

LANDSCAPE CONTRACTORS BOARD
Minutes of the May 15, 2009
Board Meeting
Comfort Inn
Roseburg, 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
Joe Lymp
Larry Thomas
Matthew Triplett,

Others

Korey Knutz

Staff

Mike Snyder, Administrator
Kim Gladwill-Rowley, Program Manager

EXCUSED

Richard Hollenbeck

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:30 am.

B. Approval of Agenda and Order of Business

Board Action: Moved by Ms. Sedlacek and carried to approve the new order of business and agenda. Vote 5-0

C. Approval of Minutes

1. March 20, 2009

Board Action: Moved by Mr. Thomas and seconded to approve the minutes of the March 20, 2009 Board meeting. Vote 5-0.

Suggestions were made to amend the minutes.

Board Action: Moved by Mrs. Sedlacek and seconded to approve minutes with suggested changes. Vote 5-0.

2. April 16, 2009

Board Action: Moved by Mr. Carper and seconded to approve the minutes of the April 16, 2009 Board meeting. Vote 5-0.

Suggestions were made to amend the minutes.

Board Action: Moved by Mr. Thomas and seconded to approve minutes with suggested changes. Vote 5-0.

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 office is extremely busy. Mr. Snyder and Ms. Gladwill-Rowley met with the Worker's Compensation Division (WCD) on two occasions to discuss the issues surrounding the LCB licensees and the WCD requirement to have workers compensation coverage. WCD thinks about coverage in terms of subject workers; not employees or if they are on the payroll. The LCB's definition of workers is based upon direction and control of that person, whether or not they are representing themselves as an independent contractor and other tests. Even if they are not licensed as required by ORS 671, WCD may consider them an independent contractor. ORS 670.600 states if a LCB license is required and the person does not have one, they are not considered an independent contractor. WCD does not follow this statute; they have their own statute regarding independent contractors. One of WCD rules is if a worker (or all workers for an employer) is not paid more than a total for all workers of \$500 in a 30 day period, those persons are not a worker and the business is exempt from workers compensation coverage. LCB statutes state every licensed landscape contracting business is either exempt or non-exempt. Non-exempt means the business has at least one employee. WCD rules state that if the business only has only one employee and that person is working for less than \$500 in a 30 day period, the business is exempt from workers compensation coverage, but the LCB is requiring them to obtain it. There seems to be a difference in what both agencies are requiring.

Another issue the LCB is facing is if workers compensation coverage gets canceled, the LCB does not know about it. WCD website could be up to 30 days behind, so it is difficult for the LCB staff to determine coverage. Another example is when an LCB licensee is on record as exempt (not having employees) and is found working with employees, the LCB will issue a fine. WCD does not issue a fine unless a subject worker was injured and filed a claim.

The final issue with the WCD is leasing companies and temporary companies. Leasing companies are licensed through the WCD; temporary companies are not. Temporary employees are those used for a one time situation. Leased employees are those workers used on an ongoing basis. Temporary workers are covered by the temporary company; not the licensed landscape contracting business. Leased employees are covered by the leasing company unless the landscape contracting business has coverage. Leasing companies are also responsible for coverage over non subject workers of that landscape contracting business if that landscape contracting business does not have coverage of its

own. Mr. Snyder and Ms. Gladwill-Rowley are working towards determining policies regarding these issues.

Mr. Snyder reported the staff prepared a flow chart to define how to go about performing collection activities. This flow chart is a work in progress. Staff believe the ripest time to collect a civil penalty is between the time the penalty becomes final and 60 days later. Copies of all final orders are now going to Mr. Roth who contacts the respondent by phone to discuss a payment plan. After 60 days the file is reviewed to determine assets. If assets are found, liens are filed and the file is transferred to either the Department of Revenue or a private collection agency under contract with the LCB. This process is proving successful.

B. Financial Report

The Board reviewed the financial report as of April 30, 2009 with a comparison of April 30, 2008. Mr. Snyder reported the lease at 235 Union Street was a great deal. Moving to the new location has cost more, but has been a benefit. Cash flow is at a positive level at this time. Mr. Snyder anticipates not spending out of reserves in the future. He also anticipates contracting with up to five contract investigators. The \$100,000 CD coming due in August 2009 will probably be broken into smaller CD's. The budget seems to be where the Board thought they would be two years ago.

3. PROGRAM REPORTS

A. Examination Report

The Board reviewed the examination statistics as of April 30, 2009. Mr. Snyder contacted North Carolina and received a copy of their study manual; which is one book. This manual does not contain irrigation information. North Carolina is a one license system.

B. License Count

The Board reviewed the license count as of May 1, 2009. Chair Gascoyne noted the number of business licenses has decreased by approximately 34 in last 7 months and landscape construction professional licenses have decreased by sixteen. However, the numbers are the same in May 2008 as May 2009. Statistics have not changed from year to year. Mr. Snyder stated he seems to be approving more new applications recently than in past years.

C. Enforcement

The Board was provided with a listing of final actions taken from March 1, 2009 through April 30, 2009. There were 93 cases that had final action during that time frame. Mr. Snyder reported there were some complaints about Angie's List, so he paid to become a user. He found a landscape contracting business cannot place their own business on this listing; this information is placed by the consumer. There does not seem to be enough information to know where the job site is or who the customer is when the consumer states landscaping work was done

D. Claims (Dispute Resolution)

There were 21 claims opened and 19 claims closed from March 1, 2009 through April 30, 2009. The board discussed claims and enforcement actions on the LCB website. This item will either be discussed at the end of the meeting or at the July 2009 meeting.

E. Education

Mr. Snyder reported he sent Mr. Van Houten to Redmond to attend the trade show. While there, he was contacted by Qwest and Northwest Natural Gas regarding the Call Before You Dig issue. They stated that 70% of their issues are with contractors not calling to verify utilities. An article will be in the next LCB newsletter and they were also referred to OLCA to discuss this issue at chapter meetings.

4. PUBLIC COMMENT

Chair Gascoyne opened the meeting for public comment at 1:00 p.m.

Kory Knutz, licensed landscape construction professional reported that in McMinnville he is forming a small association to connect the small businesses in that area to what is going on in the industry. The overall point will be less regulation. He wants to attempt to become more aware of what is being proposed at the legislative level. He is concerned about the amendments to the LCB's legislative bill and wonders how to be better informed. Mr. Snyder stated he is not always aware of amendments either. He suggested contacting the Administrator of the committee where the bill is being heard. In the absence of having a legislative lobbyist, attendance at the public hearing is the only way to be informed.

Chair Gascoyne closed the meeting for public comment at 1:14 p.m.

5. LEGISLATION

The Board reviewed a listing of active bills the LCB staff is tracking. If the bill was not heard on the originating side of the legislature and voted on by its own assembly by April 28, 2009, it is presumed dead. SB 203A impacts landscape contracting businesses by stating "contractor of origin". This bill requires a notice of right to lien. Mr. Snyder stated the lien law is something the LCB needs to discuss in depth at some point. Staff will request legal counsel review this law and have this discussion at an upcoming meeting.

A. SB 147 Update

Chair Gascoyne reported SB 147A has 2 more amendments that are attempting to be attached to this bill. OLCA was having difficulty on the Senate side with SB22 and opted instead to submit their bill as an amendment to the LCB bill, SB 147 Bill Cross received approval from Representative Schauffler to do this and a public hearing was held. A group of licensees who had reviewed this amendment offered public testimony against this amendment.

Mr. Snyder briefly explained SB 22 requires everyone that applies pesticides on another person's property for compensation must have a pesticide applicator's license unless they are performing landscape maintenance work on a residential one or two dwelling family property. Then, that person could apply the pesticide if the homeowner purchased the pesticide and the homeowner instructed the person how to apply it and provided the means to apply it. Essentially, they are stating the chemicals are dangerous and a license is required, but the homeowner may purchase and instruct a landscape maintenance business how to apply. This exemption is solely for landscape maintenance businesses only. Currently the law states you are exempt if applying non restricted chemicals on residential, single dwelling property and not advertising for this work.

Mr. Snyder stated he was told there are businesses that have their pesticide applicator's license and they see someone spraying who is not licensed and they want a level playing field. This bill affects every licensed landscape contracting business since this exemption is not given to them, they will be required to obtain a license for pesticide application. Mr. Gascoyne stated he believes this is a bad law.

Kory Knutz with Valley Green Landscape stated he testified on this amendment. There is no way to contact the large population who will be affected by this legislation – the landscape maintenance businesses. He stated it is frustrating for him to know when amendments are coming and there is no way for him to find out about amendments outside the LCB. He does not have an applicator's license. He stated it is a way to apply a smaller screen to the current system, but is not a good way to regulate the industry. He believes 80% may be demolished by a requirement like this, driving up the cost of landscape maintenance. This will be a huge impact on the "small guy". Mr. Knutz is not on the OLCA board or even a member of OLCA. He stated a current member of OLCA told him he was not aware of this amendment either. There were three landscape construction professionals who testified at the Senate hearing last Wednesday. If a smaller company does not have the applicator's license and has to subcontract this work, it will cost more to the homeowner for landscape maintenance.

Legislative committee members believed this amendment was non controversial and that it would have no opposition and were told the Senate would concur with this amendment. The Committee Chair wants a flow chart that a 4th grader can read that lists the required licenses. Mr. Snyder is hoping this amendment will be dropped and not added to SB147.

The second amendment by Andy Leisinger regarding the Landscape Architects Board appeared to be understood by the committee. The Landscape Architects Board statute states that anyone the LCB exempts, the Landscape Architects Board exempts also. This exclusion is proposed to be removed from their statutes through the LCB's legislative bill.

B. HB 2815 A (Compliance Network)

HB 2815 has a fiscal impact. A \$7 fee would be assessed through the Secretary of State through the registration of businesses. That money would then be dispersed to specific state agencies to fund part of this network. The remaining portion would be held by the Department of Revenue and used by other agencies (including LCB) to pursue litigation action on independent contractor issues.

C. HB 2057 (semi-independent health boards)

Mr. Snyder stated this bill did not move out of committee on the House side and is presumed dead.

6. OLD BUSINESS

A. Final Proposed Budget and Fee Increase (Rule Hearing 5/29/09)

The next board meeting will be May 29, 2009 at 1:00 by conference call to review the budget and rule hearing outcome. The rule hearing will be held at the LCB office.

The newsletter went out the first of April 2009. This newsletter had to be mailed to both individual and business licensees due to the proposed adoption of a new budget. The LCB is required to notify all licensees when there is a hearing regarding the budget. Mr. Gascoyne would like to see an explanation of why the April 2009 newsletter was sent to some people twice (once as a landscape construction professional and once as a landscape contracting business).

A few comments have been received about the proposed fee increase. As responses and comments come into the office, they will be dispersed to board members.

B. Review of Mission Statement

Mr. Carper thanked staff for the example of other agency's mission statements. "Protect the Public" is in almost all of them. The LCB's is "consumer protection" and he does not believe it is the same thing. This needs to be created as a team (staff and board) to be useful to the public (Oregonians). The first draft reads:

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

Board members will review the information provided and attempt to draft a new statement for discussion at the July meeting. A few hours of time will be carved out for this topic.

Chair Gascoyne stated commitments that members make above being members of the board sometimes prove to be quite burdensome. Mr. Thomas stated at the time he took the Chair position of the Search Committee he thought he would be able to put forth the time to perform the work. Now he is concerned about his commitment to reach the goal to have a committee in place to make some good decisions and recommendations for

the process, due to the struggle he is having with his own business. He stated he felt he should resign from the board to make room for someone with more time because he did not want to be a catalyst for failure. At this point, he has a new commitment to continue on the Board, but does not believe he can chair the Search Committee.

Ms. Sedlacek stated this is a very committed board and the work of this committee should be adjusted and redistributed. This committee needs to be a priority. She believes she has been in the same boat with the reviewing of items from the Guidelines Committee. She feels like she is struggling with her business too. She believes all board members are feeling this pressure.

The Board discussed how to adjust and attempt to make it easier for the committee chairs and members.

C. Search Committee Report/Thomas

Mr. Carper recommended making the Search Committee duties a permanent agenda item. This means "homework" assignments will be given out at Board meetings to different members until it is at a manageable point and someone else can take over. Mr. Thomas will present where he is to date with the committee schedule, etc. by e-mail to the office and Chair Gascoyne. This will be distributed and responses are to be returned to the office only. Mr. Thomas reported OLCA has not responded with a selection for the committee.

D. Guideline Committee Report/Lymp

Mr. Lymp reported the Guidelines Committee is making good, steady progress. All the chapters are assigned and being reviewed. He is encouraged by the quality of industry experts working on this. It is still a work in progress without an end date. He is unsure how this will come together in the end, but he was able to separate each section and e-mail them out. He plans to keep up the communication of the members of the committee. There have been enough volunteers to do the work.

E. Correspondence with Licensee

At the last meeting the board reviewed a copy of a letter from a licensee. Mr. Snyder has responded to his first letter and this licensee has again submitted another letter. Mr. Snyder has responded to him again. Mr. Snyder stated he appreciates it when licensees take time to submit inquiries and he will always respond, even though they do not come to the board's attention. The more information someone has the greater difference they can make.

F. Continuing Education Hour Rules

The Board reviewed the temporary rule amendment filed May 13, 2009. Mr. Triplett stated he believes board member should be granted CEH credit for attending board meetings. Mr. Snyder stated the board needs to be aware of the perception. Mr. Triplett stated it is more of an incentive for board attendance. The Board discussed providing CEH for those licensees who attend board meetings. Anyone who applied for CEH approval after the course and were

denied due to the 7-day rule will be reviewed again and granted approval, if they qualify based on the temporary rules.

Board Action: Moved by Mr. Triplett and seconded to support the emergency rule as presented. Vote: 5-0.

G. Landscape Architects Board (LAB) Update

Mr. Snyder reported he attended the LAB meeting on May 8, 2009. When he arrived there were people addressing the board from the City of Portland (engineers and the transportation bureau). They were discussing curb extensions on streets in the city and when engineering crosses over into landscape architecture. The City was constructing a lot of these curb extensions in-house. They are also doing a lot of permeable paving. Mr. Snyder wonders if the landscape contracting businesses will be installing these, then who is responsible for the water beneath the street and what happens to the street as a result.

The LAB also had Mr. Pellitier talk about the meeting that took place between the LAB, LCB, and designers, etc. Mr. Pellitier stated it was a 4 hour meeting for members to get to know each other and the agenda items. His comments to the LAB included that he did not feel he could do much in this arena because he did not know the LAB's position. Approximately five designers also appeared at the LAB meeting, and they stated they were just trying to stay within the law. Mr. Snyder told the LAB the LCB representatives are empowered to discuss this issue with the group and to come to a group consensus so they come back to the board with the solution for the board to review. Unless the representative is empowered, it will be a waste of time. If there are judgments, this group needs to know what they are and if the LAB is open to this discussion, then they should empower their representative. The LAB Chair agreed and empowered Mr. Pellitier to represent the LAB. The LAB Chair further stated he would like to see this group nominate a chair.

Mr. Snyder spoke with the landscape designers outside the LAB meeting. He told them designers for the LAB are like landscape maintenance for the LCB. If an exemption is made for landscape maintenance businesses, potentially, this exemption is being given to the whole world. This is the same with landscape architects and designers. The exemptions are not given to a "set" of people when these people are not licensed, but to everyone. Designers want to increase the scope of their work and unless they are willing to show a level of competency and have that recognized, it is unlikely that it will happen.

Chair Gascoyne stated it appears both boards want this to be a formal committee and see if a joint committee may be formed. He directed Mr. Triplett to proceed to schedule another meeting with the group. Mr. Triplett stated the next meeting is scheduled around June 19th. Staff was directed to seek legal advice about a joint committee. Mr. Triplett stated this group needs to be created to be equal

between both boards and the Chair position may need to be a joint chair. Steve Carper volunteered to be on the committee.

7. NEW BUSINESS

A. Administrative Rule Hearing Report

Mr. Snyder reported a rule hearing was held regarding the definition of irrigation systems. There were no comments or testimony given. The board reviewed Mr. Snyder's Hearing Officer Report.

Board action: Moved by Mr. Triplett and carried to adopt rule change to OAR 808-002-0480. Vote: 5-0.

B. Judgment of conviction/criminal Impersonation

The Board reviewed a memo from board staff regarding a judgment of conviction of criminal impersonation of the Landscape Contractors Board. In September 2007 it was brought to the LCB staff's attention that an individual was using a mocked up letterhead for the LCB. This letter was addressed to an LCB licensee requested they pay a past employee \$400. The LCB issued a letter to the individual stating impersonating a public servant is a crime and making a false instrument is a crime and requesting they cease and desist from engaging in any such conduct. The Bend Police Department became aware of the situation through the licensed landscape contracting business, spoke with the LCB investigator and charges were filed against that individual. She was convicted of criminal impersonation and was required to pay the LCB \$25, have no contact with the LCB or the LCB licensee and complete 80 hours of community service within 6 months.

C. Requirement for Material Supplier Claim and Equipment Claim to Include Job Site Address

Ms. Gladwill-Rowley reported the LCB statutes require claims to be about work subject to ORS 671.510 to 671.760. This means landscaping work within the boundaries of the State of Oregon. The LCB office has recently been receiving more material supplier claims. Several of these claims do not include the job site addresses. The Board reviewed a letter from a material supplier who filed a claim, but does not have a job site address. The material supplier explains that if the materials are delivered, the job site address is part of the claim. However, if the licensee picks up the materials he is likely to pick up materials that will be divided amongst a number of ongoing projects and they have no access to the final destination of the specific materials. The material supplier requests the board revisit the requirement for a job site address. The board discussed this requirement and the only way to determine if the work is within the boundaries of the State of Oregon is to require job site addresses. Job site addresses will continue to be required.

D. Workers Compensation Division (WCD)/Exempt and Non Exempt

The board discussed ORS 671.525 regarding exempt and non exempt classifications and the fact this statute does not require workers compensation coverage; it is only about being exempt or non-exempt. LCB statutes refer to employees and WCD statutes refer to subject workers. The LCB may have a business listed as non-exempt; however, the WCD may not require them to have coverage. Staff will continue to research this issue.

8. ADJOURNMENT AND NEXT MEETING SCHEDULE

Board Action: Moved by Mr. Triplett and seconded to adjourn the meeting. Vote 5-0. The meeting adjourned at 2:45 p.m. The next meeting of the Landscape Contractors Board will be May 29, 2009 by conference call.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager