

CONSTRUCTION CLAIMS TASK FORCE

DRAFT

Regular Meeting Minutes

May 24, 2006

The Construction Claims Task Force met on Thursday, May 24, 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
Chris Huntington, Building Codes Division
David Dahl, Insurance Division
Cece Newell, Insurance Division
Bill Boyd, Construction Contractors Board
Cathy Dixon, Construction Contractors Board
Michael Morter, Insurance Division
Joel Ario, Administrator of Insurance Division
Richard Rogers, Building Codes Division
Gina Fox, Construction Contractors Board
Ravi Mahajan, Building Codes Division

Guests Present:

John Powell, Insurers
Jeff Dean, ABC
Larry Sitz, AGC & Emerick Construction
Steve Krieg, City of Woodburn
Brian Doherty, CBIC
Kristen Leonard, OTLA
Toni Chodrich
Amanda Rich, CBIC
Lori Graham, City of Portland
Lana Butterfield, BCS
Douglas Dick, On the Level Inspection Concepts
Jim Chapman, OHBA
Greg Miller, AGC

Adrienne Sexton, Legislative Fiscal Office
Kelly Ross, CBIC
Pat Dorney, CBIC
Brian Miller, Farmers Insurance
Jim Nicks, City of Portland
John Carroll, Best Practices
Scott Barrie, OHBA
Jessica Adamson, AGC
Alan Seymour, ODOE
William Joseph, MLS
Angi Dilkes, Pac/West
Bill Cross, OBOA/BOMA
Larry Peabody, Superior Exteriors Inc.

Duncan Townsend, Detec. Systems
Shawn Miller, CNA Surety
Stephen Kafoury, Oregon Remodelers Association

Richard Thompson, OR/WA Community Assoc Mgrs

Action Items

- Submit public notice for June 28, 2006 meeting.
- Staff research projects
- Update on Phase I concepts

I. TASKFORCE BUSINESS

A. Call to Order:

Chair Eric Grasberger called the meeting to order at 1:35 p.m.

B. Approval of Agenda for May 24, 2006 Meeting and Order of Business:

MOTION: Eric Grasberger moved to approve the agenda for the May 24, 2006 meeting.

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

MOTION PASSED

C. Approval of April 11, 2006 Meeting Minutes:

MOTION: Eric Grasberger moved to approve the April 11, 2006 minutes.

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

MOTION PASSED

D. Next Meeting Date:

MOTION: Eric Grasberger moved to approve the next meeting date of June 28, 2006, 1:30 p.m. to 5:00 p.m.

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

MOTION PASSED

E. Project Update:

Mark Long, Building Codes Division, reported that this is the seventh meeting. The task force has had over 30 individuals that have presented information, 300 individuals have signed up to the website, 280 different submissions have been received and 78 recommendations have been made.

This is the final meeting for Phase 1 and will conclude with the task force voting on which concepts will move on for further drafting for possible inclusion in the task force's report to the legislature. Staff will provide updates on further drafting of Phase I concepts at future meetings.

Phase II will begin in June where the task force will begin receiving information regarding insurance issues. Phase III will begin in September where the task force will begin incorporating final recommendations and concepts into the legislative report (**Exhibit 1**).

II. PUBLIC COMMENT

Chair Grasberger stated that each party would be given five minutes to testify and asked that those testifying focus their comments on items specifically related to the draft concepts under consideration by the task force. Those testifying should be prepared to discuss whether they support or oppose specific concepts under consideration and directed those in attendance to pick up a copy of the Summary Concept document at the back of the room (**Exhibit 5**).

- A. Larry Sitz, Emerick Construction Co., Member of Associated General Contractors (AGC) (Exhibit A): Larry Sitz reported he would like to share the perspective of commercial construction industry with task force members. AGC members build road, bridges, schools, office buildings, hospitals and all manner of projects outside the realm of single-family residential structures. AGC encourages the task force to recognize that there are major differences between commercial and residential construction. The projects are different, contracts are different, and business models are different. The relationships and interactions with design professionals are different. Commercial contractors are in a business-to-business relationship while residential contractors are in a business-to-consumer relationship. The bonding and insurance needs of each group are different. AGC's goal is to separate the classifications of contractors into commercial and residential categories. AGC encourages the task force to solve the liability insurance issues. A recovery fund for commercial contractors with limits would be meaningless, since most commercial projects deal with large projects with large costs. Commercial projects have performance bonds in place. AGC urges the task force to recommend to the legislature a separation of license categories between commercial and residential contractors.
- B. Brian Doherty and Tom Dymont, CBIC (Exhibit B): Brian Doherty reported that CBIC insures small residential contractors. CBIC opposes a recovery fund. A study of California's and Arizona's recovery funds shows that the fund are chronically under funded; increase consumer expectations of state protections; decrease consumer incentives for diligence; fail to employ actuarially supported funding mechanisms; and funds fail to reserve for all liabilities. Further a recovery fund requires good contractors to pay for bad contractors' mistakes. Recovery funds encourage more claims with larger damage amounts claimed. Across the nation many recovery funds have run out of money. Both California and Arizona studies show that more and more claims will be generated granting less and less fund relief for individual homeowners. In 2005 the approximate value of residential housing built in Oregon

- was \$4.3 billion, which did not include remodeling. Approximately 21,600 dwelling units were built. CCB indicated that unpaid final orders for bond claims were about \$900,000; 75 percent of that shortfall was attributed to 14 contracts and 30 dwellings. That is well below one percent of licensed contractors that are causing the problems. A recovery fund is not the answer.
- C. Shawn Miller, CNA Surety (Exhibit C): Shawn Miller reported that CNA opposes a recovery fund. For many years the surety industry has had a very strong and productive relationship with the CCB providing protection to Oregon's consumers. CNA believes that if problems have arisen with providing surety protection to consumers that can be rectified by making adjustments to the bonding requirements either by increasing the amount of the bond or changing the coverage offered through the bond. CNA is happy to work with CCB and the task force to discuss changes that may be needed to resolve the bond issues. Arizona currently has both a bond requirement and a recovery fund. The last couple of sessions the Governor of Minnesota has used the recovery fund proceeds to balance the state's budget. The City of New York's recovery fund has gone bankrupt a couple of times in the last 20 years.
- D. Jeff Dean, Associated Building Contractors (ABC): Jeff Dean reported that ABC opposes a recovery fund. Quality contractors are paying for the mistakes of bad contractors. Many recovery funds across the nation are in financial difficulties and have had to assess more fees to cover costs. A recovery fund should be your last resort. ABC prefers other options, like the use of best practices and perhaps an increased bond requirement.
- E. Jim Chapman, Oregon Home Builders Association (OHBA) and Legend Homes: Jim Chapman reported that OHBA feels that best practices should be encouraged, but not mandated. Best practices are a living document and changing all the time. For the state to mandate best practices and maintain the document with the multiple changes would be very difficult. Requiring designers to focus on water intrusion would be difficult and reduce the quality of construction. Third-party inspections primarily work on larger buildings like condominiums and would create just another layer of government and inspections for one and two family structures that would be a waste of money. We suggest encouraging education on building envelope rather than mandating certification of each worker. Requiring a flashing code really is best practices; products that are used change all the time. It really is immaterial who takes out the permit as long as one is taken out. Holding the responsible managing individual (RMI) responsible is okay. Agree with enhancements to CCB enforcement powers. OHBA sees the need to limit the payout on a recovery fund for residential structures.
- F. John Carroll, Developer (Exhibit D) and (Exhibit E): John Carroll reported that he commends the efforts of the task force to date. There is a need for general increase of awareness of design, engineering, and coordination of the various components that make up a structure and an understanding of the long-term objectives. I encourage the task force to move forward with best practices. We need to ensure better buildings, keep attention on building maintenance to resolve problems, establish a system of best practices, and increase buyer confidence. Looking at insurance and

- recovery funds is working on the wrong end of the process. Provide insurance incentives to contractors who use best practices. Educate developers so they will not hire contractors that do not have best practices in place. Educate homeowner associations on the importance of best practices and building maintenance.
- G. Douglas Dick, On the Level Inspection Concepts: Mr. Dick is a building inspector and plan reviewer in private practice, an adjunct professor of codes at Chemeketa Community College, and the Building Official for the City of Manzanita. Mr. Dick reported that he would like to see training and continuing education required for all of the industry. Concept 2G regarding the RMI, just limiting the requirements to RMIs is a concern to him because the RMI is very seldom on the job site. The workers out in the field have little or no experience on how to install the various components and need to be better trained. He would like to see all those in the building industry be required to take training and continuing education. In regards to concepts 2C, 5A, B, C and D regarding code requirements, there is already building codes that address the building envelop in the appendices which is seldom looked at. Each appendix is 100 to 200 pages long. Adding more material to the code and to the appendix will not help; more training is needed out in the field. Concept 2J, requiring third-party inspections; as an inspector he is already required to carry errors and omissions insurance and a bond, and some third-party inspection services in this state, because they operate under another type of envelope, do not have to have the same criteria that other third-parties have. He suggests that when talking about these third-party companies, that all would be required to have the same requirements.
- H. Scott Barrie, Oregon Home Builders Association (OHBA): Scott Barrie reported that OHBA would like to change the name from “recovery fund” to “civil penalty fund”. OHBA would like to see the civil penalty fund, as the removal of CCB civil penalty monies from the general fund. CCB civil penalty monies are monies collected from contractors penalized by the board. Instead of sending the civil penalty monies to the general fund, they should be put into a civil penalty fund. It is small amount of money maybe \$250,000-\$300,000 per year that is collected. In addition to that, all of the interest on the fees collected by CCB for the fees paid to CCB also goes to the general fund. We proposed looking at also possibly taking that interest money and applying it towards a civil penalty fund. OHBA proposes limiting the fund to residential only and limit the amount of money that each individual consumer could get. This would be funded from civil penalty money and the interest earned on existing contractor fees. It cannot be under funded because it is a set amount; it is whatever comes in that year. There are no new fees for the contractor. I agree with the others that a recovery fund is not good. This is not a recovery fund, this is money that is already there and giving it back at perhaps 50 to 60 cents on the dollar to the folks that were injured after the bond is gone.
- I. Stephen Kafoury, Oregon Remodelers Association (ORA) and Larry Peabody of Superior Interiors Inc.: Stephen Kafoury reported that ORA is supportive of the task force. CCB’s website is now very accurate and easier to get to now and ORA has worked with CCB who was very cooperative. ORA is supportive of education concepts. ORA is very interested in best practices and continuing education and would like to have them voluntary rather than mandatory. Remodeling has a lot of variations because you are mixing new construction with old construction. If you

give contractors good background information and then allow them to use their professional judgment on the site on individual jobs. Look at exempting remodelers from the building envelope requirements, because most of the problems have occurred with new construction, not remodeling. Bonding increases are fine if done on the basis of actual increases in inflation over time, but ORA does not want an automatic bond increase, like every two years. On the recovery fund, ORA would need to see the details, but Scott Barrie's approach seems to make more sense than asking the good guys to pay for the bad guys. A recovery fund may also give a false sense of security to homeowners. Building permits should be pulled by the contractor in most cases, but homeowners should be allowed to if they want to.

Larry Peabody, Superior Interiors Inc.: Larry Peabody stated that he has heard from others today that water intrusion and building envelope requirements would raise the price of a home and would be difficult to implement. It is not difficult, if you make the RMI responsible for this. In my company we treat it like OSHA, and we have weekly OSHA meetings and keep records of who is there. When a new job starts, we have an OSHA meeting on-site. The same could be done for siding, windows and flashing. These standards already exist. Require the RMI to make sure his employees meet some existing standard. Then the RMI is going to hold meetings. We keep records who installed and worked on the project and who attended training.

- J. Richard Thompson, Oregon-Washington Community Association of Managers: Richard Thompson reported that he testified before on best practices. He reinforces the recommendations for best practices and continuing education. It is entirely a team effort to work closely in all aspects of construction to reduce construction defects. Best practices are intended to integrate all of those players and the timeline, to work more closely together. The next logical step is education. What is critical is to not only educate contractors on best practices, but to also educate them on how to perform the tasks. We support a volunteer approach.
- K. Duncan Townsend, Detec Systems: Duncan Townsend reported that water intrusion in buildings is a central issue this task force is trying to resolve. Automated structured monitoring of building envelopes for hidden water intrusion in the cavities would go a long way to contributing to the solution of this problem. Require construction of new multi-family structures to have automated monitoring systems, you would see a dramatic drop in the number of construction defect claims. It is all about identify small problems early before they have a chance to grow into bigger problems. It is inexpensive enough to be used on large commercial buildings. Communications businesses have used this technology since the early 1980s to monitor fiber optic lines. It is installed in the walls during construction or remodel before the walls are closed. The system is connected by low-voltage wiring to a remote device. He recommends as a code requirement for multi-family structures.
- L. Jessica Adamson, Associated General Contractors (AGC): Jessica Adamson reported that in regards to CCB's website, it gives excellent information for residential contractors, but is not needed on the commercial side. Commercial contractors are more sophisticated and do not need as much detail. In regards to third-party inspections, they are not needed on the commercial side. She reported that AGC is happy to work with the task force to identify items that pertain to commercial

contractors only. Mediation and arbitration is different on the commercial side and usually does not involve CCB dispute resolution process.

III. TASK FORCE DISCUSSION:

A. Concept Papers and Comparison Matrices (Exhibit 2), (Exhibit 3), (Exhibit 4) and (Exhibit 5):

Task force members discussed the Concept Summary document and made the following recommendations:

PREVENTATIVE CONCEPTS

TRAINING:

1. Concept 2B:

MOTION: Eric Grasberger moved to reject concept 2B.

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

MOTION PASSED

2. Concept 2D:

MOTION: Eric Grasberger moved to reject concept 2D.

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

MOTION PASSED

3. Concept 2E:

MOTION: Laura Schauer moved to amend 2E to replace “design professional” with “contractor” and to read: Require contractors to take continuing education for building envelope design standards.

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

MOTION PASSED

4. Concept 2G:

MOTION: Laura Schauer moved to amend 2G to replace “responsible managing individual” with “individuals” similar to 2E and to read: Require training and continuing education for individuals employed by contractors involved in envelope construction.

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

MOTION PASSED

MOTION: Laura Schauer moved to approve 2E and 2G as amended for drafting in the final report.

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

MOTION PASSED

Note: Concept 2G was further amended—see number 6 below.

COMPETENCY STANDARDS**5. Concept 1B:**

MOTION: Eric Grasberger moved to amend the concept to read: Investigate whether improvements to CCB's methods of researching whether an applicant was involved with a corporate entity disciplined by the CCB needs to be changed.

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

MOTION PASSED

MOTION: Eric Grasberger moved to approve concept 1B as amended.

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

MOTION PASSED

6. Concept 2G:

MOTION: Eric Grasberger moved to amend and approve 2G by combing 2G under Training and 2G under Competency Standards into one item and to replace the word "responsible managing individual" with the word "individual". The concept would read: Train and certify individuals employed by contractors to properly install elements of a building envelope.

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

MOTION PASSED

7. Concept 2H:

MOTION: Eric Grasberger moved to amend this concept to read: Investigate whether improvements to CCB's methods of inquiry into the criminal history and financial stability of prospective contractors through the application process need to be changed.

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

MOTION PASSED

8. Concept 4:

MOTION: Tom Skaar moved to table this item.

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

MOTION PASSED

STANDARDS

9. Concept 2A:

MOTION: Tom Skaar moved to approve concept 2A.

VOTE: 8-1, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Schauer, Skaar, and Vavrek. Nays—Nesmith.

MOTION PASSED

10. Concepts 5A, 5B, 5C, 5D, and 2C:

MOTION: Eric moved to direct staff to come up with a list of recommended code changes and include flashing details.

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

MOTION PASSED

CONSUMER INFORMATION**11. Concepts 9A Voluntary and Mandatory:**

MOTION: Tom Skaar moved to reject concepts 9A voluntary and 9A mandatory.

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

MOTION PASSED

12. Concept 9B Voluntary and Mandatory:

MOTION: Tom Skaar moved to approve concept 9B voluntary with staff to decide whether residential or commercial or both and report back to task force and 9B mandatory for residential and commercial.

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

MOTION PASSED

Consensus of the task force was to change last item under Consumer Information to read: Consider a time period for the consumer to fully review consumer information and the contract prior to signing.

OVERSIGHT**13. Concept 2F:**

MOTION: Eric Grasberger moved to table 2F and direct staff to report further on what other states have done on this item.

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

MOTION PASSED

14. Concept 2I and 2J:

MOTION: Tom Skaar moved to reject concept 2J third-party inspections.

VOTE: 5-4, Ayes—DeHarrport, Fahr, Jones, Skaar, and Vavrek; Nays—Grasberger, Malany, Nesmith, and Schauer.

MOTION PASSED

MOTION: Steve Malany moved to table 2I until the task force receives the report on insurance.

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

MOTION PASSED

Note: See number 17 below. The consensus of the task force members was to tie 8C into 2I.

15. Concepts 8A:

MOTION: Tom Skaar moved to approve concept 8A.

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

MOTION PASSED

16. Concept 8A and 8B:

MOTION: Eric Grasberger moved to combine concept 8A and 8B and approve them.

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

MOTION PASSED

17. Concept 8C:

The consensus of the task force members was to tie 8C into 2I.

ENFORCEMENT CONCEPTS

ENFORCEMENT

18. Concepts 1A, 1B and 1C:

MOTION: Tom Skaar moved to approve concepts 1A, 1B, and 1C.

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

MOTION PASSED

HOMEOWNER RECOVERY

19. Concept 3:

MOTION: Eric Grasberger moved to have staff further develop recovery fund options, including but not limited to funding for residential only, single family homes and duplexes.

VOTE: 8-1, Ayes—Grasberger, DeHarrport, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek; Nays—Fahr.

MOTION PASSED

Note: Task force members would like more information on Scott Barrie's proposal of a civil penalty fund.

**POST-CONSTRUCTION INFORMATION CONCEPTS
MAINTENANCE INFORMATION:****20. Concept 12A, 12B and 12C:**

MOTION: Bill Nesmith moved to table these concepts.

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

MOTION PASSED

IV. NEW BUSINESS

Task force members reported conflicts with the October 10th meeting date. Staff is to research other possible dates for October.

V. ADJOURNMENT

Chair Grasberger adjourned the meeting 5:35 p.m.

Exhibits:

- 1 – CCTF Agenda/Timeline (1 page) – *Agenda item I-E*
- 2 – Consumer Protection information matrix (3 pages) – *Agenda item III*
- 3 – General Licensing information matrix (5 pages) – *Agenda item III*
- 4 – Adopted Codes and Standards matrix (2 pages) – *Agenda item III*
- 5 – Concept Papers (33 pages) – *Agenda item III*
- A – Larry Sitz, AGC testimony – (4 pages) – *Agenda item II*
- B – Brian Doherty, CBIC testimony – (7 pages) – *Agenda item II*
- C – Shawn Miller, testimony of William G. Peterson, CNA Surety – (3 pages) – *Agenda item II*
- D – John Carroll, Going Vertical presentation (CD) – (14 pages) – *Agenda item II*
- E – John Carroll, Condo Repairs DVD – *Agenda item II*
- F – Duncan Townsend, Addressing the Water Intrusion Problem in Building Construction – (8 pages) – *Agenda item II*