

**MINUTES OF THE DECEMBER 8, 2009
CONSTRUCTION CONTRACTORS BOARD MEETING**

The Construction Contractors Board met on Tuesday, December 8, 2009, in the Glen Creek Room, West Salem Roth's IGA, 1130 Wallace Rd. NW, Salem, Oregon.

Attendees:

Board Members: Chair, Rob Hernandez, Chuck Crump, Richard DeWolf, Jon Mangis, Tom Skaar, Dennis Schad, Sandy Trainor and Rob Yorke. Board member Mary Stern was excused from the meeting.

Staff: Administrator Craig P. Smith, Enforcement Manager Richard Blank, Dispute Resolution Manager, Bill Boyd, Licensing/CSU Manager Kristie Patton, Information Technology Manager Shelly Wiles, Field Investigations Manager Robert Rambo, and Education Manager Gina Fox, Administrative Services Manager Linda Teet, and Board Secretary Catherine Dixon. Assistant Attorney General Joanna Tucker Davis was also present.

Guests: Bonnie Sullivan
Cal M Jan

A. PROCEDURAL

1. Call to Order:

Chair Rob Hernandez called the meeting to order at 8:35 a.m.

2. Approval of Agenda and Order of Business:

The agenda for the December 8, 2009, meeting was approved.

3. Approval of Minutes:

The October 27, 2009, Board meeting minutes were amended on page 1 to change the start time of the meeting to 8:35 a.m. and on page 14 to correct the chair's name to Hernandez and the minutes were approved. The October 27, 2009, Appeal Committee meeting minutes were approved.

4. Board Member Reports:

Board members reported on current CCB related events in the geographic region, in which they live and work. Construction continues to be slow in most regions.

5. Agency Revenue Driver Report:

a. Number of New Licenses Processed Per Month:

Administrator Smith reported that the number of new licenses processed in November 2009 was 221 (68 percent of 325 projected). The average number of new licensees per month for the period July 2009 through November 30, 2009 was 263. The 2009-11 budget is based on an average of 325 new licenses per month. The number of new licenses issued by the agency is significantly down.

b. Rate of Renewals:

Administrator Smith reported that the 2009-11 budget is based on 75 percent renewal rate. The renewal rate for November 2009 was 68 percent (87 percent of 09/11 projections). The average renewal rate for the period July through November 30, 2009 was 71.6 percent.

c. Budget/Fees:

Administrator Smith reported that in January the Board should determine whether to begin the process of adjusting licensing fees, effective July 1, 2010. The CCB is current authorized to raise fees up to \$325.

Currently seven important key positions will end on July 1, 2010. These positions include:

- Two Licensing/Customer Service Unit staff
- One Education Communication Specialist
- One Field Investigator
- One enforcement clerical staff
- One DRS clerical position
- One DRS Investigator/Mediator

Agency management has been taking steps to produce as much savings as possible.

Board members commented that if it is determined that further cuts are necessary, however, CCB may need to revisit eliminating one of its current programs.

Administrative Services Manager Linda Teet handed out a memo regarding projected summary of revenue based on 250 and 260 new licenses per month and 70 percent renewal rate that the Board requested at the October Board meeting. CCB's current budget was based on 75 percent renewal rate and an average of 325 new licenses per month. The projected revenue is:

- | | |
|---|--------------|
| • 70% renewal rate and 260 new licenses | \$12,508,665 |
| • 70% renewal rate and 250 new licenses | \$12,487,865 |

Board members discussed their concerns regarding the current revenue decreases and the agency's ending balance. Board members discussed looking at requesting permission to raise the licensing fee to \$420 or start planning for further budget cuts to the agency. Some Board members may not be in favor of an even higher fee increase. Board members expressed concern, since the agency may lose seven positions that are vital to the agency's performance, making even more cuts would be damaging to the agency's ability to perform its core activities, which include education, licensing, enforcement, and dispute resolution. Without a fee increase to at least the levels authorized by the LAB (\$325) the agency would not be able to sustain current service levels to the public, a program will need to be cut.

Administrator Smith reported that he will continue to project the revenue using the lower numbers and bring back an updated report on the ending balance in January.

(Staff Action Item 12.09.A.5.c1)

Board members suggested Administrator Smith carry their concerns to the agency's Budget Analyst and the Governor regarding the current revenue situation, the need to raise the fee to \$325 or cut an entire program due to revenue shortfalls. Also talk about the need to raise the fee even higher to see if the Governor and DAS would be interested in such talks. Administrator Smith will prepare a memo and motion for the Board to prepare for a rule amendment to adjust licensing fees to \$325 effective July 1, 2010.

(Staff Action Item 12.09.A.5.c2)

B. ONGOING ISSUES:

1. Purcell Issue:

Field Investigations Manager Bob Rambo and Enforcement Manager Rich Blank discussed the Purcell issue with Board members. They have reviewed the newspaper article and investigated the matter. The parties are aware that CCB is watching them. No further action needed.

2. DRS Streamlining Efforts:

Dispute Resolution Services (DRS) Manager Bill Boyd discussed his recommendations with Board members. Mr. Boyd discussed the pros and cons of each recommendation. Further action needed as outlined below:

- 1) DRS Pre-Complaint Notices (eliminate the pre-complaint notice requirement):
This recommendation has some advantages and disadvantages. It may increase the number of complaints received to a level that current staff could not timely process. Staff will proceed with drafting a legislative concept for 2011 to see if the Governor will move forward with the concept.

(Staff Action Item 12.09.B.2.1)

- 1a) Refer DRS Complaints to Small Claims Court: DRS Manager Bill Boyd reported that he did not think the agency could refer a lot of cases to small claims court, but he is researching the matter. Mr. Boyd believes that currently, CCB lacks jurisdiction to routinely refer cases to small claims court and would most likely require a legislative mandate. Small claims court may not a good venue for most construction disputes. To refer on the basis of "nature and complexity" would require the definition to be amended. Bring back this issue at the January for Board.

(Staff Action Item 12.09.B.2.1a)

- 1b) Workflow and Paperwork: DRS Manager Bill Boyd reported that DRS staff are working on a review of all letters and workflow, which may take up to a year to complete.

Mr. Boyd is to proceed with a comprehensive review of letter, program templates, workflow, and will report progress in quarterly report.

(Staff Action Item 12.09.B.2.1b)

- 1c) Mediation Referred Quicker: DRS Manager Bill Boyd reported that DRS is changing their process and will refer the case to the investigator to schedule at the same time the DRS fee letter is sent to the complainant.

Mr. Boyd is to implement this plan

(Staff Action Item 12.09.B.2.1c)

- 1d) DRS Fees—When to Require Payment of DRS Fee: DRS Manager Bill Boyd reported that a change has been made to accomplish this goal. He will report on that change at the January Board meeting. This matter is related to the implementation of 1c, above.

(Staff Action Item 12.09.B.2.1d)

- 1e) Time Between Actions –Combine Certain Actions: DRS Manager Bill Boyd reported that he and staff are working on this and will report progress at a future Board meeting.

(Staff Action Item 12.09.B.1e)

- 2) Litigation or Bankruptcy—Close DRS Action: DRS Manager Bill Boyd reported that the problem is that all DRS complaints filed in a 90 day period have the same payout dates and all the cases are held up until they are ready to be sent to the bond company. If some complaints are sent ahead, then the ones left behind could lose their priority to get payment from the bond.

Board members suggested considering stopping the agency's key performance measure (KPM) clock while the matter is in litigation or bankruptcy.

Administrator Smith reported that this could be done, but the agency would need to make such a change in a very transparent manner and get approval from Legislative Fiscal Office before the agency does so.

(Staff Action Item 12.09.B.2)

- 3a) Fee for Hearing: DRS Manager Bill Boyd reported that this recommendation may not be well advised.

Mr. Boyd is not aware of any other agencies that charge for a hearing request.

Parties to a contested case have a right to a hearing. Sometimes the agency asks for a hearing due to conflicting evidence submitted from the parties.

Board members discussed that they see too many contractors requesting hearings, and not showing up, and believe they are using the process to buy more time.

In the alternative, Board members would like to see the contractor that requests a hearing, doesn't show up, issued a penalty or lose their rights to appeal. They

also discussed requiring the contractor to respond to agency request for information, in order to request a hearing.

The group discussed the concept of citizen rights to appeal decisions made at various levels of agency decisions:

- Staff
- Administrator Law Judges
- Board Members

And, suggested that the Oregon Administrative Procedures Act (APA), that provide the agency with its power, also curbs that power by providing citizens with an absolute right to be heard. Citizens do not have a responsibility to appear at hearings. They may appear or they may choose not to appear, the consequences being that they most likely will not prevail if they choose not to appear at the hearing. Government has a responsibility to inform the citizen of his/her rights, and provide the forum for the full and fair hearing, and appeal process. This is an important check and balance on the government power and authority over the population.

It is possible for Oregon and federal courts to further curb the agency's power through case law, if they determine that agencies are melding with citizen's rights to appeal decisions made through administrative procedures.

It is, therefore, important for the agency to balance its efforts to provide incentives for licensees to respond to agency directive, with the safeguards the legislature have provided citizens through the Oregon APA.

Staff ensured Board members that they would research the issue and provide various solutions for consideration by the Board.

Fee for Hearings: Boyd to review options further.

- Board would like to consider a higher fee and possibly charging the party that requests a hearing a "hearing fee" because too many contractors are requesting a hearing and fail to show up.
- If the party that requested the hearing doesn't show up, they would lose their rights. Staff to consider a rule to charge a penalty if the contractor doesn't show up after requesting a hearing.
- Mr. Boyd is to perform research, obtain advice from DOJ, and draft a rule for a future (April) Board meeting.

(Staff Action Item 12.09.B.2.3a2)

4a) Office of Administrative Hearings (OAH): DRS Manager Bill Boyd reported that they are working with OAH to agree on a policy for granting hearing extensions, but leave implementation of the policy with OAH.

4b) Mandatory Negotiation Before Hearing: DRS Manager Bill Boyd reported that this has been completed. No further action needed.

Draft letter to OAH for Chair signature regarding the length of time to get a case completed.

(Staff Action Item 12.09.B.2.4b)

5a) Arbitration Agreements: DRS Manager Bill Boyd reported that he is working with the agency's attorney to see if a rule amendment can be made. This matter will be brought back to a future Board meeting.

5b) Mandatory Arbitration for Complaints Over \$5,000: DRS Manager Bill Boyd reported that he is preparing a staff report for the January meeting.

(Staff Action Item 12.09.B.2.5b)

6) Close Complaints: DRS Manager Bill Boyd reported that he is reviewing the recommendation and will talk with DRS staff to see if there may be options for improvement in this area and report to the Board at a future Board meeting.

(Staff Action Item 12.09.B.2.61)

Change the rule to shorten complainant's time to respond to arbitration agreement waiver. Contractor's time would have to be changed by legislative concept. Mr. Boyd is to develop a memo and legislative concept and deliver it to the Administrator.

(Staff Action Item 12.09.B.2.62)

7) Cost Estimator: DRS Manager Bill Boyd reported that he agrees that a cost estimator would be a benefit; if authorized as a DRS employee. Mr. Boyd commented that volunteers may not work out, because they could be held liable for decisions they make.

8) Move More Work to Specialists: DRS Manager Bill Boyd reported that this matter is somewhat complicated and he will prepare a report for the April Board meeting.

(Staff Action Item 12.09.B.2.8)

9) Secure Email: DRS Manager Bill Boyd reported that he will work with IT staff and will have a white paper to share with the Administrator by May 1, 2010, and the Board packet for the Board meeting in May.

(Staff Action Item 12.09.B.2.9)

10) Non-Owner Complaints: DRS Manager Bill Boyd reported that he needs to research this further and will be ready to have a discussion regarding this issue at the January Board meeting.

(Staff Action Item 12.09.B.2.10)

11) Penalizing Contractors that Don't Respond to CCB: DRS Manager Bill Boyd reported he will take a second look at this issue. (See comments in item (3) of this section.)

Board member Crump suggested requiring the contractor to respond to at least one letter. Mr. Boyd is to research this possible requirement, develop a plan, and report at the January Board meeting.

Mr. Crump suggested checking with Board of Engineers and other state agencies regarding what type of encouragements they use to get contractor's to respond.
(Staff Action Item 12.09.B.2.11a)

The APA allows the agency to require a contractor to "Answer" a proposed order issued by DRS. This could be the best solution. And, this could also be a useful tool for the Board. Bill Boyd is to research this solution and report back at the January Board meeting.

12) Change Board Meeting Agenda: The Board asked that at least 45 minutes be put on the January agenda to discuss DRS.
(Staff Action Item 12.09.B.2.12)

13) Reduce the Number of Days Between Dispute Analyst Actions: This item appears to be the same as 1e and will hence forth be treated as a duplicate of item 1e.

14) DRS Staff Committee: DRS Manager Bill Boyd reported that Administrator Smith will appoint staff to the committee.
(Staff Action Item 12.09.B.2.14)

3. DRS Work Flow Charts:

Administrator Smith discussed the flow charts with Board members. Last summer CCB received more complaints than it closed. This was a result of the agency's exceeding the capacity of DRS files that it could process, which caused a backlog. DRS has worked hard to get caught up.

DRS Manager Bill Boyd reported that it is DRS's goal to process mail, enter the complaints, and respond within one week of the date of receipt.

4. DRS File No. 150518-104:

DRS Manager Bill Boyd discussed the complaint with Board members.

Administrator Smith reported that the complaint took too long to process, there were some errors made along the way. DRS has reported that changes have been made to prevent similar problems in the future.

5. HB 3082, Department of Revenue Pilot Project:

Administrator Smith reported that a vote was needed on whether CCB would participate in the DOR HB 3082 pilot project.

Staff recommends that CCB participate and limit the pilot project to the residential limited contractor category for one year. Department of Revenue (DOR) will get a

list of the contractors that are to renewal and will check to see if they are in compliance with tax laws. DOR will notify CCB whether the license can be renewed.

Administrator Smith reported that CCB staff will work with the Department of Revenue on procedures that will be followed, and the details of the project will be worked out.

Board members asked when the project would start and when it would end. Board members are also concerned that this project not cause delays in the renewal of a contractor's CCB license.

MOTION: Rob Yorke moved to approve the proposal to participate in the DOR pilot project and limit the pilot project to the residential limited contractor category for one year.

VOTE: 7-1, Ayes—Crump, DeWolf, Hernandez, Mangis, Schad, Skaar, and Yorke; Nays—Trainor.

Administrator Smith reported that he will contact the Department of Revenue and let them know that the Board has approved participating in the pilot project limited to the residential limited contractor category for one year and that Board members have concerns about the program and are worried about delays the process may cause in renewing the contractor's license.

(Staff Action Item 12.09.B.5)

6. Website Review Workgroup:

Education Manager Gina Fox reported the Website Review Workgroup met on October 6, 2009, to address concerns on the display of administrative sanctions. Based on input from the workgroup, changes were made. The group reviewed the website screens and determined that the webpage screens should be changed by revising the order the items are listed. Staff shall separate the items into business information and disciplinary information. In the explanation of administrative sanctions, bold the "DO NOT" to make it more prominent to the reader and take the bold off the suspension information at the bottom of the screen. This will correct the current problem that makes these types of sanctions look more important than they really are. The items on the screen will be listed in order of importance from the consumer's perspective. These changes have been made.

In addition, two other areas that continue to be under discussion are the "associated name records" and the complaints closed due to lack of jurisdiction. These two items have been put on hold until spring due to IT staff working on the rollout of the continuing education, locksmith certification program and lead-based paint program.

C. SPECIAL PROGRAMS:

1. Continuing Education:

a. Residential Continuing Education—Core:

Education Manager Gina Fox reported that the applications for residential education providers are currently on CCB's website. The CCB Residential

Continuing Education (RCE) Core course is the most difficult to implement. CCB has a couple of building codes education providers in the process. Ms. Fox is preparing to contact the current building codes education providers and Energy Trust providers to see if they are interested in applying to provide courses for CCB residential continuing education.

Ms. Fox reported that she has experts from Forensic Building Consultants that are willing to help write the BEST chapter for CCB. Our goal is to get the information into the course manual.

Ms. Fox is creating a chart to post on the website that shows a licensee when the continuing education is due for each group. Also on the website will be a list of approved education providers.

Provider Listed on Website: Board members expressed concern about posting a list of education providers on the CCB's website due to the maintenance issues related to establishing and maintaining such a "fluid" list on the website. If the list was a one-time posting with not much updating needed, then perhaps such a system could succeed.

Agency stakeholders are looking for information about continuing education providers and expect the agency to provide as much information to them as possible. If something is not posted on the website, the agency will receive a lot of phone calls seeking this information.

Board members asked staff to draft a plan and sample for them to review at the January Board meeting.

(Staff Action Item 12.09.C.1.a.1)

RCE Communication Plan: Board members suggested sending information through the email. Staff are currently sending information out with the renewal notices, including telling licensees how to sign up on a list serve to get information sent to them. CCB is looking at reducing the number of publications and mailings to reduce costs. Perhaps CCB field investigators could hand something out at jobsite checks.

BEST—Part of CCB Prerequisite Education: BEST training may be incorporated into the prerequisite education in the spring of 2010, which would require a rule change. The plan is to have the new licenses take the BEST training at the same time as those renewing rather than waiting two years. This could be a second class that new contractors would be required to take. This would require a rule amendment. The goal is to accomplish this transition no later than July 1, 2010. Ms. Fox is to prepare a draft rule.

(Staff Action Item 12.09.C.1.a.2)

b. Modifications to Commercial Contractor Rules:

Education Manager Gina Fox discussed the proposed draft rule changes with Board members.

There will be a rulemaking hearing at the January Board meeting on the proposed changes.

2. Locksmith Certification Program:

Enforcement Manager Richard Blank reported that Locksmith Advisory Committee (LSAC) meeting was held on December 1, 2009. The following decisions were made at the meeting:

- The application will be available online. Staff are working on the application process and aiming for roll out on February 1, 2010.
- There is no grandfathering.
- A subcommittee was established to work on development of test questions. The test will be a test to 100 percent. The test will also be given online.
- The applicants will pay online.
- The initial fee is \$60 application, \$60 test fee, and \$60 locksmith certificate (total \$180) and \$60/2 year renewal.
- Criminal history certification will be similar to what CCB does for licensees. CCB did not have authority to have the Oregon State Police do a criminal background check. This process will be a self-certification criminal history certification process conducted “online”.

Mr. Blank and Administrator Smith discussed the proposed draft rules with Board members. The rulemaking hearing will be held at the January 26, 2010, Board meeting.

3. Lead-Based Paint Program:

Administrator Smith reported that staff are working on draft rules for a hearing in January. Staff are working with Department of Human Services (DHS), Lead-Based Paint program to match up CCB’s rules with DHS’s rules. The lead-based paint renovation contractor requirements become effective on April 22, 2010, which is Earth Day.

This new regulation will affect most remodeling contractors. They will be required to take eight hours of training, pay a fee and obtain the special license. DHS will set the standards for the lead-based paint renovation contractors. The fee will be \$50 a year, which was set by the legislature during the budget process. The CCB Field Investigation Section investigators will attend the RRP training for lead-based paint renovation contractors, so they will be informed of the requirements.

Education Manager Gina Fox reported that she has set up a list serve for contractors to sign up to receive information about the program.

Ms. Fox has also set up a blog. Board members asked Ms. Fox to send them the submissions to the blog.

(Staff Action Item 12.09.C.3)

Ms. Fox reported that she will send out press releases on the new requirements once the rules are adopted.

4. Small-Scale Energy Loan (SSEL) Program:

Administrator Smith reported CCB has not heard anything from the Department of Energy regarding the Small Scale Energy Loan Program. The CCB, however, is required to set up a SSEL licensing program. We will use the Lead-Based Paint Program as a “template”.

5. Interagency Compliance Network:

Administrator Smith reported staff are attending meetings to network with other agencies. An issue has come up regarding confidential information being discussed at an open meeting.

6. Home Inspectors:

Administrator Smith reported that there are some issues that have come up with the current home inspector rules. Issues that have come up are regarding:

- The Energy Trust audits performed,
- Federal 203 inspections, and
- Building envelope inspections.

They may require that the agency consider amendments to the current administrative rules.

Staff are working with the groups concerned to try to reach resolution and plan to hold a meeting and invite all the parties to come to the table to discuss the issues.

Board member Skaar suggested eliminating the ability of a home inspector to have a limited liability clause in their contracts. Administrator Smith stated that the home inspector industry may not support such a requirement. It was determined that CCB would seek advice from its counsel regarding CCB’s authority to adopt such a rule.

This item is to be placed on the April Board meeting agenda and invite testimony regarding the problem. Staff will research past DOJ opinions regarding this matter and be prepared to discuss them at the January Board meeting.

(Staff Action Item 12.09.C.6)

D. ADMINISTRATIVE RULES HEARINGS

1. Discussion of Administrative Rules:

Administrator Smith discussed the proposed rules for the rulemaking hearing.

2. Rulemaking Hearing:

Chair Hernandez opened the rulemaking hearing at 11:04 a.m.

Administrator Smith discussed the draft rule changes.

Public Comment:

No one came forward for public comment.

Board members discussed the draft proposed rules and made the following motion.

MOTION: Tom Skaar moved to approve the amendments to OAR 812-008-0090, 812-012-0110, and 812-021-0025.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Mangis, Schad, Skaar, Trainor and Yorke.

(Note: See Attachment B for the language of the adopted rules.)

3. Permanent Rules Filed November 30, 2009, effective 1/1/10:

Administrator Smith briefly discussed the permanent rules filed on November 30, 2009, which become effective January 1, 2010 with Board members.

4. First Look at Draft Proposed Rules:

Administrator Smith discussed the draft proposed rules with Board members. Board members asked staff to proceed with the rulemaking process.

E. NEW BUSINESS:**1. Pay Twice – HB 2366 (2009) – Recovery Fund:**

Dispute Resolution Manager Bill Boyd discussed the December 4, 2009, meeting he attending in Portland regarding legislation concept on liens. A recovery fund was discussed. Some of the parties did not like the open ended recovery fund because the concept left homeowners defending the lien foreclosure action and only getting reimbursed for part of the lien cost later. The recovery fund concept is no longer being considered. Instead the group of attorneys agreed that the following concepts would improve consumer protections:

- a. Delete ORS 87.007(2)(f) and repeal ORS 87.091. These provisions allow a contractor to comply with ORS 87.007 by obtaining a waiver of the requirements of that statute.
- b. Provide a form for lien waivers in the ORS. This will reduce the need for parties to pay an attorney to draft one.
- c. A material supplier forfeits its lien rights if it supplies materials to an unlicensed subcontractor.
- d. Provide that the deposit on a construction contract may not exceed an amount established by the CCB by rule. The CCB could set up schedules to determine the maximum percentage allowed based on the contract amount.
- e. Require that every contract over \$2,000 provide that the owner may hold back some percentage (about 10 percent) from the initial deposit and progress payments as retainage until the contractor completes the job and addresses the punch list items.

Mr. Boyd reported that legislators may wish to enact some provisions out of the New York law that provide that an individual who receives money under a construction contract holds that money in trust. This allows a suite directly against the individual

corporate officer for misappropriation of trust funds and received by the contractor. This is a bigger project for a later session.

2. NASCLA Residential Standards:

Administrator Smith handed out the NASCLA book entitled “NASCLA Residential Construction Standards” to Board members. Board members are to review the book and determine whether CCB should adopt the book as its standards at its April meeting.

3. NASCLA Mid-Year March Meeting California/Nevada (Joint Meeting):

Administrator Smith discussed him attending the March NASCLA meeting which will be a joint California and Nevada meeting discussing problems those states are having.

Board members approved Administrator Smith attending the meeting using state funds.

4. Golden Rule Remodeling and Architecture Inc. Letter:

Administrator Smith reported that Golden Rule has requested that the agency change its message to consumers. The agency’s consumer document entitled “16 Ways to Avoid Remodeling, Repair and Construction Problems”.

Mr. Jackson offered suggestions for improving the document. Mr. Jackson explained how it is a common practice of the remodeling industry to offer “design build” services; that makes comparing fix-price estimates or quotes impractical and suggested that it may be beneficial for the CCB to revise its message to consumers to account for this impracticability. He explained that it is a common residential remodeling industry practice for contractors to offer a consumer a contract for professional services, which result in preparation of design and plans, but that the design specifications and plans remain the property of the contractor. This service is often only provided if the consumer agrees to pay a fee for the professional service, which is not refundable, but may be credited toward a final contract to perform the remodeling sought by the consumer. Only then is a final estimated price offered to the consumer, thus making it difficult or impossible for consumers to “get more than one bid” on their remodeling project.

Board member DeWolf stated that his company provides separate contracts for the architectural work, which the consumer will own; and then a second contract is written for the construction phase. The architectural work can only be performed by a licensed architect licensed by the Architecture Board.

Perhaps the agency could add something making it clear that CCB does not regulate architecture and design work that is a separate agency. Gina Fox is to look into this. **(Staff Action Item 12.09.E.4a)**

Board members discussed developing “best practice” suggestions for construction businesses to have two separate contractors; one for design, and one for construction. Gina Fox will report agency action on these items at the April Board meeting.

(Staff Action Item 12.09.E.4b)

5. Exempt Contractors Working Together:

Enforcement Manager Richard Blank handed out a memo regarding exempt contractors working together on the Rose Carpet enforcement case. The memo is an update on the case. CCB determined for this case that subcontractors were licensed in the non-exempt class and had an active workers compensation policy were substantially in compliance. The CCB is considering the issuance of warning letters, in some cases, as well as civil penalties.

It is enforcement’s view that carpet and tile installations are two separate tasks.

Administrator Smith reported that he will share this information with Bob Shiprack and the Building Trades Council.

(Staff Action Item 12.09.E.5)

6. Warranty Questions from Oregon Housing, Consumer Protection and Government Accountability Committee:

Administrator Smith discussed the letter sent to Oregon Building Industry Association asking their help in answering questions from the Oregon Housing, Consumer Protection and Government Accountability Committee. Mr. Smith needs assistance from associations in answering the questions. The committee wants to know:

- What forms of written offers of warranty against defects in material and workmanship are commonly being offered to new home buyers?
- Are there other warranty products on the market (or in the horizon) that might be offered to consumers when economic conditions may permit?
- What are the most common reasons why some consumers decline a builder’s offer of new home warrant?

7. Chinese Drywall:

Administrator Smith asked Board members if they were aware of any Chinese drywall being used in Oregon. Board members were not aware of any instances.

E. PUBLIC COMMENT:

Chair Hernandez opened the meeting to take public comment. No one came forward to make comments.

G. CCB PROGRAM ISSUES:

1. Administrative Services:

Due to time constraints no additional report was given.

2. Education:

Due to time constraints no additional report was given.

3. Licensing/CSU:

Kristie Patton, Licensing/CSU Manager, *

4. Field Investigations:

Due to time constraints no additional report was given.

5. Enforcement Program:

Due to time constraints no additional report was given.

6. Dispute Resolution Services (DRS):

Due to time constraints no additional report was given.

7. Administration:**a. Letters to the Board:**

Administrator Smith briefly mentioned the letters to the Board.

b. News Clippings/Press Releases:

Administrator Smith briefly mentioned the news clippings.

c. Board Calendar 2010:

Administrator Smith briefly discussed the Board calendar.

d. Agenda Items for the Next Meeting:

- Administrative Rules
- Budget Issues
- DRS Review and Streamlining
- NASCLA Standards of Practice Book Discussion

H. Adjournment

The Board meeting adjourned at 1:00 p.m. The next Board meeting is scheduled for 8:30 a.m. January 26, 2010.

Sincerely,

Catherine Dixon
Board Secretary

Attachment A
MINUTES OF THE DECEMBER 8, 2009
CONSTRUCTION CONTRACTORS BOARD
APPEAL COMMITTEE MEETING

The Construction Contractors Board Appeal Committee met on Tuesday, December 8, 2009, at West Salem Roth's IGA, Glen Creek Room, 1130 Wallace Rd NW, Salem, Oregon. Appeal Committee Members present included: Chair, Rob Hernandez, Chuck Crump, Richard DeWolf, Jon Mangis, Tom Skaar, Sandy Trainor and Rob Yorke. Board member Dennis Schad and Mary Stern were excused from the meeting. Construction Contractors Board staff present were: Administrator Craig P. Smith, Enforcement Manager Richard Blank, Field Investigations Manager Robert Rambo, Information Technology Manager Shelly Wiles, Education Manager Gina Fox, Dispute Resolution Manager Bill Boyd, Licensing/CSU Manager Kristie Patton, Administrative Service Manager Linda Teet, and Board Secretary Catherine Dixon. Assistant Attorney General Joanna Tucker Davis was also present.

Guests Included: Bonnie Sullivan
 Tammie Sims

The agenda for the December 8, 2009, meeting was approved.

The Committee convened at 1:10 p.m. to decide the following case for which exceptions have been filed:

1. Complaint No. 128427-102, Malcolm J Corrigan and Kathleen P Corrigan vs. Edna Smyth and Edward Smyth dba E & S Services. The Complainants, Malcolm J. Corrigan and Kathleen Corrigan, appeared before the Board. The Respondent's Attorney, Greg Lusby, appeared before the Board. The Respondent Edward Smyth, appeared before the Board.

MOTION: Tom Skaar moved that the Appeal Committee finds the respondent was unreasonable in refusing to provide details on the water tank repair. Complainants were reasonable in refusing to allow repair. Damages should include complainants cost of \$5,800 to repair the water tank. The Appeal Committee directs the staff to draft an appropriate order, affirms the remainder of the Administrative Law Judge's order and issues a final order in the amount of \$28,016.51.

VOTE: 5-2, Ayes—Crump, Mangis, Skaar, Trainor, and Yorke. Nays— DeWolf and Hernandez

The meeting adjourned at 2:20 p.m. The next Appeal Committee meeting is scheduled for January 26, 2010.

Respectfully submitted,

Catherine Dixon
Appeal Committee Secretary

Attachment B

812-008-0090

Revocation of Certification

The Construction Contractors Board may revoke the certificate of an Oregon certified home inspector or the license of a business that performs work as a home inspector for failure of the Oregon certified home inspector to:

(1) Comply with one or more of the “Standards of Practice” set forth in OAR 812-008-0202 through 812-008-0214.

(2) Comply with one or more of the “Standards of Behavior” set forth in OAR 812-008-0201.

~~[(3) Comply with OAR [812-008-0078(1)].~~

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 6/99, 6/00, 3/06, 12/09 (eff. 1/1/2010))

812-012-0110

Terms of Written Contract

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

(a) A statement that the contractor is licensed by the Construction Contractors Board.

(b) The contractor’s name, address, phone number and license number issued by the board as shown on board records.

(c) Effective July 1, 2008, an acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(d) A ~~summary~~ list of the notices required under ORS 87.093, 701.330 or under rules adopted under ORS 701.335(2).

(e) Effective July 1, 2008, acknowledgment of the receipt of the maintenance information required by the board under ORS 701.335;

(f) An explanation of the property owner’s rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

(g) Customer’s name and address;

(h) Address where the work is to be performed;

(i) A description of the work to be performed;

(j) Price and payment terms;

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335

Stats. Implemented: ORS 701.305, 701.330 & 701.335

(12/07, 6/08, 12/09 (eff. 1/1/2010))

812-021-0025

Provider Approval, Standards, Fees and Renewal for Core – Continuing Education for Residential Contractors

(1) The agency will review and approve providers offering core continuing education.

(2) Providers will apply for approval on a form prescribed by the agency. Providers may, but need not, apply for approval at the same time they apply for course approval.

(3) Providers seeking approval to offer training in BEST, building codes or “green” or sustainable building practices must submit the following to the agency:

(a) Name, address and contact information of the provider;

(b) Business entity type of the provider and, if applicable, the Corporation Division business registry number;

(c) Description of provider business plan;

(d) Description of the core subject area(s) provider intends to offer; and

(e) Such other information or documentation as the agency may request.

(4) Providers must remit to the agency together with their application:

(a) A non-refundable fee of \$2,000 if applying to offer BEST;

(b) A non-refundable fee of \$500 if applying to offer building codes or “green” or sustainable building practices; or

(c) A non-refundable fee of \$2,500 if applying to offer both BEST and building codes or “green” or sustainable building practices.

(5) To qualify for approval, providers must:

(a) Certify the programs offered meet the minimum standards and content objectives established by the Board;

(b) Employ or contract with educators who have at least two years work experience or two years of education, or any combination of both, in the subject that they instruct;

(c) Be capable of entering and transmitting electronic data to the agency;

(d) Describe a process for prompt resolution of complaints by registrants;

(e) Describe a process for cancellations and refunding registrant payments; and

(f) Provide a surety bond in an amount of \$20,000 obligating the surety to pay registrants to whom the provider owes money for cancellation or other refunds that the provider fails to pay. **The bond must be in the form adopted by the board as the “Continuing Education Provider Surety Bond” dated December 1, 2009.**

(6) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.

(7) Providers must re-submit application and fees required under sections (3) and (4) of this rule for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, 12/09 (eff. 1/1/2010))