

LANDSCAPE CONTRACTORS BOARD
Minutes of the January 17, 2014
Board Meeting
Beaverton, Oregon

PRESENT

Board Members

Annie Lee, Vice Chair
William Bumgardner
Larry Hoekman
Christine Hollenbeck
Molly McDowell
Larry Thomas

Staff

Shelley Sneed, Administrator
Kim Gladwill-Rowley, Program Manager
Michael Hintz, Investigator

Others

Carolyn Groves
Wayne Guild
Kiyohiko Sake
Sergio Flores
Brock Ludlow
Loren Radford
Saul Gonzales
Matt Triplett
John Stone

EXCUSED

John Gawlista, Chair

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:30 am by the Vice-Chair.

B. Approval of Agenda and Order of Business

Board Action: Moved by Mr. Hoekman and seconded to approve the January 17, 2014 agenda. Vote: 5-0.

C. Approval of November 15, 2013 Minutes

The Board made a minor edit to the November 15, 2013 minutes.

Board Action: Moved by Mr. Hoekman and seconded to approve the November 15, 2013 minutes. Vote: 5-0.

2. Administrator's Report

A. Office Update

The Board reviewed Ms. Sneed's report, which is attached and made a permanent part of these minutes. Ms. Sneed reported that she has another presentation at PCC Rock Creek next month. Next week she has a presentation at the Oregon Backflow Prevention Association conference. Mr. Hintz met with the District Attorney in Curry County who prosecuted the repeat violator in that area and is continuing that relationship. The respondent has continued to violate the laws and has been found again. Ms. Sneed cleaned up the financial adjustments that have continued to show on the financial report. This "clean up" affected some other items and she found a Quickbooks expert to help with this. Now the office has someone to call on if there

are other issues. The financial review field work has been completed. A draft report will be issued in 1-2 weeks with recommendations. Ms. Sneed will draft a response for Board approval at the March meeting.

Mr. Thomas has agreed to extend his term of service with the Board in order to continue representing the board on the Landscape Work Group. The Governor's Office has agreed and given six months with an update at that time. If more time is necessary, they may approve it again. This will continue the consistency on the Landscape Work Group.

Mailings related to the Planting license will be issued in the next few weeks announcing this new opportunity to those that may be interested, e.g. nurseries, maintenance companies, spray companies and those LCB licensees who hold a limited license. The Exam Committee did meet and make changes to Section D and revamped the exam to be ready for the new planting license as of March 1, 2014.

B. 2013-15 Budget Update

At the last meeting the board took action to make some budget changes. Ms. Sneed reviewed the agency budget based on these changes and any other changes to the original budget that the agency is now aware of. There were 10 budget changes; none of which affect revenue; they are all expense item changes. Ms. Sneed recommends the agency not make any formal budget modifications until the agency is further into the fiscal year to determine if the economic improvement and the new planting license will have a positive effect on our revenue situation.

Here is an overview of the anticipated changes to the 2013/15 approved budget:

1. All staff wages were realigned to the current DAS classification schedules per board action at the November 15, 2013 meeting. That saved the agency nearly \$30,000 in wages and benefits and kept a full time investigator in the 2nd year of the biennium.
2. Health insurance was originally budgeted with a 10% rate increase. The 2014 costs haven't changed from the 2013 rates. The 2015 costs are budgeted at a 5% increase, since those costs aren't known at this time. The budget maintains employees paying 5% of health care costs throughout the biennium.
3. Account 5035S (State Mail Shuttle charge) was originally budgeted at \$12,000 per year, but actual costs are \$2,860 per year—creating an \$18,000 cost savings.
4. Unemployment wasn't budgeted into the original budget. Now that we know what those costs are to date, they have been incorporated into this amended budget.
5. Office lease rates in the proposed budget reflect the agreed upon lease rates. Actual costs were less.
6. The agency is moving its payroll service as of January 1, 2014 to Surepayroll, which is offering three months of free service, and a lower monthly fee.
7. The budget for lien filing fees has been increased due to the agency working with the Department of Justice's office and our collection agency to begin

- using a broader array of collections tools once we've filed a lien with the county of record. The collection company will be able to garnish bank accounts, tills and wages.
8. Contract Labor (5024) reflects the temporary employee used after the Licensing Specialist left, while we were hiring the replacement staff member. There's also some money to hire some temporary help in the Spring if needed, to maintain a timely licensing process due to the heavier season and the new Planting License.
 9. With the addition of a new Investigator/Mediator \$500 was added per year for investigator training.
 10. There was \$500 budgeted to revamp the agency's trade show booth in the 2013/14 fiscal year, and that's been increased to \$1,000 in the event that LCB needs the additional funds for the redesign of our trade show efforts.

All of the costs adjusted in this budget modification were already included (other than unemployment), so this is just realigning the expenses to different expense accounts.

The profit and loss statement from July 1 through November 30th shows income is up 39% compared to last year in exam/application revenue and up 21% in civil penalty collections. The approved budget shows a loss of just over \$69,000. Due to the above changes the loss may only be around \$25,000. If the licensing income increases, it may be a break even biennium or even a net income versus a loss. The financial position of the board is improving after the bad years.

C. 2011-2013 Financial Report

The Board reviewed the updated unreconciled financial report as of December 31, 2013. The balance sheet shows that the accounts payable increased about \$10,000 and the bank balances changed about \$3,000 between the two months. There was a cash transfer of \$6,000 in December to cover payroll. This is still the lower licensing season, but based on past trends, a positive cash flow is expected in February or March.

The profit and loss previous year comparison shows that the income is up nearly \$7,000 as compared to last year. The primary increase is the individual application fees and exam resource sales. There has been interest in the planting license, with minimal advertising of the license. Staff costs are lower than last year due to having one less position. The unemployment costs and contract labor show that we've used some of that savings to fund those two items. The net cost saving is still nearly \$8,000 above last year. The net loss is \$23,158.55, which is about \$25,000 less than last year at this time.

The Budget vs. Actual Profit & Loss shows that the LCB is nearly \$20,000 over budget in income. This report shows the budget is nearly \$12,000 below budget for staff, benefits and contract labor expenses. Several signs indicate that licensing is on an upswing and this Spring will be a better indicator of whether

these early indicators are truly accurate. The bottom line is that the budget is over \$65,000 less than the projected loss at this time.

Board Action: Moved by Mr. Thomas and carried to approve the unreconciled financial report. Vote 5-0.

3. PROGRAM REPORTS

A. Examination Report

The Board reviewed the examination statistics from 2003 through December 31, 2013. There were 880 exams taken in 2013, 864 exams taken in 2012 and 806 taken in 2011. This shows the number of exams being taken is increasing. The passing rate for all the exam sections has increased compared to 2012, but not to the 70% goal.

B. License Count

The Board reviewed the license counts as of January 1, 2014.

C. Enforcement

The Board reviewed a listing of final actions taken from November 1, 2013 through December 31, 2013. Ms. Gladwill-Rowley and Mr. Hintz reviewed several of the cases with the Board in regards to operating without a license and the type of work performed.

The Board reviewed the collections report from Cascade Collections from 2009 to the end of 2013. They collected just over \$16,000 in 2013. This is a large increase from the \$7,000 in 2012.

D. Claims (Dispute Resolution)

The board reviewed a listing of closed claims from November 1, 2013 through December 31, 2013. There were six claims closed. Mr. Hintz reported on two cases that he performed mediation and was successful in helping them resolve the issues.

E. Education

The Board reviewed the CEH audit statistics from January 1, 2010 through the present.

4. OLD BUSINESS

None

5. NEW BUSINESS

A. Vineyard Planting Discussion

Ms. Sneed reported the office has received several phone calls from a business who has planted grapes in a vineyard without a landscape contracting license. Mr. Thomas stated he has always believed agriculture was not within the LCB jurisdiction and does not believe it should be. The Board wonders how the Department of Agriculture defines agriculture. The Board discussed agriculture planting and do not believe it is something that they want within their jurisdiction.

Ms. Gladwill-Rowley read the definition of landscaping work. The Board believes it should state the planting for agricultural purposes is not included in the definition of landscaping work. Staff will work with legal counsel on proposed rule language for the next meeting to exempt agricultural planting in a commercial setting.

B. Proposed Administrative Rules

i. Adopt rule change re: Definition of Compensation

The Board reviewed a proposed rule amending the definition of compensation. The last day for public comment was November 22, 2013 and no comments were received. This rule is being amended due to several enforcement cases that came down to the issue of compensation. In some cases it was proven, but the last case was not and cost the board legal fees. Legal counsel recommended this revision to include "value received" and that it includes, but is not limited to: a.) profit from the sale or lease of property where landscaping was performed as part of developing the property for sale or lease, and b.) salary or wages where the employee's duties included landscaping work. The larger cases over the last 5 years have spent a lot of time litigating that compensation is more than money in return for landscaping. The idea is it is easier to show compensation if it is clear in the rule and there may no longer be a need for the lengthy litigation for enforcement cases.

Board Action: Moved by Mrs. Dunston and carried to adopt the amendments to OAR 808-0002-0240 as written. Vote 5-0.

ii. First Review of proposed rule amendment re: hearing requests and answers

The Board reviewed a copy of a rule amendment that amends the definition of employee and adds that an employee does not include either a subcontractor that is an independent contractor, or a leased or temporary employee. This matches the recent CCB amendment to their definition of employee. This rule amendment also adds a rule that requires an enforcement respondent that requests a hearing to state their defense. Hearing requests are usually received without any arguments as to why the respondent believes they are not in violation. The staff is not able to prepare any arguments prior to the hearing date. This rule requires the respondent to provide those written arguments and, hopefully, more cases can be settled without an actual hearing. Each respondent will be provided with these requirements. The Board directed staff to go through rule making process for these amendments.

C. Presentations to Classes

Ms. Sneed explained that when she makes a presentation to a class, she covers, landscaping law and the qualifications for licensing. Mr. Radford explained that the colleges offer classes on preparing for the licensing. Mr. Hoekman reached out to educators over the last few years to make sure they were aware of the board requirements and the new book used as a resource for the exam. There is

a lot of transition of staff within the departments. It is important for the LCB staff to make those connections each school year. Ms. Sneed stated they have been added to receive the LCB newsletters.

C. Tax Credit for Water Conservation

Ms. Sneed reported a licensee has asked the board to work on a tax credit for a water savings and irrigation savings similar to other tax credits, e.g. washers and dryers and storm windows. Mr. Hoekman stated he is aware of a plan by the Tualatin Valley Water District where they give a rebate to customers installing water efficient materials. One of those was water efficient irrigation heads. Mr. Hoekman wonders if the future agenda should discuss water conservation and invite water conservation speakers. Ms. Hollenbeck stated the most appropriate speaker will depend on what the board wants to know. She will work with Ms. Sneed.

6. PUBLIC COMMENT

At 10:25 a.m. Vice-Chair Lee opened the meeting for public comment.

Carolyn Groves

Ms. Groves stated the vineyard discussion today was interesting to her. She stated that she has an employee she is attempting to help obtain a license. He has been working in a vineyard for around five years. She is curious if this type of work qualifies him for the exam and licensing.

Ms. Sneed stated the board amended the qualifications about 2 years ago to include landscape related experience, so this type of experience should qualify.

Saul Gonzales

Mr. Gonzales stated he became licensed a few years ago. He stated he worked in vineyards. He further stated obtaining the license four years ago was much harder. He believes the changes to the qualifications and exam have been a good thing to get more people licensed.

Matt Triplett

Mr. Triplett stated that as an owner of a company one of his employee has taken the irrigation portion of the exam. He told Mr. Triplett that Shelley and Kim were great to work with and Mr. Triplett thanked them for being so helpful. He cautioned that as we go down the road and discuss things, the board may find things that they don't want to regulate and to be careful. There are things this board could chase that may take a lot of time. He believes past boards have determined some of these decisions are common sense. There are lots of ways to frame things to exclude them, but he believes keeping some on a case by case basis may be best. Mr. Triplett thanked the new board members for their service.

Ms. Hollenbeck stated there needs to be room to make determinations on a case by case basis to nail down the customer, but gives the agency the space to make choices.

Wayne Giles

Mr. Giles stated he was here all day yesterday and believes Ms. Sneed is wonderful. His concern with the LCB is not to over regulate, it difficult for the board and new people coming into the industry. As the board changes, there are different personalities and some new members may have agendas and that does make it stronger for the board and landscape contractors. Mr. Giles stated the first enforcement officer, Ken Roth stopped at one of his job sites. He stated he grew up with Mr. Roth. He asked Mr. Roth to check his truck and job site for any violations. Mr. Roth found a bond violation and issued a penalty to him. Mr. Giles stated he was confident he was 100% and would not have had Mr. Roth or he would not have asked Mr. Roth to perform this check.

Brock Ludlow

Mr. Ludlow stated a lot of his family is in farming. If the "hobby" farm wants to plant, he does not believe it should be regulated by the LCB.

Loren Radford

Mr. Radford stated he came to observe and get CEH credits. Mr. Radford is an instructor at PCC.

Public comment period was closed at 10:42 a.m.

7. ADJOURNMENT AND NEXT MEETING SCHEDULE

Board Action: Moved by Mr. Thomas and seconded to adjourn the meeting. Vote: 6-0. The meeting adjourned at 1:00 p.m. The next meeting of the Landscape Contractors Board will be February 21, 2014 by conference call. The following meeting will be held on March 21, 2014 in Salem.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager