

LANDSCAPE CONTRACTORS BOARD
Minutes of the January 15, 2009
Board Meeting

Holiday Inn Express
204 West Marine Drive
Astoria, Oregon

Please note that the minutes will not be approved until the Board meets on February 19, 2009.

PRESENT

Board Members

Matthew Triplett, Chair
Marty Gascoyne, Vice-Chair
Steven Carper
Richard Hollenbeck
Joe Lymp
Larry Thomas
Lisa Walter Sedlacek

Others

John Stone, OLCA
Cory Knutz, Landscape
Construction Professional

Staff

Mike Snyder, Administrator
Kim Gladwill-Rowley, Program Manager
Ken Roth, Investigator

EXCUSED

None

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:30 a.m.

B. Agenda and Order of Business

Chair Triplett reviewed the agenda and order of business

Board Action: Moved by Gascoyne and carried to approve the agenda as written. Vote: 6-0.

Chair Triplett turned the meeting over to be run by Vice-Chair Gascoyne

2. BUDGET DISCUSSION

The board reviewed the profit and loss statement for the 2007-2009 budget as of December 31, 2008. The Board was on the accrual basis and what was to be collected in civil penalties was listed in accounts receivable; which affected the balance sheet. The uncollected civil penalties were an issue and the Board chose to move to a cash basis and remove the uncollected civil penalties. They were recently moved from Quickbooks to the LCB database. Accounts receivable now shows a zero amount in Quickbooks. In the 2005-2007 budget the accrued assessed civil

penalty showed an amount which was amended to show a true figure that was collected.

In the income section of the 2007-2009 balance sheet, the examinations are \$41,000 off due to exam administration being transferred to PSI, including the examination fees that were paid to the LCB and had to be refunded in this biennium and previous biennia. The profit & loss reflects an increase in the collection of licensing fees of approximately 10%. The profit & loss also reflects the civil penalties collected were \$8,759 over budget as of December 31, 2008. The total income shows a negative amount of \$58,000. The projected budget was a loss of \$153,000 and is now showing an actual loss of \$181,000.

In 2007 the board knowingly voted for a deficit budget with increased enforcement that would have hopefully lead to increased revenue. Mr. Snyder explained in 2002 the Board became semi-independent and contracted with investigators compensating investigators on a per report and site check basis. In 2006 it was decided by the Board to hire the investigators as employees and increase the enforcement program. In order to do this, the Board had to adopt a deficit budget. To date enforcement as been increased, but the collection of the civil penalties has not increased. The new database has created a much better tracking system for follow up dates for enforcement deadlines and collection issues. Respondent's can file an appeal up to 60 days after the final order is issued, then the LCB staff sends it to the Department of Revenue (DOR) for collection. DOR has sated they collect 17% and also stated private collection agencies collect 2-3%. The dilemma is how much more staff time should be allocated towards collection. The LCB has collected close to 50% of assessed civil penalties. Staff believes this is partly due to the settlement agreement process. It is clear the enforcement program does not pay for itself.

The board discussed the remaining six months of the biennium and how to operate without a deficit. Mr. Snyder stated the licensing cycle will be increasing over the next six months and the budget vs actual may end with the projected deficit. As far as the outcomes for the enforcement program, the business plan has been successful. Mr. Triplett asked the board members to contemplate if the deficit is worth the success. The LCB is a law enforcing agency and Mr. Triplett stated he is not convinced the LCB goes far enough.

The board discussed net worth, collection options, fee structure, licensing options and staffing considerations. The Board determined the net worth as of December 31, 2008 on the graph is accurate and where they intended with the budget. Goals are being accomplished, but the board cannot afford to continue deficit spending.

The board discussed the following options: increase number of licensees, increase fees, increase collections and/or decrease staff. The board also discussed revising the Mission Statement with the education of consumer in mind and partnering with

stakeholders. They discussed the mission statement showing competency for the licensed, a hammer for the unlicensed and education for the consumer.

Mr. Gascoyne re-introduced the "Model 2" concept of bringing the guidelines as a requirement for contracting, reducing the landscape construction professional responsibility and keeping the examination in place. The agency should facilitate accountability between the consumer and the landscape contracting business.

Mr. Carper stated at some point there has to be trust between the licensed contractors and consumer to be accountable. The framework of model 2 allows the market to pay for what they want, have contract requirements, but with the freedom to have their own specifications. Consumers can ask for what they want and be clear about what they don't want.

Mr. Hollenbeck would like the minimum guidelines to at least be reviewed. Another alternative is the business license with a test and no individual license.

Ms. Walter stated she would like to move forward with keeping things the way they are due to the economic climate; evaluate the budget for education and focus on improving ways contracts are written to help promote accountability and a long term plan of moving towards a new model.

Mr. Lymp stated he likes Model 2 as something to move towards and the guidelines in a contract is a big thing for industry. This gets away from resistance of direct supervision and shows what the finished product should be patterned after. More consumers are internet savvy and this would make them more aware of their responsibility.

Mr. Gascoyne stated he supports model 2 for the future, likes the consumer education piece and would like to see the guidelines posted on the website for a while to help consumers know what to ask for.

Mr. Triplett stated the most efficient way to make sure people understand contract agreements are to beef up those requirements. He stated model 2 is a tool to support that idea. He stated the direct supervision requirement is ridiculous from a government standpoint and it really comes down to a contract.

Mr. Thomas stated he likes model 2 and the idea of education by posting the guidelines in a non committal way is a good first step. He believes that having the landscape construction professional does not validate the quality of work or if it was performed according to the contract. If the business has a bond and insurance, direct supervision would not be required. He questions the validity of the test if it is not brought into the field and he supports moving towards model 2 over the next three years.

Mr. Stone stated he believes OLCA would like to see a different resolution to the direct supervision issue and a one license program. He further stated that, personally, he likes model 2, but is unsure about the guidelines being part of it. He would like a one-license system.

Mr. Knutz stated he would like to see direct supervision and ongoing education eliminated and those that want it can do it. He would like to see the license remain, but with a less extreme exam and focus on how to write contracts, how to file liens, etc. He also would like to see the mediation portion of the claim process left intact. Move towards more voluntary compliance with a website for the consumers.

Mr. Snyder stated he sees the issues with the statutes and the way the industry operates and wants the statutes to be enforceable, relevant and easy to accomplish. The industry does not like the statutes as they are today, so the statutes may need to be changed to meet how the industry is operating. Model 2 has a business being the responsible entity with a technical competency that's not brought to the field. It allows a business to run as a business to succeed by developing skills in what they want to perform. It is a simplification of the current system. He is willing to pursue if industry agrees with LCB on how they want to be regulated and operate. The Board needs to make a decision about operation and move forcefully and he believes it can be done in 3 years. Until it is resolved; there is going to be discontent and a hard time regulating laws that don't fit. He wants something that works and makes sense.

Mr. Roth stated the one license with the business being responsible is basically how the industry is operating today. He believes the examination is a badge of courage. He sees the board struggling and seeing only part of the "elephant", but seeing the big picture is what the LCB's job is. It is a regulatory agency and that means sometimes the LCB doesn't make the industry happy. He stated the industry and the board are fortunate to have Mr. Snyder in his position as Administrator at this particular time because no one understands the picture of what the agency does and what the industry wants as well as he does.

The consensus is to move towards model 2 within the next biennium and review the OLCA guidelines to see if it is the document to be adopted. The review should be completed by members of the LCB and OLCA and then include others outside those organizations. The budget is to include a continuation of the programs that are in place and to look at a fee increase since fees have not been increased for over six years. Staff will remain as is for the remainder of the biennium with a contracted investigator for the Medford area.

3. STATUTE & RULE REVIEW

This topic was deferred.

4. LANDSCAPE CONTRACTING: HISTORY, CURRENT JURISDICTION & POLICY DISCUSSION

This topic was deferred.

5. TRANSITION PLAN

The board discussed the eventual retirement of the Administrator. An exit plan for replacement needs to be considered. Mr. Snyder stated when he took the position, he figured he'd hold the position for approximately five years and it has now been six and a half. He feels good about what the board has accomplished in that time. After the 2011 legislative session, he plans to retire (June 30, 2011) without a phase out type of situation and requests the board have a succession plan before that time. The board discussed the length of training for this position and whether or not the current administrator would train the new administrator, which will be an additional expense for the upcoming budget.

Mr. Gascoyne stated he wants all board members to recognize this replacement will be difficult and think about whether the replacement will be someone with a background in the industry or in administration. The board asked Mr. Roth if he knew what his intentions were over the next few years. Mr. Roth stated he is unsure at this time, but it may be unlikely he will be around much longer than Mr. Snyder. Mr. Snyder and Mr. Roth will develop position descriptions for their position. The board also wants the other positions in the office to have updated position descriptions.

The board also asked what Kim Gladwill-Rowley's intentions were over the coming years. She responded that she was "not looking" and had no intention of leaving at this point in time but did not want the job of Administrator. Mr. Snyder stated that having Ms. Gladwill-Rowley in employment during the transition would be a great help to the transition process due to her expertise and experience with the board. She would be a great asset to the new Administrator.

The board discussed creating a search committee for these positions. The state's hiring process will need to be reviewed. A timeline will be developed to include Board member terms.

6. ADJOURNMENT

The meeting adjourned at 8:50 p.m.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager