

8 ABOVE BOARD

LANDSCAPE CONTRACTORS BOARD (LCB)

May 2009, Issue 58



UNDERGROUND

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BOARD MEMBERS

Martin Gascoyne, Cottage Grove, CHAIR

Lisa Sedlacek, Florence VICE CHAIR

Steve Carper, Beaverton

Richard Hollenbeck, Estacada

Joe Lymp, Sunriver

Matt Triplett, Portland

Larry Thomas, Astoria

2009-2011 BUDGET RULE HEARING

The 2009-2011 operating Budget Hearing for the Landscape Contractors Board is being held on May 29, 2009 at the LCB office in Salem, Oregon, 9:00 AM. Address: 2111 Front St. NE, Suite 2-101, Salem, OR 97301.

The board has mandated a balanced budget for this biennium and in order to do this has proposed some cut backs in staffing with an increase in outsourcing some of the functions of the board. Along with these changes there is a new proposed fee schedule for all fees including licensing fees.

The board has not raised licensing fees since July 2002 and has absorbed all the increased costs associated with inflation and mandated programs without a fee increase. In the 2007-2009 biennium the board adopted a deficit spending budget to increase the amount of enforcement in the state and to maintain that level of enforcement the next biennium along with all the other programs a fee increase is necessary. The budget is based upon an increase in the individual LCP license to \$95 per year and the landscape contracting business license to \$260 per year. The board has also implemented a reinstatement fee of a suspended license of \$30 which covers the cost of processing the suspension and reinstating the license. Other fee increases are proposed for application fees of the individual and the business, late fees as well a fee for a requested license change.

For a copy of the proposed budget and fee changes go to the LCB website: www.lcb.state.or.us and find the link under Current Topics.

NEW PUBLIC BOARD MEMBER NEEDED

The Landscape Contractors Board has a requirement to have two (2) public members sitting on the board to provide a "non-industry" perspective to the board's mission. Richard Hollenbeck is leaving this position and the board needs a new public member. The governor's office has the final say in the appointment of this person to the board but suggestions are always welcome for people who are willing to serve. If you know of a good public member please let the office know.

Trivia Question: What is the consequence for a landscape contracting business that has their liability insurance cancelled, knowingly or un-knowingly? Answer p 5

POINTS TO PONDER

What is a License?

By Michael A. Snyder, CLP; Administrator



During my last 7 years as Administrator of the Landscape Contractors Board of Oregon, I often have been asked “why a license” for landscape construction in Oregon by many unlicensed people and even by several licensed landscape construction professionals. That question has always intrigued me and so I thought I would share my thoughts with you as we get ready to enter into a new biennium and face the challenges offered by this economy and industry.

My first thought then goes to “what is a license”, so I looked it up. Webster states that a license is “a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful”.

From this definition it implies that there is foremost an “authority” to grant a license. For the LCB that authority comes from the laws (statutes) that have been implemented by the state legislature of Oregon. The statutes, specifically ORS 671.560, provide the authority for the LCB to issue a license. This statute states the LCB shall issue a license to an individual and business who meet certain requirements of the law.

Secondly there is a “permission granted” by this authority to engage in a business or occupation or in an activity. ORS 671.530 states a license is required to perform landscaping work and in fact this statute states there are two licenses required: the individual (LCP) and the landscape contracting business license. It’s not until a subsequent statute (ORS 671.540) that creates an exemption from licensure for unlicensed employees of a licensed landscape contracting business to perform landscape work, if directly supervised by a licensed LCP. A license gives “permission” to perform the work.

Lastly, the definition states that the person is engaging in a business, occupation or activity that is “otherwise unlawful”. ORS 671.530(1) & (3) states, a person may not operate as a landscape construction professional or landscape contracting business without a valid license. It is unlawful to perform landscaping work in Oregon unless licensed.

This is one reason “why” there is a license, but what is the real purpose of a license. Maybe the answer for this goes back to “why are there laws in the first place? We obviously don’t live in a world governed by the “golden rule”; but do laws alleviate the “fear” that is the catalyst for the generation of these laws? Do they “stop” illegal activity? The history of laws goes way back and one can argue whether we are better off or not because of them. That discussion has continued for centuries, yet we still have not found a better way to govern or try to protect people from the greed, dishonesty, selfishness and violence that many of us display towards another. Does the license provide that protection? I am not sure, in all cases. I do believe that the license does provide an avenue for consumers to have some level of recourse when this trust is betrayed and a certain level of property and personal protection when work is being performed on their property by licensed businesses.

Another reason there is a license is to create a “level playing” field (fair competition) for those that have the permission to do this work. If all who do this work are required to meet the same conditions and “play” by the same rules, then one business does not have an advantage over another in terms of requirements. There is no control exerted over business practices or assurances of success, but the requirements are the same.

What do you think?

HOW TO AVOID THE SUSPENSION OF A LICENSE

It has become apparent that many businesses are having difficulty keeping up with the mandated license requirements in order to keep an active license. This is of serious concern to the LCB and much to the anguish of the businesses that fail to maintain active liability insurance, bonding or worker's compensation. If these consumer protection elements are not in place continuously during the license period the license is faced with immediate suspension by the board.

One of the purposes of licensing is to promote adequate consumer protection. If a consumer contracts with an active licensed landscape contracting business then that business must have the proper liability insurance coverage, the correct bonding amount and workers compensation coverage if the business is listed as "non-exempt" (has employees).

If the board receives notification from an insurance company, a worker's compensation provider, or bonding company that the coverage has lapsed, expired or terminated, the board has no choice except to immediately suspend the license and only reinstate the license if the conditions of licensure are met. The immediate suspension process is sudden and is done without delay and many times, unknown to the landscape contracting business. One day the license is active on our website and the next it is suspended and since the website only shows active licenses, a search for the business will not show any results.

This action is severe, sudden and necessary. It is important for every business to know that the LCB is mandated to only grant permission (license) to perform landscape work to landscape contracting businesses that **continually** meet the license requirements. (ORS 671.565)

It is not the responsibility of the board to contact the insurance company or bonding company to make sure the premiums are paid. IT IS THE RESPONSIBILITY of the landscape contracting business to make sure all this coverage is current. Failure to notify your insurance company of an address change will present a high likely-hood that the business will soon be out of compliance with these requirements and be subject to immediate suspension and civil penalties for failure to maintain the necessary requirements for licensure.

PLEASE TAKE TIME to verify all licensing requirements are met and the contact information is correct for all the business insurance and bond providers so this situation will not occur for the business. It will be expensive if these details are not taken care of.

MISSION STATEMENT REVIEWED

During the annual board planning session held in Astoria, Oregon in January, the board members revisited the current mission statement for the LCB and are in the process of exploring revisions to the statement. The current Mission Statement is:

Promoting Consumer Protection, Contractor Competency and Fair Competition in Oregon's Landscape Construction Industry.

This mission statement has been in place for over 10 years and there is a consensus that it is time to rework the statement. Do you have any suggestions or comments? If so, contact the board and let us know your thoughts on this guiding principle. Thank you.

BOARD PLANNING SESSION SUMMARY JANUARY 2009

The board met for its annual planning session on January 15, 2009 in Astoria, Oregon and discussed the goals of the board for the next biennium and years that follow. Many of the objectives of the previous strategic plan have been accomplished and one of the areas that is still unresolved is the licensing model for regulating the landscape industry. The board discussed all of the proposed licensing models that were presented earlier in the year and decided to focus on what is called "model 2" which would incorporate a set of guidelines into the contract requirements and in doing so would potentially removed the requirement for direct supervision. The model still maintains the two license system but takes the licensed landscape construction professional out of any supervision requirements for quality of work.

The board also discussed at length the need for a balanced budget during the next biennium, fee increases, staff considerations and the continued education mandate.

ENFORCEMENT ACTIONS FEBRUARY 1, 2009 THROUGH MARCH 31, 2009

THESE ACTIONS ARE FOR FINAL ACTIONS ONLY AND ARE NOT THE TOTAL NUMBER OF ACTIONS TAKEN DURING THE PERIOD, SINCE SOME ARE STILL UNDER INVESTIGATION. THIS IS SUMMARY INFORMATION ONLY. FOR DETAILED INFORMATION SEE: WWW.LCB.STATE.OR.US

CITY	Advertising w/o License	Advertising Outside Scope of License	Conduct that was Dishonest or Fraudulent	Failure to Appear at On-Site Meeting	Failure to Comply with min Standards for Contracts	Failure to Employ Landscape Construction Prof.	Failure to Obtain Required Bond Amount	Failure to Maintain Business Registration	Failure to Maintain Liability Insurance - Gap	Failure to Maintain Workers Compensation - Suspend	Failure to Notify Board - Address Change	Failure to Obtain a Permit	Failure to Pay Civil Penalty	Failure to Pay Taxes	Failure to Register with the Corporation Division	Failure to Use Business License No in Advertising	Failure to Supervise Landscape Work	Failure to Require Direct Supervision	Operating w/o License	Operating w/o License & Claim Filed	Working Outside Scope of License	Working w/o a Written Contract	Total
BEAVERTON						1																	1
BEND						1	2	1		2													6
BORING						1																	1
CANBY						2																	2
CARLTON										1													1
CENTRAL POINT								1									1	1					3
CLACKAMAS					1																		1
FLORENCE	1																				1		1
GEARHART																			1				1
GOLD HILL	1																						1
GRANTS PASS								1															1
GRESHAM																			1				1
HERMISTON								1															1
HILLSBORO							1			1						1							3
HUBBARD	1																						1
IRRIGON										1													1
KEIZER	1						1																2
LEBANON										1													1
MADRAS								1															1
MEDFORD																				1			1
MILWAUKIE	1					1				1													3
OREGON CITY	1																					1	2
PORTLAND	5	1						1		1									3				11
POWELL BUTTE	1						1																2
SALEM	1					1		1		1									1				5
SANDY	1									1													2
SILVERTON	1																						1
SPRINGFIELD										1													1
TALENT	1						1												1				3
TUALATIN	2																						2
VANCOUVER	3									1													4
WEST LINN	1																						1
Total	22	1	0	0	1	7	6	1	6	2	10	0	0	0	0	1	1	1	7	1	0	1	68

BONDING REQUIREMENTS FOR PUBLIC WORK PROJECTS

Effective January 1, 2006, all contractors working on qualifying public works projects must obtain a Bureau of Labor and Industries (BOLI) \$30,000 public works bond issued by a corporate surety authorized to do business in Oregon. The bond must be filed with the Construction Contractors Board (CCB) before starting work on a contract or subcontract for a public works project. (ORS 279C.836)

This bond will be used solely in the event of prevailing wages determined to be due by BOLI. This bond is separate and is required in addition to any other bond a contractor or subcontractor is required to obtain.

You may be exempt for any of the following:

- You are exempt from the bond if you are not required to pay prevailing wages under ORS 279C.800 to 279C.870.
- Bonding requirements may be exempt in cases of emergency as declared under ORS 279A.065.
- If the business is certified by the Office of Minority, Women and Emerging Small Business (OMWESB) the business may elect to be exempt from the bond requirement during the first year of initial certification only. After the one year expiration, a public works bond must be filed with the CCB before starting or continuing work.

If you are a licensed CCB contractor you will be required to sign the bond supplied by your bonding company. Once signed, submit the original bond directly to the CCB by mail or in person. There are no additional forms required.

If you are not required under ORS 701 to be licensed by the CCB and will be working on a qualifying public works project you will be required to sign the bond supplied by your bonding company and submit the original bond along with the completed form Non-Construction Company Filing STATUTORY PUBLIC WORKS BOND with CCB to the CCB by mail or in person.

If your business has elected to utilize the OMWESB exemption for the public works bond, you must submit the form, Disadvantaged, Minority, Women, or Emerging Small Business Enterprise Exemption from \$30,000 Public Works Bond along with the supporting OMWESB certification to the CCB office either by mail or in person.

Forms for businesses not required to be licensed under ORS 701 or businesses electing to utilize the OMWESB exemption are available from the CCB website: www.ccb.state.or.us under "What's New". Your bonding company may download the bond form from the BOLI website: http://egov.oregon.gov/BOLI/WHD/PWR/docs/public_works_bond.pdf. The bond form must be filled out, signed and sealed by the bonding company.

Forms and original surety bond may be mailed to the CCB at PO Box 14140 Salem, OR 97309-5052. In person, the CCB office is located in Salem at 700 Summer St NE, Suite 300 (Veteran's Building)

For more information, call the CCB Customer Service Unit at 503-378-4621

New Board Chair & Vice Chair Elected

During the board meeting held January 16, 2009 the board elected Martin Gascoyne from Cottage Grove as the new chair of the board for 2009. Marty served as vice-chair during the previous year and was unanimously elected as the new board chair. Lisa Walter Sedlacek was elected as the new vice-chair.

The board looks forward to thriving under Marty's leadership and it is Marty's desire to remain open and readily available to all licensees that have an interest in the functions of the board.

Thanks Marty.



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MISSION STATEMENT
 Promoting Consumer Protection, Contractor Competency and Fair
 Competition in Oregon's Landscape Construction Industry

MEET YOUR BOARD—Dick Hollenbeck



Completing his second and final term on the Landscape Contractors' Board, Dick has had a long career associated with the landscape industry. With a degree in Landscape Architecture from the University of Oregon, he began teaching in the Landscape Technology program at Portland Community College in 1974 and served as its department chair for 19 years. He was instrumental in bringing Planet's CLT program to Oregon, served as the state committee chair for CLT and as Oregon's national representative with, what was then, ALCA. He has worked on the LCB exam since

the mid-1980's and is currently serving as the exam chair. With a strong interest in landscape professionalism and environmental issues, Dick is currently the conservation chair for the Oregon Council of Trout Unlimited and continues to teach part time at PCC. Dick's service to the LCB has been exemplary and we are sorry to see him go. He has promised to continue to help in areas of the exam and in helping provide direction for guidelines and future needs the board may have for his services.

Thank you Dick for all of your hard work, dedication and commitment to the LCB during all the years of service in education for this industry.

Your face at the table will be missed.