

LANDSCAPE CONTRACTORS BOARD
Minutes of the January 16, 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
John Gawlista, OLCA

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.am.

B. Election of 2009 Officers

Mr. Gascoyne was nominated as Chair for 2009. Vote: 5-0
(1 abstention: Mr. Gascoyne).

Ms. Walter Sedlacek was nominated as Vice-chair for 2009. Vote: 5-0
(1 abstention: Ms. Walter Sedlacek).

Mr. Gascoyne took over as chair of this meeting.

C. Approval of Agenda and Order of Business

The agenda was approved as written.

Board Action: Moved by Lymp and seconded to approve the agenda as presented. Vote 6-0.

D. Approval of Minutes

i. October 30, 2008

Board Action: Moved by Mr. Lymp and seconded to approve the minutes of the October 30, 2008 Board meeting. Vote 6-0.

Suggestions were made to amend the minutes.

Board Action: Moved by Mr. Lymp and seconded to approve minutes with suggested changes. Vote 5-0 (1 abstention: Hollenbeck).

ii. November 21, 2008

Board Action: Moved by Mr. Hollenbeck and seconded to approve the minutes of the November 21, 2008 Board meeting.

Suggestions were made to amend the minutes.

Board Action: Moved by Mr. Thomas and seconded to approve minutes with suggested changes. Vote 6-0.

Administrator's Report

A. Office Update

The Board reviewed Mr. Snyder's report, which is attached and made a permanent part of these minutes. Mr. Snyder reported the seminar he gave on December 11, 2008 was not held in Medford as the report states, but held in Roseburg.

The Independent Contractor Steering Committee met with Representative Holvey. Representative Holvey is concerned that a business enters into a relationship with another person and classifies them as an independent contractor when they really do not qualify for that classification. Representative Holvey has submitted a legislative bill and Mr. Snyder stated he has a concern that the bill does not address what happens to a homeowner who hires an unlicensed landscape contracting business and then the homeowner unknowingly becomes the employer and must pay payroll taxes. Mr. Snyder summarized the proposed legislative bill.

B. Financial Report

The Board reviewed the financial report as of December 31, 2008 with a comparison of December 31, 2007. It reflects the amount of reserves being used from the money market account to fund the current biennium. A few Certificate of Deposits (CD's) will be expiring this year and Mr. Snyder is hopeful they will not have to be cashed out prior to their expiration dates. The annuities are starting to show a positive cash surrender value. The accounts receivable are no longer shown and this will affect the balance sheet significantly. The compensated absence liability will be reviewed and updated monthly.

The Board reviewed the profit & loss statement from July 2007 through December 2008 with a comparison of the prior biennium budget. The charge for credit card processing has been changed to a web-based account to save costs. The old contract has not run out yet, but the savings in fees is significant.

Mr. Snyder reported there is a legislative bill to remove the health-related boards from semi-independent status. The SIBA group entered into a contract to hire Stephen Kafori, a lobbyist to attempt to stop the bill in committee. A line item for a lobbyist will be added to the 2009-11 budget for future issues regarding semi-independent status.

Mr. Snyder is hopeful the next six months will show a dramatic change to the current negative cash flow within the budget.

3. PROGRAM REPORTS

A. Examination Report

Mr. Hollenbeck stated he is willing to continue to work with the Exam Committee through PSI. Mr. Hollenbeck reported the committee met in December and reviewed each exam question again. The committee determined the cut score for the business practices section is 58%. The current passing score for this section is 80% and it is an open book examination. This may need to be reviewed. This review reconfirms the questions are accurate; the information is something the candidates should know and how important the information is. Every question also has a reference that is given to each candidate if they fail a section. The time limitations are also being reviewed.

The exam administration is still being adjusted and staff is working with PSI to make the adjustments as soon as possible.

The Board reviewed the exam statistics through December 2008. These statistics also showed previous year's final totals. There was a significant drop in the number of sections taken in November and December 2008. This could be caused by the change in exam administration and the weather in the Eugene, Salem and Portland areas during those months. The decrease in the pass rate could be caused by the new time limit for each section.

B. License Count

The Board reviewed the license count as of January 1, 2009. The Board discussed landscape contracting businesses laying off landscape construction professionals and whether or not this relationship is still considered an "employment" relationship during the "lay off" period. The board concluded that a lay off is a termination of employment.

C. Enforcement

The Board was provided with a listing of final actions taken from November 1, 2008 through December 31, 2008. There were 103 cases that had final action during that time frame. Mr. Roth gave an explanation regarding specific cases.

Staff reported private collection agencies can report to credit bureaus. More research needs to be done on whether or not the LCB can report to credit bureaus.

The board reviewed a letter from a licensee requesting his violation not be reported in the board's newsletter. The board discussed the enforcement report in the newsletter in general. Some board members believe it is a deterrent and it is important to have in the publication and some believe it is unnecessary and punitive. All board members agree the purpose of the newsletter is education. Mr. Triplett stated he believes it does not belong in a positive education piece, but posted on the website. The board considered a table with numbers by cities in the newsletter with a listing of names on the website. The final actions report provided to the board could be posted on the website.

Mr. Snyder stated he believes the statistic should be included in the newsletter with a note that a full detailed report is on the website. This would keep the newsletter small and save some money. Mr. Roth stated it would have the same educational value even without the name. There are offenders who have asked for a hearing and have signed settlement agreements to the effect that their name will not appear in the newsletter.

The board directed staff to amend the way the final actions are publicized with a template for the next newsletter to publish statistics by numbers and location for the printing of the next newsletter and to publish on the website with names. A policy will be written for board review.

The board reviewed a listing of enforcements opened by month. 532 cases were opened in 2008 and 438 in 2007. The LCB staff can remove postings on Craigslist that advertise for licensed work by an unlicensed person. LCB Investigators are having them removed the first time and if they appear again a penalty will be assessed.

D. Claims (Dispute Resolution)

There were 17 claims opened and 19 claims closed from November 1, 2008 through December 31, 2008. The board reviewed a worksheet of the claims that have had an on-site mediation from December, 2008 through January 9, 2009. This worksheet also showed the alleged violations to the LCB laws by licensed landscape contracting businesses for contract requirements, bond amounts and permits not being obtained.

E. Education

Mr. Gascoyne told the OLCA representation that were in attendance at this meeting that OLCA Expo is wonderful and he is hoping this type of program can be offered elsewhere in Oregon.

Mr. Snyder reported the continuing education hours are getting more attention and more vendors are applying for approval. The requirement is becoming more well-known. He is encouraging individual licensees to attempt to get the vendor to go through the pre-approval process. Mr. Lymp stated OLCA is pushing for more educational chapter meetings. Mr. Stone stated he will be reporting to OLCA the comments heard from Mr. Manning and attempt to get a chapter organized in Mr. Manning's area.

Mr. Snyder reported there are a few trade shows coming up in the next few months. He is looking into producing a DVD on his latest seminar of "Doing business with the LCB". Mr. Hollenbeck suggested looking into Clackamas Community College video production arena to see if this could be done for free.

Mr. Carper requested to see if the contract DVD could be streamed on the LCB website. Mr. Hollenbeck stated he would be willing to put together a quiz on the DVD for CEH credit.

4. PUBLIC COMMENT

Chair Gascoyne opened the meeting for public comment.

David Mannion, Mannion Landscaping

Mr. Mannion stated he attended a seminar yesterday with the American Backflow Prevention Association (ABPA). He stated he did not find it educational, just a source to obtain the hours. He is opposed to the continuing education hours. He believes most licensees are already educated upon coming into the profession. He asked the board to consider regional meetings of landscape construction professionals outside an organization. He also suggested attendance at the High Desert Conference with credit hours for round table discussions with documentation such as an agenda that would include sharing information. He believes licensees will learn quite a bit during these round table discussions based on the round table discussions at the ABPA seminar during the lunch hour. He also requested licensees have the ability to vote on future suggestions. He further stated he appreciates the increased enforcement in his area, including the site check performed on his job site. The board asked questions about the courses in terms of attendance and subjects along with sign-in requirements and certificates of completion. It was suggested the licensees in this area possibly put together a course regarding the owner/managing employee requirement.

Chair Gascoyne stated he would permit public comment again at a future time during the meeting.

Chair Gascoyne closed the public comment period.

5. ITEMS FROM WORK SESSION

A. OLCA's Letter Regarding Direct Supervision

John Gawlista stated OLCA is asking for more leeway in time for reporting to the LCB Investigator regarding direct supervision instead of by midnight. The request is to extend the requirement to be by the end of the next working day. This change will require going through the rulemaking process. Chair Gascoyne stated after the discussion regarding Model 2 at the board work session, he would like to hold off making any type of change to the current rule. Ms. Sedlacek stated she prefers OLCA's recommendation. Mr. Roth stated this amendment would not make a difference in the field.

A. 2009-2001 Budget

Mr. Snyder stated that what he heard at the work session was to continue employing the investigators and the board is willing to look at increased fees, i.e. application fee, implementation of a fee to re-instate a suspended license and to contract with a private investigator in the Medford area for the remainder of this biennium. A combination of contract and employed investigators can also be used during the next biennium to help save costs. Adding funds for a committee for a search for the Administrator's replacement in 2011 and the additional of liability for unused vacation leave are also to be added to the new budget.

The board would like to create a Search Committee to begin the research process for replacement of the Administrator in 2011 to be proactive. Mr. Hollenbeck and Mr. Thomas volunteered for the Search Committee and were assigned by Chair Gascoyne. Mr. Thomas was named chair.

Chair Gascoyne created a Standards Guidelines Subcommittee: Mr. Triplett, Mr. Carper and Mr. Lymp volunteered for this committee. They were all assigned by Chair Gascoyne. Mr. Lymp was named chair.

6. OLD BUSINESS

None.

7. NEW BUSINESS

A. 2009 Board Meeting Schedule

The Board reviewed the 2009 meeting schedule. The May meeting will be held in Roseburg.

B. Administrative Rule 808-002-0780 – Hearing Held 11/21/08

The board reviewed the comments received from the Oregon Landscape Architects Board. No other comments were received. The Board would like staff to contact Danny Santos to begin a facilitated process with the Oregon Landscape Architects Board as previously discussed.

Board Action: Moved by Mr. Thomas and carried to adopt the proposed rule amendment to OAR 808-002-0780. Vote: 6-0.

C. Letters from Licensees

The Board reviewed a couple letters from licensees. The Board appreciates the comments. If board members wish to respond to any comments made by licensees, the response should be reviewed by the Board Chair and/or Administrator first.

D. Attendance of Assistant Attorney General (AAG)

The Board discussed the attendance of the AAG at board meetings. The determination as to whether or not her attendance is necessary will be determined prior to each meeting by the Administrator.

E. Irrigation Issue

Staff recently cited a CCB licensee for installing an irrigation line supplied by an irrigation ditch and installed into a community park. It was determined to be a pump pulling water out of the irrigation ditch into the park through an irrigation line. The general contractor was cited for installing the irrigation main line. It was undetermined at that time if the laterals were put in or who did it. Mr. Snyder received a call from Representative Esquivel stating landscapers should not do anything before the valve. The general contractor requested a hearing.

Representative Esquivel stated he will be making a change to the statute to remedy this issue for his constituent. This occurred during the same time the LCB Investigator was accused of discrimination. The LCB contracted with a private investigator and it was determined by that investigator that the LCB investigator was not guilty of discrimination. LCB Investigators Roth and Salomone arranged to meet with the general contractor, Representative Esquivel and another individual involved with the irrigation issue. During that meeting Investigator Roth reviewed the plans and invoices and realized the irrigation line also contained fire hydrants, which was another purpose for this line. LCB staff then determined the CCB licensee has a right to install this irrigation line because it had a different purpose from just lawns, trees, shrubs, etc.

Mr. Snyder would like to determine if there is a way to clear this up by rule rather than statute. The Board reviewed a proposed rule amendment to the definition of irrigation systems. Mr. Snyder will discuss this rule amendment with Representative Esquivel. This rule amendment allows the CCB licensee to install the master shut off valve. Board members will review this proposed amendment and comments will be directed to the Administrator.

F. Landscape Contracting: History, Current Jurisdiction & Policy Discussion

Chair Gascoyne reminded the board members that some issues have not been completely taken care of, i.e. container gardening, watershed projects, reforestation, and the "plan and install" issue with Oregon Landscape Architects Board. These will be included on future agendas as time permits.

G. Collection Policy

Staff requested the board remove the current collection policy restrictions and allow them to research and experiment with other collection options.

Board Action: Moved by Triplett and carried to allow staff to ignore the current collection policy. Vote 6-0.

F. Certificate for Ex-chair Triplett

The board thanked Mr. Triplett for his two years of contribution as board chair.

8. ADJOURNMENT AND NEXT MEETING SCHEDULE

Board Action: Moved by Mr. Triplett and seconded to adjourn the meeting. Vote 6-0. The meeting adjourned at 2:10 p.m. The next meeting of the Landscape Contractors Board will be February 19, 2009 by conference call if there are agenda items. Otherwise the next meeting will be held March 20, 2009.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager