

MEETING MINUTES

OREGON STATE BOARD OF GEOLOGIST EXAMINERS
DECEMBER 3, 2010

Members Present

Richard Heinzkill, Public Member
Chris Humphrey, RG, CEG, Board Vice-Chair
Dr. Vicki McConnell, RG, State Geologist
Dr. Stephen Taylor, RG, Board Chair
Rodney Weick, RG, CEG
Mark Yinger, RG

Staff Present

No Staff Present

Staff Excused

Susanna Knight, Administrator, On Leave

Visitors Present

No Visitors Present

Chair *Taylor* called the Work Session portion of the meeting to order at 8:54 AM in Conference Room A of The Association Center. The work session agenda was reviewed and no changes were made to the initial draft presented in the Public Notice.

At 8:56 AM, the Board entered into Executive Session to discuss human resources and office management issues. The Chair read the following statement:

“The Board will now meet in executive session for the purpose of reviewing documents or records that are exempt by law from public inspection under ORS 192.660(2)(f).

“Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced.

“No decision will be made in executive session. At the end of the executive session, the Board may meet in public session to make a decision under ORS 183.482(6).”

At 9:01 AM, the Board returned to the public work session. The Chair announced that no action from the Executive Session would occur at this time.

OSBGE Office Staffing and Management: Administrator *Knight* has been on extended Family Medical Leave since July 14, 2010. The Board office has been operating under an interim management plan through a combination of work-load reassignment to Registration Specialist Arrobang, hiring of a temporary office assistant through the Galt Foundation, and volunteer duties by the Board members of both OSBGE and OSLAB. Chair *Taylor* thanked all of the board members for their extra assistance and patience during this time period. The following is a bulleted summary of the status discussion:

- In a letter dated October 13, 2010, Administrator *Knight* informed the board that she would be retiring and terminating Board employment at the end of business on December 7, 2010.
- The 12-week FMLA window for Administrator *Knight* closed on October 6, 2010. Over the 10+ years of employment at OSBGE, *Knight* had accumulated ~500 hours of sick time, that combined with paid holidays and vacation balance allow the Board to keep her on paid leave until December 7, 2010. *Knight's* benefit package would be paid in full and maintained through December 31, 2011. The Board discussed making some sort of formal retirement announcement to the registrant community, on *Knight's* behalf, sometime after the December 7 resignation date.
- Given the letter of resignation, the Board proceeded to discuss an action plan with respect to a formalized search for a new Administrator.
- A search committee was proposed at the Sept. 2010 meeting, comprised of Board Members *Weick* and *McConnell*, plus *Tim VanWormer* from the Oregon State Board of Landscape Architects (OSLAB). *Weick* was identified as search committee chair.
- *Weick* and *McConnell* provided state agency perspectives on the hiring process. It was determined that the Department of Administrative Services (DAS) Human Resource (HR) program would be used to facilitate the search, set up the online application process, create a scoring rubric, conduct reference checks, and assist in formalized screening of applicants.
- Board Member *Weick* provided a draft position description (PD) for the Board Administrator, the Board collectively edited the PD, detailing job duties, minimum qualifications, and time required for performing work tasks. The discussion also involved crafting qualifying questions that would be included in the online application submittal process.
- The Board discussed the anticipated pay rate and class for the new Administrator. *Taylor* provided a summary of DAS management salary schedule, it was determined that the Professional Executive Manager Class D (PEMD) at the Management Service Supervisor (MMS) level is appropriately scaled for the qualifications and work duties required of the position.

10:20 AM – Chair *Taylor* declared a break from the work session.

10:28 AM – Board returned to work session.

- The Board collectively worked out a list of key words to be used in crafting qualifying questions for the candidate search. Three key task areas were identified and key words listed, these included: (1) Management/Budget: accounting, finance, organizational skills, budget writing, oral communication, independent decision skills; (2) People Skills: public relations, respectfully, communication, courteous, confident; (3) Compliance/ Legislative: knowledge of statutes / administrative rules, legislative process, attorney relations, interpretation of legal language, compliance, investigation.

- *Weick, Taylor, and McConnell* were assigned follow-up duties to work with DAS in finalizing the PD, structuring the administrator search process, and setting the wheels in motion to initiate a search by late December. A goal was established to have the application submittal / review process and initial phone interviews completed in a timely fashion, such that the top tier candidates could be personally interviewed at the March 2011 Quarterly OSBGE meeting. The Board agreed that the Chair would negotiate the final terms of employment with the new hire following selection of the top candidate.

The Board returned to Executive Session at 11:30 AM to discuss compliance cases protected by attorney-client confidentiality under ORS 192.660(h). The Chair read the following statement:

“The Board will now meet in executive session for the purpose of reviewing documents or records that are exempt by law from public inspection under ORS 192.660(2)(f).

“Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced.

“No decision will be made in executive session. At the end of the executive session, the Board may meet in public session to make a decision under ORS 183.482(6).”

At 12:30 PM, the Board returned to the public meeting; lunch was served.

During lunch, the Board discussed the need to develop an alternative strategy for engaging administrative rule-making during the interim time without an Administrator. The Board also discussed draft By-Laws in the context of office management policies and budget actions that would be required to enter into the 2011-2013 biennium.

Interim Administrative Rule-Making: Board Member *McConnell* provided a summary overview of the Oregon administrative rule process. The OSBGE rule making process has been facilitated over the past decade by Administrator Knight, working in concert with the Rules Committee Chair (currently Board Member *Yinger*). The Board discussed the need for an interim workflow model for rule making in the Administrator’s absence. The steps include engaging an advisory committee, public notice in the Oregon Bulletin with up to 7 week lead time, conducting public hearings as needed, and final filing of the rule.

The OSBGE rules currently under draft review/revision include: ASBOG examination fee changes (OAR 809-010-0001), signing and stamping work (OAR 809-050-0005), modifications to qualifications for the Fundamentals Examination (OAR 809-030-0025), and a proposed new rule relating to the restoration of a revoked certificate (Proposed OAR 809-015-0020). In addition to the above, the 2011-13 budget will require rule-modifications to “OAR 809-010-0025 Operating Budget” by the June 30, 2011 end-of-biennium. The Board charged members *Heinzkill* and *Yinger* to investigate the feasibility of having office staff take on the rule-making tasks in absence of an Administrator.

Attorney feedback and comments on the proposed restoration rule OAR 809-015-0020 were passed back to the rules committee for follow-up work with the advisory panel. The focus of the comments thus far on this rule relate to the definition of “good cause” as used in statute ORS 672.685.

OSBGE By-Laws: *Taylor* presented a status summary of draft by-laws that were crafted by Administrator *Knight* and *Taylor* in summer 2010. *Taylor* provided the history behind the by-laws and stated that the objective was to fill in gaps between existing office policies and OSBGE-related administrative rules and statutes. *Taylor* presented a second draft, the Board agreed to discuss as old business in the afternoon quarterly meeting session (see below).

2011-2013 Budget Planning Process: *Taylor* and *McConnell* comprise the budget committee in absence of an administrator. *Taylor* provided a copy of the working draft of the 2009-2011 budget and provided an overview of the procedures that will be necessary to adopt the new 2011-2013 budget. The budget committee will present a draft budget for discussion at the March 2011 Quarterly Meeting. A final budget will be crafted and voted upon in a Special Session by mid-March, and the Board will need to adopt the 2011-13 budget in rule by the latter part of June. This process will include required public notice as part of the administrative rule making, thus time will be of the essence for the March budget adoption.

2:00 PM – Chair *Taylor* closed the work session and moved for a 10-minute break.

++++
Chair *Taylor* called the quarterly meeting of the Board to order at 2:10 PM.

1. **Visitor Introductions:** No visitors were present.
2. **Agenda:** The agenda was presented. *Taylor* recommended revisions to add item 4g. “Registration Specialist Payroll Adjustment”, item 10d. “Pre-ASBOG Exam Discussion”, and item 10e. “CEG Employment Issue”. *Taylor* moved to approve agenda, *Yinger* seconded. The Board unanimously voted to approve the agenda with modifications and additions as stated.
3. **September 2010 Minutes:** The minutes were presented and *Taylor* listed a number of minor typos in the draft that should be corrected. *McConnell* moved to approve the September, 2010 meeting minutes with revisions, as presented, *Weick* seconded. The Board unanimously voted to approve the minutes.
4. **Administrator Report:** In *Knight*’s absence, *Taylor* presented the administrator report.
 - a. **Summary of Staff Activities:** *Taylor* provided a summary of office activities since September 2010. Bulleted highlights follow:
 - Staff Member *Arrobang* attended the SIBA Meeting on November 16, 2010. The SIBA lobbyist presented an overview of legislative initiatives that could potentially impact semi-independent boards in Oregon. There is continued talk of Board consolidation and changes in Board management structures.
 - Another SIBA discussion item involves financial reconciliation procedures and the difference between conducting Financial Reviews and Financial Audits, the former being less stringent than the latter. Recent legislation modified ORS182.472 to allow semi-independent agencies to contract for a financial review. The next financial report will be due in 2012.

- The Board discussed representation at SIBA and agreed that staff should continue to attend, and report back, during administrator search process.
- Staff continues to monitor renewal numbers. The budget plan factored in a 5% non-renewal projection for the biennium. The last few months of renewals are coming in a bit higher than that projection.
- Staff member *Arrobang* prepared and submitted the DAS annual revenue and expense report.

b. Updated Revenue/Expense Report for Current Biennium: The Board reviewed the report. In reviewing the Balance Sheet, *Taylor* noted that the budget was on track and Board finances are generally in a positive state. At a previous meeting, *Weick* inquired about the the Equity, Vacation line item. The payroll service provider responded explaining the technique and why it is necessary to accurately track vacation accrual.

c. Approve Check log: *McConnell* moved to approve check log #3202 through #3233 and #9131 to #9133. *Humphrey* seconded. The Board unanimously voted to approve the check log.

d. 3-Year Comparison of Changes in Monthly Renewals: *Taylor* reported that as of August 30, renewals were down a total of 12 for the year compared to previous, for a net 3.8% decline. The numbers are comparing well to the anticipated budget projections for the biennium, especially considering the state/national economic conditions.

e. Update on Edward Jones CD Balance: The Board reviewed the statement. *Taylor* noted that reserves are currently invested in 2 CD's and 1 Money Market Cash Account.

f. Other Items: As per discussion and decision at the September 2010 quarterly meeting, *Taylor* reported that Staff *Arrobang*'s payroll was adjusted +5%, retroactive back to July 1, 2010, for working out of class as related to the extra duties she has been engaging in the absence of the Administrator.

Yinger stated that he would be available to administer / proctor the March 4, 2011 exam.

5. Visitor and Board Introductions: No visitors were present.

6. Compliance Report: Compliance Chair *Heinzkill* reported on compliance cases. He led the Board through a review of compliance actions taken at the September 2010 meeting. The following is a summary status and list of actions:

a. CC#10-01-003: An individual indicated that he as an RG on an Employment Verification Form completed for a subordinate, but his registration expired in 2000. *Taylor* motioned to update draft and issue of a Notice of Intent to Impose Civil Penalties, *Weick* seconded. The Board unanimously approved.

b. CC#10-01-004: Complaint received from Joint Compliance Committee that CEG is conducting engineering work outside scope of practice. *Weick* motioned to close case with letter of concern for practicing outside scope. *McConnell* seconded. The Board unanimously approved. Note: case will be investigated by OSBEELS for Practicing Engineering without a license. *Weick* will draft a letter, *Taylor* will edit / review.

c. CC#10-04-010: Complaint is that a report stamped by an RG is deceitful because boring logs were completed by a subordinate, but stamped by the RG.

d. CC#10-04-012: Complaint is that work completed on groundwater flow by an RG was not accurate. *Taylor* motioned to close case with letter of concern. *Weick* seconded. The Board unanimously approved. Note: *Yinger* will draft letter, *Taylor* will review / edit.

e. CC#10-01-013: Complaint is that RG is guilty of negligence because care, skill and diligence was not engaged as RG has been billing client for unnecessary work in monitoring groundwater for several years. Complaint is still under investigation.

f. CC#10-04-015: Complaint is that geotechnical report is of poor quality. Case is still under investigation.

g. CC#10-11-016: Complaint from JCC about misinformation on website about scope of work and experience involving an RG. *Taylor* motioned to close case with no action due to lack of evidence. *Weick* seconded. The Board unanimously approved. Note: *Weick* will report back to JCC of action.

7. Committee Reports

a. Administrative Rules: *Yinger* provided a status summary of the work of the Rules Advisory Committee. Rules / revisions that are pending action include: the signing and stamping rule, ASBOG exam fee increase, addition of a time extension to the temporary permit, rules further defining the procedures to restore a revoked license, and clarification of the CEG exam results reporting format.

Taylor revisited the Rules Committee discussion regarding filing procedures for finalized OARs in the absence of a Board Administrator. Who will conduct these tasks? Several new rules and/or rules modifications are approved and in the queue awaiting processing? *McConnell* provided a checklist summary sheet for the rule-making process. The board discussed options and interim problem solving approaches. In addition to the above pending rules updates, the Board will need to file the 2011-2013 biennial budget in rule, by the end of this fiscal year. *Heinzkill* and *Yinger* were assigned the tasks of assessing the feasibility of existing Board staff learning the ropes and engaging the rule-making process, during the interim Administrator vacancy.

b. Joint Compliance Committee: No report, no meetings scheduled for near future.

c. Legislative *McConnell* will track the pending LC641 “immunity clause” submission was filed with the legislative office in Salem.

d. Outreach: *Taylor* reported that OSBGE outreach activities were largely on hold in Knight’s absence. The PSU student chapter of AEG is interested in promoting licensure and has asked for direction / ideas. *Taylor* agreed to follow-up.

e. Professional Practice: *Humphrey* reported that the JTFAP document is being used by engineers, but it has not been adopted by AEG. *Humphrey* will continue to monitor and follow-up with AEG. *Humphrey* has joined the AEG licensing committee.

8. Correspondence: *Taylor* reviewed the correspondence items received since the June Board meeting. The following is a synopsis of correspondence items:

a. AC 10 09 190: Letter to Board Chair from Coffey attorney requesting clarification of procedures on restoration of a revoked license. *Taylor* reported that the correspondence was sent to the AAG and shared the resulting response. The Board agreed for *Taylor* to send out a final draft.

- b. **AC 10 10 202:** Email from Ron Sonnevil expressing objection to HB3082, Tax Compliance for Professional License Review. The Board decided this topic was out of its purview.
- c. **AC 10 10 213:** Letter from DOJ stating that the Board has the right to collect \$280 in court costs from the Coffey case. The Board agreed that it was not interested in pursuing this collection.
- d. **AC 10 10 216:** Email inquiry from Steve Humphrey asking if volunteer or intern work experience under a registered geologist counts towards licensing. The Board said that it would consider it, and have *Taylor* follow-up with a response. There is no OAR or ORS that requires the work experience to be paid work experience.
- e. **AC 10 10 217:** Email inquiry from Texas licensing Board asking to enter into a reciprocity agreement. *Weick* and *Arrobang* would follow-up on this correspondence.

9. Break / Visitor and Board Introductions: No visitors were present and the Board chose not to take a break.

10. Old Business

- a. Action List: The Board reviewed the Action List. *Taylor* volunteered to update the action list based on the results of the current (Dec. 2010) meeting discussions.
- b. Newport Geologic Hazards Code: *Taylor* presented the final statement on the results of the Board review of the Newport Geologic Code updates. *Humphrey* was thanked for his work on the project and organizing an ad-hoc CEG review committee. The OSBGE-Newport collaboration on aligning the Geologic Planning Code with licensing laws in the state of Oregon was a success, and serves as a model of best practice for the Board in engaging and guiding stakeholder decision processes.
- c. “Grand Father Examinations” for Registration: The Board consistently receives a trickle of requests from applicants outside of the state to consider accepting other, older exam results for registration, in lieu of the passing ASBOG exam scores required in administrative rule. To summarize the Board position on this topic, *Taylor* provided a review of past board decisions involving acceptance of “pre-ASBOG” exams and registrations by applicants from other states. Based on historical meeting minutes between 2007 and 2010, the Board has consistently ruled that both parts of the ASBOG exam must be passed for registration in Oregon, regardless of work experience, seniority, accomplishments in the profession, or other exams that might have been completed by the applicant.
- d. CEG Employment Verification Form: *Humphrey* reviewed the CEG Employment Verification Form that recognized work experience under the supervision of either a CEG or Geotechnical Engineer (GE). He suggested that there may be discrepancies between the Employment Verification Form and ORS 672.565(2) and OAR 809-030-0020. He recommended that this topic be left status quo for now, but undergo a further review and discussion at a later date.
- e. By-Laws: The Board reviewed the draft 2 by-laws that were presented during the morning work session. All revisions were accepted and no additional comments were provided. *McConnell* motioned to approve the draft by-laws, *Yinger* seconded. The Board unanimously voted to approve the draft language, with revisions as stated. Note: *Taylor* will follow-up with review and comment by the AAG and work in collaboration with *Arrobang* to determine next steps.

11. New Business

- a. 2011 Meeting Schedule: The quarterly schedule was set for the following dates: March 3, 2011; June 3, 2011; September 9, 2011; and December 2, 2011.

12. Public Comment: No public was present.

13. Announcements

- a. Happy Holidays from the Oregon State Board of Geologist Examiners.

14. Adjournment: The meeting was adjourned at 4:55 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'S. Taylor', written in a cursive style.

Steve Taylor, PhD, RG
Chair