



## Minutes of Meeting

November 13, 2018

### CALL TO ORDER

President Duquette called the meeting to order at 9:01 a.m. in the Conference Room of the Board office. Please note: The Consent Agenda is provided as an attachment to these minutes.

### ROLL CALL

#### Members present:

Shelly Duquette, President  
Christopher Aldridge  
Sean St.Clair  
Amin Wahab  
Daren Cone  
Jason Kent  
Logan Miles  
Erin Austin  
Paul Gribbon  
Ron Stillmaker

#### Staff Present:

Mari Lopez, Board Administrator  
Jenn Gilbert, Deputy Administrator  
Eric Engelson, Communications Coordinator  
Danee Vig, Support Services Supervisor

#### Others Present:

Katharine DiSalle, Assistant Attorney General (arrived at 9:15 a.m.)  
Lawrence Magara, Public  
Seth Thomas, SEAO  
Duane Thompson, Public  
Scott Freshwaters, PLSO  
David Etchart, PEO  
Art Noxon, Public

### PUBLIC INPUT

Mr. Seth Thomas, on behalf of the Structural Engineers Association of Oregon (SEAO), stated SEAO had written a letter to the Board in August 2018 requesting the Board clarify the effects of Senate Bill 297 (SB297), specifically licensure through comity. He noted the Board provided a response to this request in October and SEAO had a follow up question to the response. Mr. Thomas requested the Board clarify whether the Structural I exam, which was deemed as a non-qualifying exam, was at any point accepted by the state of Oregon as a qualifying exam for professional engineering registration. He noted if it was not, there has been evidence provided to SEAO that indicates it might have been in the

past within an application or applications. President Duquette summarized the Board's response sent to SEAO in October, noting the Oregon state Board has never provided out-of-state registrants comity; meaning OSBEELS has never given an individual their professional license in Oregon based off of that individual's registration with another state, it has always required applicants to meet the academic, experience, and qualifying exam requirements. President Duquette stated OSBEELS has never recognized the Structural I exam as a qualifying exam by law or rule. AAG DiSalle confirmed this and noted if SEAO had evidence of the Board issuing licenses with this exam as one of the qualifying exams then they could share for the Board to review. She noted if professional engineering licenses were granted with this exam being accepted as a qualifying exam then those licenses were granted in contravention of the Board's statutes. Mr. Thomas thanked the Board for their response. Mr. Kent questioned if there was evidence of the Structural I exam being accepted. AAG DiSalle stated she believed there were instances noted within past meeting minutes, and thus Board recordings. Mr. Thomas noted SEAO's intention was not to dig up these instances but to determine whether the exam was once accepted and no longer is or that these licenses may have been awarded in error given that the exam was never accepted as a qualifying exam. AAG DiSalle noted the latter would be correct in this instance and was noted within the letter the Board sent to SEAO.

Mr. Etchart asked if the Board could share what Oregon Administrative Rule (OAR) or Oregon Revised Statute (ORS) the members were referencing that stated the Board did not recognize the Structural I exam as a qualifying exam. AAG DiSalle noted this information is included within the letter that was sent to SEAO, which is on the OSBEELS website.

#### **BOARD CONSENT AGENDA**

President Duquette requested to pull items 2, September 2018 Board meeting minutes, 6, October Examination and Qualifications Committee (EQC) meeting minutes, and 8, Finance Committee (FC) meeting minutes from the Board Consent Agenda. Mr. Miles requested to pull item #5, Law Enforcement Committee (LEC) meeting minutes. Following this, it was moved and seconded (Duquette/Aldridge) to approve the Board Consent Agenda, as amended. The motion passed unanimously.

Regarding item 2, September 2018 Board meeting minutes, President Duquette requested a minor grammar edit to the EQC section to correct "*applicants*" to "*applications*". AAG DiSalle requested in future meeting minutes that Board Member Sean St.Clair be addressed as Dr. St.Clair rather than Mr. St.Clair. She then requested a clarification be made to the LEC meeting minute's discussion summary within the Board Consent Agenda section to clarify a statement made by her regarding the process for cases when they become default. AAG DiSalle also recommended a minor correction to a discussion summary within the Administrator's Report section to change "legislative members" to "legislative counsel". AAG DiSalle also added that in the minutes, any votes taken by the Board that were not unanimous during the Board meeting would need to be listed out to show how each member voted. Following this, it was moved and seconded (Duquette/Wahab) to approve the September 2018 Board meeting minutes, as amended. The motion passed unanimously.

Regarding item 5, October LEC meeting minutes, Mr. Miles requested a minor amendment to improve the accuracy of the Committee's discussion summary on case #2930; the edit was regarding removing "*stamping plans*" and replacing with "*stamping maps or plats*". Following this, it was moved and seconded (Duquette/Cone) to approve the October LEC meeting minutes, as amended. The motion passed unanimously.

Regarding item 6, October EQC meeting minutes, AAG DiSalle requested minor edits to add clarification about comments made by her. She also requested the discussion summary on Mr. Kamalzare's application be withdrawn from the minutes until her and staff can update the summary to improve accuracy. President Duquette stated that would be ok and the Board could approve the rest of the EQC meeting minutes at this time and then review and approve the section regarding Mr. Kamalzare at a later meeting.

Following this, AAG DiSalle requested an amendment to Mr. Smoot's application discussion summary to improve accuracy regarding his employer. Additionally, she requested minor grammar and discussion summary edits to improve accuracy. Following this, it was moved and seconded (Duquette/Cone) to approve the October EQC meeting minutes, as amended. The motion passed unanimously.

Regarding item 8, October FC Board meeting minutes, President Duquette requested a correction to the spelling of her name within the minutes. Following this, it was moved and seconded (Duquette/Wahab) to approve the October FC meeting minutes, as amended. The motion passed unanimously.

## **EXTERNAL RELATIONS COMMITTEE**

### Symposium Recap

Mr. Engelson shared a summary of the 2018 OSBEELS Symposium, which took place on September 14, 2018. He stated this year's event welcomed over 250 attendees, the most ever at a Symposium, and overall staff received positive feedback from attendees following the event. Noteworthy responses from attendees included being pleased with the presenter lineup and staff assistance. Mr. Engelson noted the event was held at the Salem Convention Center and would likely continue to be held at this location in the future. President Duquette stated she attended the first half of the event and was pleased with how the event was run and the presenter lineup.

Mr. Engelson stated the External Relations Committee (ERC) would begin planning next year's event at its December meeting.

### Oregon Examiner Article – New Board Members

Mr. Engelson informed the Board he drafted an introductory article for two (2) new Board members, Ms. Erin Austin and Mr. Paul Gribbon. He added he was also working on completing an introductory article for new Board Member, Mr. Ronald Stillmaker. Mr. Engelson stated once the Board reviews and approves these articles staff would post them on the Board's website and in the next issue of the Oregon Examiner. Ms. Austin noted she had a minor revision for her section of the article and would share with staff. Following this, it was moved and seconded (Duquette/Cone) to approve the article for publishing pending any additional amendments from Ms. Austin. Following this the motion passed unanimously.

### Public Awareness Campaign

Mr. Engelson stated he prepared the Public Awareness Campaign plan by pulling from previous Board and Committee discussions, Board member and Registrant feedback, and also by reviewing what the Board has done in previous years. The purpose of this plan was to outline the Board's key messages and target audiences, as well as resources the Board would be able to utilize to fulfill any campaign tasks. Mr. Engelson hoped the plan would help inform the Board what OSBEELS has done in the past regarding communications and how staff would carry out communication tasks going forward.

President Duquette questioned whether the Board would have methods or ways to track how effective this plan is or how the Board's efforts are doing. Mr. Engelson explained in some instances there will be

methods for measuring effectiveness, such as any online communication pieces or measuring website traffic, and in other instances there may not be a clear method to track how effective a campaign or resource is performing. He added in instances when there was not a clear metric to measure, staff would monitor the campaigns on an ongoing basis and keep the ERC updated. Mr. Engelson stated the long-term goal of this plan is to see improvements in areas such as public and registrant awareness and involvement, as well as the Board developing best practices for communication efforts. President Duquette noted she was impressed with the plan staff had developed and liked what they put forth to the Board.

Mr. Engelson noted the overall campaign plan would act as the guiding document for the Board's communication efforts going forward and that staff would develop campaign-specific plans to outline the campaign's purpose, goals, tactics, and resources available to complete specific events or tasks. Within the plan, Mr. Engelson stated there was a request for a biennial budget increase of \$20,000. He noted this request was due to anticipating an increase in activities, material development and printing expenses, and also potential advertising costs. He explained he came up with this amount by reviewing what the Board spent on printing and marketing expenses the past several years, as well as reviewed online advertising costs. Mr. Engelson provided the Board with financial figures depicting what the Board's current communications-related expenses were and estimated with the increase in activity and material development, the requested amount was reasonable over the course of a biennium. He stated the requested amount was for all communications and public awareness work in the next biennium, not a specific campaign or one event. Mr. Engelson noted in previous conversations, the Board had expressed concerns over potential costs so he took that into account when developing this budget increase forecast and wanted to depict how the increase in costs might look. Mr. Engelson explained the Board would need to take action on approving the plan as well as the increase in budgeted expenses. President Duquette stated the ERC recommended the Board adopt this plan and approve the proposed budget increase.

Mr. Kent questioned if the budget request would need to be forwarded to the Finance Committee for review. President Duquette noted several Board members are involved on both Committees and they were aware of the financial implications during the ERC's discussion on this topic. As a result of this, she felt it did not need to be forwarded to the Finance Committee before the Board could make a decision. Mr. Kent noted in previous years there has been a focus on communicating to and partnering with state colleges, he questioned if these efforts were captured within this proposal. Mr. Engelson stated the anticipated expenses associated with increasing the Board's involvement with state universities were included within this proposal. He added the costs associated with these efforts currently are captured within the Board's "Promotional/Exhibition" budget line item. Mr. Engelson noted as their work with state universities continues to increase, he anticipates an increase in material development costs - which was factored into his estimation.

Ms. Austin asked what the original issue was that caused the Board to consider increasing its public awareness efforts, noting as a new Board member she was not familiar with the subject's background. Mr. Engelson stated Board communication and public awareness efforts in the past have been a secondary activity, unless otherwise deemed necessary, due to a number of reasons including staffing or Board priorities. He noted this discussion began because the Board recognized the need for an improved, on-going communications effort by the Board in a number of areas. These areas include communicating to the public, informing registrants, and educating students about registration requirements and accredited programs. President Duquette added previously, the Board has been reactive with its communication efforts and now it is hoping to be a little more proactive.

Mr. Engelson then shared the campaign-specific plan for developing materials for new registrants. He added this campaign-specific plan, and future ones, would be what staff develops when the Board identifies what message, campaign, or target audience it wants to work on. Mr. Gribbon asked how often the plan would be revisited or updated. Mr. Engelson felt it could be reviewed on a biennial basis given that is how the Board also operates with its financials and government reporting. The Board agreed. Mr. Cone asked how much of the proposed \$20,000 would staff need for remaining 6 months of the current biennium. Mr. Engelson noted since there is a quarter of the biennium remaining and he anticipated expenses for the 100 year anniversary campaign that \$5,000 would be sufficient. President Duquette agreed that this amount should be sufficient. Mr. Gribbon then asked should additional funds be needed to carry out a campaign or event, would that be something that would need to come before the Board or Finance Committee for approval. President Duquette stated it could just go through the Board depending on what meetings are being held in a given month. Following this, it was moved and seconded (Wahab/Duquette) to approve the overall communications plan, an increase of \$20,000 to the biennial budget for the ‘Promotional/Exhibition’ budget line item, and allocating an additional \$5,000 for the remainder of this biennium. The motion passed unanimously.

Mr. Engelson noted the first campaign staff would be working on would be developing new registrant materials. He stated a drafted campaign plan was provided to the Board to review. President Duquette stated staff work would with the ERC to develop and review materials for this campaign.

#### OSBEELS Renewal Confirmation Letter

The Board reviewed the updated OSBEELS renewal confirmation letter prepared by staff. Mr. Engelson noted this update stemmed from Board member Jason Kent sharing with staff what the Minnesota state Board sends to registrants once they complete the license renewal process. He stated updates to the letter include revised language and a new image for the back side of the letter. Ms. Austin asked if the image on the back of the letter was licensed by OSBEELS to use. Mr. Engelson explained the Board pays for an image service that allows them to use images for their publications that are not copyrighted. Following this, Ms. Austin noted she felt the image may not be considered an engineering image and asked if other Board members felt this way also. President Duquette stated she felt the image was suitable for an engineering image. Ms. Austin asked if they could use a more iconic image of something related to Oregon. Mr. Engelson noted they could update the letter in the future to include an Oregon-related image. Mr. Stillmaker requested to make a minor grammar edit to text that is included within the image. Mr. Engelson noted they could make this change. Following this, it was moved and seconded (Wahab/Aldridge) to approve the revised renewal confirmation letter, with the recommended edits. The motion passed unanimously.

#### **ADMINISTRATOR’S REPORT**

Ms. Lopez stated the Board’s Committees met during the interim and the meeting minutes were provided as part of the Consent Agenda.

#### **Administrative Activities**

##### OSBEELS’ Legislation

Ms. Lopez stated she and Ms. Gilbert had met with Ms. Mary Moller, interim Legislative Director, and other individuals on Thursday, October 4 to discuss the Board’s Legislative concept. She noted the concept is moving forward within the process and would likely start in the Senate section of the upcoming Legislative Session.

##### Statewide Continuity of Operations Planning (COOP)

Ms. Lopez stated the Board had been provided a draft copy of the OSBEELS COOP. She noted the Oregon State Board of Examiners for Engineering & Land Surveying

COOP had been submitted to the Department of Administrative Services (DAS) for their review and comments. Ms. Lopez stated to-date she has not received any comments back from DAS and at this time the Board did not need to take any action on the COOP until DAS is able to provide their feedback.

### Board Vacancies

Ms. Lopez stated appointments to the Board have been made by the Governor's office and the new Board members are Mr. Paul Gribbon, PE, and Mr. Ronald Stillmaker, PE. She noted the Governor's office has yet to fill the remaining PLS position.

### Staffing

Ms. Lopez informed the Board that Registration Specialist Shawn Thornhill submitted his resignation and his last day at OSBEELS was September 20. She noted OSBEELS held interviews for two (2) Registration Specialist positions during the week of November 5.

### Training and Development

Ms. Lopez provided a summary of the trainings staff had completed in the months of September and October.

## **PRESIDENT'S REPORT**

President Duquette reiterated the importance of Board members reviewing the COOP. She also noted, as discussed earlier in the meeting, the Board's response to SEAO's questions pertaining to SB 297 is now posted on the website. Should any Board or staff members receive questions about SB 297 she stated they could point to this letter.

President Duquette requested to update OSBEELS' license renewal forms to include the Yes/No question, "I have not received any discipline from other jurisdiction(s)", if it had not already been updated. Ms. Vig noted the forms were in the process of being updated.

President Duquette stated she felt the Board had not had any recent Registered Professional Photogrammetrists (RPP) registration applicants and wondered if this were a topic the Board wanted to discuss further. Mr. Aldridge felt this was a problem that the Board could review further. He stated technology is causing a lot of challenges within the industry. Mr. Aldridge recommended the Photogrammetric and Remote Sensing Task Force reconvene in February to discuss.

### Committee Assignments

President Duquette announced new Committee member assignments. She noted the following Committee assignments:

- LEC: Mr. Kent would remain the Committee Chair and herself, Mr. Cone, and Mr. Gribbon would also be on the LEC.
- EQC: Dr. St.Clair would remain the Committee Chair and Mr. Miles, Mr. Stillmaker, and Mr. Aldridge would also be on the EQC.
- ERC: Mr. Wahab would remain the Committee Chair and Mr. Aldridge, herself, and Ms. Austin would also be on the ERC.
- FC: Mr. Cone would remain the Committee Chair and herself and Mr. Aldridge, and Mr. Stillmaker would also be on the FC.

- Professional Practices Committee (PPC): Mr. Aldridge will be the Committee Chair and Mr. Miles, Dr. St.Clair, Ms. Austin, and Mr. Stillmaker would also be on the PPC
- Rules and Regulations Committee (RRC): Dr. St.Clair will be the Committee Chair and Mr. Miles, Mr. Wahab, herself, and Ms. Austin would also be on the RRC.
- Oregon Specific Exams Task Force (OSETF): Mr. Miles would remain the Chair and Mr. Cone, Mr. Wahab and Dr. St.Clair would also be on the OSETF.
- Photogrammetric and Remote Sensing Task Force (PRSTF): Which will be reconvening in February will be Chaired by Mr. Aldridge and Mr. Cone and Mr. Miles would remain on the Task Force.

## **EXAMINATIONS & QUALIFICATIONS COMMITTEE**

### Board Policy – NCEES Credentials Evaluation

Dr. St.Clair stated the revisions to the Board’s policy on NCEES Credentials Evaluation pertained to updating the OARs that were referenced within the policy that pertain to this policy. Following this, it was moved and seconded (St.Clair/Duquette) to approve the updates to the Board’s policy. The motion passed unanimously.

### Education/Experience Matrix

Dr. St.Clair stated proposed updates to the Board’s Education/Experience Matrix reflected recent Board and Committee discussions regarding out-of-state applicants who are licensed in other jurisdictions and their reference requirements. He noted the corresponding OARs have been changed and these proposed updates reflect those changes. Following this, it was moved and seconded (St.Clair/Miles) to approve the updated Education/Experience Matrix. The motion passed unanimously.

### Michael Anderson and Michael Hutsenpiller – Issue DFOs

Dr. St.Clair stated the EQC recently recommended denial of these two applications. One was based on an applicant applying with a non-qualifying structural exam and the other applicant applied with a non-branch specific engineering exam. AAG DiSalle noted the Board would need to vote on issuing the Final Order by Default to both applicants as a result of neither requesting a hearing. Following this, it was moved and seconded (Duquette/St.Clair) to approve the issuing of the Final Orders by Default. The motion passed unanimously.

## **LAW ENFORCEMENT COMMITTEE**

### Case #2930 & #3124 – Farber

Mr. Kent informed the Board that staff investigator, Mr. Sobotka, was asked to perform additional investigation work regarding Mr. Farber potentially violating his Settlement Agreement in case #2930. AAG DiSalle summarized the memo provided by Mr. Sobotka, who was unable to attend the Board meeting. She informed the Board the memo states that Mr. Farber violated his Settlement Agreement with the Board for case #2930 in two (2) ways; first, Mr. Farber failed to pay his civil penalty on time and, second, he submitted a survey map before having it peer reviewed. AAG DiSalle also noted Mr. Farber had previously violated the terms of the Settlement Agreement on two separate instances, however, the Board amended the agreement to allow Mr. Farber to remain in good standing.

AAG DiSalle stated at the previous LEC meeting the Committee reviewed the Settlement Agreement in case #2930 and discovered language was not included within the agreement that would allow the original terms of the NOI to become in effect should the terms of the Settlement Agreement be violated. She noted this language was usually included within Settlement Agreements. Additional language within the Settlement Agreement outlined how other potential violations and investigations involving Mr. Farber would be dismissed. AAG DiSalle stated under these terms, now that the Settlement

Agreement has been violated these other investigations and potential discipline may now be pursued should the Board wish to.

AAG DiSalle informed the Board as part of his Settlement Agreement Mr. Farber had retired his license without the opportunity for reinstatement by the August 31, 2018 deadline. She stated after this date staff investigators received information that alleged Mr. Farber had been practicing land surveying without a license after the August 31 deadline. She noted Jackson County Surveyor, Mr. Scott Fein, informed staff investigators he had received five (5) survey maps filed by Mr. Farber with his stamp and signature on September 12 after his license was already retired. Mr. Kent asked for additional clarification regarding the surveying work Mr. Farber had done on the five (5) surveying maps that had been submitted. He questioned if the work had been completed and the maps initially submitted to the County Surveyor's office for review prior to August 31 and he was only correcting and resubmitting the survey maps would that be considered performing professional work without licensure. AAG DiSalle clarified that the question regarding the timing of when the work was completed was not prevalent because by resubmitting survey maps with his stamp and seal applied when his license was already retired was in violation of Board laws.

Mr. Cone noted the LEC asked investigators to look into the timing of when these five (5) survey maps were first submitted and returned to Mr. Farber to determine whether the County Surveyor returned them in a timely manner. While the Board examined this information, AAG DiSalle asked the PLS Board members whether their professional stamps would need to be valid if they made corrections to a survey map, not performing additional field work or calculations, and then reapplied the stamp to the map making it a final project document for submission. Mr. Miles noted in some cases it may depend on the county where the work is completed in. He added in this instance the work was completed and filed in Jackson County where the statute outlines when project maps are submitted they are to be reviewed and returned within 30 days, which the County Surveyor office replied within. Mr. Miles stated the LEC questioned whether the survey maps filed after August 31 by Mr. Farber were returned in a timely manner, and if so, was Mr. Farber allotted a sufficient amount of time to correct the survey maps before the August 31 deadline. Mr. Kent noted in this case, #2930, the Jackson County Surveyor, Mr. Fein, was also one of the case's complainants. AAG DiSalle stated the Committee determined, of the five (5) survey maps that were submitted after August 31, Mr. Farber had previously attempted to submit one (1) of the maps in August prior to when his license was retired and the County Surveyor office refused to review it given the timing of the submission and his license retirement. As a result of this, the Committee determined that specific survey map was not in violation because the work was completed prior to when Mr. Farber's license was retired; he attempted to submit it and it was refused. AAG DiSalle reiterated the four (4) other survey maps that were stamped and submitted by Mr. Farber after his license had been retired were in violation ORS 672.025.

Mr. Kent noted a potential additional issue was that these maps may have been submitted without peer review. AAG DiSalle stated at that point Mr. Farber's license was retired and he was not required to have his work peer reviewed. Mr. Kent questioned how the Board would like to proceed with these violations. AAG DiSalle noted the Board had several options they could pursue. She first stated the Board could chose to do nothing in regards to this case and the potential new violations. AAG DiSalle explained the Board could consider issuing one (1) or two (2) new NOIs; one that would un-dismiss his dismissed cases and potential violations as part of the previous Settlement Agreement and a second notice that would address these unlicensed practice of land surveying violations. She noted they could also combine the two NOIs into one or only choose to pursue one of these options while also pursuing a petition for an injunction should the Board feel that Mr. Farber may continue to perform unlicensed land surveying work. Mr. Kent noted the Board has issued injunctions in the past, however, he did not feel

that Mr. Farber has shown any additional signs of performing land surveying work since those survey maps were submitted in September.

Mr. Aldridge questioned how much more time and resources the Board wanted to invest in this investigation and additional allegations against Mr. Farber when he is currently retired, despite how apparent these new violations are. He felt the Board and staff had already invested a good amount of time and resources at this point and he wondered what value additional penalties or discipline would provide. AAG DiSalle stated the Board did not have to reexamine the entire case and previous allegations. She explained they could choose to only assess penalties for these new violations or for Mr. Farber violating the Settlement Agreement and reinstating the penalties established in the original NOI. AAG DiSalle noted the decision the Board takes regarding Mr. Farber's Settlement Agreement violations and now performing land surveying work without a license would set precedent. Mr. Kent stated while a majority of Mr. Farber's Settlement Agreement violations were not severe, there were a notable number of violations committed, and it was upsetting. Mr. Aldridge agreed with setting a good precedent, however, he did not want to ask staff investigators to spend a lot more time on investigating Mr. Farber. AAG DiSalle noted the Board could issue a new NOI for practicing land surveying after his license was retired if they did not want to have to go back and deal with the Settlement Agreement or original NOI. Mr. Aldridge asked if Mr. Farber has paid his civil penalty in-full that was assessed to him in the Settlement Agreement. Mr. Kent noted he had paid it in-full although it was submitted past the deadline that was provided in the agreement. President Duquette stated she understood the reasoning for both sides and explained she did not want to have to revisit the Settlement Agreement if it was not necessary. AAG DiSalle reiterated if the Board decided to do that then it would be dismissing the four (4) Settlement Agreement violations he had committed, which included; paying the civil penalty late, not providing a complete list of projects he was working on in two (2) separate instances, and not having project documents peer reviewed prior to being submitted.

Mr. Kent noted the Board had established a fairly consistent precedent for penalizing unlicensed professional work and he felt these four (4) new instances of Mr. Farber submitting stamped surveying maps without an active license did not warrant an exception to these precedents. He added the length of this investigation did warrant this discussion, however, the precedents that would be broken and the new precedent that would be set if the Board decided to not take any action on these new alleged violations would be concerning. Mr. Kent stated he felt when Mr. Farber signed and submitted those plans in September he knew that his license was retired and he also used his old registration expiration date on the plans. President Duquette noted these issues are what she took exception to also.

Mr. Aldridge asked again if these alleged violations were questionable if he had completed all the work prior to the August 31 deadline and submitted them afterwards or he had previously attempted to submit the plans before the deadline and was denied. AAG DiSalle noted according to Mr. Miles it sounded like local laws in Jackson County stated a professional registrant must hold an active license at the time survey maps are filed with the County, not just when the work was completed. Mr. Miles clarified that was not necessarily what he meant by his prior comments but rather the local review and resubmittal processes in Jackson County may have been what caused Mr. Farber to submit the plans after the August 31 deadline. He noted he was still unclear about the timeline of when these plans were first submitted, or attempted to be submitted, and when they were returned to Mr. Farber for corrections and resubmission. AAG DiSalle clarified the additional work that Mr. Farber was required to complete on these surveys once returned to him included calculations and measurements, which were considered professional land surveying work and thus would need to be done and submitted by a PLS. She noted this same process would apply to a PE submitting a project, having it returned to them and having to recalculate and redesign aspects of the project for resubmission. The Board agreed with AAG DiSalle's reasoning and

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explanation that the work that was done was considered professional land surveying work and required a PLS's stamp and seal upon resubmission.

Mr. Kent questioned if Mr. Fein being the local County Surveyor and complainant in this case would cause any issues. AAG DiSalle stated it could be questioned, however, the issues involving this case currently; Settlement Agreement violations and unlicensed practice of land surveying were fairly definitive rather than speculative.

AAG DiSalle stated the Board could choose to issue an NOI for the four (4) instances of the unlicensed practice of land surveying and assess a \$1,000 civil penalty for each instance. She noted they could also reissue a new NOI for the cases that were already investigated and noticed in the original NOI in case #2930 but were dismissed by the Settlement Agreement. This way the Board would not need to perform any additional investigation due to these alleged violations already being reviewed and identified in the prior NOI. AAG DiSalle noted this approach would address both issues regarding the new violations and holding individuals accountable for violating the terms of their settlement agreement. Following this, it was moved and seconded (Duquette/Aldridge) to issue a NOI for violation of the Settlement Agreement and issue orders for the cases that have been investigated and were dismissed as part the Settlement Agreement and issue a new NOI for the four (4) instances of surveying without license for the survey maps filed after September 1, 2018. Mr. Kent questioned if this meant they would need to review all the old cases and alleged instances to determine the new penalty. AAG DiSalle recommended the Board review the original NOI issued to determine the initial penalties that was assessed in the case. Following this, President Duquette requested to amend the motion to reinstate the penalties established in the original NOI that were dismissed within the Settlement Agreement. Mr. Aldridge approved. It was recommended each instance of unlicensed practice of land surveying be assessed a \$1,000 civil penalty. President Duquette and Mr. Aldridge approved. AAG DiSalle summarized there would be a \$4,000 civil penalty for the four (4) new instances of unlicensed surveying and then reinstating the remaining \$4,000 in civil penalties from the original NOI in case #2930 after factoring in Mr. Farber's payment as part of the Settlement Agreement. She noted these two penalties would be issued in two separate NOIs. The amended motion passed unanimously.

#### Case #2920 – Thompson Final Order

President Duquette and Dr. St.Clair recused themselves from the discussion relating to case #2920. Following this, **the Board 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 reentering public session, Mr. Kent noted no decisions were made and no votes were taken during private deliberations. Following this, it was moved and seconded (Kent/Cone) to adopt the Administrative Law Judge's proposed order as the Final Order with minor modifications as discussed. The motion passed; President Duquette and Mr. St.Clair abstained.

#### Case #3033 – Summers DFO and Case #3102 – Eshelman DFO

AAG DiSalle noted the Board needed to vote to approve the Final Orders by Default in cases #3033 and #3102. Following this, it was moved and seconded (Kent/Duquette) to approve the Default Final Order in case #3033. The motion passed unanimously.

It was moved and seconded (Kent/Gibbon) to approve the Default Final Order in case #3102. The motion passed unanimously.

### Vacate DFO for case #2926 - Kampmann

*(For this item and the next item on the Agenda Board Member Jason Kent will be referred to as 'Board Member Jason Kent' and Mr. Tim Kent will be referred to as 'Mr. Tim Kent')*

Board Member Jason Kent noted this Agenda item and the next were related. Mr. Miles recused himself from the discussion. Board Member Jason Kent stated at the previous LEC meeting the Committee recommended the Board vacate the DFO issued to Mr. Shawn Kampmann in case #2926 and return the \$1,000 civil penalty he paid due to potential conflicts of interest related to the case's Expert Reviewer, Mr. Tim Kent. Following this, Board Member Jason Kent summarized case #3119 involving Mr. Tim Kent for the Board and his involvement in case #2926 as the Expert Reviewer. He stated following the Committee's review of the information related to the case and responses received from the parties involved, the Committee voted to assess Mr. Tim Kent a \$5,000 civil penalty for two (2) violations of OAR 820-020-0025(1), failing to provide truthful statements, one (1) violation of OAR 820-020-0030, failing to communicate potential conflict of interest, and two (2) violations of OAR 820-020-0015(8), failing to cooperate with the Board. The Committee also recommended the Board vacate the DFO in case #2926 and the Committee remove Mr. Tim Kent as the Expert Reviewer in cases #2827, #2858, #2939, and #2984. Board Member Jason Kent noted the Board could either decide to reopen case #2926 for investigation or close the case entirely, which was what the LEC recommended. Following this, it was moved and seconded (Kent/Aldridge) to vacate the DFO in case #2926 and refund Mr. Kampmann the civil penalty amount he paid. The motion passed, Mr. Miles recused himself from the discussion and abstained from the vote.

### Tim Kent / Role on Exam Development Team

Following his summarization of case #3119 involving Mr. Tim Kent, Board Member Jason Kent stated the LEC decided to recommend the Board remove Mr. Tim Kent from his position as the Land Surveying Exam Development Team Chair and as a member. It was moved and seconded (Kent/Duquette) to remove Mr. Tim Kent from his position as the Chair of the Land Surveying Exam Development Team and as a member. President Duquette noted upon opening case #3119, she asked Mr. Tim Kent to step away from the Committee until the LEC case was closed, which he did. Board Member Jason Kent asked what the process is for adding a new Chair and Committee member to the team. President Duquette stated the team's alternate has assumed the role as Chair and will now become the permanent Chair. She thought the OSETF could discuss further at its next Task Force meeting. The motion passed, Mr. Miles abstained.

## **OREGON SPECIFIC EXAMS TASK FORCE**

### Acoustical Engineering Exam Discussion

Mr. Miles noted at the previous Board meeting, Mr. Noxon requested a written response from the Board regarding the status of the Acoustical Engineering Exam and reasoning for suspending it. He stated Legal Counsel is currently working on drafting the letter.

### PLS Exam Workshop Discussion

Mr. Miles stated he has reached out to TEST Inc. regarding their availability to host the exam development workshop and they informed him of their availability in January or February 2019. He noted a specific date they offered was January 19 and he hoped that date would work out because of it coinciding with PLSO's annual conference and the number of PLSs that would be available and nearby. Mr. Miles noted he had reached out to PLSO to gather additional PLSs to attend the workshop and provide input. He hoped the Board would be able to offer participants PDHs for their involvement. AAG DiSalle asked how the geographical diversity is within the group. Mr. Miles noted they have the state's five (5) districts represented fairly well, however, another coastal participant would be ideal.

Mr. Miles requested to have Board staff share this opportunity across its digital channels and that PLSO would share with their members via their newsletter.

## **PROFESSIONAL PRACTICES COMMITTEE**

### Right of Entry

Mr. Aldridge noted the PPC received a question submitted by Mr. Tyler Parsons, PLS, asking for clarification on what is required to be provided to an adjoining property owner when a Record of Survey, Subdivision or Partition Plat, or similar report is done for a client that is not required to be filed with the County Surveyor as a public record. He stated the adjoining property owner's attorney requested Mr. Parsons share the survey with him, however, his client told him not to share with the attorney and adjoining property owner. AAG DiSalle noted she had performed a statutory analysis and determined the concept was unclear within the Board's statutes. She briefly explained her process for performing the analysis and how she came to this determination. Following this, AAG DiSalle recommended the Board adopt a rule defining the term "survey" specifically in ORS 672.047(3) that would clarify the term and not pursue LEC cases against PLS registrants involved in situations like Mr. Parsons until the rulemaking process is complete.

Regarding ORS 672.047, Mr. Cone questioned whether setting fence posts would be considered the act of establishing a property boundary line. He noted his practice was to always file a survey map afterwards, whether the survey was done for establishing a property corner or boundary line. AAG DiSalle stated this question did not pertain to whether or not the survey itself needed to be filed, but rather did the surveyor need to provide a copy of the survey to adjoining property owners if it is not a survey of record. She noted this was the determination the rule would need to make. AAG DiSalle explained this situation arose when Mr. Parsons was hired as an expert witness within a legal dispute to perform a private property boundary survey. Mr. Miles questioned whether the Board would be willing to poll state PLS registrants to determine what they feel the rule should dictate based off of current practices. AAG DiSalle noted this approach would not be inappropriate while the Board develops the proposed language. President Duquette requested staff develop an online poll to distribute to PLS registrants for responses. Following this, it was moved and seconded (Aldridge/Duquette) to send the question to the Rules and Regulation Committee and direct staff to develop an online poll for PLS registrants to respond to. Mr. Miles, Mr. Cone, and AAG DiSalle noted they would work on developing the survey question that staff would share. The motion passed unanimously.

## **RULES & REGULATIONS COMMITTEE**

### OAR 820-010-1000, 820-010-2000, 820-010-4000

Ms. Vig noted staff had prepared a memo for the Board to review regarding potential changes to OAR 820-010-1000 and OAR 820-010-2000 and what the Board would consider as a qualifying supervisory reference for an out-of-state applicant with less than six (6) years of experience as a professional registrant. She noted staff had provided multiple scenarios for the Board to review. Ms. Vig stated if the Board would want staff registration specialists to conduct research into applicant's references and whether their experience provided was done so in a lawful manner as opposed to requesting the applicant submit an attestation statement, then it would require a lot of time and effort on the staff's part. Following their review of the memo, the Board felt using the attestation statement staff proposed for supervisory references would be sufficient.

Mr. Miles noted proposed amendments to OAR 820-010-4000 were related to clarifying SE applicants who hold an NCEES Record may submit their record in lieu of providing this information within their application. He stated these changes were in line with what other PE and PLS applicants were permitted

to do. Following this, it was moved and seconded (Miles/Austin) to move forward in the rulemaking process with the proposed rule amendments to OAR 820-010-4000. The motion pass unanimously.

#### OAR 820-010-1020, 820-010-2020

Mr. Miles stated proposed changes to OAR 820-010-1020 and OAR 820-010-2020 pertained to out-of-state applicants who possess over six (6) years as a licensed professional in another jurisdiction and would only be required to provide qualifying reference rather than supervisory references. He noted this was a result of the Committee realizing applicants who possess this much experience as a licensed professional may have difficulty contacting all their previous supervisor references. Mr. Miles stated the EQC had also been receiving a notable amount of reference waiver requests within applications because of this rule. He add the reason the Committee proposed six (6) years of experience as a licensed professional was because in most states that amount of experience in addition to the four (4) years of qualifying experience for licensure would total 10 years of professional experience. Following this, it was moved and seconded (Cone/St.Clair) to send the proposed rule amendments to OAR 820-010-1020 and OAR 820-010-2020 to rulemaking. Mr. Kent requested a friendly amendment to correct a minor grammar error within OAR 820-010-1020. He also wondered if the Board wanted to remove the term “Commanding Officer” from the proposed rule language within OAR 820-010-1020 or if they felt an individual’s Commanding Officer would be equivalent to a supervisory reference. AAG DiSalle stated she left this for the Board to discuss given the EQC receives waiver requests from applicants who have previously, or currently, served in the military requesting this. She noted the military does not make individuals become licensed to perform engineering work, which is why it is an acceptable exemption. Mr. Kent questioned why she chose the Commanding Officer as the replacement for a direct supervisor. AAG DiSalle stated common military practice is that an individual’s Commanding Officer oversees what they are doing. Mr. Kent questioned if that was true for engineering work within the Military, he noted he was unsure. AAG DiSalle stated the Board could choose to amend the language as they best see fit. The Board discussed and determined to remove this line of qualifications from the rule and only leaving subsection (C) within OAR 820-010-1020(7)(e)(C). Mr. Cone and Dr. St.Clair approved these friendly amendments. The amended motion passed unanimously.

#### OAR 820-025-0010

Mr. Miles noted the proposed rule amendment to OAR 820-025-0010 updated citations to point to the right subsections within the rule. Following this, it was moved and seconded (Miles/Aldridge) to send the proposed rule amendments to OAR 820-025-0010 to rulemaking. The motion passed unanimously.

#### OAR 820-010-1000(2) and 820-010-2000(3)

AAG DiSalle stated proposed changes to OAR 820-010-1000(2) and OAR 820-010-2000(3) reflected new processes that are currently in place due to new license statuses that are available to registrants. Following this, it was moved and seconded (Duquette/Wahab) to send the proposed rule amendments to OAR 820-010-1000(2) and OAR 820-010-2000(3) to rulemaking. The motion passed unanimously.

## **LEGAL BRIEFING**

**The Board exited its public meeting and entered into an executive session, pursuant to Oregon Revised Statute (ORS) 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Representatives of the news, media and designated staff will be allowed to attend the executive session. All other members of the audience were asked to leave the room.**

Upon returning to public meeting, it was announced that no decisions were made and no votes were taken during Executive Session.

## **NEW BUSINESS**

Consider action on OAR 820-010-1000 (Public Comment closed on 11/13/2018)

Consider action on OAR 820-010-2000 (Public Comment closed on 11/13/2018)

Consider action on OAR 820-020-0050 (Public Comment closed on 11/13/2018)

President Duquette noted proposed changes to OAR 820-010-1000, OAR 820-010-2000, and OAR 820-020-0050 have gone through the rulemaking process and the public comment period had closed. She asked staff whether any comments were received. Ms. Gilbert informed the Board no comments were received and the Board could take action on the proposed rules. Following this, it was moved and seconded (Duquette/Austin) to adopt changes to OAR 820-010-1000, OAR 820-010-2000, and OAR 820-020-0050. The motion passed unanimously.

## **BOARD MEMBER COMMENTS**

Mr. Cone thanked staff for uploading the meeting documents earlier prior to the Board meeting so members could review them in preparation for the meeting.

## **LEGAL BRIEFING II**

**The Board exited its public meeting and entered into an executive session, pursuant to Oregon Revised Statute (ORS) 192.660 (2)(f), to consider information or records that are exempt by law from public inspection. Representatives of the news, media and designated staff will be allowed to attend the executive session. All other members of the audience were asked to leave the room.**

Upon returning to public meeting, it was announced that no decisions were made and no votes were taken. Following this, it was moved and seconded (Duquette/Aldridge) to expand the current investigation of the Confuzer Inc. contract to also include the G-Squared contract and the CPA contract, the credit cards issued, and the Board Administrator's attendance. The motion passed unanimously.

It was moved and seconded (Duquette/St.Clair) to collect all the staff's OSBEELS credit cards and direct the staff receptionist to obtain a SPOTS card. The motion passed unanimously.

It was moved and seconded (Duquette/Aldridge) to suspend Board Administrator, Ms. Lopez, as the Board's Contract Administrator and appoint the Board Deputy Administrator, Ms. Gilbert, as the interim Board's Contract Administrator and authorize her to obtain the necessary training for this role. The motion passed unanimously.

It was moved and seconded (Duquette/Aldridge) to temporarily suspend all staff traveling for trainings greater than 60 miles from the OSBEELS office address while the investigation is ongoing. She noted staff training is allowed, just not outside of the 60 miles radius. The motion passed unanimously.

## **ADJOURN**

The meeting was adjourned at 4:44 p.m.

## **NEXT MEETING**

Board Meeting

January 8, 2019, at 9:00 a.m.



# Oregon

STATE BOARD OF EXAMINERS  
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LAND SURVEYING

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## *November 13, 2018 Board Meeting*

The following consent agenda is presented for the November 13, 2018 meeting of the Oregon State Board of Examiners for Engineering and Land Surveying. Items may be removed from the consent agenda on the request of any one member. Items not removed may be adopted by general consent without debate. Removed items may be taken up either immediately after the consent agenda or placed later on the agenda at the discretion of the Board President.

| <b>Item #</b> | <b>In the matter of:</b>                                 | <b>Action:</b>                    |
|---------------|--|-----------------------------------|
| 1             | Approve November 13, 2018 Board meeting agenda.          | Moved/Second<br>Duquette/Aldridge |
| 2             | Approve September 11, 2018 Board meeting minutes.        | Duquette pulled                   |
| 3             | Approve September 25, 2018 Special Board meeting minutes | Moved/Second<br>Duquette/Aldridge |
| 4             | Approve October 12, 2018 Special Board meeting minutes   | Moved/Second<br>Duquette/Aldridge |
| 5             | Approve October 11, 2018 LEC meeting minutes.            | Miles pulled                      |
| 6             | Approve October 12, 2018 EQC meeting minutes.            | Duquette pulled                   |
| 7             | Approve October 12, 2018 ERC meeting minutes.            | Moved/Second<br>Duquette/Aldridge |
| 8             | Approve October 12, 2018 FC meeting minutes.             | Duquette pulled                   |
| 9             | Approve October 12, 2018 PPC meeting minutes.            | Moved/Second<br>Duquette/Aldridge |
| 10            | Approve October 12, 2018 OSETF meeting minutes.          | Moved/Second<br>Duquette/Aldridge |
| 11            | Approve October 12, 2018 RRC meeting minutes             | Moved/Second<br>Duquette/Aldridge |
| 12            | Approve Registration List.                               | Moved/Second<br>Duquette/Aldridge |
| 13            | Approve LEC Consent Agenda.                              | Moved/Second<br>Duquette/Aldridge |