

**LANDSCAPE CONTRACTORS BOARD**  
**Minutes of the January 16, 2014**  
**Board Meeting**  
**Beaverton, Oregon**

Please note that the minutes will not be approved until a regularly scheduled board meeting.

**PRESENT**

Board Members

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

Staff

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

**EXCUSED**

John Gawlista, Chair

Others

Katharine Lozano, Assistant Attorney  
General  
Jim Lewis  
Terry Wallingford  
Dan Hall  
Scott Buley  
Catherine Buley  
Sergio Flores  
Dave Crosswhite  
Philip Hitt  
Carolyn Groves  
Wayne Guild  
Jim Bremer  
Rand Strickfaden  
Angel Martinez  
Robert Lopez  
Russ Renner  
Doug Pickett  
Ron Vandehey  
Mark Raney  
Greg Kabinuk  
John Stone  
Mark Patten  
Matt Triplett  
Stephen Leiker  
Mark Barbour  
Jim Bremer

**1. AGENCY UPDATE AND OVERVIEW**

**Legislative Work Group Update**

Mr. Thomas reported there have been three meetings of the work group to come to a consensus to redefine the statutory language of the landscape industry. This is as a result of SB 557 in the 2013 legislative session. Any legislation coming out of this group will be for the 2015 legislative session. This group met yesterday and decided on 4 discussion focus topics – continuing education, licensing, contracting, and enforcement issues. The group tackled the continuing education piece yesterday, but no decisions were made. They are looking at approving education organizations instead of individual courses. This will streamline the approval and selection processes for the licensees.

In the licensing section, there are a few items missing, such as designing irrigation, drainage and water features. Another topic for licensing is the ability to subcontract with specialty trades outside the scope of the LCB license. These will open up business opportunities for licensees. In the contract section, the group is considering eliminating contract requirements for emergency repairs and adding a minimum dollar amount that may be performed without a written contract. The enforcement issues consist of the LCB being able to subpoena unlicensed businesses and cleaning up some of the requirements for licensed businesses to make it easier to understand

The group also discussed amending the claims and mediation process, changing enforcement actions taken against licensed businesses and allowing the LCB to collect hearing costs if the respondent loses their case.

Ms. Sneed reported that this landscape work group is a result of the attempt to move the LCB into the CCB as a CCB license and eliminate the LCB. The deregulation group within the Work Group is very set on deregulation of the LCB. The hope is to find some common ground. Ms. Sneed told the licensees in attendance if they wish to get their voices heard, they need to contact their legislator and/or members of the Work Group.

### **Agency Overview**

Ms. Sneed stated that almost half of the LCB board members are new (less than one year). The agency history and board training is the focus for the meeting today. It is hard to plan where to go if the members have no idea where we've been and where we are. The agenda is rather large and we may not get through the planning piece today. The training piece will be the focus.

Ms. Sneed reviewed the agency history beginning in 1971 when the license was first designated, to the LCB becoming semi-independent in 2002,, through the new planting license becoming available March 1, 2014. The Board would like this history included on the website.

### **Staff Functions**

Ms. Gladwill-Rowley reviewed the listing of staff functions with the board. Mr. Thomas stated he was very impressed with the amount of work each of the staff completes. The LCB is different from a larger agency in that staff have several different duties within each program rather than just focusing on one program in depth.

### **Enforcement Program and Tools**

Mr. Hintz, Investigator reported he has found all licensees, materials suppliers and other agencies to be very cooperative and responsive during his first few months. He is trying to be as responsive as possible to reports of unlicensed activity. Staff understands that the purpose of licensing is to bring about professionalism, quality work and accountability. There is a commitment to being in this industry and when the unlicensed come along and do not have to pay for

all requirements, it is not a level playing field. Staff and contract investigators respond as quickly as possible. The LCB has about eight contract investigators as this time. Mr. Hintz would like to increase this number, especially in specific areas. Having enough contract investigators throughout the state helps in the response time. Mr. Hintz works closely with each one to get a thorough investigation. Mr. Hintz attempts to get enough information from the person reporting the unlicensed activity prior to sending out a contract investigator to get the best use of LCB resources. Some of that information includes: getting the license plate number of the vehicle at the job site, an address where the work is being performed, and the specific work going on—that's the most important information that he needs. A few of the resources used by the LCB are the Oregon Judicial Information Network (OJIN), DMV records, other websites for property owners, and reverse directories for phone numbers.

The contract investigators are licensed with the State of Oregon as licensed investigators and have to report 36 hours of continuing education to their licensing agency. They understand how important the license is and they are all experienced investigators. One investigator is a retired US Fish and Wildlife Manager from Northern California who moved to the central Oregon area with 30 plus years of experience. Another investigator in southern Oregon along the coast has a law enforcement background with many years as an investigator. The newest contract investigator has more than 20 years experience. They are all contract investigators, and; therefore, independent contractors. They cannot receive training or be told what to do by the LCB. Their job is not to determine if there is a violation, but to collect information and then staff reviews the evidence and determines if there is a violation. Sometimes there is not enough information to have a solid case. Mr. Hintz may also do further investigation on a report from a contract investigator. Mr. Hintz reported he was able to stop a homeowner from paying an unlicensed person a large amount of money to an individual who has already spent time in jail for unlicensed work due to damaging a consumer.

Ms. Sneed stated the contract investigators are paid a set fee for a site visit. A site visit includes stopping to make sure it is a licensed business performing landscaping work. If there is no violation, we pay them \$25. If they find the work is being performed by an unlicensed business, the contract investigator writes a report and we pay \$150. Being a contract investigator with the LCB does not bring in a lot of money for the investigator. The contract also allows them to be paid an hourly rate to go out and cruise the community for four hours once or twice a year with the staff investigator.

### **Delegated Authority**

The Board reviewed the listing of delegated authority. Legal counsel has some concerns regarding a few of the items. Board members are responsible for the duties assigned to the board. There are specific items that can be delegated to the administrator or staff. Based on legal counsel's feedback, this listing may need a little tweaking.

### **2009 Financial Review**

Every two years the agency is required to have an audit or financial review. Last year was the first financial review as opposed to an audit. A review looks into systems and processes; rather than only verifying financial statements as an audit does. Financials are tested as well in a review.

There were some recommendations on the last review. Ms. Sneed explained the finding and recommendation #9 regarding budget controls in the last report. The currently financial review was performed last week and a report will be brought to the next board meeting.

### **2013-15 Budget Overview**

Ms. Sneed reported that the unknown in the budget process is income. When working on this budget the agency was experiencing diminishing revenues. This budget is based on a fairly flat income stream and not anticipating a lot of new revenue. The agency has not had any fee increases since 2009 and this budget did not include any licensee fee increases. The collection of assessed civil penalties cannot be relied upon for revenue.

## **2. REVIEW 2012 LICENSEE SURVEY REPORT**

Ms. Sneed reviewed the results of the 2012 licensee survey report. This survey did not obtain some of the information the agency was hoping to acquire due to the way the survey was written. The survey allowed more than one answer to some of the questions. The survey had 370 responses, which made it a statistically relevant survey. The majority of the licensees that responded have had their licenses more than ten years.

## **3. LCB 2011 RISK ASSESSMENT**

Ms. Sneed reviewed the 2011 Risk Assessment. This was done by our financial reviewer with the help of staff. Staff will schedule time to review this because of the two new staff members

## **4. REVIEW PAST LCB STRATEGIC & BUSINESS PLANS**

### **A. 2013 Strategic Plan**

The Board reviewed the 2013 strategic plan. Ms. Sneed included this as information for the new board members as to what has been accomplished. Later today the board will be discussing the direction to head today. The Board would like this plan added to the website.

### **B. Board Survey Results**

The Board reviewed the results of a survey from last week for Board and staff members. The key values listed are consumer protection, licensing and regulation and a level playing field. The theme in most questions was online applications and renewals. Ms. Sneed will be looking into this because it is time to be online.

### **C. Board Versus Staff Roles & Goals**

The Board discussed several goals to work on in 2014. Mr. Thomas stated as part of the Landscape Work Group he hopes they can produce a good model to send to the legislature to keep LCB semi-independent, fiscally sound, and provide consumer protection to a level our licensees expect.

The Board believes the discussion with the Landscape Architects Board will be important as both boards have several new members. There is an overlap between the two industries and both boards need to come to some common ground. It may require a legislative amendment.

Vice-Chair Lee stated she wants to make sure the complaints received in the LCB office are founded before spending resources and also believes that finding contract investigators throughout all parts of the state is important.

The survey taken by the Board and staff show they would like to focus on current programs with an online presence and an outreach to the consumer by working with other associations. Ms. Sneed stated she would like to look into an application for the smart phone technology for a license search and will be managing the effect of the planting license on the internal operations of the board. The Board also discussed the LCB coming up at the top of the listing for website searches. This may just take an adjustment of key words.

### **D. Affects of changes and amendments to procedures and requirements**

The Board reviewed a document showing an overview of things that have happened in the last couple of years and the changes we've seen.

### **Public Comment**

Vice-Chair Ms. Lee opened the meeting to public comment.

Randy Strickfadden

Mr. Strickfadden spoke about the design and construction piece of the license. He believes a Landscape Architect needs to be knowledgeable about construction and wonders why there is a separate board for them. He wonders who enforces whether or not a landscape construction company is performing the design or not and if the Landscape Architects Board has their own enforcement? Smaller companies do not have their own landscape architect.

Mr. Thomas stated that there are two separate statutes for the two boards and each one was created separately at separate times. LCB can plan and install. Landscape Architects can only plan. The Landscape Architect Board has the authority to take action against a company that designed and did not install, but are unsure of their history. He understands they do not have a lot of enforcement history.

Dave Crosswhite

Mr. Crosswhite wonders about licensees who have backflow and are they able to repair any backflow, even on non-potable water? Is there any legislation on that or on expanding the jurisdiction on the repair on those devices even if they are not for irrigation?

Ms. Hollenbeck stated this concept has been presented to the legislature a couple of times. The last time it was submitted late and did not get approved. The problem is the plumbing unions are huge and they are afraid that if backflow testers have the ability to repair failed assemblies, it would take a lot of business away from them. The Oregon Backflow Prevention Association has hired someone to continue to work on this topic. It is not dead, but in process and is hard to move.

Ron Vandehey

Mr Vandehey stated the history with the Oregon State Landscape Architects Board (OSLAB) goes further back than the LCB.. OSLAB was originally a policy and title only board with no regulatory jurisdiction. The LCB is more of a regulatory/policy board. He is unsure if that is still the way for OSLAB. They used to be very strong. When LCB started it was part of the Department of Commerce and that department no longer exists. Each legislative session makes it difficult to keep track of all of the changes to the regulating boards.

Ms. Sneed stated OSLAB are now a regulatory board.

Matt Triplett

Mr. Triplett stated that there was a period where OSLAB became dysfunctional. During that period, the LCB became more functional with semi-independence and started pounding turf protection. The LCB law changed from plan and install to plan or install. Each industry has their own turf. Things do move and change, and even go backwards sometimes. As long as the vision is moving forward and is intelligent, he recommends the LCB keep fighting.

Russ Renner

Mr Renner stated he worked really hard to get this license and believes the board does a lot for licensees and does not want to see it abolished. He understands it is tough for some licensees who think the board is going after them. He believes the Board keeps prices level and protects consumers. He also stated that if this license is dropped a lot of businesses will go rampant and crazy. He wonders how strong the board is on this issue when there is a group forming to abolish this license.

Mr. Thomas stated the committee is a work group and there is a minority of anti regulators, but that the majority have different mind sets, but are primarily pro regulation. There is a battle to produce a product to take

before the legislature. The Board has to stay neutral, but licensees can have options. The majority of licensees do not use their voice. Those that do use their voice have power. If anyone has an opinion, the best thing is to contact Senator Thomsen or your own legislator, or any member of the work group. Now is the best time to use your voice. No matter the outcome of this work group, those against regulation will still exist.

John Stone, OLCA representative

Mr. Stone stated he is also on the work group and that OLCA has three members on that group. The anti regulation believers are a small number, but they very carefully picked a good time to be effective, particularly for their size. He stated it was nice to see so many licensees attending this meeting today. If anyone is interested in the work group discussion, they can also contact him. He told everyone present that when to be effective is their decision. If you contact Senator Thomsen, he's going to listen and be very interested in your comments. OLCA has a list notification for these types of issues if members wish to be included.

Jim Lewis

Mr. Lewis thanked the board for bringing up reviewing contract rules for subcontracting work outside the scope of the LCB license. He believes that no contract for emergency jobs will be very helpful for the unknown issues with an irrigation system. He also wonders about where to find an LCP when you are looking to hire. Ms. Dunston stated the Board website does list those names at the bottom of the search screen.

#### **5. DISCUSS AND CREATE THE 2014 LCB STRATEGIC PLAN**

Ms. Sneed will work up the comments from today and update the last plan and bring it to the next meeting for review and amendments.

#### **6. DISCUSS LANDSCAPE MANAGEMENT BEST IRRIGATION PRACTICES BY THE IRRIGATION ASSOCIATION**

The Board discussed the draft of the Landscape Irrigation Best Management Practices by the Irrigation Association. The Board thought it was a very in-depth, solid document. They consider it an educational industry resource for licensees and would like a link to it on our website. It needs to be known that the board does not endorse this document or association, but considers it a resource for our licensees. This document is a proactive start to cultivating water management knowledge for our licensees. Christine Hollenbeck volunteered to help staff obtain other resources to link on the LCB website.

**7. Board Training**

**Public Session**

**A. Contested Case Process Overview**

Ms. Lozano reviewed the contested case process with the Board for their information. This included the difference between the administrative process and the criminal process.

**B. DAS Online Board Training**

Ms. Sneed reviewed the DAS Online Board Training with the board. This is an online training developed by the Department of Administrative Services. This training used to be face to face, but is now online for each board member to go through.

**Executive Session**

Vice-Chair Lee read the executive session statement and all public members left the room. Executive Session began at 2:55 p.m.

**A. Public Meetings & Records Law Training**

**B. Government Ethics Law**

Vice-Chair Lee brought the meeting back into public session at 3:43 a.m. No decisions were made and no votes were taken during the executive session.

**8. ADJOURNMENT**

The board adjourned until the next day for the regularly scheduled board meeting. The meeting adjourned at 4:05 p.m.

Respectfully Submitted,

Kim Gladwill-Rowley  
Program Manager