



# 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  
January 12, 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  
Ken Hoffine  
Mari Kramer  
Sue Laszlo  
Dan Linscheid  
Sue Newstetter  
John Seward  
Carl Tappert  
Amin Wahab  
Edward Butts (excused absence)

## Visitors Present:

Frank Sherkow

## Others Present:

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

## APPROVAL OF AGENDA

It was moved and seconded (Laszlo/Seward) to approve the agenda. The motion passed unanimously.

## APPROVAL OF MINUTES

It was moved and seconded (Laszlo/Tappert) to approve the minutes of the November 10, 2009 Board Meeting as amended. The motion passed unanimously.

## PUBLIC INPUT

President Davis welcomed Frank Sherkow to the meeting. Mr. Sherkow stated the reason of his

attendance was to answer any questions the Board may have in regards to his application for registration as a professional engineer by comity. Since there were no questions, it was decided that the approval of the comity list could occur at this time. It was moved and seconded (Laszlo/Linscheid) to approve the list of 85 professional engineer applicants as presented. The motion passed unanimously.

## **EXECUTIVE SECRETARY'S REPORT**

### Committee Activities

Ms. Lopez reported that the Examinations and Qualifications (E&Q), the External Relations (ERC), the Finance, the Law Enforcement (LEC), the Professional Practices (PPC) and the Rules and Regulations (R&R) Committee each met during the interim. Additionally, the Standards of Land Surveying Practice Committee met on December 11, 2009. The Committee minutes were included in the packets. In addition, she reported that a Joint Compliance Committee (JCC) meeting was held with the Oregon State Board of Geologist Examiners (OSBGE) on December 15, 2009. She attended this meeting with President Davis, Mr. Seward, Ms. Gilbert, Mr. Wilkinson, and Mr. McCartt. At this time, meeting minutes have not been provided by OSBGE.

### Administrative Activities

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

Ms. Lopez reported that the Fundamentals of Engineering (FE), Fundamentals of Land Surveying (FLS), Professional Engineering (PE), and Professional Land Surveying (PLS) examination scores have been sent. She further reported that examinees who failed the October 2009 examinations will not be given an extended deadline to submit a re-application. Additionally, staff is currently getting ready for the April 2010 examinations.

#### *NCEES Committee Assignments for 2010-2011*

Ms. Lopez briefly noted that Joe Timms, National Council of Examiners for Engineering and Surveying (NCEES) president-elect, invited by email, Board, Associate, and Emeritus members to consider serving on NCEES committees and task forces. The Board members indicated they did receive this communication. There was no further discussion.

#### *Associate and Emeritus Status*

Ms. Lopez noted that a copy of an NCEES memorandum regarding the Appointment of Associate and Emeritus Members, along with a list of current members, was provided in the packets. The deadline for modifications is February 1, 2010. President Davis directed staff to contact Bob Neathamer to ascertain his interest in a position. Ms. Laszlo also noted that she would be interested in a position once she leaves the Board. She feels that a position with NCEES coupled with her involvement on the American Council of Engineering Companies (ACEC) Legislative Committee is also a positive objective for the Board.

#### *2010 Joint Central/Western Zone Meeting*

Ms. Lopez informed the members that the 2010 Joint Central/Western Zone Meeting has been scheduled. The Little America Hotel in Salt Lake City, Utah will host this occasion from May 13-15, 2010. President Davis will be the Funded Delegate for this occasion. Additionally, Mr. Linscheid, Ms. Newstetter, and Ms. Laszlo voiced their interest in attending. Mr. Tappert noted that he is also interested but will need to check his availability.

### *Semi-Independent Agency Biennial Reports*

Pursuant to Oregon Revised Statute (ORS) 182.472, Ms. Lopez stated that the OSBEELS' report was submitted to the Governor's Office for review on December 31, 2009. Mr. Seward requested a copy of the report be sent to the Board members for informational purposes.

### *SIBA*

Ms. Lopez informed the members that she attended a meeting of the Semi-Independent Board Administrators on November 17, 2009. Matters discussed relevant to OSBEELS were: Agency audit status and the Report to the Governor (ORS 182.472). She also noted that a telephone conference was held on December 16, 2009, to discuss how each Board was interpreting the requested information and putting the data forward due to the continued complaints and concerns from the Legislative Fiscal Office (LFO). Additionally, OSBEELS is scheduled to host the next SIBA meeting on January 19, 2009.

### *Governor's Plan to Restructure State Government*

Ms. Lopez briefly noted that the Professional Engineers of Oregon (PEO) has scheduled a conference call to be held on January 14, 2009, for all parties to touch base. The letter of opposition sent from the associations to the Governor on November 17, 2009, was included in the packets.

### *2007-2009 Biennial Audits*

Ms. Lopez reported that Moss Adams, LLP has not yet completed the Board's audit. A few items to be completed by Moss Adams are still outstanding.

### *International Society of Automation (ISA)*

Ms. Lopez directed the member's attention to the letter dated November 6, 2009, requesting an amendment to the Oregon Administrative Rule (OAR) 820-001-0000. After a brief discussion, the matter was forwarded to the R&R Committee for drafting.

### *Board Vacancies*

Ms. Lopez reminded the members that the Board has yet to fill the engineer position that was vacated by George Gross and no replacement has been found for Ms. Laszlo's position. Staff contacted a representative from the Office of Senator Peter Courtney and was informed that the request to revise the make-up of the Board cannot be considered during the February Special Session. The request was to include the possibility of a registered professional photogrammetrist. Ms. Newstetter recommended that the Board further recruit for the position by targeting registrants in Congressional District 3. Ms. Laszlo and President Davis stated their efforts to recruit for the position, unfortunately with no success. However, the ERC will consider additional methods for recruitment during a future meeting.

## **PRESIDENT'S REPORT**

President Davis briefly reported on the JCC meeting held in December with OSBGE. He summarized that the purpose of the meeting was to discuss the grey areas between the practices of engineering and geology. He also felt a breakthrough with the Board members from OSBGE regarding a discussion of how each Board responds in certain circumstances. Each Board now

appears to be on the same page.

President Davis informed the members that a joint meeting with the Oregon Board of Architect Examiners is anticipated to occur during the week of January 18 or 25, 2010. The purpose of the meeting will be to discuss the grey areas between the practices of engineering and architecture. Although Mr. Linscheid and Mr. Wahab volunteered their time, Mr. Wahab will attend the meeting with President Davis since the meeting will most like be held in the Portland area.

**President Davis then took the Board into Executive Session as provided by ORS 192.660(2)(i) to discuss the annual evaluation of the Executive Secretary.**

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

As a result of the discussion held in Executive Session to discuss the annual evaluation of Ms. Lopez, it was moved and seconded (Hoffine/Newstetter) to freeze the salary of the Executive Secretary for this year. The motion passed (favor – Seward/Laszlo/Hoffine/Newstetter/Kramer; opposed – Tappert/Wahab/Linscheid)

#### **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

AAG Julie Penry initiated a discussion regarding the NCEES Exam Administration Agreement. **President Davis took the Board into Executive Session as provided by ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection.**

**Upon returning to open session, it was noted that no action was taken during Executive Session.** However, Ms. Lopez and AAG Penry will continue to work with NCEES to finalize the agreement.

Mr. Wahab reported that the E&Q Committee met on December 11, 2009 to discuss the matters contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

#### *Forest Examination Agreement*

The members were provided with a copy of the Memorandum of Understanding (MOU) between the OSBEELS Board and the Washington Board as discussed by the Washington Board during their meeting held on January 6 and 7, 2010. As also discussed with the Committee, the Washington Board will no longer participate in the development and scoring of the Forest engineering examinations. Therefore, the MOU changes the scope governing the Forest engineering examination and addresses the process to obtain registration as a professional engineer especially qualified in Forest engineering. After a brief discussion, the Board agreed that Ms. Lopez will sign the agreement.

#### *Scott Fein*

Correspondence was received on December 16, 2009 from Scott Fein regarding the review of his Oregon Specific Land Surveying examination. He requested a minimum of four hours to review his failed examination. Ms. Lopez informed the members that the Board policy has been to

allow a maximum of two hours for review; however, this timeframe is not included in the rule. Additionally, a staff member remains present during the review of failed examinations.

Mr. Fein also submitted correspondence dated January 5, 2010 requesting the opportunity to sit for the April 2010 in the case that the review of his examination is unsuccessful. It was further noted that he closed this correspondence with the title “Aspiring Professional Land Surveyor” under his name.

After discussion, the Board determined that Mr. Fein would be allowed two hours to review his failed examination. This is consistent with the timeframe allowed to other unsuccessful examinees. Furthermore, the Board denied his request to sit for the April 2010 examination and commented on the inappropriate title he used in the close of his correspondence. Staff will respond to Mr. Fein accordingly.

### Registration

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

*Prior Practice Applications* – Mr. Wahab directed the members’ attention to the 19 applicants seeking Geotechnical registration by prior practice. It was moved and seconded (Kramer/Laszlo) to approve the 19 applicants as presented. The motion passed unanimously.

## **EXTERNAL RELATIONS COMMITTEE**

Ms. Newstetter reported that the ERC met on December 11, 2009, to discuss the matters as contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

### *Message from the President*

A draft article for the next *Oregon Examiner*, “A Message from the President” was reviewed. The purpose of the article is to inform registrants and the public of the Governor’s plan to restructure state government. The Board discussed several revisions and the inclusion of the letter submitted to the Governor by the respective board’s associations. Ultimately, it was referred back to the Committee for additional modifications during the February meeting.

### *Forms*

Ms. Newstetter directed the members’ attention to the Complaint Form. A brief discussion was held related to the sections that contain the general notes, general information requested, and the statement given by a witness. After making a few revisions, the form will be sent back to the graphic designers for completion.

Ms. Newstetter then directed the members’ attention to the forms for requesting reasonable accommodations. After review and discussion, staff was directed to obtain additional information on the Religious Accommodation Request form from AAG Kathryn Logan. Additional review will then take place during the February Committee meeting.

## **FINANCE COMMITTEE**

Mr. Tappert reported that the Finance Committee met on December 11, 2009, to discuss the matters as contained in the Committee minutes. There was no further discussion.

### *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 November 30, 2009. This time period reflects the latest data received in bank statements for the 2009 – 2011 biennium. There was no further discussion.

## **LAW ENFORCEMENT COMMITTEE**

Mr. Linscheid reported that the LEC met on December 10, 2009, to discuss the following matters:

### *2495 – Matthew Smith*

Mr. Linscheid reported that the Committee met by teleconference with respondent Mathew Smith and firm co-owner John Herrick to discuss a Notice of Intent (NOI) 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 received an anonymous complaint that Smith Herrick Engineering, LLC, advertised as being an engineering company and offered the services of an engineer on the company Web site without employing a licensed professional engineer. In response to the Board company questionnaire, they confirmed that they offer and provide engineering services. However, they also asserted that their offering and services were exempt under ORS 672.060(6) because they offer services only to companies.

Smith stated that they had retained an attorney because it appeared the Board was forcing them to cease business. AAG Tucker-Davis stated that since they are represented by an attorney any further discussion should be between attorneys. No agreement was reached other than for AAG Tucker-Davis to work with their attorney to schedule another informal conference or a hearing with an Administrative Law Judge (ALJ).

### *2496 – Robert Demers*

Mr. Linscheid reported that the Committee met with respondent Robert Demers to discuss a NOI to Assess a \$3,000 civil penalty for the unlicensed practice of land surveying violating ORS 672.025, ORS 672.045, and OAR 820-010-0720.

Mr. Demers countered that he is not providing surveying services to the public but to other surveyors. However, Mr. Demers was reminded that surveyors are members of the public. Mr. Demers commented that anyone in Oregon can do subdivisions. In reply, Mr. Linscheid noted that the authorization was for construction purposes only. Mr. Demers continued that they offer land development services and not surveying and if he is misleading the public then he will change his Web site. Mr. Demers inquired on how to include a disclaimer on his Web site so that it is clear that he is not offering land surveying services, only land development, because he uses his Web site to substantiate his development business.

It was further noted a topographic map was observed on Mr. Demers' Web site and it appeared

that Mr. Demers was offering land surveying services. Upon consideration, the Committee would not offer a settlement agreement. Furthermore, the Board would not help with disclaimer language. Therefore the Committee recommended a Final Order by Default.

A Board member requested clarification on the extent of Mr. Demers' activities. It was noted that there were several actions of Mr. Demers that were violations. A motion for approval of a Final Order by Default was moved and seconded (Linscheid/Laszlo). The motion passed unanimously.

*2509 – Tim Bogan*

AAG Tucker-Davis noted that due to withdrawing his request for a hearing, Mr. Bogan's Default Final Order needed the Board's approval. Ms. Lopez recommended that the Committee meeting minutes of December 10, 2009, be amended to reflect that Mr. Bogan withdrew his request for a hearing and was not present at the Committee meeting. A motion for approval of a Final Order by Default for Mr. Bogan was moved and seconded (Laszlo/Linscheid). The motion passed unanimously.

*2498 – Gary Hickman*

Mr. Linscheid reported that the Committee met with respondent Mr. Gary Hickman, PLS, to discuss a NOI to Assess a \$2,000 Civil Penalty for failing to return a corrected map of survey within 30 days violating ORS 209.250(1) and ORS 209.250(4)(b). A discussion ensued about land surveyors filing a record of survey when preparing partitions. Mr. Hickman acknowledged he would not normally set monuments for a partition until approved, but the developer wanted the encroachment staked. As a result of this case, he changed procedures to set temporary references.

Mr. Hickman also asked the Committee to review the 45-day requirement since partition reviews can take six months or more to complete. Mr. Hoffine stated he is facing a similar problem. However, he would file a record of survey so he is not in violation. Mr. Linscheid noted that Oregon is one of the stricter states on filing requirements, but to lengthen the time would require legislative action to change ORS 209.250(1).

Upon consideration, the Committee agreed that there is a problem and offered to reduce the civil penalty to \$500 if Mr. Hickman would admit to violations. He would also have to agree that if brought up on similar violations then the remaining portion would become payable. Mr. Hickman agreed and asked about what to do with the conflicting deadline to file a record of survey and the review timeline for a partition.

In further discussion, Mr. Hoffine commented that Mr. Hickman was in a difficult spot which is why the Committee recommended dropping the civil penalty down to \$500 if Mr. Hickman admitted to the violations. A motion for approval of the \$500 civil penalty settlement agreement was moved and seconded (Linscheid/Seward). In discussion, a question was raised about including language in the settlement agreement that the registrant never violate the ORSs or OARs again. AAG Tucker-Davis stated that it could be included and explained the process. It was also noted that the stipulation was discussed with Mr. Hickman during the informal conference. The motion passed unanimously.

*2499 – George Cathey*

Mr. Linscheid reported that the Committee met with respondent George Cathey, PLS, to discuss a NOI to Revoke Registration and Assess a \$6,000 Civil Penalty for negligence or incompetence violating ORS 209.250(1),(2),(3),(4)(b); ORS 672.200(2),(4); OAR 820-010-0605; OAR 820-020-0015(2); and OAR 820-030-0060. Mr. Linscheid noted that Mr. Cathey had a number of complaints from Marion and Multnomah Counties.

During the informal conference, Mr. Cathey stated that in the last four years he had been through life experiences that impacted his ability to complete his duties, including stolen computers and data files. He was also under the impression that he responded to the concerns of the County Surveyors and did not realize that he had not. Mr. Cathey admitted to the violations and the Committee had determined that Mr. Cathey wasn't well organized which resulted in the violations. Mr. Linscheid noted that Mr. Cathey worked with the Committee and pleaded for sympathy. The Committee, however, did not feel it could allow the violations to be set aside.

Upon consideration, the Committee offered to abate the revocation and the civil penalty to \$4,000 with a payment plan. If past violations are found or future violations occur, then the revocation and the \$2,000 balance would be back for consideration.

A question arose regarding competence or if the issue was just organization. Mr. Linscheid stated that the Committee recognized only disorganization but had included the stipulation in the settlement agreement that if Mr. Cathey is found to have committed additional violations then the entire remaining amount would be due. A motion for approval of the settlement agreement for a \$4,000 civil penalty was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

*2508 – Zubair Sheikh*

Mr. Linscheid reported that the Committee met by teleconference with the respondent Zubair Sheikh to discuss a NOI to Assess a \$2,000 Civil Penalty for violations of OAR 820-010-0620 and OAR 820-020-0015(8). Mr. Sheikh stated that he was not initially aware of his non-compliant seal and had used a prior stamp design. He took responsibility and was in the process of getting it corrected and requested to change it before the next Board meeting. He asked if he presented a compliant seal, if the Board then could decide whether he should pay the penalty. He responded to a Committee question that it was his intent to make current his registration.

Upon consideration, the Committee offered Mr. Sheikh to provide proof of a compliant seal by January 8, 2010, 5:00 p.m. The Committee would waive a \$1,000 if the seal is compliant and, if not, the civil penalty would remain \$2,000. A motion for approval of the settlement agreement was moved and seconded (Linscheid/Laszlo).

In further discussion, it was asked if the civil penalty had been reduced. It was noted that Mr. Sheikh had violations of an improper stamp as well as failing to correct it in a timely manner and that the penalty had been reduced from \$2,000 to \$1,000 as result of the informal conference discussion. The motion passed unanimously.

*2494 – Thomas Swart*

Mr. Linscheid reported that the Committee was scheduled to meet in an informal conference

with respondent Thomas Swart, PLS, to discuss a NOI to Revoke Registration and Assess a \$16,500 Civil Penalty for violations of ORS 672.200(2),(4); ORS 672.025(1),(2); ORS 672.045(1),(4),(6); ORS 209.250(1),(3),(4); OAR 820-010-0605; OAR 820-010-0620(1),(4); OAR 820-010-0621(1),(2); OAR 820-020-0015(9),(10); OAR 820-020-0020(1),(2); OAR 820-020-0025(1); OAR 820-030-0060; and OAR 820-030-0070. However, Mr. Swart did not appear in person or by telephone for the informal conference. Upon consideration, the Committee determined to move forward to a hearing.

Mr. Linscheid further commented that this case has been on-going for quite some time. Mr. Swart kept requesting informal conferences but for various reasons the informal conferences never materialized. As a result, the Committee recommended taking the case to a hearing. Mr. Linscheid asked if the hearing had been scheduled and if so what the date was. It was noted that the hearing was scheduled for January 26, 2010.

#### *2534 – Erik Esparza*

Mr. Linscheid reported that the Committee met with respondent Erik Esparza, PE, to discuss a NOI to Assess a \$1,000 Civil Penalty for violations of ORS 672.007(2)(a)(b)(c); ORS 672.025; ORS 672.045(1)(2); and OAR 820-010-0720(1)(3). Mr. Linscheid stated that the underlying intent of the law is to protect the public by having a registrant in an office that is in responsible charge of every project. Mr. Esparza replied that the Web site referred the land surveying to Construction Mapping Team and was not offered by LanPacific. However, it was noted that the offering of land surveying was on the LanPacific Web site.

In response to a question about the Web site changes, Mr. Esparza reported that they are in the final stages of merging the two companies. After the first of the year, they are a single entity. He added that the health and safety of the public is foremost and now understood the issue with the Web site.

Upon consideration, the Committee proposed to reduce the civil penalty to \$500 if Mr. Esparza would admit to advertising land surveying services without employing a full-time registrant. A motion to approve the settlement agreement of a \$500 civil penalty was moved and seconded (Laszlo/Tappert). The motion passed unanimously.

#### *2541 – James Andrews*

Mr. Linscheid reported that the Committee met with respondent James Andrews, PLS, to discuss a NOI a \$1,000 Civil Penalty for violating ORS 672.045(4). Mr. Andrews set a property monument and failed to provide notice of right of entry. Mr. Andrews stated that he was unaware that the law required him to provide notice when he was setting a common monument, but was careful not to enter on the property. Upon consideration, the Committee determined to reduce the civil penalty to \$250 if Mr. Andrews admitted to the violation. Mr. Andrews was reminded that the law requires a land surveyor to provide proper notice when setting a common property monument.

Mr. Linscheid noted that Mr. Andrews was very cooperative and had learned a lesson. Mr. Hoffine also noted that this was the second such violation for Mr. Andrews and that Mr. Andrews had admitted he should have properly given notice to the property owner. A motion to

approve a settlement agreement for a \$250 civil penalty was moved and seconded (Linscheid/Laszlo). The motion passed unanimously.

#### *2480 – Abraham Taylor*

Mr. Linscheid reported that the Committee met with respondent Abraham Taylor, PLS, in a third informal conference to discuss a NOI to Suspend Registration and to Assess a Civil Penalty of \$1,000 for failing his professional duties to properly monument a property corner violating ORS 209.250(1), ORS 672.200(2), and OAR 820-020-0015(1),(2).

Upon consideration, the Committee was convinced that Mr. Taylor had learned from four meetings with the Board and would not practice in the same way he had in the past. The Committee determined to remove suspension from consideration and to reduce the civil penalty to \$500. Mr. Taylor agreed.

Mr. Linscheid noted that the discussion with Mr. Taylor was long, but in the end the Committee reached a settlement agreement with Mr. Taylor. A motion to approve the settlement agreement was moved and seconded (Linscheid/Laszlo). The motion passed unanimously.

#### ***Cases Reviewed***

Mr. Linscheid recommended that in the interest of time the Board not discuss all cases (as listed below) that were reviewed in the Committee meeting on December 10, 2009, unless there were questions or a need for discussion. It was decided that the Board would review those cases for which the Committee was recommending action.

#### *2505 – Matt Dunckel / Patrick Shine*

The complainant Patrick Shine alleged that the respondent Matt Dunckel, PLS, Certified Water Right Examiner (CWRE), failed to follow accepted land surveying standards in preparing a record of survey. The investigation concluded that Mr. Dunckel's survey ignored the original 1907 survey when the monuments were set despite a measuring error. In addition, it was determined that Mr. Dunckel ignored boundary precedence of an original survey and a parcel with senior rights and he failed to explain why he disregarded the 1907 line in favor of a deed call over monumentation.

The Committee determined to issue Mr. Dunckel a NOI to revoke registration and assess a \$2,000 civil penalty because of the harm it caused. The NOI would include violation of Yamhill ordinance 658 and would also revoke his CWRE registration. Due to his familiarity with the case, Mr. Linscheid recused himself.

#### *2512 – Daniel Redmond / Scott Mills*

Mr. Linscheid reported that the Committee reviewed a complaint filed by Scott Mills, PE, especially qualified as a geotechnical engineer, alleging that the respondent Daniel Redmond, PE, falsified data and failed to review or understand previous geotechnical engineering for his part in the landslide movement of a 2006 *Street of Dreams* home.

The investigation found that the developer received a replat of the development which changed lot designs and numbering scheme. Mr. Redmond had completed his reports 10 days after the

replat was approved and was not informed of the replat. The investigation also found no reporting where Mr. Redmond's geotechnical reporting was suspect. In fact, several reviewed reports confirmed his findings. Upon consideration, the Committee recommended the Board approve closing the case against Mr. Redmond as allegations unfounded and to open a law enforcement case against Ms. Marcella Boyer, PE, for negligence or incompetence in the practice of geotechnical engineering.

It was further discussed whether a second case should be opened against Ms. Marcella Boyer, PE, as responsible for the geotechnical report for the home involved in this case. Mr. Wilkinson noted that the case against Ms. Boyer had already been opened. A motion to close the case against Mr. Redmond based on allegations unfounded was moved and seconded (Linscheid/Laszlo). The motion passed unanimously.

Mr. Linscheid reported that the Board completed a random audit of registrants for compliance to the Continuing Professional Development (CPD) requirements set forth in OAR 820-010-0635 and OAR 820-015-0026. The following individuals were investigated for compliance with those requirements.

#### *2514 – Brent Sanborn / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Brent Sanborn, PE, is a non-resident Oregon registrant who at the time of the audit was able to subsequently certify that he was a licensed professional in his residence state and was subject to their CPD requirements. His resident state does not require CPD units. The Committee determined to issue Mr. Sanborn a letter of concern and close the case with information that the rule regarding another state's CPD requirements is no longer available to non-resident Oregon registrants. They must now meet Oregon requirements. A motion to move to close the case with a letter of concern was moved and seconded (Linscheid/Laszlo). The motion passed unanimously.

Ms. Lopez interjected requesting Mr. Wilkinson explain to the Board his concern regarding the Committee's recommended letter of concern in this case and whether it was consistent with other similar cases. Mr. Wilkinson stated that he would have to think about his concern again, but felt there were some similarities between cases and that in some instances the Committee had recommended a letter of concern for registrants in states that did not require CPDs, but may not have done the same thing for others. Ms. Lopez noted that the letter of concern for Mr. Sanborn would advise him that the rule regarding another state's CPD requirements is no longer available. Ms. Lopez also noted that the Committee may not have spoken of such an informational letter for others in the same circumstances as Mr. Sanborn. She noted the Board may be educating one individual, but not the others.

#### *2517 – Jason Leland / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Jason Leland, PE, is a non-resident Oregon registrant who at the time of the audit was able to subsequently certify that he was a licensed professional in his residence state and was subject to their CPD requirements. His resident state does not require CPD units. However, Mr. Leland failed to notify the Board of his change of address. The Committee determined to issue Mr. Leland a NOI to assess a \$100 civil penalty for violating OAR 820-010-0605. Upon receiving the NOI, Mr. Leland submitted a

\$100 payment and waived his right to a hearing since he agreed with the Committee's decision. Therefore, a motion was moved and seconded (Linscheid/Laszlo) to approve a Final Order and accept the \$100 payment. The motion passed unanimously.

*2518 – Jason Seaverson / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Jason Seaverson, PE, was able to provide documentation of his CPD requirements for the audit period once he was contacted. A zip code error caused his audit letters to be returned to OSBEELS. As a result, the Committee recommended the Board approve closing the case as allegations unfounded. A motion to close the case based on allegations unfounded was moved seconded (Linscheid/Tappert). The motion passed unanimously.

*2525 – Vernon Anderson / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Vernon Anderson, PE, is a non-resident Oregon registrant who at the time of the audit was able to subsequently certify that he was a licensed professional in his residence state and was subject to their CPD requirements. His resident state does not require CPD units. Importantly, Mr. Anderson had requested that his registration be retired. The Committee recommended the Board approve closing the case as allegations unfounded. It was moved and seconded (Linscheid/Laszlo) to approve closing the case as allegations unfounded. The motion passed unanimously.

*2527 – Frederick Bennett / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Fredrick Bennett, PE, is a non-resident Oregon registrant who at the time of the audit was able to subsequently certify that he was a licensed professional in his residence state and was subject to their CPD requirements. His resident state does not require CPD units. The Committee determined to issue Mr. Bennett a letter of concern and close the case with information that the rule regarding another state's CPD requirements is no longer available to non-resident Oregon registrants. They must now meet Oregon requirements. It was moved and seconded (Linscheid/Laszlo) to issue Mr. Bennett a letter of concern and close the case as allegations unfounded. The motion passed unanimously.

*2528 – Gordon Anderson / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Gordon Anderson, PE, is a non-resident Oregon registrant who is working overseas. Once contacted, he submitted documentation that was found to be in compliance with CPD requirements. The Committee recommended the Board approve closing the case as allegations unfounded. It was moved to close the case as allegations unfounded (Linscheid/Laszlo). The motion passed unanimously.

*2529 – Steven Oaks / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Steven Oaks, PLS, had his address changed by his home city and the city informed its residents that they would handle address changes. As a result, Mr. Oaks failed to notify OSBEELS due to reliance on city efforts. In addition, his former employer went bankrupt and assets were seized and he was unable to retrieve CPD information stored at the company. Since these experiences, he has maintained records to demonstrate his continued commitment to CPD requirements. The Committee recommended the Board approve closing the case as allegations unfounded. It was moved and

seconded to close the case as allegations unfounded (Linscheid/Tappert). The motion passed unanimously.

*2533 – Michael Parker / Bud Schmidt*

Mr. Linscheid reported that the Committee discussed that complainant Bud Schmidt, City Manager for the City of Sutherlin, alleged that respondent Michael Parker, PE, represented himself as an agent of the City and failed to perform a background check before associating with and introducing Randall B. Foshie to the City of Sutherlin. The investigation found that showed that Mr. Parker was working with a citizens group. The investigation also found that there was no evidence to suggest Mr. Parker was responsible for setting up the meeting between Mr. Foshie, who was eventually arrested by the FBI for wire and mail fraud, and the City of Sutherlin. The Committee recommended the Board approve closing the case as allegations unfounded. Therefore it was moved and seconded (Linscheid/Tappert) to close the case as allegations unfounded. The motion passed unanimously.

*2547 – Brian Gagnon / David Gessert*

Mr. Linscheid reported that the Committee discussed the complaint filed by David Gessert, PE, alleging that respondent Brian Gagnon in a Portland presentation to the Society of Fire Protection Engineers made the claim to be providing engineering services in Oregon. Mr. Gagnon's business card showed that as a PE he worked for The Fire Consultants, Inc., in California.

In further discussion, Ms. Van clarified that Mr. Gagnon was a licensed engineer in California, but the card did not identify which state Mr. Gagnon was licensed in. Ms. Van also noted that Mr. Gagnon is now licensed in Oregon. A discussion followed regarding the practice of handing out a business card denoting whether someone is an engineer when out of state and whether it was a violation or not.

Ms. Laszlo stated that the topic was discussed in the Professional Practices Committee and the result determined that handing out a business card doesn't necessarily mean one is offering to provide services. It would depend on the context. In two earlier anonymous compliant cases, two individuals were Oregon residents. One was alleging to be a PE and the other had a lapsed license or something similar.

In the case of Mr. Gagnon, he was a practicing engineer from California at a seminar in which he was presenting. In this case, Mr. Gagnon was simply stating who he was by presenting his card. He was not soliciting business. If Mr. Gagnon had stated he could address Oregon concerns, that would be different. Mr. Seward then summarized that the bottom line therefore was that it depends on the intent of the action. It was moved and seconded (Linscheid/Laszlo) to close the case as allegations unfounded. The motion passed unanimously.

***Unfinished Business***

*2500 – Linda Hill – Review of AAG Opinion*

Mr. Linscheid reported that the Committee discussed the case involving the respondent Linda Hill, Union County Assessor, who had required a land surveyor to change his plat on two occasions when it did not agree with the Union County tax map. The surveyor alleged that Ms.

Hill was not qualified to practice land surveying when she exercised her tax assessor authority by dictating where a property boundary goes and by how a Surveyor's Certificate is written.

The Committee last discussed the allegations on October 8, 2009, and requested that the AAG prepare advice regarding the Board's jurisdiction. The Committee reviewed an AAG memorandum regarding County Assessor authority. Upon consideration of the AAG advice offered during the executive session, the Committee recommended the Board approve closing the case as Board lacks jurisdiction. It was moved and seconded (Linscheid/Tappert) to close the case as the Board lacks jurisdiction. The motion passed unanimously.

#### *2501 – Lawrence Anderson – Review of Settlement Agreement*

Mr. Linscheid reported that the Committee reviewed the settlement agreement for Mr. Lawrence Anderson, a PE/PLS who went into private practice nine years ago and let his PLS registration lapse. Due to some oversight, his PLS renewal was not paid and Mr. Anderson asked that the Board take into consideration that the licensing lapse was an accident. The Committee learned that Mr. Anderson was practicing land surveying without registration when he discovered a lapse of his PLS registration and CWRE certificate. During the discussion, Mr. Anderson was asked whether he is current with the CPD requirements. He replied that they are on record in his office, but he did not have them with him. Given Mr. Anderson's comments, the Committee offered to waive the civil penalty if he would admit to the violations, agree to not practice land surveying without registration, and submit his CPD forms by November 10, 2009, as evidence of his intent to maintain his PLS and CWRE registrations. The Committee reviewed his list of submitted CPD records and determined that Mr. Anderson had demonstrated his intent to maintain his registrations. The Committee recommended the Board approve the settlement agreement.

In further discussion, it was noted that Mr. Anderson would now have to take the exam if he wanted his registration back. It was moved and seconded (Linscheid/Laszlo) to approve the settlement agreement. The motion passed unanimously.

#### **Settlement Agreements**

*See Cases Subject to Collections & Cases Subject to Monitoring*

Mr. Linscheid opened the floor for questions/discussion. There were none.

#### **Case Status Report**

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

#### **PROFESSIONAL PRACTICES COMMITTEE**

Ms. Newstetter reported that the PPC met on December 11, 2009, to discuss the matters contained in the Committee minutes. There was no further discussion.

#### *Standards of Land Surveying Practices Committee*

Mr. Linscheid reported that the Standards of Land Surveying Practices Committee met on December 11, 2009, and held a discussion as contained in the Committee minutes. Staff will provide Mr. Hoffine with a "clean" copy to start the next review round. There was no further discussion.

**RULES AND REGULATIONS COMMITTEE**

Mr. Seward reported that the R&R Committee met on December 11, 2009, to discuss the matters contained in the Committee minutes.

Action was taken by the Board on the following rules:

*OAR 820-010-0417 – Nature of Examination for Structural Engineer (SE)*

It was moved and seconded (Seward/Tappert) to approve the rulemaking process to amend OAR 820-010-0417 as presented. The motion passed unanimously.

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

It was moved and seconded (Seward/Tappert) to approve the rulemaking process to amend OAR 820-010-0440 as presented. The motion passed unanimously.

**ADJOURN**

The meeting was adjourned at 3:15 p.m.

**NEXT MEETINGS**

Next Board Meeting:

March 9, 2010

Next Committee Meetings:

- |  |  |
|--|--|
| LAW ENFORCEMENT:   | Thursday, February 11 <sup>th</sup> at 8:00 a.m. |
| PROFESSIONAL PRACTICES:                                    | Friday, February 12 <sup>th</sup> at 8:00 a.m.   |
| RULES & REGULATIONS:                                       | Friday, February 12 <sup>th</sup> at 9:00 a.m.   |
| EXAMINATIONS & QUALIFICATIONS:                             | Friday, February 12 <sup>th</sup> at 10:00 a.m.  |
| Standards of Practice for Land Surveying<br>(Subcommittee) | Friday, February 12 <sup>th</sup> at 12:00 p.m.  |
| FINANCE:   | Friday, February 12 <sup>th</sup> at 1:00 p.m.   |
| EXTERNAL RELATIONS:  | Friday, February 12 <sup>th</sup> at 2:00 p.m.   |