

LANDSCAPE CONTRACTORS BOARD
Minutes of the November 15, 2013
Board Meeting
Salem, Oregon

PRESENT

Board Members

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

Others

Katharine Lozano, Assistant Attorney
General

Staff

Shelley Sneed, Administrator
Kim Gladwill-Rowley, Program Manager
Michael Hintz, Investigator
Jerri Jones, Licensing Specialist

EXCUSED

None

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:35 am by the Chair.

B. Approval of Agenda and Order of Business

Board Action: Moved by Mr. Thomas and seconded to approve the November 15, 2013 agenda. Vote: 5-0 (Annie Lee was out of the room).

Introductions of new board members and new staff were made: William Bumgardner & Christine Hollenbeck are new board members and Michael Hintz & Jerri Jones are new staff members.

C. Approval of September 20, 2013 Minutes

The Board made a minor edit to the September 20, 2013 minutes.

Board Action: Moved by Mr. Hoekman and seconded to approve the September 20, 2013 minutes. Vote: 6-0.

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 and Ms. Gladwill-Rowley have access to on-line banking for the LCB accounts. Staff cannot transfer funds without

board approval – this approval is granted by the Board Chair. The main use of the on-line access will be to keep up to date on the balance and transfers can be made in a timely manner without having to physically go to the bank.

Ms. Sneed stated she has spoken with OLCA & SOLA to partner on consumer education on licensing and why it is important to hire a licensed business. More work will be done on that in 2014 after the financial review.

The Exam Committee will meet for three days in December 2013. This will be six months after the open book, extended time for non-English speaking candidates, and having the exam questions primarily referenced to the Sauter book went into place. The minimum competency standard will be discussed at the exam committee meeting to determine how to get the pass rate up to at least 60%.

The legislative landscape contractor work group will meet November 20th in Salem. A report will be sent to Board members after that date. Mr. Thomas stated it appears there is a door to make some legislative changes and still save the integrity of the Board. The concerns regarding the barriers to entry and the exam have already been put into place.

B. 2011-2013 Financial Report

The Board reviewed the updated unreconciled financial report as of October 31, 2013. The balance sheets show that the total check/savings are \$14,000 less than 2012 and that the total liabilities are \$2,000 less than the prior year – the change is primarily compensated absences due to two longer term staff members leaving the LCB's employment. On the Profit & Loss previous year comparison, there are several fees that are paid in the first year of the biennium, which means the cash outlay is higher as compared to last year, which was the second year of the biennium. The LCB also purchased a new server and desktop computer, which totaled over \$6,000 in the first few months of this biennium.

The initial four months of this biennium show positive licensing revenue, exam income and civil penalty collections; the total is nearly \$10,000 above last year. There has been new interest in licensing and the exam materials sales show that individuals are buying the resources to prepare for the exam.

New income is \$28,000 more than last year – that's a 100% increase! Employee costs are nearly \$23,000 less than last year due to not filling the ASII position and having a temporary in the Licensing Specialist position for a short time. Account #5016 is the unemployment insurance and the LCB has paid out \$5,213 this biennium. Ms. Sneed is expecting to have to pay a total of two quarters worth of unemployment insurance and then that expense will be gone.

There is nearly \$4,000 in temporary labor costs; that was the temp that filled the Licensing Specialist position. Postage costs are higher than the previous year due to the annual state mail charge that is paid each year of the biennium

totaling \$5,720. The line item in the budget for this item was \$24,000, so there will be a significant budget excess in that line item.

The Hearing Officer Panel and DOJ expenses are less than last year. We have had less complex cases and fewer cases going to hearing due to settling penalties for the first and second offenses. Board meeting expenses are lower than last year, primarily due to canceling the July board meeting. Computer expenses are higher than last year due to the new server and desktop and their configuration.

LCB Total Income is nearly \$48,000 over budget, Direct Costs are \$24,000 under budget, and Administrative Expenses are nearly \$4,000 under budget. Overall Net Loss is \$326 for the first two months of the biennium, which is encouraging given the significant expenses incurred in the first year of the biennium. As licensing and application fees continue to increase, the agency will see a decreased need to dip into reserves. Ms. Sneed anticipates doing a budget revision later in the biennium depending on how revenue continues to change.

Board Action: Moved by Ms. Lee and carried to approve the unreconciled financial report. Vote 6-0.

C. Realignment of Compensation with DAS

Ms. Sneed reported that due to budget decisions made by the Board for the July 1, 2012 through June 30, 2013 budget period, the agency's compensation system is no longer in alignment with the DAS system. The Board reviewed the DAS personnel budget changes for the last biennium and the LCB's. The agency is currently using the old DAS compensation schedules due to changes made for other State employees that weren't adopted by the LCB. The board decisions were good decisions for the agency. The after affect is that the LCB compensation schedule is no longer current and congruent with other agencies and the LCB will have to keep it's own records for position classes and corresponding compensation levels. Ms. Sneed proposes adjusting employee compensation to the current DAS levels. Based on personnel changes, the LCB has lost several long term employees and has not filled the ASII position. Moving all positions up to the current DAS classification level would still save the agency \$30,000, while maintaining the Investigator at a full time position for the full biennium. Ms. Sneed proposes this change to all agency positions as of December 1, 2013.

Board Action: Moved by Mr. Thomas and carried to realign staff compensation to the DAS compensation effective December 1, 2013 and reinstating the investigator position to full time July 1, 2014. Vote 6-0.

3. PROGRAM REPORTS

A. Examination Report

The Board reviewed the examination statistics from 2003 through October 31, 2013. There were 748 exams taken the first ten months of this year compared to 774 the first ten months of 2012. The passing rate for some of the exam sections has increased, but not to the 70% goal.

Ms. McDowell has received several comments from licensees and they feel that the exam being open book is too easy for the applicants. She stated she explains this makes the test more open to those applicants that are not comfortable with testing and open book does not mean it is a “give away” test. Ms. Sneed stated the changes are about accessibility of the industry. There is a lot of ethnic diversity in this industry and the exam is not accessible for those whose first language is not English. Also, to use the book during the exam, you have to be familiar with the topics. The Board is aware that getting the pass rate to 70% will not help those comments that the exam is getting easier.

The Board discussed the fact there are no courses or practice tests for this industry. The Board discussed the newsletter having a question from the exam each time so the current industry is aware of how difficult the exam questions may be.

B. License Count

The Board reviewed the license counts as of November 1, 2013. The numbers of licenses are about what they were this time of year in 2011.

C. Enforcement

The Board reviewed a listing of final actions taken from September 1, 2013 through October 31, 2013.

The Board reviewed an advertisement from Craigslist that states “sprinkler repair.” Assistant Attorney General Katharine Lozano stated she believes this would not be a strong case if it went to hearing. The definition of “repair of irrigation systems” does not include “sprinklers”.

Mr. Hintz reported that he has inherited an individual in Brookings that has done jail time for landscaping work without a license. In December he is planning to go to Brookings to meet with the DA to encourage him that this is a local consumer protection issue. There has been a current issue regarding the local gardening club wanting this individual to be their President. Mr. Salomone spoke with a representative and explained that this individual is not licensed and has had violations. They chose not to have him as their President.

D. Claims (Dispute Resolution)

The board reviewed a listing of closed claims from September 1, 2013 through October 31, 2013. There were three claims closed. Mr. Hintz has already been involved in three mediations during his employment.

E. Education

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

4. OLD BUSINESS

A. Proposed Administrative Rule/Planting License

The Board reviewed a proposed rule amendment to allow for a Planting License. The rule hearing was held June 11, 2013 and no one was present. At the September 20, 2013 meeting the Board voted to approve the rule amendment to allow for a Planting License. Staff have reviewed the rules and procedures and are making the following recommendations.

Exam Restructure

The exam restructure that was presented at prior Board meetings has been reviewed against the current structure. It was determined that this restructure had a miscalculation for the number of questions to be used in Grading & Drainage.

Section D was eliminated and divided amongst the proposed remaining sections: Moving these questions made Grading & Drainage 83 questions instead of the 55 – this was the miscalculation in the Excel document. The sections from D were moved as follows:

Topic	# of Questions	Moved to:
Estimating/Plan Reading	5	Plants
	7	Hardscaping
Safety	14	Grading & Drainage
Soil Science	10	Grading & Drainage
Design	14	Grading & Drainage

Staff recommends changing the exam section titles and moving section D categories into other categories as listed above and in the attached restructure) and decreasing the number of questions in Grading & Drainage as follows:

Topics	Current #	Proposed #
Cut & Fill	3	2
Drainage Materials	4	3
Effects of Grading	5	4
Erosion Control	6	5
Grading/Drainage Calculations	6	5
Plan reading – drainage	5	4
Soil types	5	4
Surface/Subsurface drainage	6	5
Surveying	5	4
Soil Science	10	8
Safety	14	8
Design	<u>14</u>	<u>8</u>
TOTAL	83	60

The Board believes grading & drainage is very important and wants to make sure the reduction of questions is reviewed thoroughly. The Board directed the Exam Committee to review the Section D questions and determine where those questions should be placed and then also determine the number of questions for Grading & Drainage and adjust the time allowed for that section of the exam, if necessary.

Board Action: Moved by Ms. McDowell to delegate the review of Section D and realignment to new sections of the exam to the Exam Committee. Vote 6-0.

EXAM SECTION TRANSFER/TEMPORARY RULE

There are many exam applicants that are in the process of testing for licensing. Some of these applicants have passed different sections of the exam. The rules need to show which current exam sections transfer into the new exam sections.

The Board directed staff to notify all applicants currently in the process about the changes coming up to the exam. Staff will wait until after the Exam Committee has completed the review. This will give those applicants the chance to make an informed decision on how to proceed and the Board believes this is treating everyone fairly.

The rule regarding how the current exam sections transfer into the new exam sections will be determined after the Exam Committee completes their review. A temporary/emergency rule may have to be put into place.

OTHER PROPOSED RULE AMENDMENTS/TEMPORARY RULE

Upon reviewing everything to implement this new license, OAR 808-003-0040 only states a planting license holder may “install”; it does not mention “plan” or “prepare property”. It also talks about grading and drainage services for the installation of “nursery stock”; it does not mention these services for the installation of a “lawn” and a lawn is not nursery stock.

Staff believes these services are necessary for the planting license. They need to prepare the property if installation of a lawn or nursery stock are to be installed. Otherwise, a planting license holder will have to subcontract that work to a standard or all phase license holder, which was not the intent of the planting license. The board also agrees these services are necessary.

Staff recommends a rule change to add “plan” and “prepare property” and grading and drainage services for a lawn.

The Board directed staff to go through the rulemaking process to amend the rule to include plan, lawns and preparing property for lawns, shrubs, trees, vines and nursery stock.

March 1, 2014 is the anticipated date for this license to be available and the exam section amendments.

Ms. Sneed reported the Landscape Architect Board is ready to schedule a meeting with the LCB for early next year. She will contact the three board members who are involved (Gawlista, Thomas, & McDowell) with prospective dates.

5. PUBLIC COMMENT

At 10:58 a.m. Chair Gawlista opened the meeting for public comment.

Lee Stevenson stated he is representing OLCA and has nothing to report.

Public comment period was closed at 10:59 a.m.

6. LEGISLATIVE

None.

7. NEW BUSINESS

A. Executive Session

Chair Gawlista read the executive session statement and all public members left the room. Executive Session began at 11:03 a.m.

Chair Gawlista brought the meeting back into public session at 11:43 a.m. No decisions were made and no votes were taken during the executive session.

8. 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 December 19, 2013 by conference call. The following meeting will be held on January 16 & 17, 2014 in Beaverton at Tualatin Valley Water District. The meeting on January 16th will begin at 9 am.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager