

CONSTRUCTION CLAIMS TASK FORCE
Regular Meeting Minutes
January 25, 2006

The Construction Claims Task Force met on Wednesday, January 25, 2006, in Room 260, Labor and Industry Building, 350 Winter Street NE, Salem, Oregon.

Members Present: David DeHarrport
Jon Fahr
Eric Grasberger
Elsie Jones
Steve Malany
Bill Nesmith
Laura Schauer
Tom Skaar
Jim Vavrek

Members Absent: None

Staff Present: Cory Streisinger, Director of Department of Consumer and Business Services
Mark Long, Administrator of Building Codes Division
Craig P. Smith, Administrator, Construction Contractors Board
Richard Baumann, Building Codes Division
Reese Lord, Building Codes Division
Ravi Mahajan, Building Codes Division
Richard Rogers, Building Codes Division
Bill Boyd, Construction Contractors Board
Cathy Dixon, Construction Contractors Board
Gina Fox, Construction Contractors Board
Michael Morter, Insurance Division
Cece Newell, Insurance Division

Guests Present:

Larry Boyd, Surplus Lines Assoc.
Kristen Leonard, OTLA
Pat Dorney, CBIC
Renee Haynes, HADD
Larry Peabody, ORA
Bill Cross, OBOA/BOMA
Kay Youngren, Community Managers
David Wade, Construction Defect Const.
Scott Barrie, OHBA
John Stuart
Bob Gilmore, Jackson County
Stuart Ramsing, OBOA
Kay Erickson, DAS BAM
Tom Dymant, CBIC
Drew Hagedorn, AGC

Kelly Ross, CBIC
Kraig Stevenson, ICL
Adrienne Sexton, Legislative Fiscal
Richard Thompson, OWCAM
John Carroll
Greg Miller, AGC
Dean Aldrich, ALO
Stephen Kafoury, ORA
Tim Nicol, IBEW
Betsy Lee
Lowell Smith
Don Miner, OMHA
Bob Moore, City of Gresham
Lori Graham, City of Portland
Alan Seymour, ODOE

Jim Varrco, HADD
Jeff Dean, ABC
John Powell
Amanda Rich, CBIC
Steve Krieg, City of Woodburn

Brian Miller, Farmers Insurance
Lana Butterfield, DIAO/Safeco AFI
James Bela, Oregon Earthquake Awareness

Action Items

- Submit public notice for February 15, 2006 meeting.
- Update recommendations to date.
- Write concept papers on the five recommendations initially selected for review.
- CCB submit list of changes since December presentation.
- Clarify April and May meeting dates.
- Prepare recommendation prioritization exercise for February 15, 2006 meeting.

I. TASKFORCE BUSINESS

A. Call to Order:

Chair Eric Grasberger called the meeting to order at 8:30 a.m.

B. Approval of Agenda for January 25, 2006 Meeting:

MOTION: Eric Grasberger moved to approve the agenda for the January 25, 2006 meeting.

VOTE: 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

C. Approval of December 2, 2005 Meeting Minutes:

MOTION: Eric Grasberger moved to approve the December 2, 2005 minutes.

VOTE: 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

D. Next Meeting Date:

MOTION: Eric Grasberger moved to approve the next meeting date of February 15, 2006, 1:30 p.m. to 7:00 p.m.

VOTE: 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

E. Project Update:

1. Managing Information:

Update on Web Statistics: Mark Long, Building Codes Division, reported that there are approximately 250 interested parties signed up to date to receive task

force updates. There are currently 160 different submissions for the website. Task force staff is analyzing 14 different reports right now.

State Comparison: Mark Long discussed the tentative dates for the remainder of Phase I (**Exhibit 1**). An intern from Willamette University has been brought in to do a state-by-state review of the various statutes and compare Oregon with about 20-25 other states and we will have that report ready by April 4.

Clock/Notification System: Mark Long discussed the new clock and notification system for presenters and the panel to help manage time. Reese Lord gave a demonstration of the system.

Discussion of Public Request to Transcribe Minutes: Mark Long relayed a request from the public to have CCTF meetings fully transcribed and made available to the task force and the public. Staff has reviewed the public records law and concluded that the current process exceeds the minimum requirements. Meetings are currently taped and summary minutes are prepared and made available on-line. Anyone interested in obtaining a copy of the tapes of the meeting can do so by filling out a public records request. James Bela, Oregon Earthquake Awareness, stated that the State of Washington Building Codes transcribes all of their meetings and asked the task force to consider doing the same rather than just complying with the law. The consensus of task force members was to keep the current method of taping the meetings and providing summary minutes.

Concerns re: Posted Submissions: Mr. Long reported that some concerns have been raised about documents that were omitted from the website as well as some material that was posted to the website. Mr. Long indicated that these issues have been fixed. Submissions received will be posted to the website approximately every two weeks.

2. Insurance Study RFP:

Michael Morter, Insurance Division, reported that the RFP proposals have been evaluated and a decision made. Task force member Elsie Jones participated in the evaluation of proposals process. The successful proposer is American Actuarial Consulting Services from San Francisco, California. After the contract is finalized, the department will set up a meeting with the contractor. The first draft is due May 1 and the finished report is due July 1, 2006.

3. Research:

Mark Long, Building Codes Division, stated that these reports would be discussed during the wrap up at the end of the meeting.

II. NEW BUSINESS – PANEL PRESENTATIONS

A. Building Codes Panel:

Presenters were Kraig Stevenson, International Codes Council; Mark Long, Administrator of Building Codes Division; and Stuart Ramsing, Building Official from City of Eugene.

Kraig Stevenson, CBO and Regional Manager, International Codes Council Government Relations, indicated that model codes are developed at the national level, involve a variety of experts, and becomes the basis for further refinement at the state and local level. Codes deal with life safety issues, not performance quality issues. Flashing and water intrusions are quality control issues. The code leaves it up to industry and industry standards or states to specific performance criteria for their state or jurisdiction. Codes can be refined by individual states, but the states need to keep in mind not to exclude new product development. Currently 48 states use the ICC building code. The codes are really a model document that will not address every particular issue. Even though the code and standards are set, that does not mean that they get followed. The code is aimed at minimums to get acceptable performance.

Mark Long, BCD, stated that Oregon adopts a variety of building codes on a three-year cycle based on national model codes. BCD has the ability to change the codes in the interim. The code sets the minimum and maximum requirements applicable statewide. There are 130 building departments they oversee. BCD licenses approximately 42,000 individuals with 85 different license types. BCD provides training and education services and videos for initial and required continuing education. BCD enforcement conducts 500 investigations a year. Most are for failure to obtain a permit or for failure to have the appropriate license (electrical or plumbing, etc.). Where local jurisdictions do not provide permit offices, BCD provides the inspection and permit offices in the field. According to the national Insurance Services Office, Oregon's building code effectiveness rating is one full point better than the national average on a 10-point scale. (**Exhibit A** and **Exhibit B**)

Mark Long made the following initial recommendations:

- Develop best practices that focus on building envelope construction.
- Require the contractor performing the work to take out the permit.
- Establish specialized inspection training for moisture problems, etc.
- Require additional mechanical venting devices.
- Require moisture content limits before the building is closed up. Moisture content level of 16, 17, 19 or whatever is established.
- Require certificate of occupancy for residential structures statewide.

Permit holders call for the inspections to be performed. Most of the investigations performed by BCD deal with whether a permit was taken out; quality standards are not part of the code and are not inspected. The code inspectors look to see, for example, if the fixture is safe. However, the fixture may not be aesthetically pleasing and obviously crooked and still meet the minimum code requirement by being safe.

Stuart Ramsing, Building Official, City of Eugene, reported that local jurisdictions come out and make inspections at the request of the permit holder. Inspectors inspect a sampling of the work performed. The inspectors cannot inspect what happens

between visits or what is concealed in walls. Some items are addressed in the code, but are not inspected like paint, flashings, dry wall, vapor barriers, roofing membranes, and veneers, many of which are covered up before the inspector is on-site. Some areas that are poorly understood and may be missed by the inspector are detailed designs, energy efficiency measures, fire resistance, and technical designs.

B. Developers Panel:

Presenters were John Carroll, Carroll Investments LLC and Robert Gillespie, Oregon Housing and Community Services.

1. Robert Gillespie, Oregon Housing and Community Services, reported that most of the developments financed by his department are constructed to high standards and do not experience difficulties. Of special concern is substitution of materials, specifically green lumber for kiln dried. Green lumber shrinks causing separations, cracks and sometimes significant repairs. Another problem area is when replacing windows in existing structures the window is cut off, the new window installed, and caulking placed around the window; which ruins the building envelop by failing to keep moisture out. An area of focus is architectural review of external moisture infiltration and the subsequent likelihood of mold development. The Housing Division will not finance EIFS projects because past experiences have shown an inability to adequately detail the product for the Northwest climate. Our architects develop details for exterior openings with the use of treatments such as the blue skin waterproofing and flashing, which we have found effective. Things that can be done to prevent problems are using best practices for installation of windows and doors, use of eaves and overhangs in the design, and developing ventilation systems that get the moisture out of the building. Other key elements are active property management and encouragement of active construction management. Some construction managers are not always making decisions that benefit their client. (**Exhibit C**)
2. John Carroll, Carroll Investments LLC, reported that a major challenge is ensuring that defects associated with design and construction are positively and aggressively addressed. His firm is undertaking a “best practices” effort to ensure that all parties fulfill the responsibilities of their role. This underscores the need of developer, architect and contractor to work closely setting standards for the design and construction of the building. The design needs to include current appropriate technology, and both the design and construction need to be properly inspected and documented to reduce the possibility of defects. The issue of quality is always an issue. Contractors bring in subcontractors that are not always well trained, especially in the roofing, siding and window installations areas and water intrusion occurs. In addition, the development team and the association boards and managers must ensure proper maintenance of the building. Most parties that move into condominium units do not understand the maintenance required of the structure. His firm’s development team has revised the maintenance manual given to incoming association boards to make it thorough yet manageable. They also provide ongoing education to homeowner associations and individual condo owners. His firm gives five-year warranties with annual inspections. Best practices efforts attempt to minimize defects but cannot change dispute resolution

process. When disputes occur, a more responsive and streamlined process would benefit all concerned parties. Arbitration is time consuming. Insurance companies need to get involved earlier in the process when disputes arise. **(Exhibit D and Exhibit E)**

C. Owner Panel:

Homeowners: John Stuart and Betsy Lee; Rich Thompson, Oregon Washington Community Association Managers, and Dean Aldrich, The Aldrich Law Office.

1. John Stuart, homeowner Carlton, Oregon, discussed problems associated with the construction of his home and remodel of other existing buildings on the farm. In August 2003 Mr. Stuart checked out the contractor he had selected from eight bids (TAC Northwest) The CCB record indicated the contractor did not have any claims on his record and did not contain a history of past problems or financial irregularities. After five months and a host of problems, Mr. Stuart filed a claim with the CCB. After a lengthy process, which involved \$75,000 in legal costs, Mr. Stuart was awarded a \$375,000 judgment. The only one who received anything from the liability insurance was the contractor who received \$25,000 from his carrier in exchange for a release of liability in the matter. Mr. Stuart urged the Governor to appoint a special ombudsman to address CCB's defects, which he believes is little more than a construction industry puppet. **(Exhibit F)**
2. Betsy Lee, homeowner, Gresham, Oregon, reported that she had experienced water intrusion problems beginning in January 2003. She called the CCB, but it was after the one-year period provided by statute for CCB to help. She has had third party inspections of the home that revealed an estimated \$300,000 worth of needed repairs. Ms. Lee contends that the City of Gresham did not enforce the codes, which led to some of the problems. She is suffering from various medical problems due to the mold problems in the home. The general contractor hired subcontractors with no insurance coverage due to exclusions for EIFS. Ms. Lee recommended that there needs to be higher standards to obtain a license, better codes and better code enforcement, and penalties for bad contractors. **(Exhibit G)**
3. Richard Thompson, Executive Director of Oregon Washington Community Association Managers, reported that he has worked with key homeowner association industry leaders (architects, developers, general contractors, managers, attorneys and other) to address the issues of construction defects as it applies to homeowner associations. The group produced a document called "Best Construction and Maintenance Practices for Oregon Condominium and Planned Communities". The document focuses on better consumer protection made possible by better material and design selection, rigorous quality control during construction and consistent and adequate maintenance of the structures after they are turned over to their owners. The best practices required an alliance of ten key industries that impact the construction and maintenance process along a timeline of 30 years. Mr. Thompson recommended that cost cutting/value engineering involving the building envelope should not be done, new materials should be tested to see if they will work before incorporating them into a structure, and

insurance companies should reduce premiums of those who use best practices. **(Exhibit H)**

4. Dean Aldrich, The Aldrich Law Office, (construction defect attorney/owners representative), reported that some areas of concern are accountability of contractors and insurers for property damage caused by basic construction errors; who monitors code compliance, and scope, nature, and cost of necessary repairs. He related that code inspectors do not monitor or inspect the building envelope. The personal impact on families over these construction problems is great. Once there is a problem the owner is required to disclose them to sale the property. Another concern is the high cost of litigation to resolve a construction defect case. Homeowners are not being made whole by problems caused by the contractor who failed to properly construct the building. In analyzing liability and responsibility for defects and damages we have learned the following common problems:
 - Lack of supervision/quality control at places where different subcontractor's work meets (e.g. windows, flashings, decks, and roof/wall).
 - Failure to follow manufacturer's instructions and specification.
 - Failure to monitor code compliance.
 - Lack of details for weatherproofing and to follow details when provided.
 - Experience, skill and knowledge of workforce.

Construction defects need to be corrected before and during construction. Homeowners can't maintain a defective building. Sealant reliant systems like EIFS and caulking reliance do not work. There needs to be quality control training for common problems, separate weather proofing inspectors and inspections, rainscreen siding installations, and higher specifications in code. CCB and BCD should work together to develop a detail sheet or check list on weatherproofing for flashings, decks, windows and doors. CCB also needs the authority to track construction defect letters and lawsuits so a contractor's complete history can be seen by consumers. Consumers need to get maintenance requirements up front. Require performance bonds on residential construction. There needs to be alternative dispute resolution with involvement of insurance companies sooner in the process to avoid costly litigation. **(Exhibit I)**

III. TASK FORCE GENERAL DISCUSSION:

A. **Prioritize List:**

Mark Long discussed the survey results to prioritize the 45 recommendations down to 20 recommendations. **(Exhibit 2)** Taskforce staff will start writing concept papers on the five recommendations initially selected by the task force for review:

- Increased oversight on the jobsite by architect, engineering, and building envelop specialist, or other certified supervisor to review construction practices.
- Building envelope contractor certification (e.g. roofing, siding, windows, etc.) to include required education and demonstration of competency.
- Code changes (e.g., flashing, concrete, minimum moisture content, venting, and rainscreen).

- Require general contractor to take out all required permits and be held liable for any corrections.
- Increased bond amount and/or develop a recovery fund.

B. Rainscreen Fire Hazard Concerns:

Mark Long discussed the memo from Ravi Mahajan regarding the update on rainscreen fire hazard concerns raised at the December meeting. **(Exhibit 3)**

C. Comparison of Washington and British Columbia Regulatory Approaches:

Mark Long and task force members discussed the comparison document. **(Exhibit 4)**

D. Construction Contractors Board (CCB):

Task force members discussed concern on how CCB tracks contractor's license history. Craig P. Smith, Administrator, Construction Contractors Board, reported to the task force that he would prepare a list of changes that CCB has made since the presentation in December and submit it to the task force.

E. Future Meeting Dates:

It was noted that the May meeting had two different dates listed; Reese Lord will check into this and email task force members which date is correct May 24 or May 26. Task force members Eric Grasberger and Tom Skaar have conflicts with the April 4 meeting date. Task force staff will try to reschedule the April 4 meeting, and if unable to reschedule, then Eric Grasberger will appear by phone.

IV. PUBLIC COMMENT

No additional public comment was taken at the meeting.

V. ADJOURNMENT

Chair Grasberger adjourned the meeting 1:05 p.m.

Exhibits:

1. Construction Claims Task Force agenda/timeline (1 page) – *Agenda item I-E*
2. Construction Claims Task Force recommendations to date (4 pages) – *Agenda item III-A*
3. Fire hazard research (2 page) – *Agenda item III-B*
4. Staff analysis of Washington and British Columbia (3 pages) – *Agenda item III-C*
5. Summary of design community recommendations (2 pages)
- A. Building Codes and the Regulatory Environment (1 page) – *Agenda item II-A*
- B. Responsibilities of BO's Inspectors and Plans Examiners (2 pages) – *Agenda item II-A*
- C. Summary of comments to the TFCC from Bob Gillespie (2 pages) – *Agenda item II-B*
- D. John Carroll, Best Practices...From Start to Finish (2 pages) – *Agenda item II-B*
- E. Best Construction & Maintenance Practices from Oregon Condominium & Planned Communities (7 pages) – *Agenda item II-B*
- F. Testimony provided to Construction Claims Task Force by John A. Stuart (35 pages) – *Agenda item II-C*
- G. Testimony for the CCTF Committee by Betsy Lee (4 pages) – *Agenda item II-C*
- H. Oregon Washington Community Association Managers by Richard Thompson (1 page) – *Agenda item II-C*
- I. Outline of presentation to CCTF by Dean Aldrich (1 page) – *Agenda item II-C*