

CONSTRUCTION CLAIMS TASK FORCE

Draft

Regular Meeting Minutes

December 2, 2005

The Construction Claims Task Force met on Friday, December 2, 2005, 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
Kristie Patton, Construction Contractors Board
Bruce Ehrlich, Construction Contractors Board
Linda Burns, Construction Contractors Board
David Dahl, Insurance Division
Michael Morter, Insurance Division
Cece Newell, Insurance Division

Guests Present:

Cliff Harkins, CCB (Board Member)
Jim Fairchild, CCB (Board Member)
Chuck Crump, CCB (Board Member)
Stuart Ramsing, Oregon Building Official
Bob Moore, OBOA
Hamilton Emery, Schwabe
Kirk Larsen, Dylan Development Group
Josh Karp, Adair Homes
Amanda Rich, CBIC
Kelly Ross, CBIC

Tim Nicol, IBEW
Jim Varco, HADD
Kraig Stevenson, ICC
Lana Butterfield, BCS
Steve Krieg, OBOA
Renee Haynes, HADD
Adrienne Sexton, LFO
Carie Heberlein, Allied Insurance
Jo Bell, OAHHS
Jeff Dean, ABC

Greg Miller, AGC
Jim Brown, RSI
Scott Barrie, OHBA
Ken Cochran, AFSCME
Pat Dorney, CBIC
Tim Rippey, TM Rippey Consulting Engineers
Bob Gilmore, Jackson County
Larry Boyd, SLAOR
Hank McDonald, City of Portland
Raymond T. Miller, ACECO

Myles Eldsmore, Oregon Mutual
Mark Jacobsen, Ankrom Moisan Assoc. Architects
Tom Dymont, CBIC
Brian Doherty, CBIC
Toni Chodrick, Oregon Mutual
Kristen Leonard, OTLA
Janet Adkins, Legislative Staff
John Powell, State Farm, Liberty NW
Bill Cross, OBOA

Action Items

- Submit public notice for January 25, 2006 meeting.
- Coordinate logistics for February 15, 2006 evening meeting.
- Investigate fire hazard posed by rain screen method.
- Compile recommendations to date
- Compare models from British Columbia and State of Washington, invite presenters.
- Finalize the Public Contact Protocol document.

I. TASKFORCE BUSINESS

A. Call to Order:

Chair Eric Grasberger called the meeting to order at 9:30 a.m.

B. Approval of Agenda for December 2, 2005 Meeting:

MOTION: Eric Grasberger moved to approve the agenda for the December 2, 2005 meeting.

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

C. Approval of November 1, 2005 Meeting Minutes:

MOTION: Eric Grasberger moved to approve the November 1, 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 January 25, 2006, 9:30 a.m. to 12:00 noon.

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

E. Project Update:**1. Managing Information:**

Mark Long, Building Codes Division, reported that the website is updated twice a month; on approximately the first and fifteenth. There are approximately 215 interested parties signed up to date to receive taskforce updates.

2. Insurance Study RFP:

Mark Long, Building Codes Division, reported that the insurance RFP was sent out and the close date is December 6, 2005. DCBS has received some interest, but has not yet received any proposals. Typically, proposals are received the last day or two before the closing date.

Michael Morter, Insurance Division, reported that he has received one line of inquiry on the insurance RFP; however, the inquiry asked that the State of Oregon boilerplate contract language be changed regarding the hold harmless clause and that the inquiry was received after the comment period closed. No substantive comments were received.

3. Public Contact Protocol:

Mark Long, Building Codes Division, discussed the document "Construction Claims Task Force Public Contact Protocol" (**Exhibit 1**) with taskforce members. The policy statement discusses the formation of the task force, the need to balance the benefit of free and open communication with the fact that members are part of a public body. Inform the public that the task force welcomes their input through public testimony and written submittals. Mr. Long further discussed the general disclaimer which reads:

"I am one of nine members of the Construction Claims Task Force. I am happy to share with you the goals of the task force, the process we are following, and events that have occurred to date. However, I am not able to speculate about future developments and cannot commit the task force to any individual opinion or decision. The content or results of our discussion will be summarized and disseminated to other members and the general public accordingly."

When task force members receive emails from the public, acknowledge receipt and inform the party that the information will be shared with all task force members and made part of the record. Task force staff will disseminate a packet of all public contacts to task force members on a bi-weekly basis. Members of the task force instructed Mark Long to finalize the document and send it to them.

4. Proposed Schedule:

Mark Long, Building Codes Division, discussed the proposed schedule (**Exhibit 2**) with task force members. The next two meetings are scheduled for January 25, 9:30-12:00 and February 15, 1:30-4:00 p.m. There is no meeting scheduled in March due to too many scheduling conflicts. Tentative meeting dates for April 4 or 26, 1:30-4:00; May 26, 1:30-4:00; and June 28, 1:30-4:00. The January meeting will have presenters representing owners/developers, which will cover a

developer panel, homeowner panel, including arbitrators/mediators, consumer advocate groups, and homeowner attorneys.

Taskforce members discussed having longer meetings to allow more time to discuss the issues presented at the meetings and for them to better plan their time since the meetings keep running over the time allowed. Schedule some of the meetings to allow public comment up until 6:30 or 7:00 p.m.; maybe schedule a half-hour break to allow the task force members time to get something to eat. Task force members asked Mark Long and staff to look into having future meetings run longer and add time allotments for presentations to the agenda.

II. NEW BUSINESS – PANEL PRESENTATIONS

A. Construction Contractors Board (CCB):

Presenters from the CCB were Craig P. Smith, Administrator; Bill Boyd, Dispute Resolution Manager; and Gina Fox Education Manager.

Craig P. Smith, CCB Administrator, stated that CCB is the state agency that licenses construction contracting businesses in Oregon. CCB has a nine-member policy board that sets agency policy. The CCB Licensing Section issues licenses to construction businesses. It is the Licensing Section's job to ensure that businesses that it licenses have demonstrated business competency through education and testing, do not have unpaid construction debts under previous business names, register properly with the Secretary of State's office, and have secured appropriate bond and insurance. There are currently 43,076 licensed contractors (41,032 active and 2,044 inactive). CCB also certifies Oregon certified home inspectors and licensed/certified lead-based paint businesses/workers. The CCB Enforcement Program investigates 44 different types of law violations. The most common violation is working without a license. Enforcement includes criminal investigations. In fiscal year ending June 30, 2005, CCB enforcement recovered \$247,236 for victims and unpaid government taxes (Dept. of Revenue, Workers Compensation, and Department of Employment). **(Exhibit A), (Exhibit B), (Exhibit C), (Exhibit D), and (Exhibit E).**

Gina Fox, CCB Education Manager, discussed the contractor and consumer education programs. Applicants are required to take 16 hours of prerequisite education and pass a test on business law and practices prior to becoming licensed. CCB also writes a newsletter four times a year. Consumer education includes participation in 25 home shows a year and providing educational brochures to consumers. **(Exhibit F), (Exhibit G), and (Exhibit H).**

Bill Boyd, CCB Dispute Resolution Manager, discussed the CCB dispute resolution program. CCB receives complaints filed by homeowners, material suppliers, other contractors, and employees. CCB performs on-site investigations related to new residential structures or home improvement projects. Sixty percent of the investigations result in a settlement or a resolution without the need to issue an order (600 per year).

Craig P. Smith discussed CCB's recommendations to the task force (see end of **Exhibit A**).

1. Bond/Recovery Fund,
2. Mandatory Home/Remodel Project Maintenance Scheduling,
3. Minimum Contract Provision,
4. Building envelope contractor certification (roofing, siding, windows, etc.), and
5. Additional Business Competency Education.

B. Design Community Panel:

1. Mark Jacobsen, Ankrom Moisan Associated Architects: (Exhibit I) and (Exhibit J), Mark Jacobsen stated that Ankrom Moisan Associated Architects does a lot of condominium work and they are currently working to develop best practices for condos/multi-family housing. The best practices have been generated by developers, contractors, lawyers, and architects, property managers, and homeowner associations that have been meeting to develop best practices similar in scope to the task force. Mr. Jacobsen indicated that the biggest issue with residential construction is water getting into the building through the envelope. There are several causes of the problems: design, architecture, engineering, construction practices, and maintenance. He indicated a new attitude is emerging that we all have to come together and figure out how to maintain the building. There are five or six basic points:
 - Take a hard look at developing minimum design standards with respect to envelope assemblies. Drainage cavities should require rain screen systems. The essential element is the drainage cavity, an air barrier between the exterior cladding. Theory being water cannot bridge that, and there is a water shedding barrier on the interior as the second defense.
 - Third-party design, construction, and maintenance review procedures that are passed on to the association. There is a question on who should do that. Ankrom Moisan uses consultants that have worked in British Columbia. Envelope consultants are involved from day one on a project. They force us to use better designs and details. Ultimately some kind of certification is needed. The British Columbia and State of Washington models are both good models. In British Columbia the envelope consultant works for a warranty company. Warranty companies have come up with their own design, construction review, and maintenance guidelines. Firms either follow the guidelines or they don't get a warranty, which is required to get an occupancy certificate for residential construction.
 - Another best practice is to involve the contractor on the job from beginning (design phase) to end so they can evaluate the project design prior to construction and look at the details of the design.
 - Develop maintenance manuals on how the association will maintain the structure.
 - Preserve the right in the contract to go back and inspect whether the maintenance has been done.
 - Warranty: If water gets into the structure, the contractor will fix it; if the building has been maintained.

2. Ray Miller, Miller Consulting Engineers: (Exhibit K), Ray Miller highlighted the importance of plans and specifications. Increasingly contractors are looking to jurisdictions for quality control; there is no in-house review of the project. Mr. Miller recommended that there needs to be in-house review and have the party sign a statement that the review has been done prior to obtaining the permit, making them responsible. There is a lack of detailing on plans. There is a reliance on manufacturer systems or standards for installation. Require manufacturer to inspect and certify the materials and installation were to their standards. There is a lack of knowledge of new products. Require training for proper use and installation of new products. Lack of maintenance is a problem; require maintenance program manuals by the design firm. Construction problems can be resolved by requiring a knowledgeable supervisor on the job site at all times; require protection and dry material (19% moisture or less); and proper venting of foundations. Improper flashing around openings; require inspection and certification by material supplier for conformance to standards. Workmen are not aware of design specifications, especially in areas like how far apart nailing is required. Cross-training and education could help in this area and perhaps certification requirements.
3. Tim Rippey, TM Rippey Consulting Engineers: (Exhibit L), Tim Rippey stated that there are areas of concern in architectural style and different materials used, such as less overhangs, stucco, LP siding issues, and oriented strand board use. If oriented strand board is left out and gets wet for three weeks before installation, it will cause moisture problems. Designers come in from drier climates like California or Texas and design buildings like they do for their home states without making changes for wet climate in Oregon. Developers are short-time owners and generally do not look at long-term issues and take cost saving measures. Contractors and subcontractors are inexperienced and improper installations occur. The building envelope construction needs to be overseen. Condominium associations are pressured by the owners to not spend money on maintenance, which is very important. More money is spent on experts in court than on fixing the problems with the structure.

C. Building Codes Panel:

This agenda item was moved to the next meeting on January 25, 2006, due to time constraints. (Exhibit M),

D. Task Force Member Discussion:

Task force member David DeHarrport stated that he has heard rain screen mentioned by all the presenters which raises an issue for him whether fixing the water intrusion problem may create an increased fire hazard due to no fire stopping in the walls. The task force needs to look at this issue and asked that staff to research this issue and contact the State Fire Marshall's office for information.

Task force members asked about the moisture content of wood framing and what they suggest the moisture content should be. Ray Miller stated that at 19 percent or less moisture mold will not grow. In the past, 15 percent moisture content was the standard, now it is 19 percent. Tim Rippey stated that 19 percent moisture is still a

lot of water. Moisture meters could be used to test the moisture content of wood around drains, openings, and plates. Typically do not need to check the centers of walls.

Task force members would like time at the end of meetings for them to discuss the material presented to them. Task force members discussed prioritizing the issues before them. Mark Long will summarize the issues presented and send back to task force members for them to prioritize.

Task force members would like information on the State of Washington and British Columbia models and would like staff to invite someone from British Columbia to come speak to them about their model.

III. PUBLIC COMMENT

No public comment was taken at the meeting.

IV. ADJOURNMENT

Chair Grasberger adjourned the meeting 12:30 p.m.

Exhibits:

- 1 – Draft Public Contact Protocol (2 pages) - *Agenda item I-E-3*
- 2 – Draft Speaker Schedule (1 page) - *Agenda item I-E-4*
- 3 – Summary of building science recommendations (2 pages)
- 4 – Tsongas recommendations (4 pages)
- A – CCB Presentation (49 pages) - *Agenda item II-A*
- B – Consumer damage report for residential structures (1 page) - *Agenda item II-A*
- C – Consumer damage report for all structures (1 page) - *Agenda item II-A*
- D – January 9, 2004 memo from Kathleen Dahlin, DOJ (3 pages) - *Agenda item II-A*
- E – June 27, 2005 memo from Kathleen Dahlin, DOJ (3 pages) - *Agenda item II-A*
- F – 16 Ways to avoid construction problems (8 pages) - *Agenda item II-A*
- G – 12/05 CCB Bulletin (8 pages) - *Agenda item II-A*
- H – Oregon Contractor's Reference Manual (1 page) - *Agenda item II-A*
- I – Mark Jacobsen, Ankrom Moisan Presentation (5 pages) - *Agenda item II-B*
- J – Voluntary best practices, Ankrom Moisan (3 pages) - *Agenda item II-B*
- K – Ray Miller's report (2 pages) - *Agenda item II-B*
- L – Tim Rippey Areas of Concern (1 page) - *Agenda item II-B*
- M – BCD Presentation (1 page) - *Agenda item II-C*