



# 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  
April 7, 2016

### Members present:

Bill Boyd, Chair  
Jason Kent  
Dave Van Dyke  
Ron Singh (Absent)

### Staff present:

Mari Lopez, Board Administrator  
Jenn Gilbert, Executive Assistant  
Amelia Volker, Account Specialist  
Tina Sorenson, Account Specialist  
Lisa Montellano, Investigator  
James R. (JR) Wilkinson, Investigator

### Others present:

Katharine Lozano, Assistant Attorney General  
Timothy Kent, PLS  
Tom Larsen  
Paul Allen, Attorney  
Wayne Westfall  
Lee Moore, PLS, CWRE

The meeting of the Law Enforcement Committee (LEC) was called to order at 8:12 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

### **Public Comment**

There was no public comment.

### **Case Status Report**

Boyd noted that 64 cases are open. There were no comments.

### **Discussion on Monitoring and Collections:**

*LEC Cases Subject to Monitoring/Collections (already sent to Department of Revenue (DOR) and were returned as uncollectable – case no., name, residency, license status, LEC action)*

1. 2425 – Dale E. Marx; Oregon, suspended, part of new settlement agreement
2. 2447 – Lee Hickman; California, unlicensed, research contact information
3. 2454 – Carter Case; Oregon, unlicensed, research contact information

4. 2467 – Marc M. Holcomb, Sr.; Oregon, revoked (2009), resubmit to DOR
5. 2478 – Doyle Ray Gilliland; Oregon, revoked (2007), resubmit to DOR
6. 2496 – Robert W. Demers, Jr.; Oregon, unlicensed, bankruptcy, research contact information
7. 2544 – David Lane Roshau; Oregon, unlicensed, research contact information
8. 2580 – Troy Fowler; paid in full, remove from report
9. 2594 – Bradley J. Gabriel; Oregon, active, making DOR payments
10. 2618 – Ruben Michael Martinez; Oregon, revoked (2007), current file at DOR
11. 2625 – Dennis S. Nelson; Wisconsin, lapsed more than 5 years, issue Notice of Intent (NOI) to revoke
12. 2757 – Melvin L. Johnston; paid in full, remove from report
13. 2770 – Eric Strickland; Oregon, unlicensed, check with Landscape Contractors Board
14. 2819 – Scott T. Ogren; Oregon, delinquent, bankruptcy, research contact information
15. 2851 – Scott T. Ogren; Oregon, delinquent, bankruptcy, research contact information
16. 2897 – Robert Wayne Stimson; Nevada, delinquent, issue NOI to revoke

#### Audit on Collection Efforts

1. 2539 – Larry Crowley; Oregon, not licensed, conducted a debtor's examination, research contact information
2. 2626 – Thomas Swart; Oregon, revoked, making DOR payments
3. 2662 – Robert Walz; Michigan, revoked, refer to third party for collections
4. 2673 – In Ho Hong; Korea, delinquent (2011), issue NOI to revoke
5. 2682 – Paul E. Green; Washington, delinquent (2011), third party collections, issue NOI to revoke
6. 2684 – Dana B. Lattin; Oregon, lapsed more than five years, refer to DOR
7. 2697 – Dale LaForest; California, unlicensed, refer to third party for collections
8. 2740 – Yukimasa Aizawa; Japan, delinquent (2013), issue NOI to revoke
9. 2802 – Chang Woo Lee; Korea, delinquent (2012), issue NOI to revoke
10. 2840 – Sung Ho Kim; Korea, delinquent (2013), issue NOI to revoke
11. 2857 – United Engineering, Inc.; Oregon, refer to DOR for collections
12. 2862 – Itaru Sano; Japan, delinquent (2014), issue NOI to revoke
13. 2867 – George Sening; California, delinquent (2014), refer to third party for collections, issue NOI to revoke
14. 2868 – Shaun Martin; Washington, EIT, making regular payments to Board
15. 2877 – Judson Coppock; Oregon, delinquent (2015), send past due notice with interest
16. 2898 – Jaime Lim; Oregon, suspend his PLS license, send past due notice with interest
17. 2916 – Corey Westermann; Oregon, suspended, making regular payments to Board
18. 2922 – Roger Whitaker; Oregon, active, accept payment and remove from report

Lopez introduced a memorandum that describes the issues of monitoring and collections. She requested LEC directives on these old accounts. The Account Specialists provided details on each case, including whether an individual is registered in Oregon or not or resides in Oregon or not. One of the other findings was that some people would pay their penalties, but not by the given deadline and the Board did not send invoices for interest charged for late payments. For example, Whitaker knew his #2922 payment was due March 22, but it was postmarked March 24, 2016. How should staff proceed? AAG Lozano stated to process the payment because it is

dollars due to the Board, irrespective of whether a debtor respondent is disciplined for not paying timely.

Also, there needs to be guidance in order for the Accounts Department to be consistent, for example the interest rate applied to accounts. AAG Lozano clarified that 15% is only possible in settlement agreements; otherwise, a maximum 9% can be assessed per ORS 82.010. Further discussion was held on consistently applying a consequence for failing to make timely payments. A flat fee was considered, but Kent noted that 15% has been approved by the Board in the past and to apply this rate consistently, otherwise the 9% rate in ORS 82.010 would apply. Van Dyke also suggested applying a grace period prior to assessing interest. Amounts to refer to DOR were also discussed.

After discussing potential circumstances, it was moved and seconded (Boyd/Kent) to include a 15% interest rate in settlement agreements. If there is no settlement agreement or interest rate included within, the 9% rate applies. The Board will refer any balance over \$50 to DOR and the cost of DOR recovery would be borne by the respondent. Lastly, a registrant would not be able to renew if there is any outstanding balance.

During discussion of the motion, Lopez asked about payment plans. She suggested making it a consistent practice to ask respondents if they need a payment plan. Boyd pointed out that negotiating a settlement agreement should include a payment plan discussion.

Another issue discussed relative to the motion on the table was that many of the listed individuals were unlicensed. Lopez suggested a new form for payment plans that would include information needed for collections. Boyd observed that a motion was being discussed. However, he amended his motion by removing the \$50 debt minimum for forwarding to collections. He offered that no penalty should be assessed if payment is received within two weeks of due date. The Board would send a letter notifying respondent debtors that payment was received late and the respondent debtor owes interest. If not paid within two weeks, the account would be referred to collections. Any outstanding amount would prevent renewal. On the list are persons who have owed for some time and they should not be renewed. Kent affirmed that the Board cannot have registrants who have failed to pay their penalties.

Van Dyke voiced support of the motion on the table with respect to the 15% and 9% interest policies, but suggested the policy include a two-week grace period when there is no interest calculated. He then offered a friendly amendment. If a respondent is late in making payment then the interest is charged back to the due date (70 days after the Final Order is issued for Final Orders after hearing and Default Final orders, as written into the settlement agreement and Final Order for cases settled via the informal conference), and the amount is invoiced for three months. Once they fail to make full payment, they become delinquent, the account is sent to DOR collections, and a NOI to suspend their registration is issued. If the unpaid balance is not satisfied within a year, then a NOI to revoke their registration is issued. Boyd accepted and Kent seconded the friendly amendment. Kent commented that any unpaid balance due would be grounds to not renew registrations, whether \$1.00 or a \$1,000. The members concurred and the motion passed unanimously. Furthermore, it was moved and seconded (Van Dyke/Kent) that suspension includes any and all licenses held by the individual and that any referral to collections

means sending the account either to DOR or to a third party for collections, depending on the situation. The motion passed unanimously.

AAG Lozano emphasized that a suspension or revocation is not immediate because the administrative process must be followed. For example, a respondent has 21-days to answer a notice to suspend. Then there is scheduling an informal conference or a hearing with the Office of Administrative Hearings, the issuance of proposed order, the drafting and approval of final orders, etc. Van Dyke recognized the additional time, but added there is a ratcheting of discipline up to and including revocation. AAG Lozano later stated that the costs of the collections can be included in the warrant for the judgment on the lien. Collection costs can be tacked onto the lien. The Board would enter into an agreement with DOR to receive back the recovered costs.

### **Informal Conferences**

#### **2934 – Thomas Larsen**

Thomas Larsen met in an informal conference with the LEC, and was represented by attorney Paul Allen. Larsen addressed the LEC in regards to violations of practicing engineering without a license, and applying a fraudulent seal to 55 sets of plans as a City of Eugene traffic engineer. Larsen explained to the LEC that it was never his intent to practice engineering without a license and he believed that in 2012 he had completed the appropriate forms and returned them to the Board to maintain an active license. Larsen provided the LEC with a list of continuing professional development (CPD) hours he reports having completed since his license lapsed. Larsen then stated that he felt the civil penalty imposed was excessive. Boyd explained that the number of years Larsen practiced engineering without a license was one factor that was weighed when determining the penalty. Larsen again asserted that he recalls completing renewal paperwork in 2012 but said he has no evidence to demonstrate that. AAG Lozano asked if Larsen had a counter-proposal for the LEC to consider. Larsen counter-proposed a total penalty of \$4,000. He offered \$1,000 for the renewal and delinquent fees he has accrued plus \$1,000 for each of the three periods he did not renew his license and continued practicing. Larsen also said he is amenable to proposed classes or probation as have been imposed by the Board on past cases.

Kent explained that ensuring registration status is a personal and professional responsibility, and in this instance it was concerning to the LEC that there were 55 occasions of engineering drawings and calculations stamped by Larsen with a date certifying that his license was active, when it was not. He explained that Larsen, by signing his name to his seal with an inaccurate expiration date, which he did 55 times, and which was serious enough that the LEC believed the maximum civil penalty to be warranted. Larsen asserted that it was City of Eugene draftsmen who changed his seal expiration dates without his knowledge. Kent stated that it is his responsibility to ensure that those dates and everything he seals should be correct. Larsen agreed that it is his responsibility. He said that in 2008 and 2010 he has no recollection of instructing the draftsmen to update the expiration date, but in 2012 he does. He recalls completing renewal paperwork and sending it to the Board prior to telling the draftsmen to update the stamp. Boyd asked if he had records to show that he paid his renewal and delinquent fees. Larsen stated that he paid twice by personal check but could not recall which periods those were for. Kent asked Larsen if he had any evidence of his renewals and Larsen said he does not. Montellano said that

according to OSBEELS account records, Larsen paid delinquent renewal fees by personal check in December 2004 and 2006, but there is no record of OSBEELS receiving other payments for Larsen.

Van Dyke expressed concern for harm done to the public trust and the financial harm to the City of Eugene because all plan sets stamped by Larsen while unlicensed likely had to be reviewed.

Attorney Allen added that Larsen's comments about his belief that he renewed is not to prove that he did renew - Larsen has no evidence of that. His comments have to do with the question of the egregiousness of his behavior and whether or not he was willfully and intentionally violating ethics rules. Because this Board has discretion as to the amount of fines issued, Attorney Allen offered Larsen's asserted lack of intent as a mitigating factor.

There was further discussion about the importance of record-keeping. Van Dyke asked Larsen why he has allowed multiple periods of expired licensure without taking steps to address it sooner. Larsen said he is aware that record-keeping is a weakness of his, but he was not aware that his license was not renewed. Boyd asked if he had checked the OSBEELS website for his license status, and Larsen said that did not occur to him because he assumed that he was licensed. Lopez asked if Larsen ever became concerned about not receiving a pocket card after he believed that he renewed. Larsen says he was not aware of being without a pocket card and said that the one in his wallet is dated 2002. Larsen asked if the Board has records of renewal notices sent to registrants. Montellano stated that according to the Accounts Department renewal notices are sent every two years prior to a registrant's renewal period until the registration has been delinquent for five years, at which point all notices stop. AAG Lozano clarified that renewal notices are sent as a courtesy only. Kent asked if Larsen's address is up to date with the Board. Larsen stated his address has been the same for the entire period that he has been licensed.

Larsen asserted that upon discovering his license had lapsed he stopped using the title of engineer, applied to retake the exam, and removed his certificate of registration from his office wall. Larsen offered a settlement agreement of \$5,000 penalty and offered to take classes. Attorney Allen addressed some comments made during the conference such as the penalty being not only about stamping plans, but also the act of practicing engineering without a license. He said that as far as proper work and proper pedigree - Larsen's work was proper and the registrant pedigree is not just whether the registration is current or the engineer's stamp is correct, but also whether the person has the knowledge to do the work, continuing education requirements that have been kept current, and whether he had the education and experience to support the pedigree. Attorney Allen noted that Larsen recently sat for the exam and passed it, which is 30 years after having sat for his first exam, and suggested that the Board is imposing the maximum penalty where only one element of the registered engineer's pedigree was absent. Attorney Allen suggested that the maximum fine seems unfair and inappropriately high to Larsen. Van Dyke commented that he is sympathetic to the situation that Larsen finds himself in and he doesn't think it was intentional or malicious, but he does feel that damage has been done and there is a need for consistency with other cases of unlicensed practice.

**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.**

It was moved and seconded (Kent/Van Dyke) to recommend the Board impose the entire \$55,000 penalty, suspending all but \$13,750 (\$250 per violation) with the following requirements. Within 12 months Larsen must successfully complete a three (3) semester credit hour or equivalent quarter credit hour engineering ethics course from an accredited Oregon institution; within 60 days from issuance of the Final Order, Larsen must submit evidence satisfactory to the Board of all professional development hours (PDH) he obtained for each biennium from January 1, 2007 forward; and, if for any biennium from January 1, 2007 forward, Larsen is unable to satisfactorily demonstrate he obtained 30 PDH for that biennium then, within 12 months from issuance of the Final Order, Larsen must obtain all PDH he is deficient for all subject biennia and provides evidence satisfactory to the Board of having completed those deficient PDH. Additionally, Larsen must have no further violations of Oregon rules or law within the Board's jurisdiction for a 5 year period. Kent added that a payment plan is available, but failure to pay carries 15% annual interest. The motion passed unanimously.

Upon returning from conferring with his attorney, Larsen asked if the PDH are looked at in aggregate. Van Dyke stated that they are not. Attorney Allen inquired whether PDH in excess of 30 hours per biennium would apply as carry over to a previous biennium. AAG Lozano explained that excess hours can only be applied to a future biennium, but not a past one. Attorney Allen clarified that Larsen has the next 12 months to make up any deficient PDH, and that the five years of refraining from violating laws or rules referred only to violations of laws and rules under OSBEELS authority, both of which were confirmed by AAG Lozano.

Larsen inquired whether his registration will be reinstated. AAG Lozano explained that the Examinations and Qualifications Committee would review the information to determine if his application for registration should be approved – not the LEC, but that the Examinations and Qualifications Committee would an update on his law enforcement case when deliberating on his application.

Kent reiterated that the original penalty of \$55,000 stands, but if compliance with the settlement agreement terms is met, all but \$13,750 is suspended and will be waived. The 12-month compliance period begins upon issuance of a final order by the Board with the first payment due within 30 days after the order is issued. Attorney Allen offered to manage correspondence from the Board on Larsen's behalf. There was no further discussion.

#### 2946 – Lee Moore

Lee Moore, PLS, CWRE, met with the LEC in an informal conference in an attempt to reach a settlement agreement. The investigation against Moore began with case #2907 when it was discovered that Moore produced twelve surveys while his registration was delinquent. Further research revealed Moore submitted an incomplete renewal application and Grace Period Form.

Moore stated he thought he complied with renewal requirements. He submitted a Grace Period Form knowing he had the required number of professional development units (PDH). However,

he did not have on hand the documentation to complete the form. He never received any communication that the Grace Period Form and presumed he had been granted the grace period until contacted by an investigator who informed him of the status of his registration.

Boyd noted that a registrant needs to list completion of a minimum of 15 PDH units on the Grace Period Form in order to qualify for the grace period and to be properly renewed. The Grace Period Form Moore submitted was blank. Moore replied that his records were in storage and he was unable to recall what he had done until he accessed his storage container, but knew he had completed all 30 required credits. He understood himself to be requesting a grace period to provide documentation, not to obtain the credits. Once his container was delivered, he was able to document 36.5 PDH. He also found that he had a carry-over of six PDH from the prior period. Moore summarized that he had the hours, but completed the Grace Period Form improperly.

**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 announced that no decisions were made and no votes were taken.**

Upon returning to public meeting, it was moved and seconded (Van Dyke/Kent) to recommend the Board withdraw the NOI and to close the case and send a letter of concern. The motion passed unanimously. There was no further discussion.

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

#### **2887 – Comfort Flow Heating**

Wilkinson informed the members that this case evolved from a prior case and an HVAC design for the Wheelhouse, a mixed-use commercial office building in Albany, OR. There were cooling issues in the lobby and stairwell and, allegedly, the HVAC units for the lobby and stairwell had to be replaced due to poor design. However, no evidence indicated that the first engineer's design was deficient or had failed to meet design criteria. The prior case was closed as unfounded, but the investigation found that a Comfort Flow Heating technician provided load calculations on whether the system could maintain a minimum temperature of 70 degrees, which is below the 75 degrees outlined in the 2010 Oregon Energy Efficiency Specialty Code (OEESC). As a result, a case was opened to investigate allegations of unlicensed practice of engineering.

AAG Lozano asked about the company attorney's response. There were two comments about exemptions that appear to be false. In contrast to the company attorney's assertions, the company's work was offered to the public and at least some the structures were not of an exempt size or use. Wilkinson replied that he found no offering of engineering designs, only HVAC products and installation, although the Wheelhouse is not an exempt structure. Boyd noted that not every project appeared to involve engineering without a license. AAG Lozano asked the members whether this was engineering. Were they offering a product and installation that in some cases involves design work? Boyd pointed out that one project shows that the HVAC manufacturer did the engineering for installation.

Comfort Flow performed a series of HVAC installations for the Wheelhouse project. Boyd observed that one project did involve load calculations. Wilkinson showed the letter with load calculations and stated it was the clearest example of what they provided to clients. Is this the practice of engineering? Van Dyke stated he does not work on HVAC systems. Unlike civil engineering, there is a lot of unlicensed mechanical engineering work being done on HVAC systems. Is what Comfort Flow doing common in the HVAC industry, and is what is common in the industry unlicensed engineering? Kent observed that equipment suppliers are the ones that provide engineering calculations for their equipment. The supplier might be in one state while the local installer does the specification work. In such a scenario, the engineering is done by the equipment supply company under an industrial exemption. In this case, did Comfort Flow perform specifications and installation, or were they engaged in engineering work, designing a system that is not “off the shelf.” The Wheelhouse project stood out because they did load calculations. Van Dyke countered that HVAC installers will always do load calculations for the specific installation. He gave examples of factors that go into set formulas to size the unit. The installer makes an educated estimate of what is needed.

AAG Lozano asked what about this installation work prevents it from being engineering. Kent replied that they are following a standard “recipe.” Van Dyke was troubled that an engineer sized the system and then someone else decided to replace the unit. Even if sizing a unit is not engineering, in this instance a non-engineer redesigned an engineered system. Wilkinson explained that the owner complained the building would not stay cool. The original case involved the engineer who designed the system, which was done to current, applicable building and energy codes. The owner wanted the building set points calibrated at a much lower level than the energy code required. The unit was resized in order to cool the building to those lower points.

Kent restated the issue. When they went outside the standard specifications process did they practice engineering to develop the new system? Upon further discussion, the LEC determined to refer the matter to an expert with HVAC system experience.

#### 2888 – Mitchell Duryea / OSBEELS

Wilkinson introduced the case by stating questions arose about Mitchell Duryea, PLS, providing supervision and control and responsible charge for projects he oversaw for Millman National Land Services and Duryea & Associates. Duryea was required to submit certain documents to the Board in order to satisfy a settlement agreement in case #2878. Due to a lack of cooperation, however, Duryea was assessed a \$1,000 civil penalty to close #2878. This case examines the documents submitted by Duryea for substantive practice issues.

Boyd observed that the case primarily involves American Land Title Association (ALTA) surveys. It appeared to him that a number of projects did not present any problems. Wilkinson replied that the findings begin with responsible charge and with supervision and control, which were the overarching concerns. After that were the outlines of each project and the relevant findings. In looking at the projects, Boyd noted that many do not involve potential violations. AAG Lozano highlighted that supervision and control requires a registrant to provide adequate training to those working under their license. Wilkinson replied that no evidence showed that Duryea failed to provide training. The presumption was that it would have been very difficult

for him to provide adequate training, due to his only rarely being at the same location as his trainees, is providing training, but no evidence in the submitted documents indicated that he was not in fact providing adequate training.

Wilkinson also revealed a concern with Duryea sealed documents that showed a digitized signature. When Duryea was asked, he explained that he wet signs final documents and sends them to his clients. However, he does not keep a copy for his files. Wilkinson observed that the Committee would need copies of documents sent to clients to confirm or dispute Duryea's contentions, but that the business model and contract between Millman National Land Services and Duryea & Associates were driven by electronic communications, which were deleted at the end of a project.

Boyd noted that Duryea's clients issue title insurance. Wilkinson explained that an ALTA survey is a somewhat prescriptive process with ALTA checklists to ensure compliance with title insurance requirements. In addition, both Millman National Land Services and Duryea & Associates generated their own checklists. However, professional judgment is required in regards to boundary lines, and therefore includes the practice of surveying. Each project was examined against the laws and rules that set requirements for responsible charge of registrants over the work of non-registrants, but no evidence was discovered to substantiate concerns regarding a lack of supervision and control.

However, during this investigation, Wilkinson did find evidence of filing violations, seal violations, and final v. draft document identification violations. Wilkinson explained that there were client driven changes on the documents unrelated to surveying, and that Duryea sent maps with digitized facsimile signatures to Millman, including when Duryea was Millman's contractor and not a Millman employee, but that once an ALTA survey was finalized, Duryea reported, he wet signed the final document and sent it to the client. Boyd stated it was not unreasonable that Duryea provided electronic drafts and reviews to Millman National Land Services. AAG Lozano pointed out that the maps should be marked preliminary or draft if they are not final documents.

The LEC reviewed the civil penalty factors. The nature and gravity is not inconsequential when surveys are not sealed or marked preliminary. No downstream problems from these particular surveys were found, however. Lopez summarized the findings as three surveys were not marked preliminary, four surveys showed an improper seal, and 2 surveys showed a 45-day violation. Boyd suggested \$250 for each of the two preliminary survey violations.

Kent asked about the improper seal. AAG Lozano replied that seal violations are typically fixed prior to a LEC review, and that the investigator then typically makes a "compliance met" recommendation to the Board. In this case however, the investigator reported that there was nothing to indicate Duryea is now in compliance. Wilkinson reminded the LEC that Duryea claimed that wet signed hard copies that were sent to his clients, but that no evidence had been requested from clients.

Van Dyke moved to issue a NOI for \$1,000 per violation. Boyd replied that there was no harm, except for not filing maps. Kent agreed that the civil penalty factors on a seal violation are low.

Boyd countered with a \$250 per violation for seal and not marking preliminary. Kent agreed with the \$1,000 per failure to file violation, but a \$1,000 total for the seal violations and preliminary documents \$500.

Lopez reminded the Committee that Duryea claimed to have sent wet signed final documents to his clients, but that only an investigation into those copies could verify whether that is, in fact, the case. Van Dyke replied that Duryea generated the seal violations by providing the documents to Millman. In other words, the versions the Board received violated seal requirements, but possibly not those he sent to his clients. Because these were not copies of original documents, and it was copies of the original documents that were requested and that Duryea originally purported to have provided, AAG Lozano pointed out that he submitted falsified records. It was also an additional failure to cooperate. Upon further discussion, the LEC directed staff to subpoena all of the client records relative to an investigation of potential seal violations and potential final v. preliminary document violations.

#### 2925 – Joel Smith / David Armstrong

David Armstrong, PLS, Crook County Surveyor, alleged that the respondent Joel Smith, PLS, failed to file a map of survey and corner restoration forms. Armstrong was conducting a survey and found Smith's monuments. When he examined County records, none were associated with the found monuments. Smith, however, claimed that he sent the map of survey to Armstrong for filing. Upon his further review of the record, Armstrong also found another instance of an unfiled map of survey and corner restoration forms.

Boyd summarized that two surveyors offer contradictory testimony, and there is evidence that the County Surveyor was keeping accurate records. Van Dyke observed that monuments were in the ground without a corresponding filed map.

The LEC also discussed the statute of limitation under ORS 12.280 that Smith argued. However, AAG Lozano explained that it does not apply to Board enforcement cases.

It was moved and seconded (Van Dyke/Kent) to issue a NOI to assess a \$4,000 civil penalty for failure to file two maps of survey and two sets of corner restoration records within 45 days. The motion passed unanimously. There was no further discussion.

#### 2926 – Shawn Kampmann / Anonymous

The case was removed from the agenda for review by Counsel.

#### 2927 – Chris Fischborn / William Eimstad

William Eimstad, PLS, asserted that Chris Fischborn, PLS, ignored every original monument in setting lot corners within a subdivision. In doing so, Fishborn allegedly violated one of the most basic tenets of "sound surveying practice." AAG Lozano pointed out that this case appeared to be a complaint of negligent land surveying. AAG Lozano reminded the LEC that when survey practices fall outside the purview of the BLM *Manual of Surveying Instructions* it can be difficult to address methodology and judgment. There are very few ordinances that set forth a required methodology, and there is often a lack of consensus about appropriate methodology within the surveying community. Kent asked if this case needs to be set aside until a surveyor

can offer the LEC an opinion. AAG Lozano replied that the most advisable course would be to determine whether this is more than one surveyor from within the geographic area where the conduct occurred who concurs with complainant, before deciding whether to proceed with a negligent surveying case.

Wilkinson was asked if there were any local ordinances that offer guidance. He had not inquired. Boyd commented that he could not recall any county ordinances regarding methodology. Lopez replied that some do, but the question is the level of detail. AAG Lozano added that if it exists, it can be enforced. Other counties have best practices manuals, which are unenforceable, but if there is an actual ordinance, it can be enforced.

Van Dyke stated that a surveyor should review the map to offer an opinion. The members determined to have Ron Singh review the survey and to secure copies of relevant Lane County ordinances, and determine how to proceed from there.

#### 2948 – Ray Moore / Jane Gille

Montellano summarized this case that was originally presented to the LEC on February 11, 2016. 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 of 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 Tom and Christine Covelle who own the property south of the work site. AAG Lozano requested additional information clarifying that the work done on the Covelle property was survey work. In response to that request, Montellano obtained an emailed statement from the Covelles confirming that there were two people on their property working for the day with tripod equipment and setting flag markers along the property line. Kent asked what separates the Covelle property from the work site property line, but it is unknown whether there is a fence or physical marker of the property line. Lopez asked what All Counties said in response to the allegation. Montellano explained that until recently, All County has maintained that they gave the Covelles verbal notice for right of entry prior to performing work from the Covelle property that day. Hult, who was surveyor in charge of the crew, sent a letter on March 1, 2016, stating that he was mistaken and now says the crew did no work from the Covelle property. A discussion was had about determining how the Covelles were certain the survey work was done from their property.

Montellano discussed the fact that Moore wrote a letter requesting his name be removed from the complaint because he was not in charge of the survey crew. Moore stated that he was named in the complaint because he answered the phone when Gille called All County to complain. In his letter to OSBEELS, Dale Hult had admitted to being supervisor of the survey crew. It was moved and seconded (Kent/Boyd) to recommend the Board close the case against Ray Moore as allegations unfounded and open a case on Dale Hult for review during the next LEC meeting in June. The motion passed unanimously. There was no further discussion.

**Staff Update: The Covelles have provided information to Investigator Montellano for the LEC to consider, which may result in a new vote on this case.**

2949 – Gabriel Williams / Anonymous

The LEC reviewed and discussed the allegations made by the complainant and documents, conditions, and violations, along with Williams's response. Montellano explained that Williams and McCoy each operate a business located at 1180 SW Lake Rd, but occupy different suites. William owns the building. McCoy is an employee of Williams's company, Resource Specialists Inc. There was discussion as to whether McCoy can provide supervision and control, and be considered physically present at least half of the person's working time in the offices of the licensee or organization. AAG Lozano stated that it would be difficult to prove that he was not. It was moved and seconded (Kent/Boyd) to recommend the Board close the case as allegations unfounded. The motion passed unanimously. There was no further discussion.

2955 – Monica Anderson / Anonymous

The LEC reviewed and discussed the allegations made by the complainant and documents, conditions, and violations, along with Anderson's response. Montellano provided details on virtual offices available through the Regus Group at the Congress Center in Portland where BHE Group advertises having an office. AAG Lozano said that more than a violation of not having someone physically present in the company's offices at least half time, she felt this was more defensible as an untruthful statement because BHE actually has no Portland office. A discussion was had over whether there is a violation of professional conduct for advertising and offering engineering services in Portland without actually having an office or a violation for advertising having a Portland office that is not staffed by a licensed professional. It was moved and seconded (Kent/Boyd) to issue a NOI to assess a civil penalty of \$500 for violation of OAR 820-020-0025(1). The motion passed unanimously. There was no further discussion.

2962 – Shawn Kampmann / Stuart Osmus

Complainant Stuart Osmus, PLS, CWRE, found that Shawn Kampmann, PLS, had set a temporary marker as a property corner, which Osmus asserted "is neither professional nor legal." After talking with his potential client, he learned that the matter was resolved "without resorting to surveying." This sparked his interest, so Osmus visited the site and found that Kampmann had marked a point on the sidewalk to indicate where the property line intersected the sidewalk.

Wilkinson explained that two neighbors wanted to cooperatively build a temporary deer fence. The City of Ashland had set the back property corner and the existing fence was not on the property line. The owners needed the front corner to align the fence. Kampmann has his company survey network tied into the City network, so he was able to occupy a nearby street monument where he turned an angle and pulled a distance to mark the sidewalk. There were no specific allegations of substandard surveying. In fact, the found iron rod was placed by the property owner to tie his string to. It was not set by Kampmann. The complaint was about setting a temporary mark on the sidewalk.

Boyd commented that a monument is set to mark a property corner. Wilkinson agreed, but Kampmann argued that in this instance he was not required to monument a corner when he made his boundary determination. Boyd pointed out ORS 209.250(1) requires, "*A registered professional land surveyor making a survey of lands within this state wherein the surveyor establishes or reestablishes a boundary monument shall, within 45 days thereafter, submit for*

*filing a permanent map of the survey to the county surveyor for review.” He did not see any wording that a boundary determination requires the setting of monuments and filing a map.*

Van Dyke could not understand the concern. Wilkinson replied the issue is setting a temporary marker in lieu of setting a monument. Kampmann did not set a monument, so he argued it did not trigger ORS 209.250(1). However, he did make a boundary determination to mark the sidewalk. AAG Lozano commented that the wording is, “establishes or reestablishes a boundary monument.” Van Dyke stated that placing a monument in the ground is an authoritative statement and a record needs to be filed. Kent pointed out that the neighbors were not in conflict. It was the owner who placed the iron rod. Kampmann did not establish a boundary monument.

AAG Lozano asked if Kampmann was negligent or incompetent. Wilkinson replied that Osmus provided no evidence regarding those allegations. In fact, Kampmann submitted all his background research to evidence his determination. Ultimately, the City already had set the back property pin and his existing survey network allowed him to make the determination. Kampmann made his mark where the boundary line intersected the sidewalk. AAG Lozano questioned whether that act was reestablishing a boundary monument. Wilkinson replied that Kampmann elongated the property line to make his mark. Is that reestablishing a monument? Boyd noted that Kampmann did not reestablish a missing monument. It was moved and seconded (Van Dyke/Boyd) to recommend the Board close the case as allegations unfounded. The motion passed unanimously. There was no further discussion.

#### 2968 – Andre Barbosa / Anonymous

The LEC reviewed and discussed the allegations of unlawful use of title made by the complainant along with Barbosa’s response. Montellano presented information showing that Barbosa corrected the OSU faculty web page by adding after the PE designation the jurisdiction where he is registered (see OAR 820-010-0730), but the page for the Barbosa Research Group had not been corrected. Montellano also pointed out that there are ten other faculty members using the title of PE without being registered in Oregon. Kent offered that as President of the Board he feels there should be some communication between himself and the Dean of OSU’s College of Engineering in regards to rules and regulations for engineers. Discussion was had about reaching out to Oregon colleges and universities offering engineering programs explaining that there are two acts - title act and practice act. AAG Lozano offered that Barbosa is halfway in compliance by having the faculty page corrected. Kent stated he would like to give Barbosa the chance to fully gain compliance. Boyd requested that staff survey other school websites to include in the outreach. It was decided that staff would draft a letter for Kent to distribute for the effort. Staff was directed to follow-up to verify that Barbosa corrected his title on the Barbosa Research Group website and report back at the next LEC to determine whether compliance has been met.

#### 2974 – Susan Ronning / OSBEELS

The LEC reviewed and discussed the allegations, conditions and possible violations along with Ronning’s response. Montellano presented information showing that Ronning sent an email to OSBEELS using the title PE, without being registered in Oregon. When contacted in regards to incorrect use of the title, she stated that she is licensed in California and operates nationwide

under that licensure. Ronning claims to perform telecommunications design work that does not require engineering or the stamping of plans. She stated that she designs system networks and does coverage analysis, but does not do any type of structural or electrical engineering. Ronning said she does a “rack drawing” where she designs the radio or cellular equipment and batteries that will go into the tower and how those components will connect. The LEC directed staff to investigate further. There was no further discussion.

#### 2975 – 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 Rights Examiner (CWRE) without being a licensed land surveyor, geologist, professional engineer, or photogrammetrists, which are prerequisite registrations necessary to qualify for certification as a CWRE or to remain certified 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. Montellano explained that there are two separate chapters of ORS and OAR that apply to certified water right examiners (CWRE). The investigation revealed that Short worked under the direct supervision of a CWRE and did not perform the services himself. His website and RelyLocal ad, however, do appear to be offering services as a CWRE although they contain one disclaimer that Short works with a CWRE. It was moved and seconded (Boyd/Van Dyke) to recommend the Board close the case and send a letter of concern. The motion passed unanimously. There was no further discussion.

#### **Disciplinary Action Disclosures**

No disciplinary action reports were discussed.

#### **Preliminary Evaluations**

##### Brad Hupy / Anonymous

An anonymous complaint was received alleging that Brad Hupy has been practicing engineering without a license since 2013. Hupy is the registered agent for Northwest GEO Consultants, LLC. Two pages of a geotechnical report stamped by Hupy with an expiration date of 2015 were provided with the complaint. It was moved and seconded (Van Dyke/Boyd) to open a case against Brad Hupy. The motion passed unanimously. There was no further discussion.

##### Rifaat Sammy Salem / Self Report

Salem self-reported disciplinary action from the Nevada State Board of Professional Engineers and Land Surveyors (Nevada Board). Salem received the Revised Stipulated Agreement from the Nevada Board on December 11, 2015, and reported it to OSBEELS on January 11, 2016. The report is considered timely. It was moved and seconded (Boyd/Van Dyke) not to open a case. The motion passed unanimously. There was no further discussion.

##### Daniel Sander / Anonymous

An anonymous complaint was received alleging Sander is using the PE title in Oregon without a valid registration. Sander is the registered agent for Backflow Management, Inc. and he is also registered in Washington. Backflow does business in both Oregon and Washington, so there is a possibility that the intent of using PE on the company website is for Sander to practice in Washington. The LEC directed staff to send a letter to Backflow Management with a copy to

Sander suggesting that the jurisdiction Sander is licensed in be added to his title according to OAR 820-010-0730(1). There was no further discussion.

#### James Skowronski / Self Report

James Skowronski self-reported receiving sanctions from the Engineering and Land Surveying Examining Board of the State of Iowa for unlicensed practice. The order was filed in Iowa on January 25, 2016 and Skowronski reported the action to OSBEELS on February 22, 2016. The report is considered timely. The LEC directed staff to follow-up and ensure Skowronski complies with the Iowa order and to revisit this preliminary as unfinished business at the June 2016 LEC meeting. There was no further discussion.

#### Black Mountain Consulting / Anonymous

An anonymous complaint was received alleging that Black Mountain Consulting, LLC alleging that the company is not meeting the requirements of a having a full-time engineer of record in each of its two offices. John Estrem is the registered agent for Black Mountain and Jeanne Niemer is reported to be an employee. Both were previously named in a complaint against Adapt Engineering that resulted in a letter of concern. It was moved and seconded (Kent/Boyd) to open a case. Staff was directed to make a referral to the Oregon Board of Architect Examiners for a possible title violation. The motion passed unanimously. There was no further discussion.

#### Centerline Concepts / Terry Marsh

A complaint was received from Terry Marsh alleging that a representative of Centerline Concepts Land Surveying performed right of entry without giving notice. Included with the complaint are four witness statements corroborating Marsh's allegations as well as an emailed response from Toby Bolden, PLS. It was moved and seconded (Van Dyke/Kent) to open a case against Toby Bolden. The motion passed unanimously. There was no further discussion.

#### Gene Pfeifer / Anonymous

An anonymous complaint was received alleging that Gene Pfeifer, owner of Design Build Associates, LLC (DBA) is practicing/advertising engineering services without an Oregon license. The complaint included an advertisement in the *Salem Weekly* magazine where DBA offers "value engineering." Pfeifer has a prior law enforcement case for unlicensed practice which resulted in a final order with a settlement agreement wherein Pfeifer agreed to cease using and refrain from using any verbal claim, sign, advertisement, letterhead, business card or any other representation of engaging in the practice of engineering. It was moved and seconded (Boyd/Van Dyke) to open a case. The motion passed unanimously. There was no further discussion.

#### Robert Malczyk / Anonymous

Wilkinson introduced the anonymous complaint by stating Robert Malczyk and Equilibrium Consultants, Inc. are based in Vancouver, British Columbia. The allegation is unlicensed practice of engineering in the design of the Peavy and AWP Research and Testing Building at Oregon State University. It was moved and seconded (Boyd/Van Dyke) to open a case. The motion passed unanimously. There was no further discussion.

#### Douglas Ferguson / Stephen Haddock

Wilkinson explained that a prior investigator received the complaint in 2014 and it was recently discovered in another file. Stephen Haddock, PLS, alleged that Douglas Ferguson, PLS, used “best fit” without providing record data on which his determination was based. In addition, the date of filing occurred after Ferguson’s registration had expired. AAG Lozano observed that it would be investigated as negligence or incompetence. It was moved and seconded (Van Dyke/Boyd) to open a case. The motion passed unanimously. There was no further discussion.

#### Kinnan Engineering, Inc. / Susanna Noordhoff

Wilkinson stated that Susanna Noordhoff, EIT, alleged that Kinnan Engineering, Inc. is using the title of “engineering” without registration. It was moved and seconded (Boyd/Van Dyke) to open a case. The motion passed unanimously. There was no further discussion.

#### Unfinished Business

There was no unfinished business.

#### New Business

##### Timothy Wolden / OSBEELS

Wilkinson disclosed that the Board received an inquiry from Tim Samples, Chief Electrical Inspector, Clatsop County. Samples submitted a letter signed by Timothy Wolden that was dated February 17, 2016. Wolden asserted he is the engineer of record for an addition to an office building in Warrenton, OR. He evaluated changes to the building and concluded that the changes “are actually more durable and better quality than my original drawings and calculations.” However, Samples noted that Jason Morgan, PE, signed the original plans.

AAG Lozano stated that Wolden has once again engaged in engineering practices. Wolden was revoked, so the only avenue left is to seek an injunction. This is an example where using injunctive power is available. Kent noted Wolden was revoked because of not only unlicensed practice, but for gross negligence in certifying fire escapes without following established policies. AAG Lozano replied that an injunction is issued by a Circuit Court, which would rule that he is to stop engineering and violating the title act. If Wolden violates the injunction he goes to jail. There is a referral to a district attorney and an injunction. Kent asked about the DA referral.

AAG Lozano stated that Wolden is not engineer, yet he provided engineering opinions in response to a Building Official inquiry. This is fraud. He also used the title, which is the practice of engineering. It is a crime to practice engineering in Oregon without registration. These are misdemeanor violations. She added that it would take some months and would be handled in the Circuit Court by the DOJ Civil Enforcement division. It was moved and seconded (Kent/Boyd) to recommend the Board refer the matter to the DOJ for referral to the Clatsop County DA and for an injunction. The motion passed unanimously.

Kent asked about Morgan who sealed and signed the original documents. He was unsure why Wolden would claim to be the engineer of record when the plans were done by Morgan. Lopez replied that an investigation would determine what happened. Kent wanted to know if Morgan engaged in plan stamping or if he had hired Wolden to work on the project. Lopez added that Wolden could practice under a licensed engineer. AAG Lozano commented that Wolden

claimed to be the engineer of record. The relationship between Morgan and Wolden is not important to the DOJ referral because Wolden's actions are in question, which are clear. However, it would clarify what happened, so a case should be opened to track the results. It was moved and seconded (Kent/Van Dyke) to open an investigation to determine the working relationship between Wolden Design Consultants and Morgan.

#### Update to CPD Matrix

Wilkinson reminded the LEC that they requested an update to the Continuing Professional Development (CPD) matrix. The matrix is used to determine civil penalties and the LEC asked to include failure to cooperate. It was moved and seconded (Boyd/Van Dyke) to recommend the change to the Board. The motion passed unanimously. There was no further discussion.

#### Updating: LEC Policy & Procedures form and Complaints & Actions against Registrants Form

Lopez informed the LEC that it was time to update the policies and procedures given the employment of new investigators. The last update was May 2013. The second document was adopted in 2008 and is outdated too. She suggested that staffs make changes and bring it back for the LEC to review. The members agreed.

#### Updating Options Form (minimum payments, offering payment arrangement during informal conference)

Lopez noted this was part of the morning discussion. When the Board issues a NOI, it includes an Options Form that the respondent can complete and submit with their response. The Options Form clarifies whether the respondent wants either to accept the proposed sanction, to enter into an informal conference to negotiate a settlement, or to request a hearing with the Office of Administrative Hearings. If they want to accept the sanction, there is an option to also enter into a payment plan. She observed that the Options Form has caused some confusion. AAG Lozano suggested offering a 12 month payment plan. Any excess or deficiencies would be accounted for in the last month's payment.

Lopez reviewed the Construction Contractor's Board Web site and found that they offer payment plans, including if the amount owed is less than \$2,000 then the payments are divided into 10 monthly payments. For less than \$10,000, the payments are divided into 24 monthly payments. If greater than \$10,000, the payments are divided into 36 monthly payments. Those are the only options.

After some discussion, Boyd offered that the Options Form should be revised along the same lines. He also requested that it come back to the LEC for review. The members agreed.

Kent asked about whether a payment plan was offered to Larson. Lopez replied that he offered to make a single payment. Kent suggested that counsel be granted authority to negotiate payment plans. AAG Lozano wondered about the timeline. Kent replied that Larson may have misunderstood the offer of a one year payment plan. It was moved and seconded (Van Dyke/Boyd) to authorize AAG Lozano to negotiate payment plans up to a 24 month period.

The meeting adjourned at 4:08 p.m.