



# Oregon

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STATE BOARD OF EXAMINERS  
FOR ENGINEERING &  
LAND SURVEYING

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## LAW ENFORCEMENT COMMITTEE

Minutes of Meeting  
February 11, 2016

### Members present:

Bill Boyd, Chair  
Jason Kent  
Ron Singh  
Dave Van Dyke

### Staff present:

Mari Lopez, Board Administrator  
Jenn Gilbert, Executive Assistant  
Lisa Montellano, Investigator  
Jennifer O'Neill, Social and Communications Media Specialist  
James R. (JR) Wilkinson, Investigator

### Others present:

Katharine Lozano, Assistant Attorney General  
Theodore Baker, PLS  
Timothy Kent

The meeting of the Law Enforcement Committee (LEC) was called to order at 8:07 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**

#### 2902 – Jan Rohlik

After a brief discussion, it was moved and seconded (Singh/Kent) to recommend that the Board approve the Default Final Order. The motion passed unanimously. There was no further discussion.

### **Informal Conferences**

#### 2894 - Theodore Baker

Theodore Baker, PLS, met in an informal conference with the LEC in attempt to reach a settlement agreement. Baker explained that the monument he uncovered was in the public right of way. Chair Boyd explained that based on the information provided, it seemed to be more of an easement between the two properties than a public right of way. Baker explained the series of events leading up to compliant. He believed he was not obligated to provide notice since he

never left the public roadway. Van Dyke asked if Baker practiced surveying the day he went out to the property. Baker stated he was there to assess what needed to be done before surveying and found, and uncovered a monument. Chair Boyd wondered if digging up a monument is considered surveying. Van Dyke inquired if Baker used a shovel. Baker answered yes. Kent asked Baker if he had any suggestions to reach a settlement agreement. Baker requested that no penalty be assessed. Singh provided his input as a professional surveyor and asked who dug up the monument. Baker confirmed that it was he who did the digging. Van Dyke then asked Baker how he knew where to dig the hole. Baker answered that he had a metal detector.

**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.**

Upon returning to public meeting, it was moved and seconded (Singh/Kent) to withdraw the NOI and to issue a letter of concern. Singh also requested that an article be drafted clarifying that public easements are typically held in private ownership, requiring notice of right of entry before surveying. The motion passed unanimously. There was no further discussion.

#### 2945 - Kelli Grover

Chair Boyd briefly summarized the NOI and turned the floor over to Grover who provided background. She stated that the survey map she provided her client was done simply to serve as a communication tool and was not intended as a final map. Chair Boyd asked when Grover provided the map to her client. Grover replied that it was at a very early stage of the project, and then reiterated it was as a communication tool and not intended as a final survey. Grover assured the LEC that she has made it very clear to her staff, and had changed internal procedures so that the correct process is being met and non-final documents are now clearly being marked, irrespective of what purpose they are intended to serve. She then requested that the LEC consider not assessing a civil penalty.

Van Dyke explained his understanding of the situation, which began with case number 2906 regarding Darren Weigart. The investigation in that case revealed the maps in question were incomplete, were drafted by Weigart, and were placed in the project file and later distributed by Grover to her client. This occurred after Weigart's termination of employment at Firwood Design. Grover disagreed and reiterated that map was merely used as a communication tool, and clarified that Weigart was, in fact still at her firm when she shared the map with her client. Van Dyke elaborated on his understanding in that Weigart no longer worked for Firwood Design, yet Grover still used his maps. Singh agreed that it was also his understanding of situation.

Grover reiterated that Weigart still worked at Firwood Design when she provided the map to her client. Van Dyke explained that based on the information provided by Weigart he had no awareness of the intended use of the map. Grover indicated that at that time he was still employed by Firwood Design and was fully aware of the intent. Van Dyke questioned when Grover provided the map to her client. She confirmed November 12, 2013.

Kent wondered when the actual survey took place. AAG Lozano also questioned if there was any documentation of communication between Grover and Weigart regarding the need and intent for a map. Grover clarified that as a small office she simply walked over to verbally request the map from Weigart. In addition, her computer failed one year ago losing all email correspondence between her and Weigart. Grover added that her client had other projects and this one had become a low priority. She did, however, produce email documentation showing that her client clearly understood the map was not a final document.

Chair Boyd asked what Grover would propose as a settlement. She requested that in lieu of a civil penalty being assessed, she would find it beneficial to inform the profession through the publishing of an article in the *Oregon Examiner* newsletter and that she would offer a presentation to inform the young individuals interested in the profession.

Singh recapped his understanding of both Weigart's explanation and Grover's explanation of the same situation. Chair Boyd wondered when Weigart's employment at Firwood Design was terminated. Wilkinson confirmed it was May 30, 2014. Van Dyke wondered why Weigart left the company. Grover explained the he went to work for a company closer to home. Lopez added that Weigart explained two maps were drafted. Chair Boyd wondered if both maps were sent Grover's client. Grover confirmed, yes. Singh noted that an email was sent between Grover and Weigart after Weigart no longer worked for Firwood Design. Grover explained that for the purpose of the NOI issued to Weigart, he made a request for the documentation of what was passed on to the client. Kent wondered who took control of the survey after Weigart left Firwood Design. Grover explained no one because the project went dormant.

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Upon returning to public meeting, it was moved and seconded (Van Dyke/Boyd) to withdraw the NOI and issue a letter of concern. Kent explained that the LEC would not require a presentation be given at PSU, nor would they require Grover to draft an article for the *Oregon Examiner*. Singh observed that the maps were marked "exhibits," however the case highlighted the need to make sure documents were also marked preliminary or draft. The motion passed unanimously. There was no further discussion.

## 2928 - Anthony Ryan

Chair Boyd briefly summarized the NOI. Ryan then expressed that he has historically interpreted ORS 672.047(7), very differently from what was explained in the NOI. AAG Lozano clarified that it is the responsibility of the PLS to remove the stakes pursuant to ORS 672.047(7). The stakes could have been left longer with written authorization; however, he did not receive written authorization. Singh expressed his understanding of the situation. Ryan replied that the intent of the stakes was to mark the true property line because the chain link fence was not in harmony. The stakes were placed so his client and neighbor could discuss a lot line adjustment, but nothing came to pass. Kent asked what kind of resolutions Ryan would like to purpose. He requested that the NOI be withdrawn.

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Upon returning to public meeting, it was moved and seconded (Van Dyke/Singh) to withdraw the NOI and issue a letter of concern. Chair Boyd and Kent opposed. The motion failed. It was then moved and seconded (Boyd/Kent) to withdraw the NOI and to offer a settlement with a letter of reprimand. The motion passed unanimously. Ryan accepted the offer. There was no further discussion.

## Cases Subject to OAR 820-010-0617

### 2947 – Gary Bliss / OSBEELS

Chair Boyd summarized the case and the LEC reviewed and discussed the evidence and potential violations, along with Bliss's response. The LEC expressed their biggest concern being the footer of Bliss's letter that included *Consulting Engineering Services*. Bliss used this letterhead on three different occurrences; however, the LEC noted that in the same letter, Bliss also indicates that he is a retired engineer. It was moved and seconded (Singh/Kent) to close the case. Van Dyke wondered if Bliss has discontinued the use of the footer. Montellano answered yes. Singh amended his motion to close the case with a letter of concern regarding Bliss' violation of using the term. Kent withdrew his second with Singh's amended motion. It was then moved and seconded (Van Dyke/Singh) to close the case as compliance met. The motion passed unanimously. There was no further discussion.

### 2948 – Ray Moore / Jane Gille

The LEC reviewed and discussed the allegations made by the complainant and documents, conditions, and violations, along with Moore's response to each potential violation. The allegation is that a crew from All County Surveyors & Planners, Inc. performed survey work from Jane Gille's property without giving proper notice of entry. There was no evidence to support a right of entry violation on Gille's property; however, in the course of investigation it appears proper notice may not have been given to the Covelles who own the property south of the work site. AAG Lozano requested additional information clarifying that activity done on the Covelle property included survey work. Kent directed staff to investigate further. There was no further discussion.

#### 2950 – Skyris Imaging / Robert Lennox

Lennox filed a complaint that Skyris Imaging was offering and performing engineering and land surveying without a license. The LEC reviewed and discussed the allegations, documents and potential violations. Through his experience as a licensed surveyor, Singh explained his understanding of LiDAR and photogrammetric processes and added the importance of the Board hosting a discussion regarding the emerging technologies. AAG Lozano reminded Singh that during the October 2015 LEC meeting, he offered to present about the topic during the March Board meeting. After a brief discussion, it was moved and seconded (Kent/Van Dyke) to close the case as unfounded. The motion passed unanimously. There was no further discussion.

#### 2951 - Jacob Wright / Lorraine Bazzi

The LEC reviewed and discussed the allegations made by the complainant and documents, conditions, and violations, along with Mr. Wright's response. Ms. Montellano elaborated that Mr. Wright was advertising and offering engineering services on his website and internet blog without a license. The investigation revealed that Mr. Wright has been practicing engineering for what appears to be exempt structures. Mr. Kent asked if Mr. Wright has performed engineering services on any non-exempt structures. Ms. Montellano answered that the three projects she obtained were all exempt structures but there may be more projects. Staff was directed to issue a subpoena to Mr. Wright requesting all pending and completed project documents. Ms. Montellano also pointed out that although the structures were exempt the plans were stamped by licensed engineers Michael Collins and Troy Lyver. When she spoke to the builder on one of the projects, he had not heard of Collins or Lyver. It was moved and seconded (Kent/Van Dyke) to open cases on Troy Lyver and Michael Collins for possible plan stamping. The motion passed unanimously.

Ms. Montellano summarized Mr. Wright's violations prompting the LEC to discuss them. AAG Lozano suggested that Ms. Montellano also find out how Mr. Wright's clients found him. They found a total of 18 violations. After reviewing the Civil Penalty Factors, it was then moved and seconded (Kent/Van Dyke) to issue a letter of reprimand and assess an \$8,000.00 civil penalty for falsely representing himself as authorized to perform engineering services pursuant to OAR 820-020-0025(1), and a \$10,000 civil penalty for making untruthful statements pursuant to ORS 672.045(2). Mr. Singh asked that staff double check the 18 violations, if the total were fewer than 18 violations authorization was given to make a friendly amendment and reduce the civil penalty appropriately. Mr. Kent and Mr. Van Dyke accepted the amendment. The motion passed unanimously. Staff was directed to conduct further investigation for the violations. There was no further discussion.

#### 2952 – Martin Sprague / OSBEELS

The LEC reviewed and discussed the allegations made by the complainant and documents, conditions, and violations, along with Sprague's response. Montellano explained that Sprague did not report sanctions from the State of California for 24 violations of unlicensed practice and using the stamp of a licensed professional. Sprague also completed a CPD Organization Form listing 16 PDH completed for ODOT survey conferences; however ODOT confirmed the surveys were worth a total of 14 PDH. The LEC discussed the two violations and considered the Civil Penalty Factors. After discussion, it was moved and seconded (Kent/Van Dyke) to issue an NOI assessing a \$750 civil penalty for violation of OAR 820-020-0045(4) and \$250 civil penalties for

violation of OAR 820-020-0025(1). The motion passed unanimously. There was no further discussion.

#### 2955 – Monica Anderson / Anonymous

AAG Lozano requested that it be tabled and any situations similar until she provides the full Board with additional information that may better assist the LEC in its determination. Chair Boyd said that would be fine. The LEC agreed.

#### 2966 – Terry Armentrout / OSBEELS

The LEC reviewed and discussed the allegations, documents, conditions, and violations. Armentrout's registration number was pulled by OSBEELS in a random CPD Audit. Armentrout completed a CPD Organization Form, but did not provide the supporting documentation. OSBEELS staff repeatedly contacted Armentrout requesting cooperation, but he refused to comply. Montellano explained that 5 of the PDHs listed were for Portland Christian Schools as a mentor/teacher. The principal of Portland Christian Schools reported to Montellano that neither he nor his staff had ever heard of Armentrout.

Another 20 of Armentrout's listed PDHs could not be verified without a signed release of information which Armentrout would not provide. The LEC then discussed the violations and Civil Penalty Factors. It was moved and seconded (Singh/Boyd) to issue an NOI assessing a \$1,000.00 civil penalty and a 60-day suspension for violation of OAR 820-015-0026(1) and a \$1,000.00 civil penalty and a 60-day suspension for violation of OAR 820-020-0025(1). The motion passed unanimously. Kent requested a row be added to the CPD Penalty Matrix that pertains to individuals who affirmatively refuse to cooperate. There was no further discussion.

### **Disciplinary Action Disclosures**

#### Jack Camp, Disciplinary Notice

Camp notified the Board that he entered into a Consent Order with the Texas Board of Professional Engineers. When Camp renewed his Texas registration he certified that he had completed 15 hours of continuing education, but upon audit could only produce records to verify 2.5 hours. It was moved and seconded (Singh/Boyd) to open a case and to conduct an audit of the PDH Camp had claimed with the OSBEELS. The motion passed unanimously. There was no further discussion.

#### David Cospers, Disciplinary Notice

Cospers notified the Board that a drainage problem arose on a California project that led to breakdown in communication between the architect, contractor, and Cospers. Subsequently, Cospers signed a Stipulated Settlement and Disciplinary Order that revoked his registration. However, the revocation was then stayed and his California registration placed on probation for three years subject to specific terms, including passing college-level civil engineering courses, passing a professional ethics course, and reimbursing the Board for its costs. AAG Lozano explained the process for OSBEELS jurisdiction over Oregon registrants with actions from another state.

Singh elaborated that if the incompetency was not of equal standard to that of Oregon, then the Board would want to steer away from creating a policy that such determination could be made. He added that if an individual is sanctioned for incompetency in another state then it may not

apply in Oregon. The facts need checking. AAG Lozano clarified that there is a difference between being incompetent generally and incompetent practice for one particular project or instance, but that both can be addressed through enforcement.

Van Dyke asked if Cospier had been disciplined in Oregon, which was no. He then wondered if the LEC could suspend his license until he satisfies and completes the course work. A discussion was held regarding the Board's jurisdiction pursuant with ORS 672.200.

The LEC determined to not open a case, but directed staff to issue Cospier a letter notifying him that OSBEELS will monitor his progress to comply with the Stipulated Settlement and Disciplinary Order and if he does not comply then OSBEELS will proceed accordingly.

#### Patrick Fiedler, Disciplinary Notice

Fiedler notified the Board that he signed an Application for Consent Order with the New York State Education Department, Office of Professional Discipline, State Board of Engineering and Land Surveying. New York took action against Fiedler for allowing "an engineering company to offer and/or practice engineering" without a certificate of registration in Ohio. Fiedler was found to be in responsible charge in Ohio and had been sanctioned in that state. As a result, New York suspended his registration for one year, which was stayed and placed on probation, and assessed him a \$1,500 fine. However, when his OSBEELS registration file was reviewed there was no notification to the Board of the original Ohio action.

Kent wondered if there was an internal policy regarding not reporting. Wilkinson answered, no. In fact, reporting disciplinary action from another state is required by OAR 820-020-0045(4). It was moved and seconded (Boyd/Singh) that a case be opened. The motion passed unanimously. There was no further discussion.

#### Preliminary Evaluations

##### John Short / Denise Montgomery

Montellano informed the LEC that a complaint was received from Montgomery alleging that Short is portraying himself as a Certified Water Right Examiner (CWRE) without being a CWRE, or a licensed land surveyor, geologist, or professional engineer, which are prerequisites to qualify for certification as a CWRE. The LEC reviewed copies of Short's website and an ad from RelyLocalBend.com that were provided with the complaint and discussed the possible violations. It was moved and seconded (Singh/Kent) to open a case on John Short of Water Right Services, LLC. The motion passed unanimously. AAG Lozano suggested also referring the case to the Oregon State Construction Contractor's Board, as well as to the Deschutes and Crook County District Attorneys for possible fraud if the allegations are determined to be meritorious. There was no further discussion.

##### Black Mountain Consulting, LLC / Anonymous

AAG Lozano asked that it be tabled as part of the other tabled item. The LEC agreed.

##### Hiromasa Miyashita / Marc Young

##### Ric Tharpe / Marc Young

Wilkinson informed the LEC that Young submitted complaints against two people for their involvement in the same situation. The basic allegation is unlicensed practice of engineering.

Wilkinson stated that Young was hired as the Lead Process Engineer for an Oregon project. Young is Texas based and became licensed in Oregon for the job. He was informed the day before the project began that Miyashita, an engineer from Japan, would be in charge of the Process Engineering group. Once Miyashita took over, Miyashita instituted design changes and then began to direct engineers who worked under Young to also make design changes without Young's approval.

In regards to Tharpe, Young noted two reports he authored, Interim Refrigeration Driver Selection Study and Annual Production Profile Study, which Tharpe altered. Young asserted that Tharpe provided supervision and control of all project engineering contrary to state requirements. After a brief discussion, it was moved and seconded (Kent/Boyd) to open cases against Hiromasa Miyashita and Ric Tharpe. The motion passed unanimously. There was no further discussion.

Dale Hult / Richard Roberts

A complaint was submitted by Richard Roberts regarding Dale Hult. Wilkinson noted that Roberts gave a detailed statement of his efforts to retrace the historic surveys for his client who had purchased property from C&K Market, Gold Beach, OR. Roberts found that an ALTA boundary that Hult prepared does not include monuments of record, so he contacted Hult to determine the basis of his work. However, Hult was not cooperative. After a brief discussion, it was moved and seconded (Kent/Boyd) to open a case. The motion passed unanimously. There was no further discussion.

Robert Malczyk / Anonymous

AAG Lozano asked that it be tabled as a part of the other tabled items. The LEC agreed.

John Vial / Anonymous

The Board received an anonymous complaint regarding Vial. Vial is the Director for Jackson County Roads who was awarded "County Engineer of the Year" by the Oregon Association of County Engineers and Surveyors (OACES). He is a non-registrant and the complainant wanted to the Board to educate the respondent and OACES about the protected title of "Engineer" in Oregon. AAG Lozano asked if the individuals apply for such awards. Wilkinson answered, no. It was moved and seconded (Kent/Boyd) not to open a case. Kent amended his motion that a letter should be sent to the OACES informing them of the title act and that they should change their award name; Boyd seconded. The motion passed unanimously. There was no further discussion.

Peter Handforth / Anonymous

An anonymous complaint was received alleging that Handforth did not complete some (or all) of his CPD requirements in 2015. Montellano explained that the complaint did not include any evidence to support the allegation as required by OAR 820-015-0010. It was moved and seconded (Boyd/Kent) not to open a case. The motion passed unanimously. There was no further discussion.

## **Unfinished Business**

### 2876 – Marvin Krush / Kent Baker

Wilkinson informed the LEC that at their last meeting they approved issuing Krush a Notice of Intent to Assess a \$9,000 civil penalty and a revocation of his professional land surveying registration (NOI). However, the LEC also directed further investigation into the comment Fassbender made about six partitions. Wilkinson explained that Fassbender was contacted and he stated the comment was his recollection. He could provide no further evidence. As a result, there is no new information to substantiate any changes to the proposed NOI. There was no further discussion.

### 2934 – Larsen memo

Montellano updated the LEC with additional information found regarding Larsen. Eight additional sets of plans stamped by Larsen while his registration was lapsed were discovered within the original 47 sets provided by the City of Eugene. AAG Lozano presented three options:

1. Amend the original NOI to include the additional plans without increasing the civil penalties.
2. Amend the original NOI to include the additional plans and increase the civil penalty accordingly.
3. Do not amend the original NOI.

It was moved and seconded (Boyd/Kent) to amend the original NOI to include an additional \$1,000 per violation for a total increase of \$8,000 for violations of ORS 672.020(1), ORS 672.045(1) and former OAR 820-010-0520, including subsection one that were not considered during the December 10, 2015 LEC meeting. Staff then also suggested that the LEC consider referring Larsen to the Lane County District Attorney for prosecution. It was moved and seconded (Boyd/Van Dyke) to refer the case to the Lane County D.A. The motion passed unanimously. There was no further discussion.

### 2959 – William Grip / Anonymous

Wilkinson requested to remove this item from the agenda. There was no further discussion.

## **New Business**

### Timothy Kent

AAG Lozano provided the LEC with a brief update of Kent's self-reporting, which subsequently invalidated his qualification as an expert witness. The LEC held a discussion regarding the violations he reported. Wilkinson explained that Kent was teaching a senior's class and set monuments without filing a map of survey within 45 days. AAG Lozano explained that to remain consistent the LEC would need to open a case. It was moved and seconded (Van Dyke/Boyd) to open a case. The motion passed unanimously. There was no further discussion.

## **Case Status Reports**

Wilkinson updated the LEC with case statuses. There was no further discussion.

The meeting adjourned at 3:47 p.m.