

State of Oregon
Department of Consumer and Business Services
Building Codes Division

TRI-COUNTY BUILDING INDUSTRY SERVICE BOARD

Regular Meeting Minutes

December 13, 2000

MEMBERS PRESENT:

Lisa Naito, Chair
Sue Blatner
Jim Chapman
Michael Cliburn
Terry Dieter
Jim Ferris
Jeffery Grunewald
John Lape
Ronald Murray
Forrest Soth
Rob Yorke

MEMBERS ABSENT:

Ray Kerridge - Excused
Judy Bauman

STAFF PRESENT:

Joe Brewer, Administrator
Mark Long, Manager, Policy and Technical Services
Peggy Collins, Building Program Administration Chief
Andrea Simmons, Policy Analyst
Joanie Stevens-Schwenger, Tri-County Service Center
Manager and Board Secretary
Marion Peterson, Tri-County Board Coordinator/Recorder

GUESTS PRESENT:

Kevin Brice, Washington County
Gary Lampella, City of Tigard
Clint Hilman, City of Gresham
David W. Davies, City of West Linn
Ralph Groener, AFSCME

I. BOARD BUSINESS

I.A Call to Order

Chairman Lisa Naito called the Tri-County Building Industry Service Board (Tri-County Board) to order at 9:37 a.m. The meeting was held at Convention Plaza, Conference Room 150, Portland, Oregon.

I.B Roll Call

Ray Kerridge was absent (excused).
Judy Bauman was absent.

I.C Approval of Agenda and Order of Business

Agenda items V.A and VI.A were taken out of sequence and heard immediately after item I.E.

Chairman Naito **RULED** the agenda approved as submitted.

I.D Approval of the November 8, 2000, Minutes

Chairman Naito **RULED** the November 8, 2000, minutes approved as submitted.

I.E Next Regularly Scheduled Meeting

February 13, 2001
NECA
601 NE Everett Street
Portland OR 97232

II. PUBLIC COMMENT - None

III. STAFF REPORTS

III.A BCD Legislative Concepts - Mark Long

Mr. Long distributed the draft Legislative Concept 942 (**Exhibit "A"**). This LC draft is a product of the Building Codes System Interim Review Steering Committee (BCD steering committee). The proposed legislation requires municipalities adopting plumbing or electrical inspection programs to take investigation and enforcement action on behalf of state boards. The steering committee is also working on a concept that would consolidate compliance processes statewide and make fines, procedures and processes uniform among the various program areas.

Jim Chapman expressed concern about the financing process for LC 942. Mr. Long explained that inspectors would conduct compliance (proper permitting and licensing) checks while performing on-site inspections. Clarifying the roles of all participants will be further discussed, defined and refined during session. Administrator Brewer pointed out that the pilot compliance programs that are currently being conducted in Washington County and Central Oregon are progressing and that the lessons learned from the pilots will be folded into the legislative concept. Jurisdictions will retain the money collected in fines, thereby generating enough revenue to support the program. There are three elements that must be in place before the system can be effective. These are: permitting and inspection, training and certification of officials, and licensing of trade people to do the work.

Mike Cliburn asked about waiting until the next legislative session before submitting this bill, in order to have better data, and better tools to work with. Mr. Brewer replied that waiting until the next session would mean a two-year delay. Since throughout the state, a major theme intoned by industry and jurisdictions alike is compliance and consistency (the creation of a level playing field), we need to embark on immediate solutions. Lisa Naito requested that an update of the progress of this bill be presented at the February 14, 2001, board meeting.

III.B BCD Budget Report (additional report) - Joe Brewer, Administrator

Administrator Brewer distributed the budget proposal narrative (**Exhibits “B” and “C”**) and pointed out the importance of the Tri-County Board understanding the structure of the Building Codes Division. There are five primary service sections: administration and business services, policy and technical services, field operations, statewide services and regulatory services. Attention was drawn to the mission and purpose of BCD as well as its background, and 1999-2001 successes.

The division is asking the legislature to fund its current "limited duration positions" (temporary positions), making them permanent, and to use some of the fee increase revenue to provide the funds. Lisa Naito asked, "What is the process in the Legislature and who would review these positions and the increases?" Mr. Brewer answered that BCD predicts revenues and expenditures three years into the future. This prediction is presented to the Department of Administrative Services. At this point, it could be approved, changed or refined. The next step is Legislative Fiscal (budget dry run) and then on to Ways and Means. After the adjustments are made, it comes back to BCD so that the division has an opportunity to review the revisions.

Chairman Naito was excused for an appointment and Vice-Chairman Terry Dieter assumed the chair.

The BCD budget request for the 2000-2001 Biennium was \$24,742,106 or 164.21 FTE. The request packages listed are related to workload increase and corrections/light rail over-sites. The total requested budget for 2001-2003 Biennium is \$27,386,804.

III.C Report from the planning panel on Tri-County in-training programs - Joan Stevens-Schwenger

When the board approved the Qualifications and Training Task Force's recommendations in September, it asked that the Planning Panel provide an update and implementation timeline to the board at its December meeting (**Exhibit "D"**). The Planning Panel has been looking into the in-training programs for Tri-County and has put together a time line for program implementation. While all legislative requirements have been met in terms of rule writing, the panel will continue to meet to choose approved in-training programs and curricula. The panel projects that Tri-County in-training programs will be "on the shelf" as early as July 1, 2001. The panel's task is to consolidate, streamline and make readily available to A and B level and one- and two-family dwelling structural and mechanical inspectors and plans examiners, approved in-training programs and related services to the Tri-County region. The panel is taking into consideration all of the approved programs around the state, selecting the best aspects of each program to construct a master program in each area. The panel is looking at curricula and will work with the OMOA and OBOA to fine tune the training plans.

The Planning Panel members are Ron Murray, Stan Scotton, Guy Sperb, and Tom Phillips. Joan Stevens-Schwenger and Bob Brown are staff to the panel.

III.D Report on Code Dispute Resolution Processes - Joan Stevens-Schwenger

At the November 8, 2000, Tri-County Building Industry Service Board meeting, Bob Kelly of the National Conference of States on Building Codes and Standards (NCSBCS) gave a report on dispute resolution models in operation across the United States. After the presentation, the board requested that the Tri-County Service Center return to the board with a summary of the models provided by Mr. Kelly and with a proposal for dispute resolution in the Tri-County area (**Exhibit "F"**). Joan Stevens-Schwenger gave a presentation that summarized the dispute resolution models suggested by Mr. Kelly and proposed a model dispute resolution process for Tri-County.

The majority of the dispute resolution models Mr. Kelly gave as examples are formal appeal processes. Topeka has the least formal model in which the building official works with a technical advisory team to provide a resolution within 48 hours. Norfolk's model allows an appeal to the building official who calls for an administrative review of the problem. A final decision is rendered within three days. Minnesota has a statewide, formal process that begins with a regional appeals board, and ending with the Minnesota Court of Appeals. New Jersey allows the permit holder to apply for hearing with the Construction Board of Appeals. The appeal must be made in writing and a decision is rendered within 10 days. A common element in each model is that the decisions or

interpretations are published, aiding consistency efforts. Working with the BCD technical advisory group, Tri-County and the Policy and Technical Services staff have drafted a model for the board's discussion and consideration (**Exhibit "E"**).

The State of Oregon has two processes:

1. 455.690 Appeals Process. This process has been in statute for some time and is referenced in the code. In this process, an individual disputes a technical or scientific issue to the local building official. This decision can be appealed to a local board and then to the appropriate state board. This process does not necessarily result in a speedy resolution; sometimes it can take more than a year to exhaust the system.

2. SB 587 Appeals Process. This is a new appeals process for technical, scientific and administrative aspects of state building codes. It is a process that runs parallel to the 455 process in that the customer has a choice of following 455.690 or using the 587 appeals process. In the SB 587 appeals process, the customer can appeal a site-specific or administrative issue to the local building official. The building official's decision can be directly appealed to the state code chief, and then to the appropriate state board. The board's determination may be further appealed to the Court of Appeals. Peggy Collins reported that there has been a good success rate using this new appeals process, with satisfactory results achieved within two or three days.

Discussion continued concerning the time frame involved in the appeal process. Jim Ferris expressed concern that when a job is held up because of an appeal, the contractor has a tendency to go ahead and make the corrections required by the inspector because the job has to be completed within its time frame. Mark Long replied that in the electrical statute the chief inspector has the authority, on an inspection issue only, to render a timely decision. The only time delay that would occur is if one decided to appeal the chief's decision to the state board. Peggy Collins observed that in some jurisdictions there are also additional processes that may add to the time frame. The first line of appeal should always be to the local building official.

The criteria for developing a dispute resolution model in the Tri-County area are to provide swift resolution; to create an informal, flexible system; to maintain the integrity of the current processes; to draw on Tri-County technical resources, and to assure that the answers to code questions are consistent with state interpretations. All determinations should be published and shared statewide. With these criteria in mind, the draft dispute resolution model suggests dealing with three types of disputes: site-specific disputes related to code interpretations (Technical), disputes related to how the code is carried out (Administrative) and disputes where communication is not as good as it could be (Customer Service). Tri-County Service Center suggested the customer service aspect because the center currently acts as a clearinghouse for contractors and others who need assistance concerning timeliness, quality of inspections and other problems.

Mike Cliburn expressed a concern with the broadness of the interpretation of the statute (SB 512) regarding administrative and customer service issues. Mr. Cliburn questioned that we could be exceeding our authority since the statute only references site-specific disputes. Mark Long replied that this model includes a discussion of the different issues that need attention and that we are trying to get a sense of what can or should be done. Mr. Long's perception of the statutory language is that it refers only to site-specific issues related to the state code. Jim Chapman commented that SB 587 provides a process for timeliness, but noted that there is not an easy process currently in place to help when plans are delayed. The Tri-County Building Industry Service Board wants to have a process to help address this problem rather than through the courts. Mr. Long assured the board that this report is strictly informational and has gathered information taking the best ideas applicable to Tri-County gleaned from the NCSBCS presentation. The purpose of this discussion is to see if there is a quick, timely and informal way to help expedite a variety of dispute resolution issues.

Forrest Soth inquired that, if these disputes are primarily individual jurisdictional issues, is the board best using its efforts to try to resolve something that may be internal to a jurisdiction. Administrator Brewer reminded the board that all of these processes have to come as a result of the local building official having rendered some kind of decision. None of these thoughts suggest getting into areas that are of local control, personnel, or to side step the local official's ability to render decisions. This draft concept attempts to facilitate a timely response within the current structure. John Lape stated that there are two different time lines for disputes, those disputes arising during pre-construction (when there is time available), and those arising during actual construction (when time is limited). Rendering a site-specific decision within 48 hours is crucial to the industry in order to expedite a project under construction. In such cases, however, when the decision is quickly rendered on-site, although the immediate problem would be solved, there would not be a broad vision beyond that site-specific issue. The proposed Tri-County process, that includes the jurisdiction official and code chief, would involve input from a broader perspective. Publishing the results could help to avoid possible future disputes.

Joan Stevens-Schwenger continued by pointing out that, in order to be code consistent, a regional perspective is necessary. On call dispute "resolvers" could include building officials of the customer's jurisdiction, the chief of another jurisdiction, an industry representative, a technical expert and a BCD code chief. This process would work by the customer phoning or faxing in the question or point of dispute to Tri-County, Tri-County arranging a conference call with all "resolvers," along with the customer. After the customer signs off, the "resolvers" discuss the issue. Tri-County staff would provide research if necessary and notify the customer presenting the options of the determination within 48 hours. Following resolution, Tri-County/BCD will publish the result of the issues by web, code link, monthly missives/newsletters or bulletins that will have Tri-County and statewide impact.

The benefits of this process are timeliness, flexibility, and the ability to draw on regional resources. The broad representation among the “dispute resolvers” could result in a greater sharing of expertise and consistency throughout the Tri-County region.

From experience, Kevin Brice observed that timeliness is only part of the problem. An additional problem is that customers are afraid of retribution. Therefore, it is much easier and cheaper for them to fix the problem and continue the project rather than ask the questions. Kevin concluded by asking if we are setting up another process that does not address the key issue. Kevin also observed that problems are usually quickly and satisfactorily solved when the senior inspector in the jurisdiction gets involved and looks at the problem on the site the same day or the next. Mike Cliburn asked if the Tri-County process would be binding or facilitative. What happens if agreement is not reached? Mr. Cliburn also stated that it was his belief that the intent of the legislation (SB 512) is to resolve site-specific issues regarding the code, not customer service issues. Mr. Cliburn stated that he thought that the starting place for the process should be “narrowly” defined and limited to site-specific code calls, plan review calls, before branching into these other areas of administrative and customer service issues that may not have been intended by statute. Mark Long responded by saying that if the recommendation of the Tri-County Board is to take a narrow perspective and provide some technical resolution rather than that which is timely in getting to the core issues, then that is how the division will focus its efforts. The purpose of this presentation was to share the things that the division has heard out in the field and to receive the board’s response. The outcome of issues regarding site-specific provisions of the code will be binding in time, but how to go about it, what groups are brought in, how it is accomplished, has to be worked out.

Clint Hilman asked the committee to consider the administrative issues that statute allows the local jurisdiction to adopt. There should be a separation between the Oregon Administrative Rules and the local jurisdiction's administration rules or ordinances.

Sue Blatner commented that the dispute factor comes into play when the inspector and contractor cannot settle the issue on site. The reason for SB 512’s existence is because there was a problem with customer service. This is a method of trying to solve these problems by getting together, talking about them, expressing one point of view or another and then trying to bring resolution.

Mark Long summed up the discussion. He noted that Tri-County needs to have a very timely, specific process that can address technical issues and provide the flexibility to deal with site-specific issues. The process should have a mechanism to include the proper individuals or groups and allow several different ways to communicate the problem, whether by e-mail, fax, site visit or phone call. Tri-County would like to consider today’s discussion, refine the ideas and report back to the February 14, 2001, board meeting.

IV. COMMUNICATIONS - None

Terry Dieter was not present for Agenda items V. and VI.A.

Agenda items V. and VI.A were taken out of sequence and heard immediately after Agenda item I.E.

V. UNFINISHED BUSINESS

Approve hearing officer's report on proposed administrative rules on fee methodology for manufactured housing siting permit fees, the expansion of the minor label rules to include commercial electrical, and a process by which persons in Tri-County can request the board to review their qualifications for certification testing.

A recommendation was made to adopt the rules as they were approved for hearing with an effective date of January 1, 2001.

MOTION by Mike Cliburn to approve the hearing officer's report on rule making.
MOTION CARRIED UNANIMOUSLY.

VI. NEW BUSINESS

VI.A Approve the Certification Qualification Review Form - Andrea Simmons

This form directly relates to the qualification review process. The applicant would fill out this form to begin the process to have their qualifications to sit for their certification exams reviewed by the Tri-County Board.

MOTION by Mike Cliburn to approve the Certification Qualification Review Form.
MOTION CARRIED UNANIMOUSLY.

VI.B Installation of Water Service (additional) - Ron Murray

Ron Murray requested there be consistency in the installation of water services and asked the Tri-County Building Industry Service Board for help in enforcing consistency in this statute throughout the Tri-County area.

Mr. Murray noted that statute states that a licensed plumber will install the water service from the meter to the building. A state task force was formed to investigate the viability of either creating a special license for the installation of water services, eliminating all restrictions for the installation of water services, or maintaining the status quo. This task force has completed its work and has reaffirmed that a licensed plumber shall install the water service from the meter to the structure. In the testimony given by the laborers their recommendation was that they be allowed to install backflow prevention devices, pressure reducing devices, and any other appurtenances on that water service that they deem necessary.

Administrator Brewer informed the board that this is a long-term dispute between the laborers and the plumbers. The issue has been debated through the legislative process in Oregon for at least the past three sessions. Senator Derfler has asked that BCD facilitate a process to try to address this issue, indicating that he believes that the legislature is not qualified to make this decision, but rather should be made by the Plumbing Board. As a result, BCD established a task force through the Plumbing Board. Since this is a consistency issue in the Tri-County area, Mr. Brewer suggested that a request could be made by the Tri-County Board for BCD staff to address the issue and report back with an interpretation of statutory requirements.

Vice-Chairman Dieter requested that Administrator Brewer have the division's staff review the statute and rules related to the Tri-County board's authority with respect to the specific issue of interpreting the water service issues in the plumbing statute and report back at the February 14th meeting.

VII. ANNOUNCEMENTS

- A. Code Consistency Task Force, Organizational Meeting, December 14, 2000, from 9:30 a.m. - 12 noon.
- B. Planning Panel, December 27, 2000, from 12 noon - 3 p.m.
- C. Process and Forms Advisory Committee, January 23, 2001, from 1:30 - 4:30 p.m.

VIII. ADJOURNMENT

Vice-Chairman Dieter adjourned the meeting at 11:27 a.m.

Marion Peterson
Board Coordinator/Recorder

Exhibits:

- A. Draft - Legislative concept #942 (Agenda III.A)
- B. Budget proposal narrative (Agenda III.B)
- C. BCD Budget Forum (Agenda III. B)
- D. Tri-County Planning Panel (Agenda III.C)
- E. Dispute Resolution Process (Agenda III.D)
- F. Dispute Resolution Models (Agenda III.D)