



Oregon

State Board of Examiners for
Engineering & Land Surveying
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Minutes of Meeting
November 12, 2013

CALL TO ORDER

President Tappert called the meeting to order at 9:03 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.

ROLL CALL

Members present:

Carl Tappert
William Boyd
Steven Burger
Anne Hillyer
Ken Hoffine
Sue Newstetter

Members Excused:

James Doane
Ron Singh

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Jenn Gilbert, OSBEELS Executive Assistant
Katharine Lozano, Assistant Attorney General
Joy Pariante, OSBEELS Social and Communications Media Specialist
Matthew Cash, Professional Engineers of Oregon (PEO)
Robert Neathamer, Oregon Specific Land Surveying Examination Development Team liaison

PUBLIC INPUT

There was no public input.

BOARD CONSENT AGENDA

It was moved and seconded (Newstetter/Hoffine) to approve the consent agenda containing the following:

- November 12, 2013 Board agenda
- September 10, 2013 Board meeting minutes
- October 11, 2013 Oregon Specific Examination Task Force Committee meeting minutes
- October 11, 2013 External Relations Committee meeting minutes
- October 11, 2013 Finance Committee meeting minutes
- October 11, 2013 Professional Practice Committee meeting minutes

The motion passed unanimously.

Additional discussion was held regarding the following:

- Item 3 – October 10, 2013 Joint Board meeting minutes. AAG Lozano requested a change to the language in the Joint Board meeting minutes to clarify a statement she made during the meeting regarding the benefits of having the definition of a profession in rule in addition to statute. It was moved and seconded (Newstetter/Duquette) to approve the July 9, 2013 Board meeting minutes, with AAG Lozano’s changes and the suggested changes from the Oregon State Board of Geologist Examiners. There was no further discussion. The motion passed unanimously.
- Item 4 – October 21, 2013 Special Board meeting minutes. Ms. Newstetter pointed out that Tom Van Liew was listed as being in attendance during the Special Board teleconference, but he had resigned from the Board, effective October 16, 2013. It was moved and seconded (Burger/Newstetter) to approve the October 21, 2013 Special Board meeting minutes, with the removal of Mr. Van Liew. There was no further discussion. The motion passed unanimously.
- Item 8 – October 10, 2013 Law Enforcement Committee meeting minutes. Mr. Hoffine requested clarification on the right of entry information provided in the Case 2779 summary. Mr. Hoffine was under the impression that surveyors could still provide verbal notice prior to entering private lands, under the personal notice portion of ORS 672.047. AAG Lozano explained that personal notice must also be written. President Tappert added that the rule specifically states that personal notice must be hand delivered, which implies written notice. Ms. Newstetter said she tells surveyors who ask her about right of entry notification requirements to provide the Professional Land Surveyors of Oregon (PLSO) right of entry notice door hanger and to record the delivery or placement of the hanger on the door in their field book. AAG Lozano further clarified that asking permission to enter upon someone’s land only prevents the surveyor from trespassing upon private land, but does not fulfill right of entry notification requirements. Additionally, Mr. Hoffine stated that Case 2829 was being discussed within the surveying community. At a recent PLSO meeting, surveyors were commenting that the sanctions proposed in this case seem very minor in relation to the magnitude of the offenses. Mr. Hoffine said surveyors, including Bureau of Land Management (BLM) employees, are pointing out that there was an inappropriate land transfer, which is a significant issue in the surveying community. AAG Lozano reminded Mr. Hoffine that these individuals may not be considering all the information in this case before judging the severity of the sanctions. The survey in question was performed 15 years ago and the inappropriate land transfer wasn’t discovered until 2008. President Tappert added that the unauthorized timber harvest from the transferred land is outside of OSBEELS’ jurisdiction and has already been addressed by other organizations. Other Board members also noted that BLM has abstained from involvement in the investigation of this case, despite the BLM being the party that lost timber as a result of this survey. It was moved and seconded (Burger/Hoffine) to approve the October 10, 2013 Law Enforcement Committee meeting minutes, as presented. The motion passed unanimously. The Board also discussed Case 2735, as a Staff error led to a registrant being selected to participate in an audit, despite his registration being in “exempt” status at the time of selection. It was moved and seconded (Hoffine/Hillyer) to withdraw the Default Final Order for Case 2735. There was no further discussion. The motion passed unanimously.

EXECUTIVE SECRETARY'S REPORT

Additional discussion was held on the following matters:

Administrative Activities

City of Hillsboro

The Systems Support Supervisor in the Information Services Department of the City of Hillsboro has requested the Board's permission to utilize registrant data through the Building Codes Division. The city is willing to enter into a data sharing agreement, if necessary. Ms. Newstetter asked for clarification regarding what exactly the City of Hillsboro is interested in accessing. President Tappert said it appears the city would like real-time access to check license status. Ms. Newstetter and AAG Lozano agreed that the biggest concern with this request is the city using outdated data for reference, which would be a public safety issue. President Tappert asked if similar agreements are in place with any other agencies. Ms. Lopez said there is a similar agreement with Department of Justice's Child Support Division and Building Codes Division. BCD has access to a portal that pulls registration data nightly to update their systems. President Tappert said that option might work with the City of Hillsboro and he asked how much OSBEELS charges for access to registrant information. Ms. Lopez said BCD would not enter into an agreement regarding payment, but DOJ pays \$50 each quarter for access. President Tappert asked if the charge to the city could be waived because information access would benefit registrants seeking permitting. Mr. Boyd said public record fees may be waived if the release of the information is in the interest of the public. The Board directed Ms. Lopez to gather additional information regarding the City of Hillsboro's request and information access options for discussion during the January 14, 2014 Board meeting. There was no further discussion.

Office of the Governor – Economic and Business Equity

Ms. Lopez reported that a meeting was held between Cheryl Meyers, Director of Economic and Business Equity; Yuri Dyson, U.S. Small Business Administration; John Saris, Business Service Manager of Oregon Business Development Department; Carrie Hulse, Office of Minority, Women and Emerging Small Business; Ms. Gilbert and herself on November 5 concerning OSBEELS requests for records related to current investigations. The meeting was initiated to gain a better understanding of the Board's decision concerning Case 2813 against DL Design Group, Inc.

Ms. Lopez explained that she was told the North American Industry Classification System (NAICS) codes used by OMWESB were developed by the U.S. Census Bureau with the Canadian and Mexican governments to be used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing and publishing data related to business economy. According to the information regarding NAICS codes provided on the U.S. Census Bureau's website (www.census.gov), these codes are not well suited for use as descriptions of good or services offered.

- **What is NAICS and how is it used?**
 - *“NAICS in the United States was designed for statistical purposes. However, NAICS is frequently used for various administrative, regulatory, contracting, taxation and other non-statistical purposes... Various agencies and organization have also begun using NAICS as a basis for their procurement programs, requiring that a NAICS code be provided for*

each good or service to be procured. NAICS is an industry classification system, not a product classification system, and therefore neither intended nor well suited for this purpose.”

- **Who assigns NAICS codes to businesses and how?**
 - *“There is no central government agency with the role of assigning, monitoring, or approving NAICS codes for establishments... The U.S. Census Bureau assigns one NAICS code to each establishment based on its primary activity to collect, tabulate, analyze and disseminate statistical data describing the economy of the United States... Various other government agencies, trade associations and regulation boards adopted the NAICS classification system to assign codes to their own lists of establishment for their own programmatic needs.”*
- **How do the NAICS codes affect federal procurement and regulatory activities, such as those carried out by the Environmental Protection Agency, the Occupational Safety and Health Administration, the Department of Defense and the General Services Administration?**
 - *“NAICS was developed for use in the collection, tabulation, presentation and analysis of statistical data that show the economic status of the United States. The NAICS categories and definitions were not developed to meet the needs of procurement or regulatory applications. However, other federal agencies, trade associations and regulation boards have adopted NAICS to use for procurement and regulatory purposes even though it is not well suited to meet their specific needs.”*

She further explained that Ms. Dyson said she often advises small business owners to advertise their NAICS codes along with business services offered. President Tappert explained, for the newer Board members, that OMWESB does not require proof of licensure before approving the use of NAICS codes that cover the practices of engineering and land surveying. By advertising their NAICS codes on their websites, these small business owners are then offering engineering and land surveying services without a license.

Ms. Lopez was asked by Ms. Hulse if OSBEELS could provide a guidance paper to assist OMWESB when matching NAICS codes to the proper licenses. Ms. Lopez said Ms. Gilbert asked Ms. Hulse about the possibility of revising OMWESB certification letters to clarify that approved NAICS codes do not take the place of required professional licensure. Ms. Lopez also reported that OMWESB does not want to share their applications with OSBEELS for use in investigations, as it may discourage individuals from applying, which would be detrimental to economic growth in Oregon. Ms. Newstetter said she would support developing a guidance paper that directed individuals to the appropriate OSBEELS rules and statutes. The Board determined to send the issue to PPC for discussion. There was no further discussion.

Action Items

AAG Lozano noted that the California Board wanted OSBEELS to sign an examination contract for the CA Geotechnical examination as a 3rd party contractor. She explained that the State Constitution doesn't allow the State to act as a 3rd party, as the State has more constraints than private contractors. A revised contract has been sent to the California Board for review. Ms. Lopez reported that the Certified Water Right Examination Memorandum of Understanding (MOU) has been signed and sent to Water Resources Department for signature. There was no

further discussion.

Additionally, Ms. Newstetter reminded the Board that it needed to identify individuals to participate in the review of Ms. Lopez's position description. Mr. Tappert and AAG Lozano volunteered to participate in the review. There was no further discussion.

PRESIDENT'S REPORT

President Tappert reported that the recent Joint Compliance Committee meeting was very productive and meetings would now be schedule three times per year. He also reported that he is part of the National Council of Examiners for Engineering and Surveying (NCEES) Foreign Experience Task Force, which is meeting in Tampa, Fl. in December. He said NCEES is considering changing the Model Rules to require that the experience used to qualify for examination applications must be gained in the United States. President Tappert said he believes that, as long as the individual is supervised by a professional who is registered in an NCEES jurisdiction, experience should be allowed. Ms. Lopez pointed out that Oregon's rules require the supervisor hold registration in an NCEES jurisdiction. President Tappert explained that some states want to require at least some qualifying experience to be gained in the U.S. Mr. Boyd asked if foreign registrants gain the same quality of experience as U.S. registrants and, if so, why would there be an issue with where the experience is gained. President Tappert noted that, as the experience requirement is defined in rule, OSBEELS has some flexibility regarding requirements. There was no further discussion.

EXAMINATIONS AND QUALIFICATIONS COMMITTEE

The EQC meeting minutes were approved during the October 21, 2013 Special Board meeting. It was moved and seconded (Burger/Hillyer) to approve the PE Comity list containing 96 applicants. There was no additional discussion. The motion passed unanimously. It was moved and seconded (Burger/Newstetter) to approve the PLS Comity list containing 3 applicants. There was no additional discussion. The motion passed unanimously. It was moved and seconded (Burger/Boyd) to approve the 1st Registration list containing 9 applicants. There was no additional discussion. The motion passed unanimously.

OREGON SPECIFIC EXAMINATIONS TASK FORCE

Ms. Newstetter reported that the OSETF met on October 11, 2013, to discuss the matters as contained in the Committee minutes. There was additional discussion regarding the following:

Oregon Specific Land Surveying Report

Mr. Neathamer reported that six of the eight examinees pass the Oregon Specific Land Surveying Examination. Of the two who failed, neither was within the five point range required for an appeal. He also said his team is considering redistribution of point and questions to make each portion more equitable in regards to point worth.

Ms. Newstetter informed Mr. Neathamer that his team will be used as a model for the organization of the digital examination and question bank storage system being developed for OSBEELS. She said a group of OSBEELS representatives will visit Mr. Neathamer on site in early 2014 to collect his hard copy and digital documents. The hard copy documents will be scanned to a secure server and stored at the State Archives. The digital documents will be transferred to the secure server. Mr. Neathamer said a majority of his information is stored digitally and he looks forward to working with OSBEELS to secure the examination information

and question banks.

Forest Engineering Examination Development Team

The Board members noted that the team member submitted for review, Jim Kiser, Ph.D., is not a registered professional engineer. Ms. Newstetter noted that not every team member is required to be registered. For example, the land surveying team has a land use attorney as a member. Ms. Hillyer asked if survey and design of forest roads, as listed in Mr. Kiser's resume, requires licensure. Ms. Newstetter said that work done on federal land is usually exempted from licensure requirements. Mr. Hoffine added that most of Mr. Kiser's work appears to be teaching preliminary GIS and surveying classes. Unlike other states, Oregon doesn't require a PE/PLS license to teach engineering or land surveying subjects. After discussion, it was moved and seconded (Newstetter/Burger) to approve Mr. Kiser for the Forest Engineering Examination Development Team. There was no further discussion. The motion passed unanimously.

Acoustical Engineering Examination Development Team

Upon the request of the Board to add additional members to the Acoustical Engineering Examination Development Team, Mr. Noxon submitted the qualifications of Mark Bastasch, PE, and Jacob Ross, PE, for review. After discussion, it was moved and seconded (Newstetter/Duquette) to approve Mr. Bastasch and Mr. Ross for the Acoustical Engineering Examination Development Team. There was no further discussion. The motion passed unanimously.

EXTERNAL RELATIONS COMMITTEE

Ms. Newstetter reported that the ERC met on October 11, 2013 to discuss the matters as contained in the Committee minutes. There was no additional discussion.

FINANCE COMMITTEE

Mr. Hoffine reported that the FC met on October 11, 2013, to discuss the matters as contained in the Committee minutes. Ms. Newstetter asked if Mr. Kent had been informed of the denial of his delinquency fee waiver request. Ms. Lopez said Staff contacted him. There was no further discussion.

LAW ENFORCEMENT COMMITTEE

President Tappert reported that the LEC met on October 10, 2013, to discuss the matters as contained in the Committee minutes. It was moved and seconded (Newstetter/Burger) to approve the consent agenda containing the following:

- Final Orders
 - 2734 – Gary D. Wicks – Civil penalty of \$1,000
 - 2742 – Philip Oren Martinson – Civil penalty of \$500
 - 2758 – Randall John LaPlante – Civil penalty of \$300
 - 2760 – Thomas Werner Pennington – Civil penalty of \$100
 - 2761 – James Edward Pfluger – Civil penalty of \$500
 - 2763 – Keith L. Short – Retirement without the possibility of reinstatement
 - 2765 – Arthur M. Noxon – Civil penalty of \$100, surrendered all non-compliant stamps, agreed never to use electronic stamps

- Additional Action Items
 - 2659 – Freddie “Neil” Hibbs – Close case as allegations unfounded
 - 2752 – Robert Hale – Close case as compliance met
 - 2756 – Yoshiro Ideguchi – Close case as compliance met
 - 2848 – Andrew Robinson – Close case as compliance met
 - 2849 – Lloyd Jonathan Reitz – Close case as compliance met
 - 2768 – Steven Miller – Close case with a Letter of Concern

The motion passed unanimously.

There was additional discussion regarding the following matters:

Knight Settlement Agreement

Mr. Knight signed and returned his settlement agreement without making any changes to the language approved by the Board. There was no further discussion.

Martinez Final Order

The Board exited its public meeting pursuant to ORS 192.690 (1) for private deliberation on a contested case. All members of the audience were asked to leave the room for these deliberations and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was noted that no decisions were made and no votes were taken.

Ms. Hillyer asked for background on Mr. Martinez’s case. AAG Lozano said his sanction was for violating the title act. Mr. Tappert said Mr. Martinez was registered in Washington when using the PLS title in Oregon. He did not hold a license in Oregon because it had been revoked. His license has since been revoked in Washington. Mr. Martinez was also facing administrative and criminal charges in Utah for using other surveyors’ stamps. After that explanation, Ms. Hillyer felt the \$1,000 fine for surveying without a license wasn’t enough of a sanction. AAG Lozano explained that the amount was already noticed and can’t be increased. It was moved and seconded (Hoffine/Boyd) to adopt the proposed Final Order with minor language changes. There was no further discussion. The motion passed unanimously.

PROFESSIONAL PRACTICES COMMITTEE

Ms. Newstetter reported that the PPC met on October 11, 2013, to discuss the matters contained in the Committee minutes. There was no additional discussion.

RULES AND REGULATIONS COMMITTEE

Mr. Hoffine reported that the RRC did not meet in October. There was no additional discussion.

UNFINISHED BUSINESS

There was no unfinished business to address.

NEW BUSINESS

Adoption of Retroactive Rules

On October 15, 2013, the Board received a Petition for Judicial Review from Arlen Porter Smith. Mr. Smith is an inmate of the Oregon Department of Corrections and routinely requests reviews of the rules of different state agencies. When a challenge to an agency rule is made outside the context of a contested case hearing or other proceeding, the judicial review record must contain

copies of all documents necessary that demonstrate compliance with the applicable rulemaking procedures. Part of these procedures is to provide Legislative Counsel with a copy of the Certificate and Order for Filing Permanent Administrative Rules along with the marked-up rule text within 10 days of filing rules with the Secretary of State Administrative Rules Unit. Unfortunately, verification is not received from Legislative Counsel when this information is sent. AAG Lozano said the system at the Legislative Counsel office operates via monthly input of data and filing of documents by date sent. Legislative Counsel has no record of the following filings:

- May 2013 – OAR 820-050-0001 and OAR 820-010-0325
- July 2013 – OAR 820-010-0225 and OAR 820-010-0226
- September 2013 – OAR 820-001-0020, OAR 820-010-0010, OAR 820-010-0227, OAR 820-010-0228, OAR 820-010-0305, OAR 820-010-0442, OAR 820-010-0620 and OAR 820-010-0621.

AAG Lozano advised the Board to; first, adopt temporary retroactive rules to cover the time between when these rules were adopted and when the new rules are filed. Second, the Board should propose permanent rules, complete the rulemaking process and file with the Legislative Counsel office again. AAG Lozano said Staff will be hand-delivering documents to the Legislative Counsel in the future and getting proof of receipt. It was moved and seconded (Newstetter/Hillyer) to adopt OAR 820-050-0001, OAR 820-010-0325, OAR 820-010-0225, OAR 820-010-0226, OAR 820-001-0020, OAR 820-010-0010, OAR 820-010-0227, OAR 820-010-0228, OAR 820-010-0305, OAR 820-010-0442, OAR 820-010-0620 and OAR 820-010-0621 as temporary retroactive rules and corresponding permanent rules, due to loss of documentation during filing at the Legislative Counsel office. There was no further discussion. The motion passed unanimously.

LEGAL BRIEFING

Informational

The Board entered into executive session pursuant to ORS 192.660 (2)(f) to review records not subject to public disclosure. All members of the audience were asked to leave the room for these deliberations and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was noted that no decisions were made and no votes were taken.

There was no additional discussion.

ORS 215.080

The Board entered into executive session pursuant to ORS 192.660(2)(f) to review records not subject to public disclosure. All members of the audience were asked to leave the room for these deliberations and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was noted that no decisions were made and no votes were taken.

There was no additional discussion.

Declaratory Rulings

AAG Lozano explained that requests for opinions from OSBEELS are considered a petition for a declaratory ruling under ORS 183.410. She said the application of rules and statutes to specific situations by OSBEELS is considered contractually binding. These declaratory rulings can only

be changed by the courts and are eligible to be directly reviewed by the Court of Appeals. Alternative options offered by AAG Lozano include referring the questioner to the applicable rules and statutes or referencing final orders from law enforcement cases that relate to the situation in question. President Tappert asked if these responses should come from the full Board or handled by the appropriate Committees. Ms. Newstetter said the Committees have been making the determinations and directing Staff to respond to questions. AAG Lozano said responses should be reviewed by the full Board because the full Board will be held culpable or accountable by the Court of Appeals. She added that anyone affected by a declaratory ruling, even if they weren't the original questioning party, has the legal standing to challenge the ruling. President Tappert asked what the danger is in declaring the Board's position on an issue or that standing being upheld at the Court of Appeals. Mr. Boyd explained that the process would be an expenditure of Board resources. Ms. Newstetter added that there is the possibility of contradicting declarations made by previous Boards. The Board members suggested creating an AAG opinion and Board declaration archive for reference. AAG Lozano said these documents can be organized by OAR, ORS, subject or opinion number. Mr. Hoffine said the concern regarding declaratory rulings means that the Regulation Department shouldn't be directly answering questions regarding rule or statute interpretations. AAG Lozano suggested the department be reminded to not make determinations regarding rules and statutes. There was no further discussion.

BOARD MEMBER COMMENTS

Board members had the opportunity to comment on Board or non-Board related issues. They discussed the following:

- Mr. Boyd discussed his recent travels to Scandinavia and the Midwest.
- President Tappert mentioned that the Ashland girls' water polo team took 3rd place.
- Ms. Hillyer discussed acting as an expert witness in Idaho regarding illegal entry onto a property and construction of a service road on that property. She said she was able to use aerial photography to prove the road's existence since the 1960s. Ms. Hillyer also informed the Board that she would be absent from the January 14, 2014 Board meeting.
- Ms. Newstetter said a company is engaged in preliminary planning for a mega load movement through her town and she doesn't believe the roadways have the area needed to maneuver such large loads. She also added that no permit for the move has been granted by ODOT, the community was not informed of the move and the Governor's office was unaware of this plan.

ADJOURN

The meeting was adjourned at 11:30 a.m.

November 2012 ACTION ITEMS:

- Draft an RFP for research and consulting services to better understand the public's perception of OSBEELS.

March 2013 ACTION ITEMS:

- Complete CA Geotechnical examination contract.

November 2013 ACTION ITEMS

- Obtain more specific information from the City of Hillsboro pertaining to data sharing with OSBEELS.
- President Tappert and AAG Lozano will be coordinating to evaluate and edit Ms. Lopez's position description.

NEXT MEETINGS

Next Board Meeting:
January 14th, 2014

Next Committee Meetings:

LAW ENFORCEMENT:	Thursday, December 12 th at 8 a.m.
RULES & REGULATIONS:	Friday, December 13 th at 8 a.m.
EXAMINATIONS & QUALIFICATIONS:	Friday, December 13 th at 9 a.m.
EXTERNAL RELATIONS:	Friday, December 13 th at 11 a.m.
FINANCE:	Friday, December 13 th at 11:30 a.m.
Oregon Specific Exam Task Force:	Friday, December 13 th at 12 p.m.
PROFESSIONAL PRACTICES:	Friday, December 13 th at 1 p.m.
MEETING WITH OBAE (Tentative):	Friday, December 13 th at 2:30 p.m.
JOINT COMPLIANCE COMMITTEE:	Thursday, February 6 th at 1 p.m.