



# Oregon

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STATE BOARD OF EXAMINERS  
FOR ENGINEERING &  
LAND SURVEYING

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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  
October 13, 2016

### Members present:

Jason Kent, Ad Hoc Chair  
Dave Van Dyke  
Ron Singh

### Members absent:

Bill Boyd (excused)

### Staff present:

Mari Lopez, Board Administrator  
Jenn Gilbert, Deputy Administrator  
Lisa Montellano, Investigator  
Amelia Volker, Account Specialist  
Tina Sorensen, Account Specialist

### Others present:

Katharine Lozano, Assistant Attorney General  
Allen Alley  
Jacob Wright  
Charles Harrell  
Tim Kent, PLS

The meeting of the Law Enforcement Committee (LEC) was called to order at 8:03 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

### **Public Comment**

Ad Hoc Chair Kent allowed public comment from Allen Alley. Mr. Alley introduced himself and noted the reason he is before the LEC today. He spoke about his experience and qualifications. There was no further public comment.

### **Case Status Report**

Total cases open: 80  
No comments were offered.

### **LEC Cases Subject to Monitoring and Collections Report**

Ms. Sorensen and Ms. Volker updated the LEC on the status of collection efforts. Respondents for case #2916, case #2952, and case #2618 have paid in full. Respondents for case #2467 and

case #2478 were referred to the Department of Revenue to move forward with collection efforts. Notification from the Department of Justice Child Support Program was received to suspend the registration for the respondent in cases #2819 and #2851. Lastly, the respondent in case #2934 has been making timely payments.

### **Case Dispositions**

#### **2994 – Stimson, Robert W.**

Montellano summarized the case by explaining that Stimson was assessed a civil penalty of \$1,000 on case #2897. The civil penalty was due by July 25, 2015, but Stimson did not pay. On August 31, 2016, a Notice of Intent (NOI) to Revoke Registration was sent to Stimson. In response to the NOI, Stimson requested a payment plan for the civil penalty he owes on case #2897. Because Stimson does not contest the matter, AAG Lozano advised the LEC that the next step is to issue a Default Final Order to Revoke Registration on case #2994 and if Stimson pays his civil penalty in full before the order is approved by the Board and signed by the President, the NOI to Revoke Registration can be withdrawn. It was moved and seconded (Kent/Van Dyke) to recommend that the Board issue a Default Final Order to Revoke Registration. The LEC also directed staff to write a letter to Stimson advising that if he pays his civil penalty in full before the order becomes final, the Board can withdraw the NOI. The motion passed unanimously. There was no further discussion.

### **Informal Conferences**

Vishwesh Bhat gave a statement to the LEC in regard to case #2951 and his business with Jacob Wright. It was the project documents for Bhat's residence that prompted Lorraine Bazzi of the Portland Bureau of Development Services (BDS) to file a complaint with the Board. Bhat explained to the LEC that he hired Wright in August 2014 to provide design and engineering services on a residence he was planning to build in Portland. Bhat provided detailed information regarding repeated issues with getting the project documents through BDS for permitting to begin building his home. Bhat alleges that Wright did site planning for the project without having a geotechnical report done first, resulting in errors in site planning and Bhat subsequently hiring a separate civil engineer. Bhat also explained that Wright did not abide by zoning law for the site, nor did he do a storm water control plan or an erosion control plan and Bhat described in detail the errors that were discovered through the multiple iterations of the project documents. He further asserted that Wright failed to do seismic and static loading for a required retaining wall. Van Dyke asked Bhat if he ever had to ask Wright to stamp his project plans; Bhat said that this is when he first saw the name of Troy Lyver, PE on his documents. Bhat explained that he had never heard of Lyver until he saw his seal and signature on the project documents, and to date Bhat has never met or interacted with Lyver. Bhat expressed his concerns based on the number of errors which were pointed out by BDS staff.

2951 – Wright, Jacob: Jacob Wright met in an informal conference with the LEC, and was represented by attorney Charles Harrell. Wright addressed the LEC in regards to 8 violations of ORS 672.045(2) for falsely representing that he is authorized to practice engineering, and 10 violations of OAR 820-020-0025(1) for making untruthful statements.

Wright began by stating that he feels the City of Portland is overboard on their seismic design and static requirements for retaining walls. He said he does not agree with them. Wright says

that complications in the Bhat project began with the City of Portland's variance which dictated that the home be placed a set number of feet from the environmental zone. He said the problems escalated from there. Wright said that he told Bhat that he is not a civil engineer and said that the storm water and erosion control plans are the job of the contractor. Wright explained that Lyver reviewed all of his work on the project. Wright asserted that he has never told anyone that he is a professional engineer, but said that he considers himself a level higher than an EIT because of his experience and what he is capable of doing.

Harrell then addressed the LEC to present Wright's side of things. Harrell said that Wright disputes that he represented himself to anyone as a licensed engineer. Harrell explained that they feel the civil penalties imposed on Wright as a first time offender was excessive. Harrell asked the LEC to consider the evidence from a different point of view – and explained that Wright is young and eager to be an engineer so he did not think through his wording very well. Harrell discussed Wright's company website and claimed that the site was merely a draft website that was launched unintentionally and contained gibberish. Harrell addressed Wright's use of the term, "practicing engineering" on his website and explained that to Wright, practicing means learning engineering, not engaging in the act of engineering. Harrell said that Wright never intended to deceive the public by passing himself off as a licensed engineer. Wright agreed with Harrell's comments and said he has never used "PE" behind his name because he understands the title requirements.

Kent directed the conversation to the specific violations in the NOI, explained the purpose of the informal conference, and asked Harrell and Wright if they had a proposal for the Board. Harrell stated that he would assume Wright has learned to be more careful and attributed his mistakes to lack of having a professional to guide him. Harrell admitted that Wright violated the rules and suggested reduced fines based on it being his first offense and attributed Wright's actions to mistakes. Harrell proposed a reduced fine of \$2,000 and a public reprimand.

Kent asked Wright to describe his experience working as an EIT under a licensed engineer. Wright explained that he worked for an engineering firm for four years, and currently works for licensed engineers as a subcontractor. Wright explained that he is excited to open his own firm and work on bigger, commercial projects. Harrell again said that the launch of Wright's website was accidental and that Wright did not present himself as a licensed engineer. Kent added that it was difficult to believe the website was launched mistakenly because his blog contained a link to the engineering website which raises the question why someone would link to a website that was not supposed to be up?

Kent expressed concerns that Wright does not understand the rules and regulations that govern the practice of engineering, particularly responsible charge and supervision and control. Kent explained that the licensee stamping the plans must have supervision and control. Kent further iterated concerns that Wright lacks an understanding of licensing requirements in Oregon based on his comments that he has the knowledge base, more than other EITs, that gives him the ability to practice engineering. Kent recommended that Wright read the ORS governing the practice of engineering. Singh and Van Dyke expressed similar concerns to Kent's.

**The Committee exited its public meeting pursuant to Oregon Revised Statute (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 announced that no decisions were made and no votes were taken.**

Kent asked Wright some follow-up questions in regard to the PE exam and his use of letterhead, email signature and his company name. It was moved and seconded (Van Dyke/Kent) to decline acceptance of Wright's counter-proposal. The motion passed unanimously. Kent explained that the LEC reviewed the basis of Wright's violations to determine whether the penalties should be reduced. Based on Wright's lack of remorse and no apparent modification of his behavior, there was nothing to warrant reducing the penalties. Since Wright preserved the right to a hearing, the process will move forward for an administrative hearing. There was no further discussion.

2925-Smith, Joel: Joel Smith met in an informal conference with the LEC. Smith explained that he filed a survey with David Armstrong, the Crook County Surveyor, but Armstrong rejected the survey. Smith pointed out to Armstrong that the survey met state statutory requirements but Armstrong still would not accept the survey, "for reasons of his own personal taste." Smith says he spoke to his client, Lawrence Sale, after attempting to file the survey and Sale informed him that Armstrong had contacted him at the beginning of the project asking to be hired to do the job. Smith said that he had kept all of his records because he could foresee there being an issue with this survey, but in 2005 he lost all of his records in a mud flow that flooded his basement. Smith says he brought up the issue of county surveyors refusing to file surveys at an OSBEELS Board meeting during his tenure, but at that time was told nothing could be done.

Kent asked Smith if he had a counter-proposal. Smith asserted that he is not guilty. Singh asked if Sales could corroborate Smith's assertion that Armstrong refused to file the map. Smith said that Sales may provide a statement, but indicated that he is elderly and doesn't really want to get involved. Lopez asked Smith if his conversation occurred during a Board or committee meeting so that a recording could be accessed to confirm his statement. Smith said he believed the conversation was on record. Kent asked for specifics about Armstrong's reasons for rejecting the map and why Smith didn't submit a corrected map. Smith explained that the state statute at that time allowed the survey and narrative to be on two separate documents, and informed Armstrong of this, but Armstrong told him the narrative had to be on the face of the map and refused to accept the map. Smith did not change and resubmit the map because it met statutory requirements and he did not feel it was necessary. Van Dyke inquired about locating past Board meeting minutes and Lopez said Board meeting minutes are supposed to be permanently retained with the Archives Division.

AAG Lozano proposed suspending the informal conference to allow staff the time to obtain the Board meeting minutes from the archives in order to substantiate Smith's statement. The LEC agreed with suspending the informal conference to obtain additional evidence on this case. Smith agreed to return once the evidence is obtained. There was no further discussion.

2981 – Kent, Timothy: Timothy Kent met in an informal conference with the LEC to address his violation of ORS 209.250(1) and OAR 820-030-0060 for failure to file a map of survey within

45 days. Timothy Kent explained that he self-reported because it was the ethical thing to do. He said that he was aware of the 45 day filing time frame and it would have been a good learning lesson for his students at the time, except for the size of the project and the fact that it was stretched over a time period of three years. Timothy Kent explained that the project was a hands-on land surveying project. He expressed that he is proud of the work he has done and has maintained a professional record.

Timothy Kent stated that he finds a letter of reprimand to be a severe penalty and he proposed that the Board find him in compliance in filing the map and close the case. Singh explained that Timothy Kent cannot be found in compliance since the map was not and cannot be filed in the appropriate timeframe. Singh asked if he remained in contact with the County Surveyor at that time to keep him informed that the map could not be filed on time. Timothy Kent responded that the County Surveyor at that time was fully aware of the project. Singh asked if the County Surveyor had any concerns when the map of survey was finally filed and Timothy Kent stated that that County Surveyor no longer worked there when it was filed. Jason Kent inquired about Timothy Kent's working relationship with the Forest Supervisor. Timothy Kent explained that most of his interaction was with the Forest Land Surveyor who works under the Forest Supervisor and that he maintained a very close working relationship with the Forest Land Surveyor. Jason Kent asked if the 45 day filing requirement was considered when planning the project? Timothy Kent stated that it was.

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It was moved and seconded (Singh/Van Dyke) to withdraw the NOI and issue a letter of concern.  
The motion passed unanimously. There was no further discussion.

### **Cases Subject to OAR 820-015-0060**

**3013 – Allen Alley/Kenneth Cochran:** Montellano summarized the case by explaining that two complaints were received regarding Alley presenting himself as an engineer in a television advertisement he ran while campaigning for governor. Montellano related her communications with Alley during the investigation in which he responded that he calls himself an engineer based on his education, experience and awards. Montellano explained to the LEC that she contacted Alley three separate times in an attempt to gain compliance, as well as providing him with copies of ORS 672.007, ORS 672.060 and OAR 820-010-0730 which govern title use in Oregon. She added that based on Alley's responses he did not appear intent on complying. The LEC discussed similar cases of title violations – some who complied, some who did not. Van Dyke expressed concern about Alley's understanding of the law in Oregon in regard to the use of the professional engineer title. It was moved and seconded (Kent/Singh) to close the case and issue a letter of concern. The motion failed (Van Dyke, Singh opposed). The LEC directed staff to continue the investigation in order to ascertain Alley's intentions moving forward and to gauge whether he appreciates the difference between his career experience and what is considered the practice of engineering in Oregon. There was no further discussion.

3017 – Gui Jang Yang/OSBEELS: Montellano summarized this OSBEELS generated case in which Yang failed to cooperate with a random Continuing Professional Development (CPD) audit. Montellano explained that OSBEELS Accounts Specialists contacted Yang four separate times requesting verification of his Professional Development Hours (PDH) for the audit period, but Yang did not respond. A law enforcement case was opened and a fifth attempt at contact was made by OSBEELS Investigator Ulberg. Yang finally complied by providing verification of all PDH for the time period of the audit. It was moved and seconded (Van Dyke/Kent) to issue an NOI assessing a civil penalty of \$500 for a violation of OAR 820-020-0015(8). The motion passed unanimously. There was no further discussion.

3019 – Duane W. Kirby/OSBEELS: Montellano summarized this OSBEELS generated case in which Kirby failed to cooperate with a random CPD audit. OSBEELS Accounts Specialists made three attempts to contact Kirby, requesting verification of his PDH for the audit period, but Kirby did not respond. A law enforcement case was opened and a fourth attempt at contact was made by OSBEELS Investigator Ulberg. Kirby did not respond.

There was additional discussion regarding CPD penalties and whether registrants who are deficient in PDH should have their registration suspended until the deficient PDH are satisfied. It was moved and seconded (Van Dyke/Kent) to recommend the Board amend the CPD Penalty Matrix under the deficient PDH to include registration suspension until the date the deficient PDH are satisfied, with minimum suspension periods for respondents with 20-24 and 25-30 PDH deficiencies. The motion passed unanimously.

The discussion returned to the Kirby case and it was moved and seconded (Van Dyke/Kent) to issue an NOI assessing a civil penalty of \$500 for violation of OAR 820-020-0015(8) and a civil penalty of \$1,000 with suspension of registration until the deficient PDH are satisfied, but no less than a minimum of 60 days for violation of OAR 820-010-0635 and OAR 820-020-0015(7). The motion passed unanimously. There was no further discussion.

3022- Barry Houseal/OSBEELS: Montellano explained that Houseal, an Oregon resident, received disciplinary action from the Arizona State Board of Technical Registration (Arizona Board) and did not report it to OSBEELS in accordance with OAR 820-020-0045(4). Also named in Houseal's Order of Discipline from the Arizona Board was Zeyn Uzman, another Oregon registrant. Uzman received discipline from the Arizona Board that was not reported timely to OSBEELS. The LEC reviewed and discussed past cases of unreported disciplinary action. It was moved and seconded (Kent/Singh) to issue Houseal an NOI assessing a \$1,000 civil penalty for violation of OAR 820-020-0045(4). The motion passed unanimously. It was then moved and seconded (Van Dyke/Singh) to ratify the opening of a law enforcement case on Uzman for failure to notify the Board of disciplinary action from another jurisdiction. The motion passed unanimously. There was no further discussion.

### **Preliminary Evaluations**

Sherman/Kumar: Montellano explained that OSBEELS received a complaint from Amit Kumar, Senior Structural Engineer with the Portland Bureau of Development Services alleging that Donald P. Sherman's work consistently demonstrates incompetence or negligence in the practice

of engineering. Kumar provided examples with the complaint. After brief discussion, it was moved and seconded (Kent/Van Dyke) to open a law enforcement case. The motion passed unanimously. There was no further discussion.

Lankford/Self-report: Montellano presented Lankford's self-report of disciplinary he received from the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Professional Landscape Architects for copyright violation. Lankford reported the action to OSBEELS on June 26, 2016, however the Missouri order became final on June 4, 2015. In his letter, Lankford reported subsequently receiving disciplinary action from both Colorado and Texas. Colorado's discipline was issued on July 22, 2015, and Texas was issued on or about November 16, 2015 - none of which were reported to OSBEELS timely. It was moved and seconded (Kent/Singh) to open a law enforcement case. The motion passed unanimously. There was no further discussion.

Nangia/Self-report: Montellano summarized that Nangia received disciplinary action from the State of Colorado, Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors for applying his seal and signature to three sets of plans while his registration was expired. The Colorado order was final on September 1, 2016, and Nangia reported the action to OSBEELS on September 13, 2016. Nangia has paid the fine and his registration has been reinstated in Colorado. The action was reported timely. It was moved and seconded (Kent/Singh) not to open a law enforcement case. The motion passed unanimously. There was no further discussion.

Thompson/Morgan: Montellano summarized a complaint filed by Mike Morgan against John Thompson for performing two land surveys without providing notice of entry. Morgan alleges that Thompson performed surveys to facilitate the extension and widening of the Sisters Airport runway. The LEC discussed the allegations and it was moved and seconded (Kent/Van Dyke) to open a law enforcement case. The motion passed unanimously. There was no further discussion.

### **Unfinished Business**

2291 – Marx, Dale: Montellano gave the LEC an update on the status of Marx' sanctions from case #2291. Marx has satisfied the requirements previously stipulated by the Board in case #2291, and now wishes to renew his registration but has requested more detailed guidance from the Board in regard to content of his peer review evaluations. Montellano read verbiage from a previous settlement agreement with Marx dated January 2007 which requested that peer evaluations contain at a minimum the following:

- Name and type of all projects submitted to the reviewer
- Name and type of projects reviewed
- Status of projects, dates worked on
- Reviewer's comments on whether the work complies with accepted land surveying standards
- If Marx did no work during the review period or if he submitted work that the reviewer has not reviewed, they can write a letter stating so, in lieu of a peer review evaluation

Kent directed staff to send a letter to Thomas Beinhauer (the approved reviewer) and Marx using the verbiage from the 2007 settlement agreement as a guideline for the upcoming evaluations content. There was no further discussion.

2912-Rockwood, Thomson: Montellano explained to the LEC that a letter was received from Rockwood on October 3, 2016, which included a Decision and Final Order from a hearings officer for the Jackson County Planning Division. The complainant in case #2912, Jon Proud, filed an appeal with Jackson County in regards to approval of the home site accessed by the road at issue in the case. On June 9, 2016, the LEC had directed staff to use a professional reviewer in the case. Kent stated that the county's Land Development Ordinance (LDO) is separate from the engineering work that was done in this case and that accepted standards of practice in engineering are not necessarily the same requirements in the LDO. The LEC directed staff to continue with the professional review on the Rockwood case. Lopez reminded the LEC that there will be two reviewers on this case, a geotechnical engineer and a civil engineer. There was no further discussion.

2964-Camp, Jack: Montellano explained to the LEC that on July 27, 2016, OSBEELS issued an NOI to Jack Camp at his address in Gardnerville, NV. On August 2, 2016, Camp reported an address change to OSBEELS. The NOI was delivered to Camp's old address in NV on August 3, 2016, signed for by one of his parents and forwarded to him at his new address. Camp received the forwarded NOI on August 18, 2016, one day after the due date to request a hearing. Camp promptly contacted Board staff. On August 19, 2016, Camp emailed his Response Option Form marked that he requests a hearing along with a brief letter. Camp's request for hearing was one day late due to an address change that was reported timely. It was moved and seconded (Kent/Van Dyke) to accept Camp's hearing request late, but with good cause. The motion passed unanimously. There was no further discussion.

### **New Business**

Staff presented the LEC with a Civil Penalty Payment Plan form to assist with negotiating payment on civil penalties assessed. After discussing the form and recommending the revisions, staff will include the revised form for consideration during the November Board meeting.

The meeting adjourned at 1:43 p.m.