

LANDSCAPE CONTRACTORS BOARD
Minutes of the September 19, 2008
Board Meeting
Roth's IGA
1130 Wallace Road
Salem, Oregon

Please note that the minutes will not be approved until the Board meets on November 21, 2008.

PRESENT

Board Members

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

Others

Joanna Tucker-Davis, Assistant
Attorney General
Susanna Knight, Administrator,
Landscape Architects Board

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 8:30.am.

B. Approval of Agenda and Order of Business

The agenda was approved with amendments to the order of business.

Board Action: Moved by Gascoyne and seconded to approve the agenda as presented with changes. Vote 6-0.

C. Approval of July 18, 2008 Minutes

i. July 18, 2008

Board Action: Moved by Ms. Sedlacek and seconded to approve the minutes of the July 18, 2008 Board meeting. Vote 6-0.

The Board discussed amendments to the minutes.

Board Action: Moved by Mr. Gascoyne and seconded to amend the motion on the floor to include the corrections as submitted. Vote 6-0.

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. Gascoyne requested an update on the office security issue. Mr. Snyder has contacted Monitronics regarding key fobs for the alarm system in the LCB office. Monitronics would not supply these key fobs because the company that installed the system has the right to any kind of improvements for one year. The installation company was called but would not return the phone call requests. After the one year period was up Monitronics agreed to furnish the fobs and program them for us but the telephone line for our system only allows outgoing calls so the key fobs were not able to be programmed remotely. Monitronics is scheduled to come to the LCB office to update the system. Mr. Snyder reported he is looking into further security possibilities on the main entrance to the LCB suite.

Mr. Snyder reported the office staff is gradually working towards figuring the best way to import the database from QuickBooks into the new database system. All active collections are being input into the data base with a deadline of January 1, 2009. Then staff will need to go back to the original penalty and update the new database for those that were originally input into QuickBooks. The Board inquired about a temporary person to assist with this process. Mr. Snyder would like to wait until after November 1 to see what time is freed up by the exam administration change. This will also give Ms. Clark time to develop a plan for this process. The Board's expectation is the Spring of 2009. They support adjusting the budget to compensate Ms. Clark to get this completed sooner rather than later.

Mr. Snyder reported he and Mr. Roth met with Clean Water Services of Washington County. This meeting was arranged due to a violation by a company that was planting shrubs and trees in a ditch/swale along a highway. This company stated they were performing reforestation and are exempt from the licensing requirement. The investigator performed further investigation and found this company had received contracts from the City of Beaverton and found he had performed more than a dozen projects of similar type. The penalty was amended to include these other contracts. The City of Beaverton stated this company was hired from an approved list and the investigator met with quite a bit of resistance from the City of Beaverton. The accounting department for the City of Beaverton provided contracts and invoices to the LCB office. After reviewing these contracts and invoices, it was determined that Clean Water Services was providing an approved listing based on the Bureau of Labor and Industries (BOLI) who gives a license to foresters to supply labor for forestry work. This is an approval to provide the labor and do the work for reforestation. This license requires a bond, insurance and workers compensation.

Clean Water Services creates contracts to perform their work and the City of Beaverton gets to use the same contractor at the same price negotiated by Clean Water Services with those contractors. However, this work was performed under a contract with the City of Beaverton through a purchase order not Clean Water Services.

LCB staff met with Clean Water Services to make sure all levels of government are giving the same information and make them aware of the LCB statutes. If the practice continues, there may be more violations. Clean Water Services stated they are contracting for reforestation only. BOLI's definition of reforestation is about planting trees to harvest at a future date.

Mr. Snyder reported the Staff retreat was for the administrative staff only and they performed process flow charting on how the different duties in the offices are being handled and how they are being distributed. After November 1 duties will move again. Some processes were also simplified. The laws and rules that are passed can create large administrative issues for the administrative staff.

B. Financial Report

The Board reviewed the financial report as of August 31, 2008. Mr. Snyder reported he is currently working with private accountant to get all adjustments from the last audit into the books. Mr. Snyder also reported he will be researching the visa expense to see if there is another system for processing credit cards.

C. Request to Update Delegated Authority Listing

The Board reviewed a request from staff regarding decisions to be made during the contested case process. These decisions include, but are not limited to discovery, subpoenas and payment of witness fees and requests to conduct further hearings or to reopen the hearing. Staff is requesting the Board grant the Administrator delegated authority to make all decisions during the contested case process prior to and including final order authority.

Board Action: Moved by Mr. Gascoyne and seconded to approve the request to update the delegated authority as submitted. Vote: 6-0.

3. PROGRAM REPORTS

A. Examination Report

Mr. Hollenbeck and Mr. Snyder met for a full 8 hour day to review all exam questions to prepare for the transition to PSI. Mr. Hollenbeck believes this will work out as far as getting the test state-wide. The Board thanked Mr. Hollenbeck for all his work on the exam.

PSI will be ready to administer the exam by November 1. All applicants have been notified in writing and all applicants who have taken the exam within the last year and have not received a license or who do not have an All Phase License will receive a 2nd mailing.

The exam statistics show a large increase in the number of examinees for the months of July and August of 2008 compared to 2007.

B. License Count

The Board reviewed the license count as of September 1, 2008.

C. Enforcement

The Board was provided with a listing of final actions taken from July 1, 2008 through August 31, 2008. There were 114 cases that had final action during that time frame. Mr. Roth gave an explanation regarding specific cases.

The Board discussed backflow permits. It appears that some jurisdictions that issue backflow permits are not requiring permits consistently. Mr. Snyder will discuss this issue with Terry Swisher, Chief Plumbing Inspector for State Building Codes and request Mr. Swisher write a newsletter article for the LCB newsletter.

A licensed landscape contracting business who was fined told Ms. Gladwill-Rowley he appreciates all the efforts the LCB is putting into enforcement, even though he was fined. He recognized he violated the law, but was not unhappy so long as other violators were also being fined.

D. Claims (Dispute Resolution)

There were 18 claims opened and 17 claims closed from July 1, 2008 through August 31, 2008. Mr. Roth stated he believes most of the claims he investigates have a contract issue (either no contract or the contract does not meet the minimum standards for landscape contracts). Board members would like an article regarding contracts in the next newsletter.

E. Education

Mr. Snyder reported the Portland Home & Garden Show is October 3-5, 2008. All consumer information booths will be housed in one large booth. The LCB will be required to rent a table and chairs. The Central Oregon Building Association show is October 16-20, 2008 in Redmond.

4. LEGISLATION

The LCB's legislative concept has not been drafted by Legislative Counsel yet. There may be a short turn around to review it once it has been drafted.

5. OLD BUSINESS

None.

6. PUBLIC COMMENT

Susanna Knight, Administrator, Landscape Architects Board

Ms. Knight stated she is here to deliver a letter from the Chair of the Landscape Architect Board. John Pellitier is one of their board members who is assigned to review the LCB's activities. He did not receive notification about the rule hearing on August 20th. When the overlap arena is being dealt with, she believes it is important both boards are in the arena to discuss it. Mr. Van Wormer is requesting the LCB develop a definition of the word "plan" and the Landscape Architects Board would like to be part of that development. She explained the registered landscape architect education, experience and examination requirement. Planning is what landscape architects perform and it is important that role is defined for landscape construction professionals.

Ms. Knight stated she attended the LCB's May meeting and brought some plans to the LCB to request information regarding whether a landscape construction professional would perform that work. She explained she is also the Administrator for the Geologist's Board and they recently increased their annual fee by \$25 and believes this transition went so well for them because of their transparency in the information dispersed to the licensees. She stated she did not believe the May minutes covered everything that was discussed and invited the board members to review the Landscape Architect Board minutes on their website. She believes the rule amendment to the definition of plan and install will make designers happy. Ms. Knight explained they do not regulate landscape designers; only landscape architects. She spoke of different enforcement actions the Board has recently taken.

Chair Triplett explained he spoke with Tim Van Wormer yesterday and they both believe going forward with a relationship with the Landscape Architects Board will be important due to the areas of overlapping authority.

Ms. Knight stated the role of the board is to protect citizens of the state of Oregon; it is never about protecting the profession. Her new board members attend a 4 hour orientation with her. The Board members are not here to represent the industry; they are serving on the Board to represent the public. She further stated that when she started, she was told it is extremely important to keep the roles of the board and the association separate.

Ms. Knight stated she is concerned the LCB rules seem to be letting go of the designers and wonders why. She also wonders why the board is focused on landscape construction professionals performing design work without installing. She would like to see the definition of "plan" to know what landscape construction professionals are doing. Mr. Carper suggested the Landscape Architect Board may wish to educate the public about the credentials required of landscape architects. The board would like to know where the Landscape Architect Board believes there are "gray" areas. Ms. Knight stated designers cannot specify or give construction detail, but they have not specified the limitations of a landscape construction professional. Her concern is allowing a landscape construction professional to perform landscape architecture work without having to install that work.

Chair Triplett will be meeting with Mr. Van Wormer in order to personally meet each other. A few members of each board and the administrators of both boards need to meet to discuss these issues.

7. ADMINISTRATIVE RULE HEARINGS

A. Hearing Scheduled for 1:00 Today

Chair Triplet opened the rulemaking hearing at 1:00 p.m. No members of the public were present. Chair Triplett closed the rulemaking hearing.

B. Hearing Held August 20, 2008

The Board reviewed the Presiding Officer's Report for the rulemaking hearing held August 20, 2008. The president of OLCA was the only person in attendance and stated they opposed the amendments to the direct supervision rule and requested the board postpone the amendment.

The Board discussed the rule amendments.

Direct Supervision

Mr. Gascoyne stated he spoke with Kevin Schindler, president of OLCA last evening regarding the direct supervision rule amendment. They discussed adopting guidelines instead and wonder if the board can withhold a decision on this rule amendment until the October Board meeting, which is after OLCA's next meeting to see if OLCA is in agreement with the guideline approach.

Part of the supervision rule exists to recognize the landscape construction professional is the only person in the company that has proven they have the skills and knowledge to perform landscape work.

Mr. Gascoyne stated he had the conversation with Kevin Schindler yesterday and listened to his comments regarding this rule amendment. He shared these comments with the board. Ms. Tucker-Davis explained that the rule comment period was closed prior to yesterday and any comments Mr. Gascoyne heard and repeated to the board needs to be stricken. The decision on this rule needs to be made without that information. The Board stated they feel comfortable making a decision and disregarding this information.

This rule amendment will require the employee contact the landscape construction professional within an hour and, if unavailable, the landscape construction professional returns the call to the employee by the end of the day. To verify direct supervision the landscape construction professional may contact the investigator by midnight of the same day. The rule also states the unlicensed employee needs to be able to contact the landscape construction professional while the work is being performed. This amendment allows the communication to happen later in the day.

Certain Board members believe that one person in attendance at the rule hearing shows the entire industry is not opposed and that they had an opportunity to present their opinions.

Board Action: Moved by Mr. Hollenbeck and seconded to adopt the amendments to OAR 808-002-0328 and OAR 808-003-0018.

Each Board member determined the conversation between Mr. Gascoyne and Mr. Schindler was not taken into consideration when making their decision.

Vote: 4 yes (Lymp, Hollenbeck, Carper & Thomas), 2 nays (Gascoyne & Sedlacek)

Charges

Board Action: Moved by Ms. Sedlacek and seconded to adopt the rule amendments to OAR 808-001-0020, 808-003-0045, 808-003-0130. Vote: 6-0.

Housekeeping Rules

Chair Triplett stated the landscape architects board has requested an extension to the public comment period for rule amendment OAR 808-002-0780. The Board has the option of extending the comment period, but must extend it for everyone.

Board Action: Moved by Mr. Hollenbeck and seconded to extend the public hearing period and to direct staff to re-notice the public hearing period for OAR 808-002-0780. Vote: 6-0.

Moved by Mr. Gascoyne and seconded to adopt rule amendment OAR 808-002-0200, 808-002-0810 and 808-003-0100 and to repeal 808-002-0900. Vote: 6-0.

C. Proposed Amendments for Hearing to be Held October 14, 2008

The Board reviewed proposed amendments that are scheduled for a hearing on October 14, 2008 at the LCB office.

8. NEW BUSINESS

A. Letter from licensee #11440/Information Only

The Board reviewed a letter from a licensee who has decided not to renew his landscape contracting business license, but will continue to maintain his individual landscape construction professional license. He stated he has noticed a change in the atmosphere of the Board and that he believes the Board strongly favors the consumer and tends to treat licensees in a "less than desirable fashion" while the unlicensed businesses "run rampant".

B. Request from Licensee Re: Removal of personal information from website

The Board reviewed a request from a licensee to remove specific information from the website. Mr. Snyder reported that when information was placed on the website the decision was that all licensees should be on the website so everyone can see the information. There is no requirement as to what should be on the website; it is a Board policy.

Ms. Tucker-Davis stated there is a variety of information that Boards put on their website. Her licensing authority gave her a choice of what she would like to have on the website. In the past there was a legislative push for transparency.

The board discussed the history of a license on the website. The Board consensus is to show only active licensees and active associations for employment and to include "we have changed this site" verbiage.

C. Advertising Outside the Scope of the License

The Board reviewed the advertising rules. The Board believes the rules do not allow a landscape contracting businesses to advertise outside the scope of the landscape contracting business license, but the laws and rules are not clear. The Board has authority to issue limited license and can make it clear in the rule with general rulemaking authority laws. The Board directed staff to draft rule language to limit advertising to phase based advertising, bidding & subcontracting. The current enforcement case and all future enforcement cases until this requirement is clear should be settled.

9. ADJOURNMENT AND NEXT MEETING SCHEDULE

Board Action: Moved by Gascoyne and seconded to adjourn the meeting. Vote 6-0. The meeting adjourned at 3:07 p.m. The next meeting of the Landscape Contractors Board will be October 30, 2008 by conference call.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager