



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
October 8, 2015

Members present:

Ron Singh, Ad Hoc Chair

Members present via telephone

Shelly Duquette (alternate)
Amin Wahab (alternate)
Dave Van Dyke

Members absent:

Bill Boyd (excused)
Jason Kent (excused)

Staff present:

Mari Lopez, Board Administrator
Jennifer O'Neill, Social and Communications Media Specialist
James R. (JR) Wilkinson, Investigator

Others present:

Katharine Lozano, Assistant Attorney General
Logan Miles (observer)

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. Due to the absence of Committee Chair Boyd, Singh volunteered to act as chair.

Public Comment

There was no public comment.

Review Settlement Agreement

2291 – Dale Marx¹

Mr. Marx requested to reinstate his professional land surveying registration on January 13, 2015. During the August 2015 LEC meeting, it was recommended that the Board sign a revised settlement agreement. As a condition of the renegotiation of the settlement, Mr. Marx provided the name of a peer reviewer for approval. The first peer reviewer Mr. Marx provided has been involved in eight prior law enforcement cases with the Board. Mr. Marx then provided the name

¹ Discussed during the June 11, 2015 LEC meeting and the July 14, 2015 Board meeting.

of a second peer reviewer, Thomas Beinhaur, PLS, who is currently active through December 31, 2015, and has not been involved in any prior law enforcement cases with the Board. The LEC was provided with the Final Order Incorporating Settlement Agreement (3rd ver.) that Mr. Marx signed on September 28, 2015. It was moved and seconded (Wahab/Duquette) to recommend the Board approve the Final Order and Mr. Beinhaur as the peer reviewer. The motion passed unanimously. There was no further discussion.

Cases Subject to OAR 820-010-0617

2836 – Adapt Engineering / Daniel Watkins²

On March 13, 2013, OSBEELS received a complaint from Daniel Harris Watkins, PE, claiming that Adapt Engineering was producing geotechnical reports and performing civil engineering through its Oregon office without having a manager, officer, partner, or employee registered to practice in the discipline of civil and geotechnical engineering, in violation of OAR 820-010-0720(1). Mr. Watkins stated that, at the time, geotechnical reports were prepared by Matthew Steffan, then an Engineering Intern (EI), and sent for stamping to Ms. Jeanne Niemer, PE, GE.

During the August 13, 2015 LEC meeting, it was determined to issue a Notice of Intent (NOI) and assess a civil penalty for each of the four known projects over a two-year period. However, while drafting the NOI, the evidence was reexamined and found to be lacking. As a result, the LEC needed to reevaluate the civil penalty.

Staff informed the LEC that through reevaluation of the evidence, it was found that the Board would not be able to sustain the four counts that the LEC reviewed and approved during the August 13, 2015 LEC meeting. AAG Lozano stated that there were only two clear allegations that could be supported by the evidence. She indicated that the previous investigator determined that Adapt Engineering was involved in providing the engineering for all four reports, when in fact they did not. She explained that Adapt Engineering acted as the “administrators” for two of the projects and did not provide the engineering. Mr. Wahab also questioned if Ms. Niemer is violating any conflict of interest policies as an employee of the City of Portland while working as a consultant. AAG Lozano indicated that in state employment it is prohibited; however, the LEC may direct staff to inform the City of Portland of the circumstance for any violations of City of Portland policies.

Considering the reevaluation and how the LEC determined to issue each civil penalty during the August 13, 2015 meeting, Ms. Lopez asked if it was still a two-year violation. AAG Lozano clarified that the violations occurred over a period of one month and not two years, which may alter the LEC’s opinion of the severity of the civil penalty. Mr. Singh asked if a letter of concern is what the LEC would have issued in the past for violations that occurred over that brief of a period, with a company between full-time employee engineers. AAG Lozano replied that a letter of concern would be consistent with prior practice of the LEC, particularly when compliance was met, as appears to be the case with Adapt now. It was moved and seconded (Singh/Wahab) to issue a letter of concern to Adapt Engineering. The motion passed unanimously. There was no further discussion.

² Discussed during the December 11, 2014 LEC meeting, the April 9, 2015 LEC meeting, and the August 13, 2015 LEC meeting.

AAG Lozano then raised a previous conversation she had with Jenn Gilbert, Executive Assistant, in which Ms. Gilbert had suggested that the Board might consider revising OAR 820-010-0720. Specifically, it might wish to consider measuring full-time employment versus half-time employment by the hours an employer is open and operating, rather than by a percentage of an employee's working time that the employee is working for the engineering firm at issue. For example, under the current rule, an individual who only works 2 hours per week, total, could work for an engineering firm only 1 hour per week, and would still be considered "full-time employee." If the rule is changed, an individual would have to be working at the firm at least half the time the firm is open for business to qualify as a full-time employee. It was moved and seconded (Singh/Wahab) to forward OAR 820-010-0720 to the Rules and Regulations Committee for review. The motion passed unanimously.

Mr. Wahab then directed staff to send a letter to the City of Portland notifying them of Ms. Neimer's employment for other entities. AAG Lozano suggested that staff draft a letter for her review it before it's sent. The LEC agreed. There was no further discussion.

Preliminary Evaluations

Staff introduced the preliminary evaluations by stating that the LEC was provided documents as submitted by the complainant for their determination on whether or not to open a case.³ No investigations have occurred. The below list begins with the subject of the complaint followed by the name of the complainant.

Gary Bliss / OSBEELS

On September 21, 2015, OSBEELS received a letter from Gary Bliss, PE (retired), regarding the complaint submitted by Leonard Rydell, PE. Bliss's letter was added to the Rydell complaint file. However, Bliss retired his professional registration on February 6, 2012, yet Bliss indicated "Consulting Engineering Services" in the letter's footer. He also showed an email address using the "PE" designation. It was moved and seconded (Duquette/Van Dyke) to open a case. The motion passed unanimously. There was no further discussion.

Christopher Clement / Arden Newbrook

On August 13, 2015, OSBEELS received a complaint regarding Christopher Clement, Clement Engineering Services, from Arden Newbrook. Pursuant with OAR 820-015-0010(2), the LEC determined there wasn't sufficient evidence to proceed. It was moved and seconded (Duquette/Van Dyke) not to open a case. The motion passed unanimously. There was no further discussion.

Andrew Jansky / Arden Newbrook

On August 10, 2015, OSBEELS received a complaint regarding the design activities of Andrew Jansky, PE, from Arden Newbrook. Pursuant with OAR 820-015-0010(2), the LEC determined there wasn't sufficient evidence to proceed. It was moved and seconded (Duquette/Van Dyke)

³ OAR 820-015-0010, Processing Complaints, The Board will process complaints as follows:

(1) Anyone may submit a complaint against a licensed or unlicensed person. Complaints must be in writing and include evidence to document all charges; (2) The Board will conduct a preliminary review of the complaint to establish that there is sufficient evidence to justify proceeding and that the allegations against the respondent are such that, if proven, would result in a penalty or sanction. * * * *

not to open a case. The motion passed unanimously. However, it was noted that the Oregon Board of Architects Examiners (OBAE) may have interest in the case and directed staff to draft a referral letter to OBAE. There was no further discussion.

Ray Moore / Jane Gille

On August 7, 2015, OSBEELS received a complaint from Jane Gille regarding Ray Moore, PLS, PE, All County Surveyors. Ms. Gille made a right-of-entry claim that All County Surveyors came into her gated backyard by folding down a wire fence. She described property damage and contacted Mr. Moore who reportedly laughed and stated, "It must have been vandals." Ms. Gille added that "property stakes were pounded into the ground by them." After a brief discussion, it was moved and seconded (Singh/Van Dyke) to open a case. The motion passed unanimously. There was no further discussion.

Oregon State University / Havlin Kemp

On September 23, 2015, OSBEELS received an article from Havlin Kemp, PE, regarding Oregon State University trademarking "Oregon State Engineer." He wanted to know if OSBEELS has had any conversations with OSU regarding the term. After a brief discussion, it was moved and seconded (Singh/Duquette) to open a case. AAG Lozano asked if the LEC would be interested in having her confer with the Intellectual Property counsel (AAG McDonald) to see what the legal parameters are regarding unlawful trademarking. The Committee agreed. The motion passed unanimously. There was no further discussion.

Anthony Rubalcava / Reports disciplinary action from another jurisdiction

On August 24, 2015, OSBEELS received notification from the attorney representing Anthony Rubalcava, SE, that the Louisiana Professional Engineering and Land Surveying Board (LAPELS) took disciplinary action. Along with the LAPELS Consent Order, Mr. Rubalcava provided a written statement to clarify the action. After a brief discussion, it was moved and seconded (Singh/Van Dyke) not to open a case. The motion passed unanimously.

Robert Schwarz / Leonard Rydell

On March 9, 2015, OSBEELS received a complaint from Leonard Rydell, PE, PLS, CWRE, regarding Robert Schwarz, PE. The LEC made a decision on April 9, 2015, to forward the complaint packet to the Joint Compliance Committee (JCC). The JCC met on May 7, 2015, and determined to recommend not opening cases due to both boards lacking jurisdiction over the issues in the complaint. Staff informed Mr. Rydell of the JCC decision. Mr. Rydell subsequently submitted supplemental comments. Since the JCC recommended that both boards lacked jurisdiction, the LEC needed to consider that recommendation, the additional information provided, and make their own determination on whether to open a case. Although Mr. Rydell submitted additional information, the lack of jurisdiction remained. It was moved and seconded (Singh/Van Dyke) not to open a case. The motion passed unanimously. There was no further discussion.

Skyris Imaging / Robert Lennox

On October 1, 2015, OSBEELS received an email complaint regarding the remote sensing activities of Skyris Imaging from Robert Lennox, PLS. Mr. Lennox asserted that the company is advertising and performing surveying and engineering services without licensure. The

company has offices in Seattle and Portland and utilizes drone and UAS observation to conduct “precision agriculture,” industrial and property inspections, real estate and development, and marketing imagery. Mr. Singh expressed that this is a really big topic and would like it to be considered by the entire Board. Mr. Miles agreed. Mr. Singh thought it would be beneficial to begin the discussion with a presentation. AAG Lozano asked if Mr. Singh would be interested in giving that presentation. Mr. Singh agreed that he would be willing; however, travel plans will exclude that until January 2016. AAG Lozano clarified that it would be best to place it on the agenda for the March 2016 Board meeting. Mr. Wahab wondered if Mr. Singh would be discussing LiDAR or remote sensing technology in general. Mr. Singh clarified that he would like to discuss all emerging technologies. Returning to the complaint received, it was moved and seconded (Van Dyke/Singh) to open a case. The motion passed unanimously. There was no further discussion.

Martin Sprague / OSBEELS

On August 3, 2015, OSBEELS received a disciplinary action notice regarding Martin Sprague, PLS, from the California Board for Professional Engineers, Land Surveyors, and Geologists. A Citation Order #10354-U was issued in case #2011-07-237 and dated August 20, 2014. According to the Citation, Mr. Sprague practiced and provided unlicensed land surveying services in California and forged the seal and name of a California registrant on twenty-four ALTA surveys. No other details were provided. Mr. Sprague had 30-days from the date of the Citation to appeal or request an informal conference, which was by September 19, 2014. Otherwise, California imposed a \$6,350 administrative fine. However, a year has passed, yet Mr. Sprague has not reported the California discipline to OSBEELS as required by OAR 820-020-0045. According to the OSBEELS database Mr. Sprague works for the City of Beaverton. Mr. Sprague was issued professional land surveyor registration #81280PLS on July 9, 2013. He is due to renew by June 30, 2016. It was moved and seconded (Singh /Van Dyke) to open two cases; one for failure to report discipline and the second for the issues underlining the discipline which are within the Board’s jurisdiction. The motion passed unanimously. There was no further discussion.

Gabriel Williams / Anonymous

On August 6, 2015, OSBEELS received an anonymous complaint alleging Gabriel Williams, Resource Specialist, Inc., “sells and contracts for engineering services.” The evidence submitted suggests that Mr. Williams may have gone beyond the limits of his EI certificate in designing a replacement culvert. Ms. Lopez added that in May 2009, staff sent Mr. Williams a letter regarding engineering work that must be in responsible charge performed under the direction and supervision of a licensed engineer and advertising for or offering to perform services without employing a licensee. The May 2009 letter was sent as a result of potential violations discovered during the review of his April 2009 PE examination application. Ms. Lopez added that despite the letter sent to Mr. Williams in May 2009 he appears to continue to offer engineering services. After a brief discussion, it was moved and seconded (Singh/Van Dyke) to open a case. The motion passed unanimously. There was no further discussion.

Jacob Wright / Lorraine Bazzi

On August 14, 2015, OSBEELS received a complaint regarding Jacob Wright, EI, from Lorraine Bazzi. Ms. Bazzi stated in her complaint, *“It appears the respondent is offering*

engineering services without a Professional Engineers license.” The evidence was structural calculations and a portion of a plan sheet showing the title block. The calculations and plans regard the Viswesh Bhat residence, a “new two story residential structure,” in Portland. The calculation coversheet shows that Wright prepared them while Troy Lyver, PE, SE, reviewed them and affixed his seal and signature. The LEC determined that according to the plans provided, Mr. Wright may be exempt pursuant to ORS 672.060(10). However, as a result of the offerings specified on Mr. Wright’s Web site, it was moved and seconded (Singh/Van Dyke) to open a case. The motion passed unanimously. There was no further discussion.

Contested Case Updates

2898 – Jaime Lim

AAG Lozano updated the LEC that a Motion for Summary of Determination was issued October 7, 2015 and that Mr. Lim has two weeks to file a response. There was no further discussion.

2903 – Mitchell James Duryea

It was moved and seconded (Singh/Duquette) that the Board issues a Final Order that adopts the Proposed Order. The motion passed unanimously. There was no further discussion.

Case Status Reports

Staff noted that there has not been any additional movement at this time. There was no further discussion.

The meeting adjourned at 9:43 a.m.