

LANDSCAPE CONTRACTORS BOARD
Minutes of the March 20, 2009
Board Meeting
Roth's IGA
1130 Wallace Road
Glen Creek Room
Salem, Oregon

Please note that the minutes will not be approved until a regularly schedule board meeting.

PRESENT

Board Members

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

Others

Katharine Lazano, Assistant Attorney
General
John Gawlista, OLCA
Charlie Short
Valerie Hedrick, Attorney
Terry Scott Bradley

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 8:34.am.

B. Approval of Agenda and Order of Business

Chair Gascoyne announced this is a full meeting and several agenda items will be taken out of order.

Board Action: Moved by Mr. Lymp and carried to approve the new order of business and agenda. Vote 5-0 (absent - Sedlacek)

C. Approval of Minutes

1. February 19, 2009

Board Action: Moved by Mr. Triplett and seconded to approve the minutes of the February 19, 2009 Board meeting. Vote 5-0 (1 abstention – Ms. Sedlacek)..

Suggestions were made to amend the minutes.

Board Action: Moved by Mr. Triplett and seconded to approve minutes with suggested changes. Vote 5-0 (1 abstention – Ms. Sedlacek).

2. February 26, 2009

Board Action: Moved by Mr. Hollenbeck and seconded to approve the minutes of the February 26, 2009 Board meeting. Vote 6-0.

Suggestions were made to amend the minutes.

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

C. Exception/Appeal Training

The board reviewed the process of reviewing exceptions and the board's role and the options available to the board for a decision. The board will be hearing exceptions filed by a claimant at 1:00 p.m. today.

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 SB147 has passed through the senate chamber. He commended Mr. Lymp for all his help with this legislation.

Mr. Triplett stated he has personally lost close to 500 hours of continuing education hours due to the 7 day rule of submitting items to the office. He wants to review the 7 day rule. He further explained he is concerned about the amount of staff time this program is taking. He is wondering if after the 2-year audit cycle has passed, if it will not be as time consuming. Mr. Snyder stated he spends a lot of time on the phone explaining the CEH requirement and assumes that up until 2011 there will be even more phone calls and questions. After the first audit cycle, it may be fewer phone calls, but more program approvals, which is a learning process for those that are submitting documentation. Mr. Snyder also spends a lot of time communicating with the program providers about what is required. It does require a significant amount of time and after the first audit cycle, it may decrease. Mr. Triplett stated the process is burdensome, but the forms are not difficult to complete. Mr. Snyder hopes the program providers will come forward to get their programs approved and the individual licensees will not have to go through that process. Mr. Snyder stated the number of approved programs is increasing. Ms. Sedlacek is concerned that this program is an unfunded mandate at a time when with the board is looking at cutting the budget. She wonders if it might be better to delegate this program to another staff person to run this program instead of the Administrator. She further stated he is probably the best person for this job, but he is spending a lot of time doing this. Mr. Snyder stated as 2010 gets closer, he will become stricter with the timeframe and that Ms. Gladwill-Rowley has stated she is interested in taking over this program, if other duties can be moved around.

B. Financial Report**1. 2007-2009 Budget**

The Board reviewed the financial report as of December 31, 2008 with a comparison of December 31, 2007. The investments have grown slightly, but cash flow still is showing deficit spending. The biggest difference in the asset line (close to \$300,000) is due to the removal of the accrued civil penalties now being reported on a cash basis. Staff is still working on getting the civil penalty data out of the database in report form. The compensated absence liability has also been updated. The examination fees previously paid by candidates who have never taken the examination are required to be refunded which explains the negative amount showing in examination fee income. Staff sent letters to those candidates who are allowed refunds. The examination line item is also affected due to the change in administration of the examination. Reserves were not used this month to cover monthly expenses.

Mr. Snyder reported that Mr. Roth is contacting each respondent when a final order is issued to work out a payment agreement. Mr. Snyder stated he is extremely happy with the results Mr. Roth is creating in this process.

The Board reviewed the Cost Reduction Directive Policy issued by the Department of Administrative Services (DAS). This policy requires all management positions to take a pay freeze in salary and furlough days based upon the position's pay scale. The LCB has chosen to follow DAS policies as a semi-independent agency, unless it adopts a separate policy. This policy will only affect the Administrator's position. Other semi-independent agencies have acted on this policy differently. Mr. Snyder stated the economy is in shambles and the landscape industry is hurting. He believes the state is responding appropriately creating a positive perception of how government is being run. This new DAS policy does not affect semi-independent agencies, but he believes this board should review the policy in terms of perception. He is willing and able to follow this policy if the board needs this to take place. Chair Gascoyne stated he appreciates the offer and that Mr. Snyder is already losing vacation days and this should be taken into consideration. Mr. Triplett stated he does not accept this policy and he challenges the board to make this budget work and not have the staff harmed. The economy is bad, but he does not believe everyone should take a pay cut. Mr. Snyder's pay step increase was January 1, so this policy would not require a pay freeze for him; only the furlough days. Mr. Triplett reminded the board that industry members and an administrative position are very different.

Board Action: Moved by Hollenbeck and carried to implement a salary freeze for the administrator for the remainder of the 2007-09 biennium. Vote: 6-0.

Board Action: Moved by Mr. Triplett and carried that the board not follow the recommended furlough days in the DAS policy for the Administrator for the current biennium. Vote 6-0.

2. 2009-2011 Budget

The Board reviewed the 2009-2011 proposed budget. The board reviewed this budget with increased fees and additional fees for reinstatement of licenses and upgrade of licenses. The board focused on staff needs and fees. There has not been any license fee increases for seven years. The board concurred to have two staff investigators and three contracted investigators with no salary freezes and to increase license fees and add new fees. The board discussed looking at smaller, incremental raises in the future so it is not a large jump then. Mr. Snyder stated in state government he believes it is better to make the larger jumps and then not have to increase fees for a while. Fees within state government are different than business fees. The increase should sustain the LCB for at least five years and all fees should be adjusted appropriately.

3. PROGRAM REPORTS

A. Examination Report

The Board reviewed the examination statistics as of February 28, 2009. Mr. Hollenbeck reported a few weeks ago the Exam Committee completed a review of every question in the exam bank. They removed inappropriate questions and documented where to locate the answer for each question. A survey was completed by PSI to review how people were responding to the examination and the administration of the examination. The largest responses had to do with the information on the test. 80-85% responded with an average or above rating. Statistics show the number of exam candidates decreased slightly, which is normal with the change of administration to PSI. There is one issue in determining references for the grading and drainage section Mr. Hollenbeck is currently working on. Bob Nelson will be asked if he would like to be a member of the Exam Committee. In another 3-4 months another survey should be conducted. The board believes that for an initial survey the responses appear strong.

B. License Count

The Board reviewed the license count as of March 1, 2009.

C. Enforcement

The Board was provided with a listing of final actions taken from January 1, 2009 through February 28, 2009. There were 72 cases that had final action during that time frame. Mr. Roth explained there is one LCB investigator assigned to review Craigslist on an ongoing basis. He is removing advertisements that are in violation of ORS 671.530, sending an e-mail to the person who posted them letting them know they cannot advertise for this type of work and, if posted again, referring to the office for a civil penalty to be issued. He believes there is an increased awareness of licensed people referring violations to the office.

Ms. Gladwill-Rowley reported two contracted investigators have signed contracts with the LCB; one in the Medford area and one in Gold Beach. Also, staff have reviewed the collection of civil penalties, created a work flow for the collection and are currently researching another collection agency to submit outstanding penalties. All final orders are provided to Mr. Roth to contact regarding payment agreements. The board reviewed a collection report regarding the amount collected by the Department of Revenue.

D. Claims (Dispute Resolution)

There were 18 claims opened and 14 claims closed from January 1, 2009 through February 28, 2009.

E. Education

None.

4. PUBLIC COMMENT

Chair Gascoyne opened the meeting for public comment.

Larry Hoekman

Mr. Hoekman stated he is a landscape construction professional and has been in business for 23 years. Presently he is a consultant and has been conducting research and found two items of interest. The first is interior landscaping. There are interior landscaping companies operating without a license. A few of them do hold a nursery license and they believe this is their license to install interior landscaping. In recent years and particularly over the last few months he stated people are being creative with interior plants in containers inside buildings. Some of these containers have to be trucked in and are expanding to outdoor landscape planter areas. A few years ago he lost a bid to an interior landscape company for plants outside. They considered themselves to be "container planters" and decided they do not need a license. He provided the board with pictures of plant containers outside which represented large dollar figures. He believes it is an area where the LCB is lacking in enforcement and clarity to individuals who are pushing the envelop.

The second item is regarding eco roof systems. Roofing companies install plant materials on rooftops. The City of Portland is looking at increasing the acreage of rooftop gardens. There are special considerations required in installing these types of gardens. There is a difference in a roofer installing these plants and a landscape business doing the installation and not to mention the maintenance of these gardens. He believes the board is going to see a lot of this activity in the future. Some have already gone to the growers to implement an increase in production of specific plantings to meet the demands within the next five years. He thinks this is an area that needs the board's attention.

John Gawlista, OLCA Legislative Committee

Mr. Gawlista extended OLCA's gratitude and thanks for involving the industry in the different issues the board has come to deal with lately. They believe these issues are proceeding forward as a cooperative effort.

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

5. LEGISLATION

A. SB 147 Update

SB 147 passed the senate side and will now be heard on the house side.

B. Review of Active Bill Report

The Board reviewed a listing of bills the office is tracking. HB 2980 will be added to this listing.

C. OAR 808-002-0480 Rule Hearing

The Board was provided a copy of the rule hearing notice and reminded of the hearing in the LCB office on April 23, 2009 regarding the definition of irrigation.

6. OLD BUSINESS

A. Review of Mission Statement

Mr. Carper reported that at the January work session a proposed amendment to the Mission Statement was written:

To promote consumer protection and education; landscape construction professionalism and fair competition in Oregon's landscape contracting industry.

There was some public comment that assisted the board with this statement. The section about "professionalism" appears to be something the association would focus on and replaces contractor competency. Ethics and a code of conduct may need to be discussed. This will be deferred to the May board meeting. Public comment will be accepted at that time. Staff will research other agency mission statements and report at the May board meeting.

B. Search Committee Report/Thomas

Mr. Thomas contacted OLCA who stated they would like a representative on this committee. Mr. Thomas has been invited to attend their next board meeting to discuss the process.

C. Guideline Committee Report/Lymp

Mr. Lymp reported Willamette Graystone and Mutual Materials are working on the paver and concrete sections. Gordon Kunkle is working on the irrigation section and then it will go to Andy Smith at the IA to review. Mr. Triplett requested the maintenance section be sent to him to review.

D. LCB/LAB Report/Triplett

Mr. Triplett reported this meeting was a chance for representatives from different parts of the industry (landscape construction professional, landscape architects and landscape designers) to get together. The discussion was based on the word “plan”. The Landscape Architects Board (LAB) requested the LCB define the word “plan” from the LCB statutes as this is a professional overlap between the three professions. This meeting was primarily to get to know each other. The liaison from the LAB was invited to attend future LCB meetings. Mr. Triplett stated he will be attending the LAB meetings. The individuals present did not speak for their industries, but acted as a representative to get to know each other and the issues involved. The board was provided with Mr. Triplett’s notes from the joint meeting.

7. NEW BUSINESS

A. Ann Christensen/Request for Extension to OAR 808-003-0065(3)

Ms. Christensen canceled her appearance for this meeting.

B. Terry Scott Bradley/Request to Accept Experience

Mr. Bradley identified himself and explained he wants to take the LCB examination. He currently performs backflow testing and is a member of the American Backflow Prevention Association. However, his experience is over ten years old and the LCB staff denied his application. He stated there is current legislation to allow a limited specialty license through the building codes division, but this could take a few years. The board reviewed Mr. Bradley’s experience. Katharine Lazano, legal counsel, stated the Board’s rules and statutes do not allow for a case by case evaluation of special circumstances with a few exceptions. If the person is licensed by the CCB or if they have a license in another state, the board is allowed to evaluate exceptions to the licensing statutes on a case by case basis. Mr. Bradley stated he is currently licensed with the CCB.

Chair Gascoyne announced the board will convene in executive session under ORS 192.660(1)(h) to consult with legal counsel.

Members of the public left the room at 10:15 a.m.

The board returned to public session at 10:28 a.m. Chair Gascoyne announced the board did not take action or make a motion while in executive session.

Board Action: Moved by Mr. Hollenbeck and carried to accept the application of Scott Bradley to sit for the irrigation and backflow LCB license based on his past experience and CCB license. Vote: 6-0.

C. Claim 6359-101, Bruce W. Horton vs. Charles J. Short dba Horizon Garden & Landscape Specialties/Exceptions

Valeria Hedricks, attorney for the claimant presented the claimant's exceptions to the board via telephone. Charles Short appeared in person and responded to the claimant's exception. Counsel for claimant and Mr. Short were content to receive the board decision on Monday by phone from Ms. Gladwill-Rowley. Chair Gascoyne announced the board will convene in executive session under ORS 192.690(1) to consult with legal counsel.

Members of the public left the room at 1:28 p.m.

The board returned to public session at 1:35 p.m. Chair Gascoyne announced the board did not take action or make a motion while in executive session.

Board action: Moved by Mr. Triplett and carried to affirm the proposed order from the Administrative Law Judge on claim #6359-101. Vote 6-0.

D. Letter from Jim Ball, Licensee

The Board reviewed a letter from a retired licensee. Mr. Snyder has written a draft response and Chair Gascoyne will review.

E. Advice from Legal Counsel on License Jurisdiction

The Board went into executive session at 10:52 a.m. under ORS 192.660(2)(f) to consult with legal counsel to consider documents outside the public records law.

The Board returned to public session at 11:40 a.m. Chair Gascoyne announced the board did not take action or make a motion while in executive session.

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 3:08 p.m. The next meeting of the Landscape Contractors Board will be April 16, 2009 by conference call if there are agenda items. Otherwise the next meeting will be held May 15, 2009.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager