULATIONS:

Friday, April 13<sup>th</sup> at 8:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, April 13<sup>th</sup> at 9:00 a.m.

FINANCE:

Friday, April 13<sup>th</sup> at 11:00 a.m.

EXTERNAL RELATIONS:

Friday, April 13<sup>th</sup> at 11:30 a.m.

PROFESSIONAL PRACTICES:

Friday, April 13<sup>th</sup> at 1:00 p.m.