

Joint Compliance Committee (JCC) Meeting

Board of Examiners for Engineering and Land Surveying (OSBEELS) and Board of Geologist Examiners (OSBGE)

**Thursday, May 1, 2014
Meeting Summary**

Committee Participants

Kenneth Thiessen, OSBGE
Peter Stroud, OSBGE
John Seward, OSBEELS
Carl Tappert, OSBEELS
Shelly Duquette, OSBEELS

Staff/Others Present

Mari Lopez, OSBEELS
Jenn Gilbert, OSBEELS
Joy Pariente, OSBEELS
JR Wilkinson, OSBEELS
Jason Abrahms, OSBEELS
Joanna Tucker, AAG, DOJ (for OSBEELS)
Kyle Martin, AAG, DOJ (for OSBGE)
Christine Valentine, OSBGE
Bernard Kleutsch, OSBGE Registrant

WELCOME/INTRODUCTIONS

At the meeting outset, there was some question as to what constitutes a quorum for committee meeting and decision-making purposes. All concluded that this is an area where the Memorandum of Understanding between the two Boards should be updated to provide more clarity. For the May 1 meeting, it was determined that there was a quorum.

Stroud called the meeting to order at 1:25 PM. Stroud led a round of introductions of all present by telephone and at the OSBGE office. Stroud welcomed Duquette as she was new to the committee. Duquette shared with the committee some of her professional background in structural engineering and her interest in the JCC. All welcomed her.

REVIEW OF AGENDA

Stroud inquired if any committee members or others had any comments about the agenda. Valentine noted that the agenda erroneously referred to the DOJ opinion as from 1984 when it was issued in 1983. She apologized for not catching this error sooner. At that juncture, Stroud suggested the addition of one agenda item. He requested discussion of the use of written summary documents to memorialize committee decisions as a new agenda item to follow the complaint case updates. The committee members did not object to this addition. No one else had any questions, comments or corrections.

COMPLAINT CASES (Updates)

Stroud opened discussion on the case updates.

#13-01-005 (OSBGE): Stroud asked Martin to briefly speak to the status of the OSBGE case. Martin stated that the respondent has disagreed with the recommendation of the JCC with regard

to whether his conduct fell outside the practice of engineering. OSBGE is in process of evaluating options as to how it may move forward to a final decision in this case.

Case #2726 (OSBEELS): Stroud asked for an OSBEELS representative to provide this update. Tappert stated that OSBEELS closed this case. The Board was finally able to obtain information demonstrating that the PE and CEG worked together on the project. The Board determination was that allegations of negligence and incompetence were unfounded. Wilkinson reminded the committee that there had been questions about dual stamping and sealing by the PE and CEG in this case or possibly stamping of engineering plans by only the CEG. Additional records obtained from Curry County revealed that the PE did stamp and sign engineering plans. He referred the committee members to the case summary.

Stroud noted that there were no new cases for the committee's consideration.

WRITTEN SUMMARIES (New Agenda Item)

Stroud said the JCC review of OSBGE case #13-01-005 in October 2013 was a good opportunity for the committee members to review information and come to a recommendation. However, as a result of continued work on the case, it has come to OSBGE's attention that the committee recommendation related to the case was somewhat generally described in the meeting summary. OSBGE has found it limiting to rely only on the meeting summary vs. having a clear document that simply but clearly memorializes the rationale behind the recommendation of the JCC. Stroud proposed that the JCC prepare written summaries of recommendations in the future and requested feedback from the other committee members. Stroud also asked for Valentine to read from the MOU regarding written recommendations, and she did so. She explained that she could not speak to whether the committee ever prepared separate written recommendations as mentioned in the MOU vs. relying on the meeting summaries. Shelley and Seward agreed that this type of written recommendation could be useful. Tappert wondered why the meeting summaries were not adequate. He asked for clarification about what would be captured in the written recommendation that is not captured in the meeting summaries. Stroud suggested that when others outside the JCC meeting process look at the summaries, they may not gain a clear enough understanding of the details discussed, the committee process, or the full basis for a particular recommendation.

Lopez asked if the OSBGE investigator could add the details desired by OSBGE into the Board's investigation report. Valentine explained what the Board does currently for investigation reports and limitations related to not having a staff investigator. She suggested that an investigator report may or may not be the answer. She was hearing Stroud's concern as more about ensuring the JCC reasons for any given recommendation are clearly documented and ratified by the committee. Valentine noted there will be an issue with timeliness of ratification as the Board working on a case will be looking for a timely recommendation from the JCC. She noted that this could require more meetings when working on a case under investigation. Lopez explained how the OSBEELS investigators take the JCC recommendations and include details in the case investigation report. Wilkinson shared an example of this with the OSBEELS case discussed previously.

Stroud appreciated the input from OSBEELS staff. Nonetheless, he said the recent OSBGE experience has led him to question whether the process could be improved. He said his idea was to create a single document that details the recommendation and is easier to read while strengthening the paper trail. Thiessen said he thought this was a good idea. He reviewed the

meeting summary and a transcript and could see how it would be hard for an outsider to understand what goes into a particular recommendation. He also feels that some elements of the committee review are not verbalized as committee members are in agreement and do not see a need to discuss. Tappert said he still thinks such a document would be redundant but also saw no harm in trying out this new procedure for recommendations related to future complaint cases considered by the committee.

Stroud asked for counsel input as to whether the JCC would need Board approvals to implement this new procedure. Martin stated that the existing MOU seems to give the authority to the JCC to determine the form and fashion of its written recommendations. He noted that the JCC would have to vote on the written recommendations to ratify them. Stroud asked for confirmation that the JCC can start implementing this procedure without a vote, and Martin said this was correct. Stroud summarized that the committee members were open to trying this procedure out on a new case.

Valentine noted there will be an issue with timeliness of ratification as the Board working on a case and public interested in any given case will be looking for a timely recommendation from the JCC. She noted that this could require more meetings when working on case under investigation. Stroud agreed that this would need to be worked out. Seward suggested it would be ok to meet more often, particularly via teleconference. Stroud suggested that the committee could meet by teleconference just for purposes of approving written recommendation when necessary. Thiessen wondered if the draft recommendations could be useful to the Boards in the interim or if the Boards had to also approve. Martin stated that the Boards do not have to adopt those recommendations. Martin suggested that written recommendations would likely need to have more specific information in them about how committee reached a particular recommendation to be of most use to the Boards and the public.

UNFINISHED BUSINESS

Stroud referred to the JCC meeting summary for February 6, 2014 and asked if there were any comments. Thiessen noted that the penalty information for CC#13-01-005 did not appear to be entirely accurate. Valentine suggested the summary be revised to say OSBGE offered to reduce the penalty if the respondent agreed to discontinue any public practice of geology in Oregon. Tappert moved to approve the meeting summary with the revision noted. Seward seconded the motion. Stroud asked if there was any discussion on the motion. Hearing none, he summarized the motion and called the vote. All approved.

ACTION ITEMS (Updates)

Alternates: Stroud opened discussion about JCC alternate members. He noted there has been some discussion about the number of members and alternates for each Board. He explained that OSBGE looks to add one alternate as a means to better assure it will always have two members representing the Board. Kleutsch, who was in attendance, has been asked about serving as OSBGE's alternate, and the Board will be asked to formalize this appointment at its next meeting. He then asked for an explanation of what OSBEELS proposes for its members and alternates.

Lopez stated that OSBEELS made new appointments to the JCC at its March 11, 2014 meeting. The Board appointed Jason and Shelley as members. Jim Doane was appointed an alternate. Neither Tappert nor Seward was removed from the JCC. However, Tappert is ending his tenure with OSBEELS June 30, 2014 and likely will not continue with the JCC past then. Stroud asked

if he understood correctly that going forward the OSBEELS members would be Shelley and Jon with Jason and Jim as alternates and noted that OSBEELS has larger pool of Board members and registrants to work with. He was concerned about unequal representation on the JCC.

Martin recommended that both boards adopt through an updated MOU the composition and structure for the JCC. He noted that the JCC does not have independent authority and instead derives authority from the MOU. He suggested that the committee members agree to what will work and then make sure the Boards agree to this. Valentine referenced the JCC's previous agreement to work on updating the MOU.

Stroud commented that it is a hardship on OSBGE to have more than 2 members and 1 alternate. He explained that this is due to the small size of the Board and small registrant pool compared to OSBEELS. Valentine also said a concern is that three OSBGE members constitute a quorum of the Board, and OSBGE generally tries to avoid having a quorum serving on any committee. Stroud asked if OSBEELS would also consider limiting its members to 2 members and 1 alternate to ensure balanced representation. Shelley suggested instead that perhaps OSBEELS could agree to limit the number of voting members while still having more members involved for cross training and continuity purposes. Stroud indicated this was a reasonable proposal. Tappert and Thiessen also supported the idea. Stroud noted that having more participating in the JCC discussions could be advantageous while limiting who votes would address the equity concern.

1983 DOJ opinion: Stroud asked Valentine to summarize where OSBGE was on consideration of the opinion and possibly cooperative effort with OSBEELS to request an update from DOJ. Valentine stated that OSBGE requested a work session with counsel to ensure all members fully understand the existing opinion and options for pursuing an update. The Board was unable to work this into its last meeting in March but will be scheduling it into the May 30, 2014 meeting. She will notify Lopez of the outcomes of that discussion. Stroud added that the Board has been generally supportive about looking into this and the possible work with OSBEELS.

Stroud asked for an update on OSBEELS consideration of the same matter. Lopez stated that OSBEELS approved moving forward with an updated opinion. Tappert confirmed that OSBEELS deferred to its JCC representatives to develop the scope and specific questions for the update request.

Thiessen asked if the JCC should define the primary goal of any request for legal review and work this into a scope and specific questions. He noted that the original request document asked a limited number of questions. He asked how the JCC might develop the new set of questions and whether there should be a target number of questions. He asked Martin for some advice on this. Martin explained that the more focused the Boards make the questions, the more likely the DOJ response will be specific enough to be helpful to the Boards. For example, he asked is the question simply to find out if the opinion's findings are still valid. He suggested the committee decide on the specific issue or issues that the Boards really need to have DOJ address. He suggested that once the key issues are framed by the JCC, then the AAGs for the Boards can help refine the questions. He reminded all that the update will be an involved process because it involves two boards; multiple AAGs would end up working on this type of request.

Stroud summarized that the JCC needs to make sure that there is ultimately approval from both Boards to the questions to be asked. He also suggested that both Boards would want to be

briefed by counsel before signing off on the questions to ask. Finally, he noted the concern about keeping in mind the need to limit the number of questions asked.

Kleutsch offered from his experience with the Oregon Department of Transportation (ODOT) that it might be helpful to have a step where input from the respective Boards is reviewed for overlap. The committee briefly discussed that there might need to be a step where the Boards are asked to review any questions proposed by the JCC.

Valentine noted that it sounded like OSBEELS deferred the question formulation work to the committee. Stroud asked for clarification on this point. Tappert said this was correct. OSBGE had not yet made a similar delegation regarding this work.

MOU Revisions: Stroud reminded all that the committee decided to hold a few regular meetings, starting with the October 2013 committee meeting, before diving into the MOU. He noted that all acknowledged some issues with the existing MOU and the need to update it. He asked for committee opinions on how quickly the MOU work should proceed. Tappert noted that October 2014 would be one year since the committee initially said it wanted to hold one year of meetings. He also noted that the committee is not currently terribly busy. He suggested the committee push to have a draft MOU to review at the October 2014 meeting. Lopez and Valentine acknowledged this request and said they would work together on the first draft. Thiessen indicated a willingness to assist as needed. Tappert suggested that the OSBEELS members could perhaps work on some details at regular Board meetings. He encouraged each Board to discuss ideas for the MOU at upcoming meetings.

INFORMATIONAL (2000 & 2001 DOJ opinion)

Stroud referred the committee to the legal opinions in the meeting packet from 2000 and 2001. Lopez explained that the opinions were recently found by OSBEELS staff in a folder of older documents. She wanted to share these with the committee so the members had this additional history regarding issues of mutual interest to OSBGE and OSBEELS. Committee members were appreciative of being provided copies. Stroud summarized that the 2000 opinion addressed dual stamping and signing for reports that contain content provided by both a RG and PE and the 2001 opinion addressed areas of practice and overlap between CEGs and GEs. He noted that the 2001 opinion confirmed it is acceptable for the CEG scope of practice, which is based on the statutory definition of engineering geologist, to overlap with the scope of practice for engineers. Thiessen noted that having access to information like these opinions was consistent with the committee's idea of keeping a compendium of lessons learned and better tracking the knowledge base built from committee work.

NEXT MEETING

The committee confirmed the next meeting as October 2, 2014 to be hosted by OSBEELS.

PUBLIC COMMENT

There were no requests to provide public comment to the committee.

ADJOURN

Stroud confirmed that there were no final issues for discussion and then adjourned the meeting at 2:25 PM.