

MINUTES OF THE OCTOBER 27, 2009 CONSTRUCTION CONTRACTORS BOARD MEETING

The Construction Contractors Board met on Tuesday, October 27, 2009, in the Oregon 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, Mary Stern and Rob Yorke. Board member Sandy Trainor was excused from the meeting.

Staff: Administrator Craig P. Smith, Enforcement Manager Richard Blank, Licensing/CSU Manager Kristie Patton, Information Technology Manager Shelly Wiles, Field Investigations Manager Robert Rambo, and Education Assistant Holly Eilertson. Assistant Attorney General Joanna Tucker Davis was also present.

Guests: Bonnie Sullivan
Steve Telfer, OREIA
Scott Barrie, OHBA
David Hutchins, Energy Trust of Oregon
Eric Smith, Department of Revenue

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 October 27, 2009, meeting was approved.

3. Approval of Minutes:

The August 25, 2009, Board meeting minutes and 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.

5. Agency Report:

a. Number of New Licenses Processed Per Month:

Administrator Smith reported that the number of new licenses processed in September 2009 was 252 (76 percent of 325 projected). The average number of new licensees per month for the period July 2009 through September 30, 2009 was 273. 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 down significantly.

b. Rate of Renewals:

Administrator Smith reported that the renewal rate for September 2009 was 73.4 percent (98 percent of projections). The 2009-11 budget is based on 75 percent renewal rate. The average renewal rate for the period July through September 30, 2009 was 70.5 percent.

c. CCB Licensed Contractor Categories:

Administrator Smith briefly discussed the license categories table with Board members.

d. Workload Charts:

Administrator Smith briefly discussed the workload charts with Board members. The chart shows the drop in the number of licensees, which is about ten percent.

Board member Skaar asked for a report next meeting on the number of licensees CCB is losing each month. Administrator Smith reported that the number of licensees is dropping about 600 per quarter.

(Staff Action Item 10.09.A.5.d.— memo Patton to Smith)

e. Projected 2009-11 Revenue:

Administrator Smith reported that Administrative Services Manager Linda Teet was working on a special report for the agency's budget analyst at LFO. The state is asking for more reports as it prepares for more budget cuts.

Administrator Smith and Ms. Teet will be meeting with the agency's new Budget Analyst Michael Kennedy and the agency's LFO Analyst Daron Hill to discuss the agency's budget and revenue.

Administrator Smith reported that revenue is not what was projected and money will be tight for the next 12 to 24 months.

Board member Skaar asked for a report at the next meeting that projects what the actual revenue looks like based upon 70 percent renewals and 250 to 260 new licenses each month. This will help Board members know how bad it could get if revenue continues at the current rate. Administrator Smith reported that Ms. Teet is working on a special report to LFO. We will have the report for the next Board meeting.

(Staff Action Item 10.09.A.5.e.—memo Teet to Smith)

f. Summary of Expenditures:

Administrator Smith reported that the agency may have to make staff adjustments to prevent a deficit. The problem is that the Legislature did not authorize the fees sought in the GRB, but did allow up to a \$325 fee starting in July. Our problem is the workload is rising in every department due to new legislation; CCB's current fee structure does not support the new programs. We may need to look at eliminating program(s). We will have further information in December on the budget. In January the Board will need to discuss raising fees, which will be at a

controversial political cost. However, the industry is in favor of raising fees on July 1, 2010 to \$325.

(Staff Action Item 10.09.A.5.f.)

Board member Skaar volunteered to attend the meetings to support a fee increase.

B. ONGOING ISSUES:

1. Key Performance Measures and Budget Issues:

Administrator Smith reported that annual key performance measure (KPM) report has been submitted to BAM and LFO.

Administrator Smith discussed the report with Board members. The dashboard chart shows that the agency is 60 percent green, 10 percent yellow and 30 percent red. The Legislature will be looking at the pie chart for the areas in red; which indicates that the agency did not meet its target by ten percent or more. KPMs are tied to Oregon benchmarks, but none of the benchmarks fit with CCB. Therefore the agency has high level outcomes (HLOs) to tie its key performance measures.

KPM 1: Measures the Education Program. This measure was developed by LFO and may not be the best measurement of the Education Program. The data in the columns for 2004 through 2007, we are asking that the data be deleted since it is based upon data that staff went back and tried to gather as a baseline. This measure was new in 2008.

KPM 2: This measures the percent of homeowners who are aware of CCB and its services. The Legislature lowered the target due cutting funding to advertise the agency's services.

KPM 3: Enforcement recidivism rate. In 2007 the Legislature lowered the target when it added the field investigation positions. Administrator Smith reported that the Enforcement Section is at capacity for the number of enforcement actions they can handle with the current staffing level.

KPM 4: Percent of contractors that fail to pay damages. This year the number has spiked; as a result of contractor's not having money to pay due the economy. This measure is in the red.

KPM 5: Enforcement average days to close: The target is very aggressive, 60 days from start to finish. Due to the current economic situation, CCB enforcement phones are ringing a lot with people demanding enforcement action. The target was missed by two days, we are making progress.

KMP 6: DRS average days to process: The target is 155 days, which is hard to reach. This measure is in the red, it is up to 193 days to process. There are a number of factors that affected this measure, including: not filing positions, illnesses, etc. We do have a subcommittee working on this matter.

KMP 7: Fair DRS Process: This measure is within its targets.

KMP 8: Licensing Customer Satisfaction. The target is 95 percent; we dropped down to 94 percent, partly due to the new licensing requirements, which people are angry about.

Board members suggested that perhaps the Oregon context box had incorrect data; and asked staff to check.

(Staff Action Item 10.09.B.1.)

KPM 9: Customer Satisfaction Surveys: We are doing well on this measure. The surveys are mailed out April through June with every new license or renewal.

Administrator Smith reported that staff are working to have the surveys available to complete on-line.

KPM 10: Best Practices for Boards: The agency is doing very well on this measure.

2. DRS Review and Streamlining Workgroup:

Board member Chuck Crump discussed the workgroups report with Board members. Board members Crump and Yorke interviewed DRS staff prior to writing the report.

Board members stated that they feel the number of complaints will drop off significantly due to the lack of construction work being performed due to the economy.

Board member Crump discussed the following workgroup suggestions:

- a. Pre-Complaint Notice:** Eliminate the requirement that complainant serve a pre-complaint notice on respondent.
- b. Small Claims Court Referrals:** Consider, if it is possible and feasible to refer appropriate complainants to Small Claims Court to save both money and the time it takes for CCB to process their complaint.
- c. Workflow Streamlining:** It seems that the entire paperwork process is ripe for work simplification, i.e., reducing the number of letters to both respondent and complainant, or combining letters; working more closely with Investigators to get complaints out to them earlier in the process (EX: send the INV letter to the Investigator so that he can schedule the appointments on site), make sure that all documents used by the DA's are automated as much as possible in order to reduce so much manual inputting of information, etc.

Board members discussed telephoning the complainants when they do not send in all the necessary information on their complaint form to speed the process and reduce time sending numerous letters back and forth.

- d. Onsite Mediations—Sooner:** Once jurisdiction has been established, send files to the field as quickly as possible as it appears that when the parties get together 60 percent of complaints are settled on site.

- e. **DRS Fee Payment Delays:** Reduce the time allowed for complainants to send in their fees that they pay to file a complaint.
- f. **Time Between Actions:** We suggest that DRS management look at every instance where a number of days are allowed for a complainant or a respondent to react to a requirement from CCB towards reducing those days, if at all possible.
- g. **Bankruptcy/Litigation Complaints:** Close a complaint if either party declares bankruptcy or litigation or arbitration is started. There should be a process to preserve the respondent's complaint against the bond if the extraneous settlement process exceeds the CCB's one year time limit on complaints.
- h. **Hearing Fees:** Research the legality of levying fees on the party requesting a hearing.
- i. **Hearings—Limitations:** Limit a party's ability to request a hearing. We learned that many hearings are requested by a respondent even though there are no documents or a rational narrative to support the request. If the documentation submitted fails to reach a material standard or does not address the issues raised in the complaint, then reject the hearing. Send an invoice for the costs of the hearing to a respondent who fails to attend the hearing. Or, it should be a part of each hearing notice to both parties involved that nonattendance will be cause for the Board to not hold a hearing and will find for whichever party who does attend.
- j. **Hearings OAH:** Work with Office of Administrative Hearings (OAH) and request that they not allow a hearing extension without the approval of the DRS Analyst. Once a hearing is requested, CCB loses control on the length of time to process.
- k. **Hearings—Settlements:** If possible, require that parties hold a negotiation settlement meeting before a party can request a hearing.
- l. **Arbitration Clause Delays:** In cases where the contract between complainant and contractor contains an arbitration clause, shorten the waiting period to receive waiver of arbitration from 30 to 14 days.
- m. **Mandatory Arbitration Trigger--\$1,000-\$5,000:** Raise the minimum complaint that must go to mandatory arbitration from \$1,000 to at least \$5,000.
- n. **Dispute Analyst Authority to Close Files:** Allow the Dispute Analyst to close cases which have obvious defects and cannot be processed.
- o. **Cost Estimator:** Hire a cost estimator or train a current CCB employee. Or empower a panel of retired contractors to prepare estimates so homeowners are not required to do so.

- p. **DRS Staff Training:** Train the current Specialists to take on more work of the Dispute Analysts.
- q. **DRS Email Issues:** Begin the process towards providing a secure website to allow complainants and contractors to view the status of a complaint.
- r. **Non-Owner Complaints:** Consider restricting the type of complaints that can be handled by CCB. Commercial complaints are already restricted. Why should DRS handles employee complaints against a contractor when BOLI has a complaint mechanism for this specific situation.
- s. **Penalize Non-Responsive Contractors:** Develop sanctions for contractors who fail to respond to CCB correspondence. Include in the Builder Notification a statement that a default judgment may be filed if the respondent fails to respond to this notice within the 14 days allowed.
- t. **DRS Streamlining Report:** Place on each Board meeting agenda a report presented by the DRS Manager regarding the number of complaints currently being worked on, the number of complaints considered to be behind schedule, and what steps are being taken to get caught up.
- u. **Dispute Analyst Actions—Speed Up:** Reduce the number of days between Dispute Analyst actions.
- v. **DRS Streamlining Committee (Staff):** Establish a staff committee within CCB, reporting to Craig that will meet on a regular basis to implement suggestions approved by the Board. The committee should also include somebody from outside the DRS section. At least one Investigator should be on the committee.

Board members asked that staff report back on the suggestions and recommendations for implementation or why it should not be implemented. CCB's legal counsel will review the suggestions and advise staff. The report can be given over several Board meetings.

(Staff Action Item 10.09.B.2.a.)

Board members suggested that staff research what is going on with OAH and work with OAH to process hearings quicker. Have the Board Chair write a letter to the Chief Administrative Law Judge letting OAH know that CCB has a problem with processing time that is tied to CCB's KPM, which they are affecting negatively.

(Staff Action Item 10.09.B.2.b.)

3. Department of Revenue Invitation Regarding HB 3082:

Eric Smith from the Department of Revenue (DOR) discussed HB 3082 with Board members. Department of Revenue would like to work with CCB staff to do a pilot project on one or more categories of CCB licensees; perhaps renewals. Department of Revenue would give the chosen categories of licensees notice ahead of time of the pilot project. This is a pilot tax program. CCB would supply DOR with a list of licensees. DOR would quickly review the CCB license information submitted and notify CCB whether the party complies with DOR tax requirements and whether CCB can renew the license.

Eric Smith reported that DOR will report back to the 2011 Legislature regarding the information they collect from the pilot project. Mr. Smith handed out the January 2009 DOR Tax Compliance Report. The pilot project will look at compliance rates before and after to see if there is an impact and what resources would be needed to get better compliance.

Administrator Smith reported that this could be all renewals or just a category of licensees. For example, all sole proprietors, general contractors, limited contractors, or home inspectors, etc. DOR needs a decision by the December Board meeting. The pilot project dovetails with the Interagency Compliance Network nicely as well.

4. Four-Year License Transition to New Endorsements:

Administrator Smith reported that by July 1, 2010, licensees with a four year license will have to pick an endorsement and get a new bond. Their current license and bond under the old licensing system will not allow them to do any work after July 1, 2010. As of July 1, 2010, all licensees must have chosen an endorsement and obtain a residential or a commercial bond, depending on the type of structures they work on.

Board members would like the notification letter to be sent to licensees with four year licenses by April 1, 2010 to allow the licensee enough time to comply.

(Staff Action Item 10.09.B.3.)

5. Website Review Workgroup:

This matter was set over to the next meeting.

6. NASCLA Executive Committee Meeting:

Administrator Smith discussed his memo seeking approval to allow him to use agency time to attend the meetings. NASCLA will pay for his travel expenses.

MOTION: Rob Hernandez moved to allow Craig P. Smith paid time to attend NASCLA meetings.

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

7. NASCLA State Membership Meetings:

Administrator Smith advised Board members that NASCLA has two all state meetings (Spring and Fall) that require further attention. The meeting will be in California in March and will feature a joint meeting of the Nevada and California Licensing Boards. These meetings are not paid for by the Association. The last meeting was held in September 2009. Administrator Smith used personal funds and vacation time to attend this meeting, but prefers not to do so in the future. It is recommended that the Board authorize Administrator Smith to attend the March NASCLA meeting, but that this decision be tabled until next year to determine the Board's financial status. This matter will be placed on the January Board meeting agenda.

Administrator Smith reported that NASCLA will be holding their 50th anniversary conference in Oregon in 2012 and Administrator Smith will be President at that time.

8. New Insurance Courtesy Notices:

Administrator Smith discussed the change to doing two notices rather than three. This change will save the agency \$30,000.

Board members discussed providing the insurance courtesy notices by email. Administrator Smith reported that the problem is that most licensees have not signed up to receive things by email. Staff will look into sending notices by email and report back at the next meeting.

(Staff Action Item 10.09.B.7.)

9. Online Renewals Update:

Administrator Smith reported that the agency is committed to moving forward with online renewals. Staff have researched online renewals and found that some agencies had online renewals for a period of time, but due to the complexities and problems pulled back and no longer offer online renewals. Staff are working to implement online renewals and may begin by creating an online application and renewal process for the Locksmith Program as a pilot project.

10. List of Subcontractors:

Administrator Smith reported that licensees are required to maintain a list of subcontractors used on every job and have the information available. CCB has authority to request a list of subcontractors, to be delivered to the agency within 72 hours.

A new issue has come up involving subcontractors lists for homeowners. CCB would notify the general contractor to supply a list of subcontractors. After receiving the list, CCB would send the list to the homeowner. This service would be offered online only as a pilot project.

Scott Barrie, Oregon Home Builders Association (OHBA) stated that the legislature had a bill last session that would require a general to list all subcontractors available for homeowners. Mr. Barrie reported that OHBA did not like the bill because

homeowners may call the plumber instead of calling the general contractor. The plumber may tear out a wall and leave it.

Mr. Barrie reported that OHBA supports CCB's concept.

Board members discussed giving the homeowner a checklist to check off what types of subcontractors they would like in the list rather than all subcontractors on the project. Perhaps the homeowner only has an issue with a portion of the home like the plumbing and doesn't need a list of all subcontractors. A shorter list would also save the licensee time in providing the list. Board members instructed staff to proceed with implementing, allow a mechanism for the homeowner to specify what subcontractors they want listed, and make it available only online.

(Staff Action Item 10.09.B.9)

11. Pay-Twice Issue:

Scott Barrie, OHBA reported that Rep. Holvey put together a group of contractors to discuss pay twice issues. One of the items discussed was using the civil penalty money for a recovery fund. In the past \$50,000 would take care of the fund in most years. However, the numbers may rise with the current economic situation. Building Codes Division keeps all of the civil penalty monies collected.

C. NEW BUSINESS:

1. Enforcement Violation of 701.026(2) Hiring Unlicensed Subcontractor:

Administrator Smith discussed the issue of what size of penalty should be imposed on a general contractor for hiring a non-licensed subcontractor. General contractors hiring subcontractors get a \$1,000 civil penalty. In some instances the general hires a subcontractor who is licensed at the time of hiring, but later in the project becomes unlicensed due to bond or insurance lapses. At issue is whether the agency should more lenient with first time offenders as opposed to repeat offenders?

CCB provides the E-Watch service that general contractors can use to be notified of a change in status of their subcontractors. Staff suggest that when CCB first finds the contractor meets certain criteria, they were licensed at the time the job began, they have not ever been issued a fine before, that a warning letter be issued. Particularly if they cooperate with staff and agree to sign up for CCB's E-Watch and the subcontractor gets licensed, and they promise to do no more work until properly licensed.

Joanna Tucker Davis, AAG, stated that there may be some legal issues to consider. The question is with someone who is receiving one of these warning letters, do they have the right to contest the warning letter that it was either issued correctly or wrongly. The question is can you issue a warning letter and then be harsher on people?

Perhaps this could be remedied by including language in the warning letter that it could be contested.

Board member consensus was to proceed on setting up a penalty structure as recommended by staff.

2. DOJ Budget:

Administrator Smith reported that the agency spends approximately \$600,000 in Assistant Attorney General (AAG) advice a biennium. CCB has a policy about seeking AAG advice. CCB also has a book of previous AAG advice where staff can go and see if the question has been asked before.

3. NASCLA Standards of Practice Book:

Administrator Smith passed around a book from NASCLA "Standards of Practice" that was written using the National Homebuilders Association's standards as a model. Other state licensing boards have reviewed the standards and made suggested changes. These are minimum standards that might be a benefit as a guideline to CCB DRS investigator/mediators. Administrative Law Judges may also benefit from the book. Perhaps in the future the Board may want to review and adopt the standards for staff to use.

Board members asked that Administrator Smith get more copies of the book and bring it back for review at the next Board meeting.

(Staff Action Item 10.09.C.3.)

4. Public Meeting Law:

Joanna Tucker Davis reported that the public meeting law says that when you have a quorum of the Board, getting together to discuss things, the public has a right to notice and attendance. The concern becomes are you having an electronic conversation, when emails start flying back and forth quickly. If there is a quorum of the Board and conversations are going on, then you need to give public notice. Our advice generally is to designate a central person to get the information. You could have a rule that states you don't answer anyone's email for 40 minutes, then there is no question it is not an ongoing conversation.

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:

Steve Telfer, Oregon Real Estate Inspectors Association: What we are talking about here is the potential for third-party lawsuits. He spoke at a group of home inspectors from around the state where a joint meeting with Oregon Pest Control Association, out of that 30 or so members in the audience there were two home inspectors who have been sued as a result of third-party suit as a result of inspections that they have

not done for the person at all. Back in the days of a booming economy, there were house flippers, they would be a home inspection and keep that in their pocket and they would through the inspection out when a buyer came along. The buyer would rely on that inspection, which would result in the home inspector being sued. Inspections are really nothing more than a snapshot at a given time. You will find quality, well trained, certified home inspectors are very careful about laying that out. The consumer notices that Craig mentioned earlier, unfortunately, imply that there is an opportunity for a suit if the purchase was conditioned upon an inspection. That is where the third-party liability comes from. We are concerned about that and talked to CCB staff. I questioned whether there was statutory authority for the rules that exist. There was authority that made it permissive for CCB to adopt the rules. I suggest that OREA is fully in support of this rule amendment. One caveat is that we want one consumer notice, like all other contractor notices are and we haven't seen that yet, so we would hope that we would have the opportunity to work with staff to draft that to make sure that we are really focusing on letting consumers know exactly what they can and cannot expect out of a home inspection. I endorse adoption of these rules and endorse the armed forces piece of this also.

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

MOTION: Chuck Crump moved to adopt the rules as proposed by staff.

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

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

3. **Permanent Rules Filed September 1, 2009, effective 9/1/09:**
Administrator Smith briefly discussed the permanent rules filed on September 1, 2009 with Board members.
4. **First Look at Draft Proposed Rules:**
Administrator Smith discussed the draft proposed rules with Board members.

Administrator Smith reported that there is an issue with non-profits not being able to obtain a bond, a person has to get the bond and be responsible. Board members directed staff to work with Marie at Homebuilders and perhaps look at changing the dollar amount for non-profits.

(Staff Action Item 10.09.D.4.a.)

Administrator Smith discussed the proposed rules for residential continuing education providers. Board members suggested requiring the current prerequisite education providers to have a bond like the BEST providers will be required to have. Staff are to work with AAG on whether CCB has authority to require prerequisite education providers to obtain a bond.

(Staff Action Item 10.09.D.4.b.)

E. PUBLIC COMMENT:

Chair Hernandez opened the meeting to take public comment.

Bonnie Sullivan: Ms. Sullivan reported that a couple of weeks ago she got a new phone book for Albany with a magnet on the front advertising a CCB licensee, but no license number included. She will give the magnet to Richard Blank, CCB Enforcement Manager. Ms. Sullivan reported that she has not missed a meeting since 1993. Her husband recently had CCB field investigator come to one of his job sites. The field investigator told him things she had told him before. Keep up the good work.

F. SPECIAL PROGRAM:

1. Continuing Education:

New Proposed Rule re BEST:

Board member Skaar reported that OHBA is working to create a BEST course and have available by mid December. Make the new requirement effective February or March 1, 2010 and OHBA will be ready to provide the course using CCB's outline.

Board member Skaar suggested a new proposed rule that would make it mandatory for new licensees to take the BEST courses for a hearing in December of January.

(Staff Action Item 10.09.F.1.)

Course Manual: Administrator Smith reported that the course manual needs to be updated to fold in the BEST training. Some of the current education providers are not at a level to provide the BEST course. Once good courses are available for BEST, we will add BEST to the manual.

2. Lead-Based Paint Program:

Administrator Smith reported that staff are working on draft rules for a hearing in January.

3. Small-Scale Energy Loan Program:

Administrator Smith reported CCB has not heard anything from the Department of Energy regarding the Small Scale Energy Loan Program.

4. Interagency Compliance Network:

Administrator Smith reported staff are attending meetings to network with other agencies.

5. Locksmith Certification Program:

Administrator Smith reported that staff are working on draft rules for a hearing in January.

Locksmith Advisory Committee (LSAC) Membership: Chair Hernandez discussed the memo from CCB Education Manager Gina Fox regarding staff recommendations to serve on LSAC. Chair Hernandez approved the following to serve on LSAC:

- William Blanchard
- Ernie Blatz
- Simon Blatz
- William Curtis (public member)

- Kristina Leipzig
- Christopher Tardiff

Chair Hernandez asked for a Board member to volunteer to chair LSAC. Board members Dennis Schad and Jon Mangis volunteered to Co-Chair LSAC.

The first meeting is scheduled for November 10.

6. Home Inspectors:

Administrator Smith discussed an issue that has come up regarding a home inspector who wanted to perform stripped down home inspections at a lower cost and no written report. This is a different product than the normal home inspection. Also the issue of energy audits has come up. Staff need to get home inspectors and the other contractors (energy audits, other inspections) together to see if they can come to a consensus that will work for all the parties. Staff will meet with Steve Telfer to see if home inspectors could support a rule change.

(Staff Action Item 10.09.F.6.)

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, discussed the quarterly report. The first quarter of the 2009/11 biennium shows there is a 601 drop in the number of active licensees. CCB is now under 40,000 licensees. The license category sole proprietors is renewing at a much lower rate than the other categories. Processing time has dropped from 1 day turnaround to 5 days to process a license. Staff work very hard to keep the processing time down. Licensing staff have been frustrated with the customer satisfaction survey results because they have provided the same great service they have always and there is nothing they can do to improve, customers are upset at the new legislation.

4. Enforcement Program:

Due to time constraints no additional report was given.

5. Field Investigations:

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 2009:

Administrator Smith briefly discussed the Board calendar.

d. Agenda Items for the Next Meeting:

- Administrative Rules
- Budget Issues
- DRS Review and Streamlining
- Insurance Notices Sent by Email
- NASCLA Standards of Practice Book Discussion

H. Adjournment

The Board meeting adjourned at 12:55 p.m. The next Board meeting is scheduled for 8:30 a.m. December 8, 2009.

Sincerely,

Catherine Dixon
Board Secretary

Attachment A
MINUTES OF THE OCTOBER 27, 2009
CONSTRUCTION CONTRACTORS BOARD
APPEAL COMMITTEE MEETING

The Construction Contractors Board Appeal Committee met on Tuesday, October 27, 2009, at West Salem Roth's IGA, Oregon Room, 1130 Wallace Rd NW, Salem, Oregon. Appeal Committee Members present included: Chair, Rob Hernandez, Chuck Crump, Richard DeWolf, Rob Hernandez, Jon Mangis, Tom Skaar, Dennis Schad, Mary Stern and Rob Yorke. Board member Sandy Trainor 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, and Holly Eilertson. Assistant Attorney General Joanna Tucker Davis was also present.

Guests Included: Bonnie Sullivan

The agenda for the October 27, 2009, meeting was approved.

The Committee convened at 1:05 p.m. to decide the following cases for which exceptions have been filed:

1. Enforcement No. 71312, Lisa A. Chandler and Gregg S. Chandler. The Respondent, Gregg S. Chandler, appeared before the Board. Enforcement Manager, Richard Blank, appeared before the Board.

MOTION: Richard DeWolf moved to amend the Administrative Law Judge's proposed order and direct issuance of a final order assessing the respondent a \$5,000 civil penalty; and amend the Administrative Law Judge's finding of fact number three to exclude that the respondent contracted to engineer drawings for the erection and footing for the building.

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

2. Complaint No. 157567-104, Dave Kindred vs. PBNW Inc dba Progressive Builders Northwest Inc. The Complainant, Dave Kindred, appeared before the Board. The Respondent's Attorney, Alan L. Mitchell, appeared before the Board.

MOTION: Chuck Crump moved to affirm the Administrative Law Judge's proposed order to dismiss the complaint.

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

3. Complaint No. 52670-102, Sweet Dream Properties LLC vs. Daniel T. Armstrong dba Weststates Construction. The Complainant's Attorney, Meilina Wilde, appeared before the Board. The Respondent did not appear before the Board.

MOTION: Mary Stern moved to remand complaint no. 52670-102 so that the complainant has the opportunity to subpoena and call the respondent to testify.

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

4. Complaint No. 36088-001, Donna Huard vs. Don Walker dba Don Walker Construction. The Complainant, Donna Huard, did not appear before the Board. The Respondent, Don Walker, appeared before the Board.

MOTION: Dennis Schad moved to affirm the Administrative Law Judge's proposed order and issue a final order to dismiss the complaint because it was untimely filed.

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

5. Complaint No. 132622-102, Alan K Andrews vs. Thomas Eugene Ware dba Everywhere Construction. The Complainant's Attorney, Casey Robertson, appeared before the Board. The Respondent, Thomas Ware, appeared before the Board.

MOTION: Tom Skaar moved to affirm the Administrative Law Judge's proposed order and issue a final order in the amount of \$5,849.10.

VOTE: 6-2, Ayes—DeWolf, Hernandez, Mangis, Schad, Skaar, and Yorke. Nays—Crump and Stern.

6. Complaint No. 128877-101, Roger Wagner vs. Jack Dee Pincock. The Complainant, Roger Wagner, appeared before the Board. The Respondent did not appear before the Board.

MOTION: Mary Stern moved to remand complaint no. 128877-101 to give the opportunity to the complainant and respondent to provide additional evidence on the quality of workmanship and damages. The Board also asks that Dale Morgan testify.

VOTE: 7-1, Ayes—Crump, DeWolf, Hernandez, Mangis, Schad, Skaar, and Stern. Nay—Yorke.

The meeting adjourned at 3:40 p.m. The next Appeal Committee meeting is scheduled for December 8, 2009.

Respectfully submitted,

Catherine Dixon
Appeal Committee Secretary

Attachment B

812-001-0200

Consumer Notices Adoption

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled "Information Notice to Owner About Construction Liens," as revised December 20, 2007. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under ORS 701.330(1), the board adopts the form "Consumer Protection Notice" as revised February 20, 2009.

(3) In order to comply with the requirement to adopt ~~an~~ **an** "Information Notice to Property Owners About Construction Responsibilities" form under ORS 701.325(3), the board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised September 23, 2008.

(4) In order to comply with the requirement to adopt a notice of procedure form under ORS 701.330(2), the board adopts the form "Notice of Procedure" dated December 4, 2007.

(5) The board adopts the form "Notice of Compliance with Homebuyer Protection Act" (HPA) as revised December 16, 2003.

(6) The board adopts the form "Model Features for Accessible Homes" dated December 4, 2007.

(7) The board adopts the form "Home Inspection Consumer Notice" dated October 27, 2009.

Stat. Auth.: ORS 87.093, 670.310, 701.235, 701.325, 701.330 & 701.530

Stats. Implemented: ORS 87.093, 701.235, 701.325, 701.330 & 701.530

(4/81, 11/81, 1/82, 3/82, 6/82, 1/83, 1/83, 3/83, 3/83, 10/83, 2/87, 7/87, 1/89, 11/89, 5/92, 7/92, 8/92, 3/99, 9/99, temp. 5/00, 8/00, 6/02, 12/02, temp. 3/03, 6/03, 12/03, temp. 12/03, temp. 12/03, 2/04, 5/04, temp. 6/04, 8/04, 12/05, temp. 1/06, 3/06, 6/07, 12/07, temp. 1/08, 4/08, 9/08, temp. 2/09, 5/09, 11/09)

(Amended and renumbered from 812-001-0020, 12/05)

812-003-0120

License Required to Advertise

(1) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, or insured unless that person holds a current, valid license.

(2) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS chapter 701 prepared by a contractor or at the contractor's request or direction, shall show the contractor's license number.

(b) All written bids, written inspection reports and building contracts subject to ORS chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) All advertisements by audio-only media, such as radio commercials, must contain an audible statement of the contractor's license number.

(e) All advertisements by video media or video and audio combined media, such as television commercials, must show visually the contractor's license number.

(f) All advertising by internet media, including but not limited to, website advertising must show visually the contractor's license number.

~~[(d)]~~ **(g)** ~~[Except as set forth in subsection (2)(e) of this rule all]~~ **All** business cards, business letterhead, business signs at construction sites[;] **and** all **other written or visual** advertising[;] shall show the contractor's license number.

~~[(e)]~~ **(h)** ~~[Subsection (2)(d) of this rule]~~ **This section** does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

(i) This section does not apply to promotional gifts, including, but not limited to, pencils, pens, cups and items of clothing.

~~[(f) All advertisements by audio-only media, such as radio commercials, must contain an audible statement of the contractor's license number.~~

~~[(g) All advertisements by video media or video and audio combined media, such as television commercials, must show visually the contractor's license number.~~

~~[(h) All advertising by internet media, including but not limited to, website advertising must show visually the contractor's license number.]~~

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010 & 701.026
(12/04, 6/08, 5/09, 11/09)

812-003-0140

License Application Fees

- (1) The application fee for all new, renewal, or reissued licenses is \$260.
 - (2) Except as provided in section (3) of this rule, application fees will not be refunded or transferred.
 - (3) If a licensee submits an application to renew a license and the agency cannot renew the license because the applicant has formed a new business entity, the agency may refund the renewal application fee, less a \$40 processing fee.
 - (4)(a) Any licensee in the [~~military or naval service of the United States, or any of its auxiliary corps,~~] **United States armed forces** need not pay a license renewal fee if such fee would be due during the licensee's active duty service.
 - (b) A licensee in the [~~military or naval service of the United States, or any of its auxiliary corps,~~] **United States armed forces** shall pay the next license renewal fee that will become due after the licensee is discharged from active duty service.
 - (c) The agency may request that the licensee provide documentation of active duty status and of discharge.
 - (d) Section (4) of this rule applies to licensees that are sole proprietors or partners in a general partnership.
- Stat. Auth.: ORS 670.310, 701.238 & 701.235
Stats. Implemented: ORS 701.056, 701.063, & 701.238
(12/04, 8/05, 12/06, 2/08, 1/09 (eff. 2/1/09), 9/09, 11/09)

812-004-0320

Jurisdictional Requirements

- (1) A complaint must be of a type described under ORS 701.140.
- (2) A complaint must be filed with the agency within the time allowed under ORS 701.143.
- (3) A complaint will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section must be determined as follows:
 - (a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.
 - (b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. Damages will be awarded only for material delivered within the period of time that the respondent was licensed.
 - (c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which the respondent was licensed.
- (4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:
 - (A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.026 in order to perform the work; and
 - (B) The complainant files a complaint arising out of a contract to construct the work at issue and the complaint is for unpaid labor or materials furnished under the contract.
- (b) As used in section (4) of this rule, "properly licensed" means the complainant:
 - (A) Had a current valid license issued by the agency and was not on inactive status;
 - (B) Was licensed for the type of work at issue in the complaint;
 - (C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to the complainant's license status as an "exempt" or "nonexempt" contractor; and
 - (D) Complied with any other requirements and restrictions on the complainant's license.
- (5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:
 - (a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;
 - (b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;
 - (c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or
 - (d) A real estate purchase conditioned upon [~~an inspection report or~~] repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be dismissed under this section (7) if the previously filed complaint was:

- (a) Withdrawn before the on-site meeting;
- (b) Closed without a determination on the merits before the on-site meeting;
- (c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110.

(d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(e) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

(9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount, not including the processing fee required by 812-004-0110.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

(10/98, 6/00, 12/01, 5/02, 3/03, 8/03, 12/03, 10/04, 12/04, 12/05, 12/06, 6/08, 11/09)

812-008-0070

Requirements for Renewal of Certification

(1) An Oregon certified home inspector shall submit the following to the agency for renewal of certification:

(a) A properly completed renewal application on an agency form; and

(b) The renewal fee as required under OAR 812-008-0110; and

(c) Copies of completion certificates listing no less than 30 continuing education units (CEUs) completed by the Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought.

(2) If, during the two years immediately preceding the expiration date of the certification, an Oregon certified home inspector served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(6/99, 9/01, 3/03, 12/04, 1/06, 12/07, 11/09)

812-008-0110

Prescribed Fees

The following prescribed fees are established:

(1) Application to become certified, \$50.

(2) Test, first attempt, \$50.

(3) Test, each sitting to retake one or more sections, \$25.

(4) Initial two-year Certification, \$150.

(5) Certification renewal (two years), \$150.

(6) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) Except as set forth in subsection (6)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of \$40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

(7)(a) Any certified home inspector in the United States armed forces need not pay a renewal fee if such fee would be due during the certified home inspector's active duty service.

(b) A certified home inspector in the United States armed forces shall pay the next license renewal fee that will become due after the certified home inspector is discharged from active duty service.

(c) The agency may request that the certified home inspector provide documentation of active duty status and of discharge.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350

Stats. Implemented: ORS 293.445, 701.350 & 701.355

(2/98, 6/99, 9/01, temp. 1/03, 6/03, 12/04, 12/05, 12/07, 11/09)

812-008-0202

Contracts and Reports

(1) Home inspections undertaken according to Division 8 shall be based solely on the property conditions, as observed at the time of the home inspection.

(2) Oregon certified home inspectors shall:

(a) Provide a written inspection contract, signed by both the Oregon certified home inspector and client, prior to completing a home inspection that shall:

(A) State that the home inspection is in accordance with standards and practices set forth in Division 8 of OAR chapter 812;

(B) Describe the services provided and their cost;

(C) State where the planned inspection differs from the standard home inspection categories as set forth in OAR 812-008-0205 through 812-008-0214; and

(D) Conspicuously state whether the home inspection includes a wood destroying organism inspection and if such inspection is available for a fee.

(E) For the purpose of this rule, a home inspection shall be deemed completed when the initial written inspection report is delivered.

(b) Observe readily visible and accessible installed systems and components listed as part of a home inspection as defined by these rules unless excluded pursuant to these rules in OAR 812-008-0200 through 812-008-0214; and

(c) Submit a written report to the client that shall:

(A) Describe those systems and components as set forth in OAR 812-008-0205 through 812-008-0214;

(B) Record in the report each item listed in OAR 812-008-0205 through 812-008-0214 and indicate whether or not the property inspected was satisfactory with regard to each item of inspection; it will not be sufficient to satisfy subsection (2)(c) of this rule that the certified home inspector prepare a report listing only deficiencies;

(C) State whether any inspected systems or components do not function as intended, allowing for normal wear and tear; and how, if at all, the habitability of the dwelling is affected[-];

(D) State the inspector's recommendation to monitor, evaluate, repair, replace or other appropriate action[-];

(E) State the Construction Contractors Board license number of the business and the name, certification number and signature of the person undertaking the inspection[-]; **and**

(F) Include on the first page of the contract and on the first page of the report, in bold-faced, capitalized type and in at least 12 point font, the following statement: "THIS REPORT IS INTENDED ONLY FOR THE USE OF THE PERSON PURCHASING THE HOME INSPECTION SERVICES. NO OTHER PERSON, INCLUDING A PURCHASER OF THE INSPECTED PROPERTY WHO DID NOT PURCHASE THE HOME INSPECTION SERVICES, MAY RELY UPON ANY REPRESENTATION MADE IN THE REPORT."

(d) Submit to each customer at the time the contract is signed a copy of [~~Summary of Oregon Home Inspector Certification Law (ORS 701) or Summary of Oregon Home Inspector Certification Law (ORS 701) and Standards of Practice for Home Inspectors~~] **"Home Inspection Consumer Notice."**

(3) Division 8 does not limit Oregon certified home inspectors from reporting observations and conditions or rendering opinions of items in addition to those required in Division 8.

(4) All written reports, bids, contracts, and an individual's business cards shall include the Oregon certified home inspector's certification number.

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

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05, 3/06, 11/09)

(Amended and renumbered from 812-008-0080(1), 8/05)

812-020-0062

Exemptions – Continuing Education for Commercial Contractors

(1) Commercial contractors subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693 do not need to satisfy the continuing education requirements. These contractors include, but are not limited to:

- (a) Electrical contractors subject to regulation under ORS 479.510 to 479.945.
- (b) Plumbing contractors subject to regulation under ORS chapter 693; or
- (c) Boiler contractor subject to regulation under ORS 480.510 to 480.670.
- (d) Elevator contractors subject to regulation under ORS 479.510 to 479.945.
- (e) Renewable energy contractors subject to regulation under ORS 479.510 to 479.945.
- (f) Pump installation contractors subject to regulation under ORS 479.510 to 479.945.
- (g) Limited sign contractors subject to regulation under ORS 479.510 to 479.945.

(2) Commercial contractors endorsed only as commercial developers do not need to satisfy the continuing education requirements.

(3) If, during the two years immediately preceding the expiration date of the license, a commercial contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the commercial contractor is a:

- (a) Sole proprietor;**
- (b) Sole owner of a corporation; or**
- (c) Sole member of a limited liability company.**

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

(11/08, 11/09)