



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

LAW ENFORCEMENT COMMITTEE

Minutes of Meeting

December 12, 2013

Members Present:

Carl Tappert, Chair

Steven Burger

Shelly Duquette

Ron Singh

Staff Present:

Mari Lopez, Executive Secretary

Jenn Gilbert, Executive Assistant

Jason Abrams

Joy Pariente

Monika Peterson

James R. (JR) Wilkinson

Others Present:

Katharine Lozano, Assistant Attorney General

David Loomis (Respondent)

A meeting of the Law Enforcement Committee was called to order at 8:15 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

Public Comment

There was no public comment.

Contested Case Updates

There were no contested case updates.

Cases Recommended for Closure

2775 – Michael E. Brown/Brian B. Conley

Mr. Brown's case was previously discussed during the October 10, 2013 Committee meeting.

The Committee determined to issue Mr. Brown a Notice of Intent (NOI) for a \$200 civil penalty for a violation of OAR 820-010-0720. After reviewing Mr. Brown's Construction Contractors Board (CCB) records after the Committee meeting, AAG Lozano recommended not issuing the NOI.

During this Committee meeting, AAG Lozano explained that Mr. Brown's engineering offerings would be covered by his CCB license. Despite the fact that he may have been practicing while

his CCB license was delinquent, AAG Lozano said there are times when CCB will backdate active licensure dates once insurance and bonding are obtained. Mr. Tappert asked if there was still a title violation. AAG Lozano said there could be. Mr. Tappert asked if, as long as the CCB licensee discloses they're not a professional engineer and identify who they are contracting services out to, Mr. Brown would be within the exemption offered by his CCB license under Oregon Administrative Rule (OAR) 820-010-0715. AAG Lozano confirmed that, if those criteria were properly met, Mr. Brown could still continue to use his current business name. Ms. Duquette said she was concerned about setting a precedent regarding CCB licensees and engineering offerings. AAG Lozano said it would be better to use a case with more solid facts to set precedence, as the only time Mr. Brown did not properly disclose the information above was on the advertising sign posted on his vehicle. Ms. Duquette agreed that this is a slippery slope, but a case like this could cause the Board to lose footing on that slope. Mr. Wilkinson reminded the Committee that a Letter of Concern clearly explaining the rules of title use and what constitutes the offering of engineering services could be issued to Mr. Brown. The Committee determined to issue a Letter of Concern to Mr. Brown. Mr. Burger asked if the Board needed to explain this decision to the complainant. AAG Lozano said that isn't required, as Mr. Conley was not personally harmed by Mr. Brown's actions. He had reported Mr. Brown to OSBEELS when he saw his vehicle advertising around the neighborhood. AAG Lozano discouraged engaging in discussion with complainants after the Committee or Board has made a determination. Mr. Singh asked how future cases of this nature would be handled. AAG Lozano recommended addressing any future complaints on a case-by-case basis, as the results may be dependent on the particular situation and available facts. For example, the Rick Franklin Corporation was also licensed by the CCB, but did not disclose that they did not have engineers on staff or to whom they subcontracted their engineering services, as required under OAR 820-010-0715.

Informal Conferences

2743 – Timothy W. Bardell/OSBEELS

Mr. Bardell's case was previously discussed during the August 8, 2013 and October 10, 2013 Committee meetings. Mr. Bardell participated in his informal conference via telephone. Mr. Bardell discussed portions of the written response he submitted to the Committee. He explained that his seal was for a pre-engineered steel building package. He said that it is customary when using engineered building products such as plate trusses, open web steel joists, engineered wood floor systems or pre-engineered steel buildings for the engineer sealing the plans of the material design package to not be the engineer in responsible charge of the project. Mr. Bardell said the engineer in responsible charge is usually the engineer who prepares the foundation plan. He said he did have questions about whether or not he could stamp the package, but he thought, since common practice involves a foundation engineer who usually acts as the engineer in responsible charge, that someone else would notice if a structural engineer was required for the plans and arrange for a structural engineer would review Mr. Bardell's plans and stamp them. Ms. Duquette said that a complete metal building is not like a truss, in that it requires the design of a lateral force resisting system. Also, the Golgatha Church is considered a significant structure. For example, pole buildings used as fire stations require the stamp of a structural engineer. She explained that just because something is common practice, it doesn't make that practice right.

Mr. Bardell added that it was never his intent to use a delinquent stamp and license. He said he uses his Oregon stamp infrequently and he assumed his license was valid because of administrative procedures in place at his office that tracked renewals. He said he did not notice the delinquent status until he had already stamped the designs. He chose to work toward bringing his license back into active status rather than recalling the documents he had stamped with his delinquent registration information, but that was delayed due to incomplete professional development records.

The Committee 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.

The Committee offered Mr. Bardell a \$2,000 civil penalty and a 90-day suspension for violations of OAR 820-040-0020(1), Oregon Revised Statute (ORS) 672.107, ORS 672.002 and ORS 672.020. Mr. Bardell informed the Committee that he was against the idea of a 90-day suspension because he feels it is unfair to punish him so harshly for an activity that is very common in the field. Mr. Tappert said he believes the rules and statutes are very clear regarding these topics and doesn't think these activities are as common as Mr. Bardell believes. Mr. Tappert added that OSBEELS takes these types of violations very seriously due to the potential impact on public safety. He pointed out that Mr. Bardell said he was aware that stamping significant structures without being especially qualified as a structural engineer was an issue when he described feeling conflicted about his decision to stamp the church designs.

Mr. Bardell added that he tried to get grandfathered as a structural engineer in Oregon, but he was turned down. Ms. Duquette said that was no excuse, as he could easily take the examination and become especially qualified as a structural engineer. He also said he thought the engineer designing the foundation would be the engineer in responsible charge and that individual would catch any issues with Mr. Bardell's design. Ms. Duquette said the situation actually called for the reverse – she said the designer of the significant structure should have been giving the information on forces to the foundation engineer. She explained that, in this situation, there would have been two engineers in responsible charge – one for the structure and one for the foundation. Mr. Tappert said Mr. Bardell's stamp on the structure names him as the engineer in responsible charge of that portion of the project.

After discussion, the Committee determined to draft a settlement agreement and agreed to let Mr. Bardell review the settlement agreement and consider his options more thoroughly. Mr. Tappert reminded Mr. Bardell that his decision is required prior to the January 14, 2014 Board meeting.

Staff Update: On December 31, 2013, Mr. Bardell submitted proposed revisions to the settlement agreement. He was sent notice regarding the opportunity for an additional informal conference during the February Committee meeting to discuss his proposed revisions. Mr. Bardell accepted the opportunity for an additional information conference on January 8, 2013.

2779 – David A. Loomis/Gregory and Teresa Aland

Mr. Loomis' case was previously discussed during the October 10, 2013 Committee meeting. Mr. Loomis participated in his informal conference in person. Mr. Loomis discussed portions of the written response he submitted to the Committee. He explained that he found himself in a

situation where he was put between a number of feuding neighbors. There were also legal matters between these neighbors in play. However, Mr. Loomis did admit that he did not file Survey 18880, which was a survey he completed in Lincoln County. It was 13 years before Mr. Loomis filed the survey. Regarding another survey, Mr. Singh asked if Mr. Loomis thought he should have placed the reference marker in question on his clients' side of the property line. Mr. Loomis agreed that placing the marker on the other side of the property line may have alleviated some of the conflict. Mr. Burger asked Mr. Loomis to clarify the difference in findings between his survey, Survey 18889, and a later survey he completed to revise the existing survey, Survey 18964.

The Committee exited its public meeting pursuant to ORS 192.690 (1) for private deliberation. 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.

Mr. Tappert noted that monuments in the ground without a corresponding map on file can cause significant issues. The Committee offered Mr. Loomis a \$750 civil penalty for a violation of OAR 820-030-0060 and ORS 209.250(1). Mr. Loomis accepted the settlement agreement.

Cases Subject to OAR 820-010-0617

2697 – Dale LaForest/Matthew Steele

Mr. LaForest's case was previously discussed during the February 11, 2011 and February 9, 2012 Committee meetings. During the latter meeting, Staff were asked to gather additional information regarding Mr. LaForest's contracts with client(s) and to contact the California and Nevada boards to ascertain if complaints involving LaForest had been investigated.

Additional investigation revealed that the group, Citizens for Clean Air, is not registered with the Oregon Secretary of State and there is no contact information for the group available online. However, information recorded in the file indicated that John Williams, with Williams Research, may be connected with the group. Investigators attempted to contact Mr. Williams, but he did not respond to questions or provide documentation regarding Mr. LaForest's working relationship with the group. Attempts to locate other group members referenced in Mr. LaForest's reports were unsuccessful.

The investigation also noted the similarities between this case and *Topaz v. OSBEELS*, as they both involved the practice of engineering as defined by ORS 672.005(1), the types of acts constituting engineering under ORS 672.007(1), and the resulting violation under ORS 672.045. Both individuals, in their respective cases, cited the First Amendment as a defense of their actions. Without title use, Mr. LaForest conveyed works that appear to be the practice of engineering as defined by ORS 672.005(1), ORS 672.007(1)(c) and ORS 672.045. Since the final ruling was issued recently on Mr. Topaz's case by the Court of Appeals, attempts to contact Mr. LaForest regarding the reactivation of his case have been unsuccessful.

The Committee discussed the circumstances related to Mr. LaForest's case in order to determine an appropriate civil penalty. Making public statements about a major public works project without licensure has the potential to allow for significant impact to the welfare of the residents – both to those who did and did not want the plant to be built. Mr. Burger pointed out that Mr. LaForest was not speaking at that meeting as an interested party, as he has no personal connections to that area, which indicates that he may have been acting as a consultant to Citizens

for Clean Air. The Committee determined to issue a NOI for a \$1,000 civil penalty for violations of ORS 672.005(1), ORS 672.007(1)(c) and ORS 672.045(1).

James Rodine/William Galli

Mr. Rodine's case was previously discussed during the December 12, 2010 LEC meeting, the November 30, 2011 Joint Compliance Committee (JCC) meeting, the April 11, 2013 LEC meeting and the October 24, 2013 JCC meeting. The most recent JCC determined that OSBEELS should move forward as the lead board in Mr. Rodine's case.

During additional investigation, it was discovered that the plans Curry County has on record have an engineer's seal, unlike the plans originally provided to OSBEELS by the complainant. David Gowers, the respondent in case 2726, said he didn't recall stamping Mr. Rodine's plans, but his stamp is present on two of the final documents on record with Curry County. Mr. Tappert pointed out that this confirms Mr. Rodine's story that Mr. Gowers was the engineer in responsible charge of this project. The Committee requested that Staff obtain supplemental information that may further define Mr. Rodine and Mr. Gowers roles on the project.

AAG Lozano suggested that, if informal conferences are requested by Mr. Rodine and Mr. Gowers, the conferences should be scheduled together to reduce the confusion in this situation by allowing both parties to explain their situations at the same time. Mr. Burger pointed out that Mr. Rodine stamped multiple times on some of the documents provided. Ms. Duquette mentioned that Mr. Rodine is the individual who stamped the engineering calculations and Mr. Wilkinson said Mr. Rodine also stamped the design package cover sheet, which included engineering documents. The Committee directed Staff to investigate further for both Mr. Rodine and Mr. Gowers' cases.

2726 – David Gowers/William Galli

Mr. Gowers' case was discussed during the conversation regarding Mr. Rodine's case above.

2748 – James Colton/Donald Long

Mr. Colton's case was previously discussed during the October 13, 2011 Committee meeting. Mr. Colton informed investigators that James V. Long hired Ford & Associates, not the complainant, Donald Long. Mr. Long's complaint that his instructions were not followed during the survey were determined to be irrelevant, as he was not the individual who hired the surveyors. Additionally, the evidence submitted by Mr. Long's attorney consisted of maps with an unsigned seal that were marked "Preliminary." AAG Lozano pointed out that there is no evidence of misconduct on the part of the surveyor. After discussion, the Committee determined to close this case as allegations unfounded.

2749 – Jay Abramovitz/OSBEELS

OSBEELS opened a case against Mr. Abramovitz's company, Software Technology Group, Inc. (STG), for unlicensed practice of engineering. The website for STG displayed information indicating it was a professional engineering consulting firm. Mr. Abramovitz told investigators that his company is not performing "structural, land, mechanical, or survey" engineering services. The website was revised after May 2013, but the revision added services including "automation engineering solutions" for robotics and manufacturing automation. Mr. Abramovitz told investigators he would further revise the website and was planning on taking the PE examination in January. As of this Committee meeting, there continues to be references to

“engineers” and engineering services throughout the STG website and on Mr. Abramovitz’s LinkedIn profile.

Ms. Lopez further clarified that Mr. Abramovitz’s legislator’s assistant had contacted OSBEELS and Staff explained the licensure requirements to this individual. Mr. Abramovitz was informed by the legislative assistant of the requirements and indicated that he would seek licensure.

However, no application for any examination has been received from Mr. Abramovitz.

Ms. Duquette pointed out that it is unclear based on the website if STG subcontracts any of the “electrical engineering” or “mechanical engineering” services it offers. AAG Lozano said the information provided is not sufficient to prove that Mr. Abramovitz is practicing without a license. However, Mr. Abramovitz is using the title of “engineer” without a license via his LinkedIn profile. It was noted during the meeting that Mr. Abramovitz only uses the term “engineer” in reference to his work as a “software engineer.” As software engineering is not a discipline offered by OSBEELS, there is no violation on Mr. Abramovitz’s part.

After discussion, the Committee determined to change the respondent in Case #2749 to STG, as the violations are on the part of the company, not Mr. Abramovitz. As there are continued references to mechanical and electrical engineering on the website, the Committee determined to send another letter with a deadline to correct these violations. The Committee will review the amended case file during the February 2014 meeting.

2762 – Ramasurdial Preamsingh/OSBEELS

Mr. Preamsingh was selected to participate in an audit of his PDH units for the renewal period of January 1, 2009 through December 31, 2010. He failed to respond to an attempt by auditors to contact him and gain his compliance with the audit request. On March 15, 2012, Mr. Preamsingh submitted incomplete and inappropriately documented PDH materials. Despite several attempts by investigators, Mr. Preamsingh never submitted adequate documentation proving his compliance with the PDH requirements during the audit period. Additionally, Mr. Preamsingh, who is only licensed as a PLS, was found to have offered engineering services without a license through his company Preamsingh and Associates on an annual report submitted to the Secretary of State’s office on August 5, 2009.

Mr. Singh asked Staff if there is any measure in place to prevent registrants from choosing to pay a fine instead of actually completing PDHs. Ms. Gilbert explained that the suspension associated with failure to complete CPD requirements is reportable to other state licensing boards, which acts as a deterrent for repeated violations. Those state licensing boards can take reciprocal disciplinary action based on a suspension from OSBEELS. Mr. Singh asked if it’s possible to require registrants to complete their delinquent PDHs in addition to the PDHs required for the current renewal cycle and to schedule previous violators for upcoming audits to monitor and ensure compliance. AAG Lozano said those are options the Board has when dealing with failure to comply with CPD requirements. She also pointed out that the current renewal form requires registrants to sign a statement attesting to the completion of their CPD requirements. Falsely signing that statement is an additional violation.

After discussion, the Committee determined to issue a NOI to assess a \$1,500 civil penalty and a 90-day suspension for violations of OAR 820-010-0635(1)(a), OAR 820-010-0635(1)(c) and OAR 820-020-0015(8). Additionally, Staff were directed to conduct a preliminary evaluation of the engineering offerings of Preamsingh and Associates.

2770 – Eric Strickland/Landscape Contractors Board (LCB)

OSBEELS received a complaint from the LCB regarding Mr. Strickland performing engineering without a license. Mr. Strickland submitted a bid for landscaping work which included the design and installation of a water feature, irrigation and a retaining wall. On this bid, he charged money for “project engineering, design components.” He referred to himself in a contract he prepared and signed as a “landscape project designer and engineer.” Related to this project, he was convicted of No Landscape Contractors License, ORS 671.530, U/Misdemeanor and Criminal Mischief in the Second Degree, ORS 164.354, A/Misdemeanor. The homeowner Mr. Strickland performed the work for was awarded a \$26,500 judgment against Mr. Strickland because he never completed the project and most of the work he did complete had to be redone by other contractors.

Based on the wording of the judgment against Mr. Strickland and his own wording on bid documents and invoices, it appears he has violated ORS 672.007(1)(c) on multiple occasions. The Committee discussed a number of factors related to Mr. Strickland’s case. First, the Committee determined that Mr. Strickland used the title “engineer” to secure work and then performed flawed work, which directly harmed the public. Mr. Tappert said it appears that Mr. Strickland used the title “engineer” to enhance his credibility, which is fraud. There were also a number of other legal proceedings related to Mr. Strickland’s work on this project. Mr. Strickland also made no effort to pay his penalties and even quit working to avoid garnishment of his paychecks.

Mr. Burger asked if this case should be handled by the LCB. Ms. Lopez said LCB has already taken action against Mr. Strickland for violations under its rules and statutes and it’s now up to OSBEELS to handle the violations within its authority. She said it is common for boards to refer cases to each other if there’s the possibility of violations across multiple practices.

After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$1,000 for violations of ORS 672.002(1)(c).

2773 – Sofronio C. Mendez/OSBEELS

Mr. Mendez was selected to participate in an audit of his PDH units for the renewal period of January 1, 2009 through December 31, 2010. Mr. Mendez initially failed to provide documentation in support of his CPD Organizational Form to auditors. Appropriate supporting documentation was later received by investigators. Mr. Mendez stated that he believed, since his license was retired, he was not responsible for participating in the audit. Staff explained that his license was active during the audit period, therefore, he was required to participate in the audit of CPD compliance for that period.

After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-020-0015(8).

2782 – Chander Nangia/OSBEELS

The Board received information through NCEES that there were a number of disciplinary actions that were taken by other state boards against the license/registration of Mr. Nangia. There are 14 documented violations from 11 states and eight reported, but undocumented violations from seven states. None of these disciplinary actions were reported by Mr. Nangia to OSBEELS, as required.

Many of the violations were reciprocal action stemming from initial violations regarding plan stamping. During discussion, the Committee determined that Mr. Nangia failed to report plan stamping-related violations from Alabama, North Carolina, Ohio, Oklahoma and Texas. There

was an additional violation from North Carolina regarding submitting false information on his renewal form. AAG Lozano pointed out that the key supporting evidence in this case are the 22 unreported actions from 18 states. Committee members agreed that that plan stamping and false statement violations are very significant violations.

After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$6,000 and revocation of Mr. Nangia's license for violations of OAR 820-020-0045(4).

2782 – Ralph Edward Dunham/OSBEELS

Mr. Dunham submitted his registration renewal late and was assessed a \$160 delinquency fee. After paying his renewal, Mr. Dunham assumed his registration was current and began signing and sealing multiple documents. However, because of the unpaid delinquency fee, Mr. Dunham's registration was not in active status. Mr. Dunham admitted in a letter to OSBEELS to signing and sealing multiple documents between January 14, 2012 and April 17, 2012. The Committee discussed a number of factors related to Mr. Dunham's case. It was determined that Mr. Dunham's violations were inadvertent, as he wasn't aware of the delinquent status of his registration until receiving notice of his unpaid fee from the Board office. Upon receiving notice, Mr. Dunham quickly paid the delinquent fee and brought his registration back into active status. While the situation was similar to Mr. Bardell's, discussed above, Mr. Bardell was aware of his delinquent status when he was stamping plans; Mr. Dunham was not.

Mr. Tappert said he thought suspension was inappropriate in this situation because he didn't believe that registrants should automatically assume delinquency when their renewal is submitted late. Mr. Singh agreed, explaining that it was a reasonable assumption on Mr. Dunham's part that, after submitting his payment, waiting a few weeks and not hearing from Staff, his registration status was active. Mr. Singh said it is also reasonable to assume that the delinquent fee is simply a late fee and unrelated to registration status.

The Committee had questions regarding when Mr. Dunham's renewal was received and when his payment was processed. However, the renewal form in question was not available for review during the meeting. AAG Lozano noted that OSBEELS rules do not specify that receiving a delinquent fee results in a registration being put in delinquent status. She said, based on the wording of the rule, "delinquent renewal fee" refers to a renewal fee that is delinquent, not a separate "delinquent fee." Based on this interpretation of the rule, once the "delinquent renewal fee" – or the renewal fee that is late – is paid, the registration should be returned to the active status. There is no correlation between "delinquent fee (late fee)" and "delinquent status" explained in the rule. AAG Lozano asked if Mr. Dunham had been stamping documents while actually delinquent, as per the above interpretation. Mr. Tappert said Mr. Dunham had waited a few weeks after submitting his payment to ensure it was processed before stamping documents again.

After discussion, the Committee determined to close Mr. Dunham's case as allegations unfounded, based on AAG Lozano's explanation of the rule. Ms. Lopez said the rule would be amended to properly reflect the application of the delinquent fee and delinquent status.

2790 – Kenneth Ward Cobb/OSBEELS

Mr. Cobb was selected to participate in an audit of his PDH units for the renewal period of January 1, 2010 through December 31, 2011. Mr. Cobb did not submit the requested PDH units when requested to do so by auditors. After being contacted by investigators, Mr. Cobb submitted

appropriate documentation. After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-020-0015(8).

2792 – Vlad Diaconu/OSBEELS

Mr. Diaconu was selected to participate in an audit of his PDH units for the renewal period of January 1, 2010 through December 31, 2011. Mr. Diaconu failed to respond to numerous attempts by the auditors to contact him and gain his compliance due to having failed to update the Board following an address change. When contacted by investigators, Mr. Diaconu provided his CPD Organizational Form and supporting documentation. After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$250 for a violation of OAR 820-010-0605(1).

2839 – Takeshi Kobayashi/OSBEELS

Mr. Kobayashi was selected to participate in an audit of his PDH units for the renewal period of July 1, 2009 through June 30, 2011. He responded to the initial letter from auditors, but failed to provide required supporting documentation. It appears that Mr. Kobayashi moved after the initial notice, but his address was not changed with OSBEELS. A notification letter was sent to his employer and he responded with the requested documentation. After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$250 for a violation of OAR 820-010-0605(1).

2845 – Timothy Wolden/OSBEELS

Mr. Wolden's case was previously discussed during the October 2013 Committee meeting. As a result of a previous case, Mr. Wolden's registration was suspended for 45 days and he was assessed a \$16,000 civil penalty, of which \$8,000 was suspended for five years as long as the Board found no past, present or future conduct violations regarding Mr. Wolden. During that 45-day period, it is alleged that Mr. Wolden practiced engineering on July 18, 2013 and August 2, 2013.

The Committee discussed the fact that Mr. Wolden violated his settlement agreement with the Board. The Committee agreed that the \$8,000 in civil penalties which was suspended should be payable immediately. Mr. Singh asked if Mr. Wolden was aware of the date his suspension took effect. AAG Lozano said he was notified at the settlement drafting as to when the Board would sign the settlement agreement and the suspension would become active. AAG Lozano reminded the Committee that this settlement agreement was regarding egregious violations that had the potential to cause significant physical harm to the public and he had lied numerous times on certification documents that were submitted to a public body. The Committee considered an additional \$2,000 in civil penalties for violating a settlement agreement and practicing engineering without a license. The Committee also considered revocation of Mr. Wolden's engineering license.

Ms. Duquette asked if it was possible that the August 2, 2013 documents, which were undated and unsigned calculations, might have been completed prior to Mr. Wolden's suspension, but only received during the suspension period. Mr. Wilkinson said the document appeared to be a response to a plan reviewer from a submission made June 20, 2013. Mr. Wolden explained in a letter that the calculations were only sent to a designer in Eugene as an explanation of how to answer questions from the City of Eugene's plan reviewer. Mr. Wolden further explained that

the document was only meant to assist the designer and wasn't sure how the document was obtained by the City of Eugene.

Ms. Duquette asked investigators to confirm that the design calculations were completed during his suspension. She said she didn't feel comfortable making a determination on registration revocation without this information. The Committee directed Staff to gather additional information and determined to discuss the case further during the February 2014 Committee meeting.

Staff Update: Staff obtained the additional information requested by the Committee and it doesn't contradict any of the initial information presented. The additional information further solidified the choices the Committee made regarding the suggested disciplinary actions to be included in the NOI.

2853 – Charter Construction/OSBEELS

Charter Construction's case was previously discussed during the August 2013 and October 2013 Committee meetings. Representatives of Charter Construction failed to respond to numerous attempts to gain information regarding alleged violations. Review of the website indicates that Charter Construction provides engineering services, but does not identify a registered professional engineer. As a registrant with the Construction Contractors Board (CCB), Charter Construction is required to identify the registered professional engineer performing the offered engineering services. Furthermore, Charter Construction gives the title of "Project Engineer" to non-registered staff.

The Committee discussed a number of issues related to this case. While the Committee agreed that the title violation isn't as egregious as in previous cases, it is still being used to inflate the qualifications of non-registered personnel. While the use of the title "Project Engineer" for non-registered personnel is a common practice, Ms. Lopez pointed out that it doesn't mitigate the potential dangers resulting from errors in public perception. Ms. Duquette noted that Charter Construction works in high-end residential construction, which could mislead members of the public into thinking the company is qualified to design other residential structures.

Mr. Tappert noted that the company had changed the title of an employee who was the subject of a law enforcement case, but not the titles of any other non-registered employees. Mr. Singh asked if Charter Construction has refused to comply or just hasn't responded. AAG Lozano said the company has refused to respond or communicate in any way with investigators despite numerous attempts made and options for resolution offered.

The Committee noted that the key issue with Charter Construction is that the website doesn't clarify which individuals work in the Washington branch and which work in the Oregon branch. Individuals who primarily work in Oregon must be registered in order to be called "Project Engineers." Washington, however, does not have a similar title use rule. After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$1,000 for violations of OAR 820-010-0715. Mr. Tappert asked what the course of action would be if Charter Construction pays the civil penalty, but does not clarify the locations or titles of the individuals listed on the website. AAG Lozano said, if necessary, the Board can seek an injunction against the Portland branch of Charter Construction.

2854 – John Alfred Arscott/OSBEELS

Mr. Arscott's case was previously discussed during the October 2013 Committee meeting. Mr. Arscott entered into a settlement agreement with the Board that resulted in a \$500 civil penalty.

The due date for payment submission passed with no contact from Mr. Arscott. Mr. Arscott claimed he was not given a due date. Staff records show that Mr. Arscott was contacted on June 6, 2013 regarding his Final Order, but was mistakenly given a due date of June 1, 2013. His Final Order was mailed June 14, 2013 and Staff emailed him on June 24, 2013 to clarify that the due date was August 23, 2013. Mr. Arscott was reached by phone on November 8, 2013 and he said he was never notified of the due date. Staff offered to provide Mr. Arscott with the correspondence noted above, but he declined. He submitted full payment of his civil penalty on November 12, 2013 with the explanation that he was never informed of his due date and that he had not yet given up his right to have the issue decided by a judge. However, Staff noted that Mr. Arscott did not request to proceed to a hearing at his informal conference, nor did he request judicial review within 60 days of the date he received the Final Order. After discussion, the Committee determined to close this case as compliance met.

2855 – John Raymond Gery/OSBEELS

This law enforcement case was opened in response to Mr. Gery's failure to submit payment for the civil penalty assessed for Case Number 2712 by the date it was due. Mr. Gery still has not responded to Staff or submitted payment. Staff has checked the Social Security Death Index and Mr. Gery is not identified as deceased.

AAG Lozano noted that Mr. Gery is not outside the five-year window of retirement, which means he can still reinstate his license. This allows for the options of revocation, suspension or permanent retirement without the option of reinstatement. Ms. Lopez asked if Mr. Gery could be sent to collections. Ms. Peterson said that option doesn't apply, as Mr. Gery is not an Oregon resident.

After discussion, the Committee determined to issue a NOI to revoke Mr. Gery's registration.

2856 – Jong-Rok Lee/OSBEELS

This law enforcement case was opened in response to Mr. Lee's failure to submit payment for the civil penalty assessed for Case Number 2715 by the date it was due. Mr. Lee still has not responded to Staff or submitted payment. Staff has not been able to confirm whether or not Mr. Lee is deceased. The Committee directed Staff to continue investigating this issue and to issue a NOI to revoke Mr. Lee's registration upon confirmation of status.

Staff Update: Staff contacted the South Korean embassy and were not able to obtain information regarding Mr. Lee. As per Committee directions, Staff will issue a NOI to revoke Mr. Lee's registration.

2857 – Jaime Lim/OSBEELS

Ms. Duquette recused herself from discussion on this case. This case was opened in response to a violation of the settlement agreement reached in Case Number 2579. The terms of the settlement agreement were permanent retirement of his professional engineering registration in lieu of revocation and a \$5,000 civil penalty. Recently, Mr. Lim corresponded with a client stating that "we" could provide "their" builder with "foundation information, steel reinforcing, beam and joist sizes, hold down, etc." Investigators said this constitutes design work under ORS 672.005(1) and is an act constituting the practice of engineering under ORS 672.007(1)(c). Mr. Lim said the engineering work was done by an OSBEELS registrant. However, this registrant is a 1099 contractor and does not meet the definition of a "full-time partner, manager, officer or employee" as required by OAR 820-010-0720(3)(b).

AAG Lozano explained a number of legal issues with this case. First, she explained that Mr. Lim's company, not Mr. Lim as an individual, was offering engineering services in violation of the law. Therefore, this situation can't be constituted as Mr. Lim offering services in violation of his settlement agreement. However, if the company is a sole proprietorship, Mr. Lim would be responsible for the civil penalties related to this violation. Additionally, AAG Lozano said the company is not allowed to offer the 1099 contractor's services, as he's not a full-time employee. Mr. Singh asked under what circumstances subcontractors can be used for engineering work. Mr. Tappert and AAG Lozano explained that subcontractors can always be used to complete the work, but a company cannot offer engineering services unless a full-time engineer is employed by the company. Additionally, individuals licensed by the CCB can offer engineering services as long as disclosures are made regarding the subcontracting of engineering services and the specific engineer used is identified.

After discussion, the Committee determined to change the respondent in this case to Lim's company, United Engineering, Inc. and to issue a NOI to assess a civil penalty of \$750 for a violation of OAR 820-010-0720.

Preliminary Evaluations

Michael L. Branch, PE, Branch Engineering

OSBEELS received a complaint from Richard Maggard stating that Mr. Branch was hired by the Springfield Utility Board (SUB) to prepare diagrams to be used in the application of a facility permit with Lane County. Mr. Maggard claims these diagrams were prepared without documentation of pertinent facts and without measurement or survey. He claims Branch Engineering colluded with SUB in the falsification of documents in order to obtain a permit, specifically citing that Branch's drawing show power lines as being to the west of the fence line, when a picture he submitted show the power lines to be to the east of the fence line. In addition, he claims the edge of the existing asphalt to be depicted inaccurately.

A judgment against Mr. Maggard's partner, Tana Baker, was submitted, compelling her to move the fence in question and pay costs, with no mention of any problems with engineering drawings or survey lines produced by Branch Engineering or SUB. After the hearing that produced this judgment, Mr. Maggard sent OSBEELS an email stating that the diagrams indicate an underground electric line that does not exist, yet was testified to by Renee Clough, PLS (coworker of Mr. Branch), as well as a few other opinions regarding his perceived falsities in the diagram in question. Investigators spoke to Ms. Clough, who said the lines Mr. Maggard is referencing are not electrical lines, but rather communication lines of some sort. She said that both parties spoke after the hearing and Ms. Baker and Mr. Maggard seemed to understand that it was determined that Branch Engineering and SUB acted appropriately in this matter. She said she was confused as to why Mr. Maggard was continuing in his attempt to lodge a complaint with OSBEELS regarding this matter.

After discussion, the Committee determined to not open a case on this matter.

Paul Burns, Waste Management

Mr. Tappert recused himself from discussion on this matter. OSBEELS received a complaint from Leonard A. Rydell, PE, PLS, CWRE, stating that Mr. Burns claimed he was an engineer during a meeting at the McMinnville Community Center. Mr. Rydell said other meeting attendees also remember this statement. He further claims that Mr. Burns was listed as the "engineer of record" for the Riverbend Landfill, that Mr. Burns resigned this position when the

landfill did not meet design standards and that the public is being misled due to inaccurate statements made by Mr. Burns.

Mr. Rydell also had concerns regarding Bob Schwartz, PE, who was the Department of Environmental Quality (DEQ) permit engineer for the Riverbend Landfill, not correcting Mr. Burns after he (incorrectly in Mr. Rydell's opinion) answered a question regarding the stability of flood control berms. Mr. Rydell asked this question during the meeting to which Mr. Burns answered "No."

Mr. Burns and Waste Management's general counsel said Mr. Burns has never represented himself as an engineer. Mr. Burns explained that, as the director of operations for Waste Management, he oversees design and engineering landfill and recycling centers, but all engineering work is performed by outside consultants who are registered professional engineers. He said he fully understands that he cannot call himself an engineer in Oregon, despite the fact that he has a degree in engineering and has been licensed in other states in the past.

During discussion, the Committee agreed that there didn't seem to be enough evidence to validate Mr. Rydell's statement. AAG Lozano said, according to Mr. Rydell's statements, Mr. Burns seemed to be trying to avoid answering the question Mr. Rydell referenced in his complaint, but Mr. Rydell continued to push for a response. Mr. Abrams said most of the evidence submitted by Mr. Rydell seems to be focused against the landfill, rather than Mr. Burns specifically.

After discussion, the Committee determined to not open a case on this matter.

Phil Martinson, PE

This preliminary evaluation resulted from concerns regarding Case Number 2742 against Mr. Martinson. Concerns were raised regarding possible violations of ORS 672.045, 672.020 and OAR 820-010-0720 when Mr. Martinson's license was in delinquent status. Following additional investigation, it was discovered that Mr. Martinson was offering engineering services, project management services, custom seminars and training through his website, which became active in spring 2007. However, there is no proof that Mr. Martinson was involved with any engineering projects, despite the archived website engineering offerings.

AAG Lozano pointed out that failing to take down a website and actively seeking or starting new projects are two very different issues. She recommended sending a Letter of Concern regarding offering services while delinquent. After discussion, the Committee determined to follow AAG Lozano's recommendation and issue a Letter of Concern to Mr. Martinson.

Richard Kelson, PE

Mr. Kelson submitted a complaint packet after presenting public testimony during the March 12, 2013 Board meeting. His concern during public testimony centered on supervising electricians being able to "design, plan and lay out electrical installations for customers of the electrical contractor without obtaining any other license, permit or certificate." This activity is allowed under ORS 479.860. Mr. Kelson contends that these actions are the practice of engineering and fall under ORS 672.

Mr. Kelson has complained to the Board previously regarding these issues. He resubmitted a previous complaint as part of his complaint packet, which addressed the following issues:

- Overstepping the practicing of engineering boundaries by supervising electricians and electrical contractors.
 - Outside of Board jurisdiction

- An electrical contractor preparing electrical drawings and providing them to the architect. The drawings were then distributed to the general contractors.
 - Outside of Board jurisdiction
- Electrical contractors can only layout and design their own projects. Architects not enforcing this.
 - Outside of Board jurisdiction
- Plans centers should not put unstamped drawings on their service.
 - Outside of Board jurisdiction
- An electrical contractor drew out for a bid and allegedly bought a PE stamp from an engineer in Eugene to satisfy the public money requirement for an engineer's stamp.
 - Electrical contractor – outside of Board jurisdiction
 - Plan stamping – no information was provided about the Eugene engineer

Another complaint segment within the packet alleged the unlicensed practice of engineering. However, the only evidence submitted was a copy of Yellow Pages listings from 2010, without any details regarding which firms or persons might be engaging in these activities.

The final complaint segment was a collection of letters and emails between himself and Board Staff from 1995 through 2009. He was provided with a copy of House Bill 2457 from the 2009 Legislative Session. He included a list of dates and key issues, but there was no information provided regarding violations, respondents or evidence.

Another complaint segment within the packet referenced an email where an individual is complaining about the review of his design by an electrical contracting company employee who was not licensed to design or install fire alarm systems. The email alleges that a complaint was made to the state electrical inspector regarding this issue. Again, it was determined the Board does not have jurisdiction.

The final complaint segment references an electrical contractor submitting electrical plans to an architect. The submitted plans show that the architectural firm has a licensed electrical engineer overseeing the electrical design work completed by an electrical contractor. Due to an exception, this too is outside the Board's jurisdiction.

After discussion, the Committee determined to draft a letter to Mr. Kelson to explain that the complaints referenced in his packet are outside the Board's jurisdiction or not enough evidence was submitted for the Board to move forward with complaints that do fall within its jurisdiction.

Erwin Quiachon, PE/Dennis Stanton

Mr. Quiachon, a Washington registrant, submitted a complaint regarding unlicensed persons in corporate management making engineering demands contrary to those recommended by engineering professionals. He alleged a "lack of formal engineer training in the management staff" of M+W U.S., Inc. He stated that a company design lead "attempted to direct a licensed professional structural engineer," who was a coworker and OSBEELS registrant, to remove a vital engineering code reference from a drawing. Mr. Quiachon requested that OSBEELS "clarify if the members of M+W management are practicing engineering without a license, since there is doubt as to whether any of them are engineering graduates." Mr. Quiachon also referenced concern regarding this issue in a Bureau of Labor and Industries (BOLI) complaint against M+W.

Ms. Lopez pointed out that, following the initiation of this evaluation, M+W submitted two engineers for licensure by comity. Mr. Stanton was denied comity and, subsequently, left M+W and the second applicant, Nathan Bink, was granted comity.

In a second complaint against M+W, Mr. Stanton alleged plan stamping, in that an off-site engineer in Arizona was sealing and signing documents when he was not in responsible charge. M+W staff provided investigators with documents detailing the internal protocol in place for document review and stamping. Ms. Duquette pointed out that the engineer in responsible charge is not required to be in the same geographic location as the designers. She also mentioned that the quality control protocols provided by the company are legitimate and don't raise any red flags for her about internal procedures.

Neither Mr. Quiachon nor Mr. Stanton provided any evidence of either of the alleged actions. After discussion, the Committee determined to not open a case on this matter.

Case Status Report

The LEC offered no comments on total cases open (92), cases subject to collections (10), or on cases subject to monitoring (13).

The meeting adjourned at 2:42 p.m.