

LANDSCAPE CONTRACTORS BOARD
Minutes of the May 11, 2007
Board Meeting
Roth's IGA, Salem, Oregon

Please note that the minutes will not be approved until the Board meets on July 27, 2007.

PRESENT

Board Members

Matthew Triplett, Chair
Marty Gascoyne, Vice-Chair
Richard Hollenbeck
Joe Lymp
Ron Overstreet

Others

Joanna Tucker-Davis, Assistant
Attorney General
Ken Bierly, OWEB
Melissa Leoni, OWEB

Staff

Mike Snyder, Administrator
Kim Gladwill-Rowley, Program Analyst
Ken Roth, Investigator

EXCUSED

Patrick Griffiths
Maia Holliday

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:30 a.m.

B. Approval of Agenda and Order of Business

The agenda was approved as with the following additions: Old Business - Licensing Task Force, Strategic Plan Integration, New Board Member Training Packet, Rules Advisory Committee, Exemption to ORS 479 and Proposed Rule Amendments.

Assistant Attorney General Tucker-Davis introduced herself to the Board and explained her background. Each board member introduced themselves to Ms. Tucker-Davis and also explained their background.

C. Approval of Minutes

1. March 16, 2007 Work Session Minutes.

The Board reviewed the March 16, 2007 minutes. The following edits were suggested:

Page 2 – Office Update section – when mentioning Green Industry Conference it should be called the High Dessert Green Industry Conference.

Page 3 – there are a couple of typos on that page to be corrected.

Page 4 –adobe should be Adobe; Intended instead of tended

Page 7 – last paragraph, 4th sentence should be deleted.

Board Action: Moved by Hollenbeck and seconded to approve the minutes of the March 16, 2007 minutes as written. Vote: 4 ayes; 0 nays.

2. April 12, 2007 Board Meeting Minutes

The Board reviewed the April 12, 2007 minutes. The following edits were suggested:

Page 2 – 2007--2009 should be changed to 2007-2009.

Board Action: Moved by Gascoyne and seconded to approve the minutes of the April 12, 2007 minutes as amended. Vote: 4 ayes; 0 nays.

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.

Mr. Snyder reported to the board on each of the legislative bills. House Bill 2117 which proposes to amend the title Landscape Contractor to Landscape Professional has some opposition. Landscape Designers attended the last committee hearing and opposed the bill. The Chair of the committee heard both sides and determined both parties could come to an agreement and requested both parties work out the issues by Monday with an amendment. The initial agreement was to change it to Licensed Landscape Professional. After further discussion it was determined this would also not work and Landscape Construction Professional was recommended.

Chair Triplett opened the meeting to public comment at 9:00 a.m. Barbara Hilty stated the main objection to Landscape Professional is "hi jacking" a common English language term to describe one profession. She believes the term Landscape Construction Profession is the right solution. She stated she supports the LCB's work and the attempt to make terminology clearer to the public.

Mr. Overstreet stated there have been previous issues that have been worked out together with the designers. The letter submitted previously creates damage to the legislation. If the communication is timely, the board is willing to listen. He hopes in the future the two professions are able to communicate before letters are issued opposing any legislation. Ms. Hilty agreed the communication needs to be kept open by both professions. Mr. Gascoyne stated there is political fall-out when anyone comes out in opposition. Any way to work with stakeholders to avoid the appearance of conflict is to the advantage of all parties. All LCB bills should go to all stakeholders and the board requests any opposition be brought before the board before the session begins. Ms. Hilty believes the communication is a great start, but we have to remember they are all volunteers and Board Chairs change. It is important to keep reaching out and not go backwards.

Amy Whitworth stated she thought she took all avenues to communicate with the Board by stating the designers' opposition to HB 2117. She felt she was ignored and had no other recourse, but to write a letter to the legislature. She was offended that it came as a surprise that there was opposition. Chair Triplett stated he assumed it was not a large issue because the bill went through the house side. The phone conversation he had with Ms. Hilty yesterday was more effective than the letter. Mr. Gascoyne stated the designers sent the LCB a letter and the Board did not agree. Since a letter was sent back in return, he believes the Board did not ignore the issue. Ms. Whitworth stated due to the disagreement, they felt they had

to take it to the legislature. Mr. Snyder stated the LCB works through the landscape contracting industry and getting that language changed was mainly through them and getting their support was a huge discussion. Landscape Professional was agreed upon by this industry. Mr. Snyder remembers attending a landscape designers meeting and hearing the opposition, but the Board had already decided to move in this direction. What happened with this bill shows the process does work. Chair Triplett reminded them it is a public forum and they are welcome to address the Board at any meeting. This Board meets monthly so if something is urgent or critical, there are more opportunities to deal with them. Mr. Gascoyne stated he honors and respects the fact that when they feel strongly about an issue, they have an opportunity to discuss it with the Board.

Paul Taylor, Northwest Landscape Designers stated he was not sure if coming here today would mean anything, but has determined it has helped. He felt they were heard by the Board today and believes going to the legislature together is best. Ms. Whitworth stated her intention is to let the committee know they are in agreement with the Landscape Construction Professional title.

Chair Triplett closed the public comment at 9:30 a.m.

Mr. Gascoyne believes Landscape Professional is an issue, but does not completely agree with Landscape Construction Professional. Being identified as constructing professionals takes away from planting, however, he is at a loss for a better term and is willing to move forward.

Mr. Snyder phoned several industry members who were against the change from the very beginning. They determined Landscape Construction Professional fits in the same as Landscape Maintenance Professional. John Stone, John Gawlista and Mike Fisher all agreed with the term Landscape Construction Professional. The idea is to do whatever is necessary to get it done.

Mr. Overstreet asked about Landscape Construction Supervisor. In the business world there are employees who are not licensed that are called supervisors.

Mr. Gascoyne thanked the members from the landscape designers for appearing before the Board today.

HB 2538, which is the continuing education bill, is being heard Monday in the Senate Committee. There is an appeal for OLCA members to attend that hearing. Mr. Snyder believes the opposition will appear. The LCB voted to support this bill and should also be in attendance.

HB 2656 is the building envelope specialist bill regarding decks. Home builders are not in favor of landscaping businesses installing decks when it penetrates the building envelope. Bill Cross requested Mr. Snyder write an amendment. The amendment was interpreted incorrectly and requires a separate bond and insurance. Mr. Snyder has told OLCA his opinion.

Mr. Overstreet requested a follow up report on the newsletter. Mr. Snyder stated it has not been a priority to produce the newsletter, so it has fallen on him and Ms.

Gladwill-Rowley. He found an individual who would “force” it to be done on a consistent basis and with a new look and feel and contracted a person to do this. It will be issued every quarter and upgraded to be a more visual and interactive newsletter. It is still up to the staff to provide the articles and information.

Chair Triplett stated he would like to attend the Enforcement Team Meetings. A brief report out of each meeting would be a great update for the Board as an educational issue. He also wonders what the group’s relationship to the board is. Mr. Snyder stated staff believes it is important to get the new investigators connected and determine what enforcement looks like to the LCB. Several investigators have law enforcement backgrounds and the hope is that they will get together and make it happen.

Mr. Overstreet stated he believes Mr. Snyder and the staff are on the right track and doing the right thing. Mr. Gascoyne wants to know what staff is doing and how they are going about it, but doesn’t want to step in too much. Mr. Snyder believes if staff doesn’t own it, it won’t happen. The people doing the work have to buy into it and create it. The Board needs to know what the goals are and hold staff accountable.

Mr. Gascoyne stated he is increasingly frustrated with the large sums of money the LCB is spending on a database program that fails to live up to its expectations. Mr. Snyder stated he has been frustrated for quite some time and it is now time to explore new avenues and determine if it is feasible to make this change financially. Personnel changes and requests not completed by GL Suite are frustrating in spite of several trips to visit with them still produces unfulfilled promises. The database now functions, but not like staff wants.

B. 2005-2007 Financial Report

The Board reviewed the balance sheet as of March 31, 2007.

3. TESTING & LICENSING REPORT

A. Examination Report

Board members reviewed the exam statistics through April 2007.

B. License Count

Board members reviewed the current license count. As of March 1, 2007 there are 1558 actively licensed individual landscape contractors and 1161 actively licensed landscape businesses.

C. Exam Committee Report/Hollenbeck

Mr. Hollenbeck reported the Exam Committee has made adjustments to the exam as requested by AMP and this should show an increase in the pass rate. They plan to increase the exam question bank to 4 times the number of questions used on test. Each member will develop 2-3 questions a month, assign a value of what percentage of people can answer it correctly and then readjust this value after receiving performance data. If legislation goes through, the committee will need to look at a business owner exam that will also need a task analysis. All amendments to the exam are currently made by the Administrator. If he’s out, there is no one else

who knows how to make these changes. The Board would like Ms. Gladwill-Rowley and a board member to be shown how to make these amendments.

4. ADMINISTRATIVE RULE HEARING

Chair Triplett opened the rule hearing at 10:00 a.m.

No public comment.

Chair Triplett closed the public rule hearing at 10:10 a.m.

Mr. Snyder reviewed the 2007-2009 proposed LCB budget with the Board. Board members suggested the increased enforcement will create an increase in revenue. Mr. Snyder stated licensing and exam should reflect the revenue stream. The legislature looks at other agency's budgets and do not want to see a state agency generating more enforcement so they get more money. The proposed budget may not have to use reserves if the enforcement program is successful. The licensee will see what the LCB does with the licensing fees with respect to enforcement. If enforcement does not generate as much as needed to support the program, then the Board will need to review the program and make a determination as to what to do at that time.

Mr. Overstreet stated the proposed budget covers the licensees' priority, which is an increased enforcement program. It may also generate more applicants and licensees. It will help alleviate the perception of the industry that civil penalties are included as an economic factor on the bid. He believes the reduction in civil penalty amount if the person complies and succeeds in licensing is reasonable and can still be perceived as a winning opportunity from the standpoint of the person receiving the penalty and from the consumer's standpoint for protection.

Mr. Gascoyne stated he is appalled at the amount the LCB is giving away in reductions of civil penalties. The perception is that they are paying so little as a percentage of what the fine actually is. He believes a 50% reduction is more appropriate.

Mr. Roth stated the goal is compliance and he believes every individual is motivated differently. If you compare speeding tickets and the concept of going faster equaling a higher ticket, it may be a concept the LCB can use. Mr. Snyder states the LCB could unknowingly take advantage of a high school kid who has no knowledge a license is required. The penalty for operating without a license is \$1,000. At this time it is being reduced to \$750 if the respondent does not wish to become licensed, but promises not to perform this type of work without a valid license. It is reduced to \$250 if the respondent obtains an individual landscape contractors license and licenses the business. Obtaining these licenses costs money.

Mr. Triplett stated the LCB has the discretion to not enforce the penalties when the person doesn't know the law and to give leniency. The rules allow the LCB to subjectively fine people. The risks are inconsistency and diminished credibility of the LCB. Ms. Davis Tucker stated there is discretion and different ideas about the suspension of fines. As the Board makes these decisions, they need to look into the legal ramifications.

Mr. Lymp stated the perception of the licensees is the penalties have become a joke and if you play by the rules, you are being penalized. He believes this needs to be revisited. He believes he represents a lot of individual licensed contractors that may

feel the amount of penalties the board is giving up is ridiculous. The newsletters show they are getting off relatively easy. Mr. Roth stated the perception problem is in how much it appears the LCB is giving up. The respondent may sign an agreement to reduce the penalty to \$250, however, they still have to obtain a license and only 1/3 of those signing the agreements are obtaining the license. The other 2/3 are paying the full penalty.

Mr. Gascoyne stated he does not like posting a deficit budget and things are going to have to change. Mr. Hollenbeck asked when the last time licensing fees were raised. Mr. Snyder stated in 2002 – 5 years ago.

Mr. Overstreet stated he believes the LCB should empower staff through an approved budget for the remainder of the fiscal year and 2007-2009 to achieve the objectives of the Board and the mission statement and if it's not working, the Board can scrutinize and figure out how to make it work. The Board and licensees have already identified enforcement as the #1 concern. He believes the outcome is compliance.

Mr. Lymp stated enforcement is a big issue and the Board should look into how penalties are handled. He is in favor of moving ahead with the budget as proposed and working with it to see how it comes out. He is also duly impressed with way this board has built a reserve fund. He sees major changes and believes you have to take faith in that.

Board Action: Moved by Mr. Gascoyne and carried to adopt the amended budget ending June 30, 2007 and adopt the proposed budget for July 1, 2007 through June 30, 2009. Vote: 4 ayes, 0 nays.

Board Action: Moved by Mr. Hollenbeck and carried to amend OAR 808-001-0008 to read "for the budget 2007-2009". Vote: 4 ayes, 0 nays

5. ENFORCEMENT REPORT

Board members reviewed a listing of final actions taken from March 1, 2007 through April 30, 2007. There were 61 cases with final actions taken. The Department of Justice has issued injunctions recently against three individuals. Two of them have been served and the last one cannot be located and may have left the state.

6. CLAIMS (DISPUTE RESOLUTION)

Ms. Gladwill-Rowley reported there were 10 claims opened and 15 claims closed from March 1, 2007 through April 30, 2007.

7. EDUCATION ACTIVITIES

A. Central Oregon Home Show

Bob Van Houten and Vince Salomone manned the booth for the LCB. The booth was located next to the CCB. They felt the LCB booth was extremely attractive.

8. OLD BUSINESS

A. Employee Handbook

Mr. Snyder reported every good business needs employee guidelines and the LCB is getting more employees. The Department of Justice reviewed the manual. The LCB has "at will" employment.

B. Licensing Task Force

Mr. Gascoyne stated he has put together a task force to meet in June 2007. The bulk of the meetings will be conference calls. The scope of work is broad, but they will be starting where the Board left off at the January work session with the one-license system concept. The following individuals are interested in being a member:

Joe Lymp

Ron Overstreet

Ron DiPietro

Tony DeSantis

Lisa Walter Sedlacek

John Gawlista

Kory Knutz

Ms. Gladwill-Rowley mentioned these are public meetings and must be noticed and minutes must be kept. She will attend these meetings.

C. Strategic Plan Implementation

Chair Triplett and Ms. Gladwill-Rowley are looking at cleaning up the plan and will meet again next week.

D. New Board Member Training Packet

Chair Triplett and Ms. Gladwill-Rowley are looking at creating this packet and will meet again next week.

E. Rule Advisory Committee

The Rule Advisory Committee has not met for quite a while. The last rule hearing was held without their input and Chair Gascoyne is ok with that. The Committee will review changes to the rules based on new legislation.

9. NEW BUSINESS

A. Oregon Watershed Enhancement Board

A presentation by Ken Bierly was given and a copy of the Power Point Presentation is part of the minutes. Discussion ensued around the intent of the Oregon Watershed Enhancement Board (OWEB) and the use of volunteers for this program. Ken stated that some watershed councils are still learning their roles and the organization of some of these councils is not as advanced as others. OWEB is willing to work with the LCB to come up with a legislative fix, if needed, to make sure it is clear to all councils that volunteerism is supported but not to allow contractors to make a profit by using watershed councils in an improper way and not in accordance with the intention of OWEB.

OWEB stated they would work with Mike Snyder, LCB Administrator, to develop an information flyer for Watershed Councils to clarify the work they do and the licensing laws for landscaping in Oregon.

B. Exemption to ORS 479

The Board reviewed the exemption to ORS 479 for licensed landscaping businesses. An identification card and instructions for the landscaping business have been created and will be made available on the website.

C. Proposed Rule Amendment

The board reviewed proposed rule amendments. Staff was directed to proceed with the rule making.

C. Ron Overstreet

A plaque was presented to Mr. Overstreet for his years of service to the LCB. Chair Triplett thanked Mr. Overstreet for his 6 years of service to the board. He will be greatly missed.

10. PUBLIC COMMENT

No members of the public present at this time.

11. ADJOURNMENT AND NEXT MEETING SCHEDULE

The meeting adjourned at 3:05 p.m. The next meeting of the Landscape Contractors Board will be a conference call meeting on June 14, 2007.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Analyst