

## MEETING MINUTES

OREGON STATE BOARD OF GEOLOGIST EXAMINERS  
SEPTEMBER 10, 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

Denise Fjordbeck, Oregon Dept. of Justice

Chair *Taylor* called the Work Session portion of the meeting to order at 8:39 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 8:40 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 9:56 AM, the Board returned to the public work session. The Chair announced that no action from the Executive Session would occur at this time. Taylor announced a 10 minute break.

Appellate Case Review Coffey v. Board of Geologist Examiners: At 10:10 AM the Board welcomed Denise Fjordbeck from the Oregon Dept. of Justice to the Work Session. Fjordbeck was the lead DOJ appellate attorney for the Board in the Oregon Supreme Court appeals case. She provided an overview of the case results and the implications for the greater administrative rules process in the State of Oregon. A bulleted summary of findings follows:

- March 5, 2010, *Coffey v. Board of Geologist Examiners* (CA A134319) was argued and submitted for review by the Oregon Supreme Court at the University of Oregon School of Law, Eugene, Oregon.
- Nicholas W. Coffey (petitioner), a formerly registered geologist, sought review of a Court of Appeals decision, 226 Or App 418, 204 P3d 177 (2009), that affirmed an order of the Board of Geologist Examiners (board) that had revoked his certificate of registration on grounds of negligence, gross negligence, and two violations of the board's rules of professional conduct. On review, the petitioner argued that the Oregon Supreme Court should reverse the order on the grounds that the board lacked the authority to revoke the registration, the administrative rules defining "negligence" and "gross negligence" were insufficient, and that some of the conclusions in the board's order were not supported by substantial reason.
- On review, the petitioner relied on *Megdal v. Board of Dental Examiners*, 288 Or 293, 605 P2d 273 (1980) to argue that the board must adopt rules explicitly stating the board's standard for selecting a particular sanction from the range of possible sanctions listed in ORS 672.675, before it may impose any of those sanctions. The Supreme Court upheld the Court of Appeals decision, and disagreed that *Megdal* requires the explicit rule making that the petitioner argued. In sum, the board has the existing authority to define the standard of care in the community and that disciplinary decisions by the board are afforded by law in ORS 672.675:

"The State Board of Geologist Examiners has the power to *suspend, revoke or refuse to renew the certificate of registration* of any registrant *or reprimand* any registrant who is found to have been involved in:

- (1) The practice of any fraud or deceit in obtaining a certificate of registration,
  - (2) Any negligence, gross negligence, incompetence or misconduct in the practice of geology as a registered geologist;
  - (3) Any felony; or
  - (4) The commission of any unlawful act set forth in ORS 672.505 to 672.705."
- The final Oregon Supreme Court opinion (S057511) was filed on July 9, 2010; unanimously affirming the Court of Appeals decision and the board's order for revocation of the Coffey certificate of registration.
  - Fjordbeck commented that the standard of care for professional geologists is applied in the "community of practice", is defined by the board, and recommended that the board further evaluate the term "community" in rule to determine the most applicable scaling with respect to registered geologists practicing at the local, state and/or national levels.

OSBGE/OSLAB Office Management Planning Discussion: at 11:00 AM the Board engaged in a group teleconference call with David Olsen, incoming Chair of the Oregon State Landscape Architects Board. Board Members introduced themselves, discussed the status of the cooperative professional services contract between OSBGE and OSBLAB, and conducted a round-table discussion on the ramifications of the extended Family Medical Leave engaged by Administrator Knight.

The following is a bullet summary of the status discussion:

- David Olsen is a licensed landscape architect, and chair elect of OSLAB with a projected 5 year service period. He also stated that there would be a transition period with passing of the leadership baton from Tim VanWormer, past chair of OSLAB.
- OSBGE Board members introduced themselves with respect to their expertise and professional experience.
- OSBGE Board members acknowledged the excellent working partnership with OSLAB, and collectively expressed interest in continuing the professional services contract for sharing office space and staff. David Olsen responded in kind, and expressed that OSLAB shared similar perspectives.
- OSBGE Chair Taylor summarized the status of Administrator Knight's extended Family Medical Leave and recommended that an interim office management plan include hiring of a temporary administrative specialist and formulation of a longer-term limited duration or permanent replacement position, should Administrator Knight decide not to return to Board employment.
- OSLAB Chair Olsen agreed with the reasoning and stated that OSLAB would want to be part of the human resources process. OSBGE members collectively agreed that a combined *ad hoc* search committee would be a sound approach. Chair Taylor ended the conversation by stating that OSBGE would devise a plan later in the day, during the quarterly meeting and that he would be in touch soon with details. Olsen requested published materials and guidance documents on State and Federal FMLA policies, Taylor affirmed he would forward them as well.

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:

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"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 12:04 PM, the Board returned to the public meeting.

Lunch was served at 12:15 PM. During lunch, the Board discussed the need for OSBGE By-Laws and debriefed on a follow-up to the proposed City of Newport hazards planning ordinance that potentially could influence the practice of Engineering Geology in that area.

OSBGE By-Laws: Taylor presented a status summary of draft 1 by-laws that were crafted by Administrator Knight in May and June, 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. Knight and Taylor identified this need previously and recommended formulation of by-laws to provide more explicit guidance on best practices to future Boards, Administrators and staff. All members agreed. Taylor offered to serve as lead editor on the draft and stated that he would send out for review before the December 2010 meeting.

Newport Zoning Ordinance: Board discussion was revisited as related to the May 27, 2010 draft of the City of Newport’s Proposed Amendments to Section 2-4-7 of the Newport Zoning Ordinance. At its June meeting, the Board agreed that a letter should be submitted to Newport’s Planning Department objecting to the Geologic Reconnaissance Form referenced in 2-4-7.025. E., as it does not meet the current standard of practice in the industry. The Board did not oppose the form as an attachment to an Engineering Geology Report or a Geologic Hazards Report, but did oppose the use of the seal and signature on such a form.

The Board was also concerned that the city would allow a Registered Geologist to complete the Geologic Reconnaissance Form in consultation with an Engineer. ORS 672.525(7) does not allow a Registered Geologist to perform activities of an Engineering Geologist as defined in ORS 672.505(3).

The Board sent an outreach letter to the Newport planning office in early June and Chair Taylor followed up with several email consultations on the topic with Derrick Tokos, Newport Community Development Director. The Board convened an *ad hoc* engineering geology advisory committee led by Board member Humphrey (along with Tom Kuper and Jason Hinkle as volunteers). Humphrey’s group followed up with a letter in August detailing OSBGE concerns and recommended language to better align the proposed code with state laws and administrative rules governing the practice of engineering geology. Humphrey attended a public meeting in Newport in early September to field any questions. Humphrey provided a summary of responses to the letter and proposed edits to the Newport planning code. He stated that most of the citizen concerns in Newport were related to the hazards mapping and zone classifications, rather than the engineering geology language pertaining to planning applications.

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Chair *Taylor* called the quarterly meeting of the Board to order at 1:07 PM.

1. **Visitor Introductions:** No visitors were present.
2. **Agenda:** The agenda was presented. *McConnell* moved to approve agenda, *Taylor* seconded. The Board unanimously voted to approve the agenda.
3. **June 2010 Minutes:** The minutes were presented. *Taylor* moved to approve the June, 2010 meeting minutes as presented, *Weick* seconded. The Board unanimously voted to approve the agenda.
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 June 2010. He noted that 14 candidates took the ASBOG Fundamental Geology Exam, 13 the Professional Geology Exam, and no one sat for the CEG in Oregon. 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.
- 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. Taylor stated that he would follow-up with office staff to clarify the charge.
- c. Approve Check log.** *Weick* moved to approve check log #3170 through #3201 and #9129 to #9130. *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 and noted that one of the CDs is coming due on 9/16/10 and that follow-up action would be needed with the investment advisor. Taylor stated that he would check into it.
- f. Other Items:** The newsletter has been on hiatus since *Knight* started leave. Taylor suggested that this was a low priority and should be shelved until later. *McConnell* offered to write an article summarizing the results of the *Coffey v. Board of Geologist Examiners* appellate case. All thought a good idea, *McConnell* stated she couldn't give a definite time line, but would put it on the action list. The other newsletter idea that was discussed involved the pending signature rule being worked on by *Yinger*.

Taylor reminded the Board of the annual ASBOG meeting and asked if this was a priority. The Board agreed to shelve meeting attendance and re-examine later.

*Humphrey* stated that he was working with staff on the October 1 exam administration, and that he would be available to proctor for the entire day.

As a follow-up item from a previous meeting, the Board asked about the SIBA lobbyist activities and the status of SIBA participation in *Knight's* absence. Taylor offered to follow-up on this item with Board staff.

A Board member asked about the appointment status of current members, and whether everyone was up to date on their appointment renewals. Chair Taylor said that he would check with staff and investigate the appointment status and timelines since members took up residence on the Board.

**5. Break / Visitor and Board Introductions:** *Taylor* announced a 5-minute break. 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 June 2010 meeting and stated that

double checking on the status of letters was necessary, since Knight was out on leave. Heinzkill directed office staff to review the case correspondence files since June 1, to make sure that all decision letters were mailed out. Based on his review, Heinzkill reported that the following cases were acted upon with Board response letters mailed out in mid-June: CC#08-4-008, CC#10-01-002, CC#10-01-003, CC#10-01-005, CC#10-03-007, CC#10-03-008.

- a. CC#10-03-009:** City of Prineville outreach letter on geologist registration laws and practice in the State. Taylor reviewed the draft letter by Knight and would check with staff to make sure it was sent out.
- b. CC#10-04-010:** Complaint is that a report was deceitful because it states boring logs were not completed by an RG. Technical reviewer recommends closing case, allegations unfounded. Heinzkill moved to close case, Humphrey seconded. The Board unanimously voted to close the case. Humphrey will write draft letter to complainant and Taylor will review for mailing.
- c. CC#10-04-012:** Complaint is that work done by an RG on groundwater flow is not accurate. *Heinzkill* had no recommendation at this time and suggested that further investigation was needed. Yinger will take technical lead on follow-up analysis.
- d. CC#10-04-013:** Heinzkill reported that the case involved a claim of billing by an RG for unnecessary work. The case file is still under review, no action recommended at present.

## 7. Committee Reports

- a. **Administrative Rules:** *Yinger* distributed a summary of the work of the Rules Advisory Committee.

**OAR 809-050-0005:** *Yinger* directed the Board to the most recent revisions on Signatures. A previous draft was approved by the Board in June, but additional changes were developed since then, to include the word “expire” on the signing procedures. Weick moved to modify the previously- approved OAR 809-050-0005 Signature rule to include the word “expire”, Taylor seconded. The Board unanimously approved the change.

Rule writing to define the procedures for Reissuance of Revoked Certificate, as per ORS 672.685. The Board discussed the statute and expressed a need for administrative rules to better define the phrase “showing good cause to justify reissuance”. The Board discussed the issue in the context of existing administrative procedures, and crafted a rough draft of language addressing the topic. At the conclusion of the discussion, Chair Taylor stated that he would take the rough draft, work with Rules Committee Chair Yinger on refining the language, then send it to counsel for comment and review.

Rules committee discussion concluded with a query from Chair Taylor regarding filing procedures for finalized OARs. The question arose as to who will complete the filing procedure in Knight’s absence? For example, OAR 809-050-0005 is ready for action, Yinger chairs the rules committee, but who will actually perform the filing procedure? McConnell stated that she would check into the procedures. Taylor concluded that follow-up action will be required at the December meeting.

**b. Joint Compliance Committee:** *Weick* provided a summary of actions taken by the JCC on August 17, 2010. He and Gary Petersen represented OSBGE. Three joint compliance cases were reviewed, one was closed, two were referred to OSBEELS for further investigation. JCC did not schedule another meeting time.

**c. Legislative *McConnell*** stated that LC641 “immunity clause” was filed with the legislative office in Salem. This will be an OSBGE action item in the next legislative session.

**d. Outreach:** Taylor reported that OSBGE outreach activities were largely on hold in Knight’s absence.

**e. Professional Practice:** Nothing to report at present, other than the old business of the Newport Planning code (see below).

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

a. **AC 10 08 170:** Board letter crafted by Vice Chair Humphrey in support of the Earth Science program at Western Oregon University.

b. **AC 10 08 177:** Email from Joseph McBride inquiring about a DEQ project manager and guidance related to signing and stamping reports. Yinger volunteered to write a response.

c. **AC 10 08 180:** Letter from Appellate Court Administrator stating that Coffey would not be filing a Petition for Reconsideration on the Supreme Court Decision.

d. **AC 10 08 182:** Email inquiry from Brandon Ashby regarding experience obtained under RG’s and PE’s in other states. Humphrey volunteered to follow-up on the correspondence and direct Ashby to reformulate his application with respect to “in responsible” charge.

e. **AC 10 08 165:** Email inquiry from Gegory Olmacher regarding cooperative registration in Oregon involving RGs from other states who pre-date the ASBOG exam. Taylor stated that he would follow-up and search the OSBGE minutes for previous discussions on this topic.

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 (Sept. 2010) meeting discussions.

b. Newport hazards planning code: Humphrey summarized results of the Board outreach effort, as discussed in the morning work session. Taylor stated that he would follow-up with an email to Derrick Tokos at the City of Newport to check on the status of the planning code process. Humphrey was thanked for his efforts in responding to this action item and for assembling an *ad hoc* advisory committee.

## 11. New Business

a. Office Management Plan: From discussions that transpired in the morning work session, the Board engaged conversation about the ramifications of extended medical leave by Administrator Knight. The Board reviewed the administrator’s list of responsibilities, work tasks, and management classification level. Board members Weick and McConnell shared experience and knowledge about State hiring practices and policies with respect to Temporary Positions, Limited Duration Positions, and Permanent Positions. Weick provided a summary of State and Federal FMLA laws and general policies regarding medical leave and termination procedures.

Discussion followed in regard to office management and filling in with temporary help during Knight's extended leave. The Chair recommended that a temporary administrative assistant be hired as soon as possible to maintain essential services and to assist the Registration Specialist in general office duties. After round-table discussion, the Board agreed to engage part-time temporary office services through December 31, 2010, with a possibility of extension. Board Member McConnell signaled to the chair that she would forward information on available State service vendors. Chair Taylor stated that he would summarize the temporary office needs in a memorandum and send out to Board members for comment after the meeting. He also suggested that a temporary hiring plan through Dec. 31 would provide enough time for details of Knight's future employment status to develop, and further follow-up action could be taken at the December 2010 meeting. All agreed to move forward with an interim hiring plan.

Weick made a motion to hire a temporary administrative assistant as soon as possible, Heinzkill seconded. The vote was a unanimous yes, no abstentions.

In the event that Knight did not return to her position from extended leave, the Board created a contingency plan to convene an *ad hoc* search committee that would be engaged to fill either a limited duration or permanent replacement. Reflections from the morning work session teleconference with David Olsen followed, and discussions led to assembling a three-person search committee including Board Members Weick (chair) and McConnell, and one OSLAB Board representative.

A motion was made and seconded to convene an *ad hoc* search committee, as described above. The vote was a unanimous yes, no abstentions.

b. By-Laws Development: Chair Taylor follow-up to the OSBGE By-Laws conversation from the morning work session, and entered the topic as new business. He emphasized the importance of By-Laws to fill in the current knowledge gap on organizational policies and procedures that are not explicitly stated in the Oregon Revised Statutes or Administrative Rules. Administrator Knight was keenly aware of the need for By-Laws to provide some type of institutional memory to future Boards on best organizational practices. Knight prepared an initial draft document in June 2010. Chair Taylor recommended that the Board follow-up on the effort and edit/revise for presentation at the December 2010 meeting. The Board agreed that Taylor would service as lead facilitator, he would take a first pass at editing Knight's draft 1, then circulate the document to respective members for additional edits and comments at the December meeting.

**12. Public Comment:** No public was present.

### **13. Announcements**

- a. Fall 2010 ASBOG and CEG Exams – October 1, 2010.
- b. Fall 2010 ASBOG Council of Examiners / National Meeting – 1<sup>st</sup> week of November, St. Louis, MO
- c. The next quarterly Board Meeting is scheduled for December 3, 2010, in Salem, Oregon at the Board office conference room. The December 2010 meeting was originally scheduled to

convene at Western Oregon University, as part of the professional outreach program to college students, but the Board agreed that in Knight's absence, it is best to meet at the Association Center with direct access to office facilities.

**14. Adjournment:** The meeting was adjourned at 4:49 PM.

Respectfully submitted,

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

Steve Taylor, PhD, RG  
Chair