

LANDSCAPE CONTRACTORS BOARD
Minutes of the July 18, 2008
Board Meeting
Tualatin Valley Water District
Beaverton, Oregon

Please note that the minutes will not be approved until the Board meets on September 19, 2008.

PRESENT

Board Members

Matthew Triplett, Chair
Marty Gascoyne, Vice-Chair (arrived
10:00 a.m.)
Steven Carper
Richard Hollenbeck
Joe Lymp
Larry Thomas
Lisa Walter Sedlacek

Others

Joanna Tucker-Davis, Assistant
Attorney General

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 8:32.m.

B. Approval of Agenda and Order of Business

The agenda was approved as written. The minute approvals were moved to take place after lunch. The financial report was moved under item 5.B.- Budget Overview and Discussion.

Board Action: Moved by Sedlacek and seconded to approve the agenda as presented with changes.
Vote 5-0

C. Approval of March 21, 2008 Minutes

i. May 16, 2008

Board Action: Moved by Mr. Hollenbeck and seconded to approve the minutes of the May 16, 2008 board meeting. Vote 6-0.

Mr. Gascoyne stated the minutes are a public record so the public can see what transpires at the meeting. However the May minutes may be unclear to the public. The future board is gong to want to find out how this board arrived at the changes they were considering, so the detail in the minutes may be important.

The Board discussed the level of detail they want included in the minutes and determined that less statements by individual board members would be appropriate.

Board Action: Moved by Mr. Gascoyne and carried to amend the motion to reflect the amendments as discussed. Vote 6-0
Vote to approve minutes as amended. Vote 6-0.

ii. June 25, 2008

Board Action: Moved by Ms. Sedlacek and seconded to approve the minutes of the June 25, 2008: Vote: 6-0.

2. Administrator's Report

A. Office Update

The Board reviewed Mr. Snyder's report, which is attached and made a permanent part of these minutes. The Board also reviewed an update regarding SIBA (Semi-Independent Board Administrators). This group met July 16, 2008 and discussed insurance. SIBA agencies pay into DAS for the administration of the insurance policy. If there are losses, SIBA agencies are required to pay that back. The LCB has had some claims so this will likely affect the rates for the next biennium.

Semi-Independent state agencies are the only state agencies that are audited every two years. The Secretary of State is allowing these agencies to determine whether they want a financial review or an audit. A review does not provide the same level of protection as an audit. SIBA members believe an audit is better for the next biennium due to the political exposure Semi-independence is experiencing this session.

The legislature is looking at bringing more of the oversight of semi-independent agencies back under their purview. The Governor will be introducing some legislative amendments around boards in general. They include: board members can be removed without cause by the Governor, board members cannot have a family member licensed in the industry on which the board regulates, granting boards the ability to do background checks for licensing, the governor obtaining the right to terminate the Executive Director and all boards to submit quarterly compliance reports.

Ms. Sedlacek mentioned she received a copy of the recording from the May 2008 meeting and it was difficult to hear. She suggested microphones around all tables.

B. Financial Report

This agenda item was moved to item 5.B.

3. PROGRAM REPORTS

A. Examination Report

The exam statistics show the numbers of examinations are increasing. One of the goals was to increase the passing percentage, which seems to have increased to approximately a 33% pass rate. The passing rate for the plant section has

increased significantly. The monthly difference in the passing rate seems to have leveled off.

i. PSI Contract

Mr. Snyder stated the examination is an area the LCB has made a huge improvement since semi-independence with Richard Hollenbeck's persistence and time. This takes a lot of time and getting the exam committee together is a big task. It is in the best interest for the exam and the agency to subcontract the examination to someone else that is psychometrically able to administer it. Mr. Snyder and Mr. Hollenbeck met with a representative from PSI who administers the exam for the Construction Contractors Board (CCB). The DMV contacted the LCB office and stated that they no longer wish to proctor the LCB examinations as of the end of 2008. Effective January 1, 2009, the LCB has to find another way to administer the exam throughout the state. PSI would be an alternative. PSI has stated they are willing to take the licensing process from application to issuing the license and the costs seem reasonable. Mr. Snyder stated he is not comfortable giving all the functions of licensing to someone else. However, the owner/managing employee exam has been written and is available through PSI.

Mr. Snyder checked with Lasergrade (another exam provider) and PSI has just acquired the Lasergrade company. They will make one of Lasergrade's testing facilities in Salem available for the LCB exam. Applicants will pay \$65 for the first section and \$10 for each additional section. The current charge is \$15 for the first section and \$10 for each additional section. PSI will issue a certificate for each section passed and monitor the questions, pass rates, difficulty of questions, write new questions based on materials the LCB provides and bring the exam committee together at PSI's own expense to review questions and update exam at least once annually. The LCB will receive \$5 for every sitting for the exam. This will take the administration of the exam out of the LCB's hands and place it in a professional's hands.

Staff will continue to handle the application and licensing process. The Board discussed the control over the questions, which will be reviewed by the LCB's exam committee. The cost is a \$50 increase per exam sitting. Current revenue and costs to administer the exam show the exam as a "wash". This will free up staff time in the office to do other important things. The Board would like to review the \$60 application fee to determine if it can be decreased. It's been approximately 5 years since there has been an increase in the exam fee. The Department of Justice is reviewing the PSI contract at this time.

The Board believes PSI is a professional organization and may be able to perform the approval of the application and the issuance of the license. Mr. Snyder believes the approval of applications and issuance of licenses needs to continue to be performed by the LCB. The contract with PSI will be only for the exam at this time and later the application and licensing process may be reviewed.

Board Action: Moved by Hollenbeck and carried to direct the Administrator to proceed with entering into a contract to have the LCB test administered by an outside company. Vote 5-0.

ii. Owner/Managing Employee Course

Mr. Snyder stated Superior Training Systems contacted him to discuss the owner/managing employee course. This is modeled after the CCB course. Superior Training Systems are accredited in the state of Oregon as an education provider. Mr. Snyder provided them with a copy of the manual written by the LCB and Superior Training Systems created a self study course and is requesting approval. Mr. Snyder stated he is ready to approve the course. This course will cost \$160. Clackamas Community College and Portland Community College have shown interest in the course. Mr. Snyder is hoping on-line courses will soon be available.

B. License Count

Mr. Snyder reported there is an individual who was caught performing landscape work without a valid license a couple years ago and was recently caught again. This individual is now taking the exam and paying his civil penalties. He was in the office yesterday taking the exam and shook Mr. Snyder's hand and thanked him for catching him and giving him the opportunity to obtain the license, which has always been a goal of his.

Late renewals

Ms. Gladwill-Rowley reported the statistics show more licensees are letting their licenses expire. She stated they are renewing the licenses late and paying the \$25 late fee. This creates more work administratively.

C. Enforcement

The Board was provided with a listing of final actions taken from May 1, 2008 through June 30, 2008. There were 104 cases that had final action during that time frame.

Ken pointed out there are more cases where contract standards are not in place and several of these cases come out of the claims process.

Mr. Snyder reported Mr. Varble who has an injunction against him and has been arraigned in court has quit paying his restitution. The Department of Justice would like to know what we want to do. There are a couple options: send it to the Department of Revenue for collection or have him arrested. However, the Department of Justice has lost track of him and need an updated address. Mr. Snyder suggested contacting the District Attorney in Lane County and seek their help tracking him down at their expense or send Mr. Roth to Florence to locate him.

The Board reviewed a public service announcement the office placed on CraigsList informing the users a license is required for landscape contracting. There are eight areas in Oregon and CraigsList did not allow the LCB to put it in all eight. The next

step is to discuss with CraigsList how to have this public service announcement out there regularly.

When enforcement referrals are received, most of them come from the industry and a fair number are about other licensed businesses that are doing illegal things (incorrect bond size, no direct supervision, paying under the table, etc.) This goes towards the "fair competition" part of the LCB's mission statement. Licensee want to know that those they are competing against are following all laws and rules that they follow. The complaints are not about bad work, but about not following the law.

Board members reviewed some documents regarding what it costs the office to conduct a hearing or obtain an injunction. Enforcement affects the budget. A negative budget was adopted this last year based on enforcement. A total of \$210,091 was assessed in 2006/2007. 43% of these enforcement cases entered into settlement agreements. After completion of the settlement agreements there was \$27,600 of assessment given up in exchange for specific conditions. There are several things the LCB and consumers get out of settlement agreements, i.e. restitution to the consumer, compliance, and admission of guilt. The concept of reduction is consistent throughout government agencies through some sort of victim relief funds. Approximately 1/3 of those who sign a settlement agreement for licensing obtain their license.

D. Claims (Dispute Resolution)

There were 10 claims opened and 19 claims closed from May 1, 2008 through June 30, 2008. It was noted there is a landscape contracting business who has 28 claims filed. This business' practices have been reviewed by the Department of Justice and there is nothing illegal about how he is operating. He has the homeowners sign off on his charges prior to performing the work.

Mr. Roth reported he is seeing a pattern where more difficult and severe claims are being filed and more claims are not being settled through the mediation process. More companies also have enforcement issues where they are not complying with other requirements, i.e. contract requirements that are coming out of the claim process. Businesses that do not pay attention to "little things", i.e. address, bonds, and contracts are engaged in poor business practices.

Mr. Roth reported the office recently suspended a license for dishonest conduct for lying on an application stating he was an employee of a licensed landscape contracting business when, in fact, he was not.

E. Education

Mr. Snyder reported he would like to check out the trade shows in southern Oregon.

4. LEGISLATION

Mr. Snyder reported the board's legislative concept has been sent to legislative counsel for drafting.

5. OLD BUSINESS

A. Review of Proposed Rule Amendment – OAR 808-005-0020

The Board reviewed a proposed rule amended prepared by staff with the board's recommendations to OAR 808-005-0020.

Board Action: Moved by Hollenbeck and carried to instruct the Administrator and staff to proceed sending their proposed changes to 808-005-0020 on to a rule hearing. Vote 5-0.

The board discussed the policy statement being part of the new rule. The perception by landscape construction professionals is penalties towards licensees do not get settled. The recommended policy is to settle only those violations for operating or advertising without a license and only on the first offense.

Board Action: Moved by Ms. Sedlacek and carried that OAR 808-005-0020(6) through (23) not be subject to settlement agreements. Vote 6-0.

Board Action: Moved by Mr. Gascoyne and carried to amend the motion on the floor to also remove the settlement option in OAR 808-005-0020(3), (4) & (5) for second and repeat offenses. Vote 6-0.

B. Budget Overview and Discussion

The Board reviewed a balance sheet for 2005-2007 and the first year of the 2007-2009 biennium. The budget included a deficit of over \$200,000. There has been a decrease in the assets due to the budgetary decision to spend more than was received. In the last 4 -5 months, the cash flow has been good and money has not been taken from savings.

The Board reviewed a Net Worth by Month graph prepared by staff. The Board was encouraged with the budget. It is tight and as cash received starts slowing down again and money is needed out of savings, the budget may need to be reviewed again. With the exam being administered by an outside source, staff will have more time for enforcements and/or collections. The Board was encouraged that the board did not have to dig as deep into reserves as predicted. The Board determined to continue and to monitor income over the next few months.

Mr. Snyder reported the database is in a position where we can input all the civil penalties and track them there rather than through accounts receivable in QuickBooks. The civil penalties will no longer be reflected in the budget or financial records.

6. NEW BUSINESS

A. Substituted Contracts/Gascoyne

A substituted contract is a settlement agreement on a claim where the parties agree this agreement replaces the contract they previously had. The goal is for both parties to put everything else behind them and come to a new agreement (contract). The business usually ends up with a release from law suits for other items, but there is an advantage for both sides.

Mr. Gascoyne attended an on-site meeting and observed that a substituted contract was written between the parties that did not meet the LCB's minimum standards for contracts. The business is entering into an agreement that is in violation of the law

that the LCB is assisting in writing. Mr. Roth stated they now include the ten elements of the minimum standards. However, Mr. Roth is not writing these agreements; he is only writing what they are agreeing to. Sometimes the agreements are not substituted contracts and do not have to include the contract standards.

B. Board Member Travel Reimbursement Outside Board Meeting Travel

Mr. Thomas reported he made an inquiry of the office regarding whether or not the mileage was an authorized reimbursable expense when he attended the town hall meetings. Mr. Snyder stated it is not reimbursable because it is outside of a Board meeting. Reimbursement for travel was recently granted to the Chair and should also be reimbursable for other board members when conducting board business. The Board discussed handling it on a case by case basis. There are some people who want to be really involved and some that are not. There are also some situations where individual board members will attend functions to either represent the board or learn more about a specific subject for the board. The Board believes the Administrator should have the discretion to send someone to attend meetings and that should be reimbursable up to \$500 upon conference with the Board Chair (and in the absence of the Board Chair, with the Vice-Chair). This item will be budgeted in the future.

Board Action: Moved by Ms. Sedlacek and carried that the Administrator and the Board Chair (or Vice-Chair in the Chair's absence) have authority to authorize expenses for board members to attend board related activities per their discretion up to \$500. Vote 6-0

C. Trespassing Notice to Licensee

Mr. Snyder reported that he recently wrote a letter to a licensee that he is not to appear at the board office or on the property without an appointment due to threatening statements he has made to the LCB staff, in particular Ms. Gladwill-Rowley. The Salem police have also been informed. There is no extra security in the building, but there is now a new tenant so the LCB is no longer the only office in the building. These threats have been a concern to the staff and Ms. Gladwill-Rowley stated the outer doors are locked when only one person is left in the office and she is more aware of her surroundings. Staff was directed to look into key fobs with panic buttons for the security system and discuss video monitoring with the security company currently used by the office.

7. PUBLIC COMMENT

Chair Triplett opened the meeting to public comment.

No members of the public were present.

Chair Triplett closed the public comment period.

8. EXECUTIVE SESSION

Chair Triplett announced the Board would be entering into executive session and all public members must leave the room, except for news media.

Chair Triplett closed executive session and returned to open session.

9. ADJOURNMENT AND NEXT MEETING SCHEDULE

Board Action: Moved by Gascoyne and seconded to adjourn the meeting. Vote 6-0
The meeting adjourned at 3:40 p.m. The next meeting of the Landscape Contractors Board will be August 21, 2008 by conference call. Unless there are any important items, this meeting may be canceled. The following meeting is September 19, 2008.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager