



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

Meeting Minutes – December 12 , 2022

Location: Wye Island NRMA Lodge, 632 Wye Island Rd., Queenstown, MD 21658

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
Tammy Roberson, MDE Representative
Lester Kelly Wright, DNR Representative
Josh Schlepner, Eastern Shore Rep
Bob Murtha, Southern Md Rep

OTHERS PRESENT

Mike Eisner, Board Administrator
Matt Standeven, Board Counsel
Gene Benton (beginning of meeting only)

CALL TO ORDER

The meeting was called to order by the Board's Chairman at 10:07. Of note, this was the first in-person Board meeting since the start of the covid pandemic. Five Board members were present, as well as the Board's administrator and Board Counsel. In addition, Gene Benton of Encompass Enterprises was in attendance to speak with the Board about his application. The Board Chairman stated that Board meetings are always open to anybody who wants to attend.

Prior to proceeding with the draft Agenda, the Board Chairman introduced Mr. Gene Benton to the Board. The floor was given to Mr. Benton to address the Board. He stated his purpose was to share with the Board why he thought his work history meets the minimum requirements and he should be allowed to take the Marine Contractors test.

Mr. Benton stated that he has a long history of construction. Mr. Benton brought 3 copies of a portfolio that was an attachment to his earlier applications. He stated the information in this portfolio is essentially what was previously submitted to the Board, but with a few more details of his work as Director of Facilities for 7 years at Ashbury-Solomons Highlights, a continuing care retirement community. This facility has a waterfront area of 2500 ft. At this site he stated he was responsible for maintaining the shoreline, pier, bulkhead and rip rap. He said he currently, as a general contractor in southern Maryland, does all forms of construction, new and rebuilds, handyman and includes many projects are on the waterfront. He stated he works with Critical Areas and MDE on a regular basis to manage projects for erosion control and buffers, and understands the need for standards for marine contracting licensure. He stated he has physically hand built decks, but never over the water. He acknowledged that even though he has never been a marine contractor or worked for a licensed marine contractor, construction knowledge is in his blood. Mr. Benton believes this construction and management background is in the category of 'similar contracting experience' found in the Statute. He believes that since this term is ambiguous and arbitrary, his experience falls in this category, and he should be allowed to proceed and take the licensing exam.

The Board's counsel stated that since 'similar' is not defined in the Statute, it's meaning has been a policy decision of the Board, that this is a decision the Board makes routinely, and that the Board tries to be consistent in its review.

One Board member asked if Mr. Benton would like to point out anything in particular in the portfolio he brought. Mr. Benton highlighted again maintenance and repairs of a pier and along the waterfront at Ashbury-Solomons, but he stated he didn't construct these waterfront features.

The Board reminded Mr. Benton that an option for his company to get a Marine Contractor License is hiring of someone who does meet the Statute's minimum requirements to be his company's representative. Mr. Benton stated that he could hire somebody today with marine contracting experience that would meet the Statutes minimum requirements. However, he stated he doesn't want to do that because they could quit at any time, or if he didn't like them or their work quality, he wouldn't have sufficient control.

Mr. Benton concluded his appeal for reconsideration of his application and thanked the Board for this opportunity to speak to them directly. The Board Chairman invited Mr. Benton to stay through the meeting if he liked – Mr. Benton declined.

The Chairman then proceeded with the draft agenda.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: update of licensing activities, update on finances, update on training module development by Maryland Environmental Services (MES), update on Board appointments, update on draft regulations, continuing discussion of policy for unlicensed work and complaints against licensed Marine Contractors, and review of two new license applications. Gene Benton speaking to the Board in person, was also on today's draft agenda.

REVIEW OF PRIOR MEETING MINUTES

Board Members reviewed and approved the draft meeting minutes from August 8, 2022.

OLD BUSINESS

The Board jumped ahead in the Agenda and discussion ensued on complaints received against specific unlicensed and licensed contractors.

The Board's Administrator updated the Board on a complaint by an Anne Arundel County citizen against an unlicensed contractor who built a bulkhead on his property that failed. Guidance given to the Board's Administrator is that complaints against contractors doing marine contracting work without a license or tidal wetlands authorization, be referred to MDE Compliance. This complainant also alleged this contractor did other marine contracting work on homeowners in his area. MDE Compliance investigated this complaint and obtained no information or documents about these allegations. Follow-up attempts by the Board's Administrator to obtain documented verification of these allegations also yielded no actionable specificity.

The Board's Administrator participated in a MDE Compliance investigation on complaints of unauthorized structures on Smith Island. The complaints alleged that this marine contracting work was done by a certain licensed marine contractor. Compliance inspectors were not able to obtain documentation of who did the work. Therefore, no further action could be taken.

Review of the August 8, 2022, meeting minutes included a discussion about a suggestion made at an earlier meeting to create an audit process for license renewals, specific to licensed Marine Contractors with complaints against them. Suggested was cooperation with MDEs Compliance Program and Office of the Attorney General before a renewal is issued, to see if there were recorded violations. The MDE Board representative stated that a MDE formal enforcement action would need to be a prerequisite before the Board could take any action.

Discussion continued about the issue of substandard work, or work that failed that was performed by licensed contractors. The Board's counsel stated the Statute 17-310 has standards for denial, refusal to renew, suspension and revocation of a license. Any action the Board would take would be dependent on the nature of the violations. Specifically, Title 17-310(a)(4) states grounds for the Board denying, refusing to renew, suspending or revoking a license if an applicant or licensee: "Commits any gross negligence, incompetence, or misconduct while practicing marine contractor services." However, key words in this such as 'gross negligence' and 'incompetence' are not defined. The concept of 'competency' was discussed. One Board member stated that there are no criteria for competency. Counsel pointed out that since the Statute lists 'incompetency' as justification for actions such as denial or revocation of a license, this suggests the possibility that even if a person meets the qualifications for licensure, they still could be incompetent. As stated above by the Board MDE Representative, any enforcement action considered by MDE can only be taken if alleged complaints have been well documented. Further, such a MDE enforcement action against a licensed contractor would need to be a prerequisite before the Board took any action as authorized in Title 17-310. Related, guidance given to the Board's Administrator at the start of his tenure, is that citizen complaints about licensed contractors performing sub-standard work, work delays, or deposits taken for work not performed - be referred to the Office of the Attorney General, Consumer Protection Division.

An email from Josh Gibbons, a licensed marine contractor, was then discussed because it spoke to this discussion topic. Mr. Gibbons' email was received by the Board Administrator and a MDE Compliance inspector on November 2, 2022. Mr. Gibbons stated he knew of licensed marine contractors who are not qualified to do marine contracting work, and other contractors operating without a license. Mr. Gibbons stated that the Board's licensing program is not effectively serving licensed Marine Contractors who have diligently sought to comply with the Board's licensing requirements. As a result, he finds his company at a competitive disadvantage with companies not 'playing by the rules,' including not getting the appropriate Tidal Wetlands authorizations. In a letter of response drafted with the help of Board Counsel and sent by the Board Administrator, Mr. Gibbons was invited to share more specific information about his allegations. To date (January 6, 2023), no specificity, no documentation and no further information about these allegations have been received.

Board Activities and Financial/Budget Report

Licensing Activities: The Board Administrator gave an overview of licensing activities. In calendar year 2022 there were 17 periodic licenses that were up for renewal. Of these, 12 have been issued, 3 are in process of being renewed, and 2 businesses did not respond. Renewal application packages went out to marine contractors whose license expires December 31, 2022. Specifically, there are 99 licenses up for renewal. Renewal packages were made via email on October 13, 2022, and hard copies were mailed October 25, 2022. MCLB renewal notice requirements are in Title 17-308(c) which states that a renewal notice can be sent to the licensee by 'mail or electronically.' The Board Chairman stated that the Board Administrator has historically been very proactive in attempts to contact licensees who are remiss in filing their renewal application. In comparison, the Chair

shared that the renewal process for a Maryland Home Improvement Commission (MHIC) license is quite different. The process is online. The licensee receives an email notice of renewal, and it is the responsibility of the licensee to follow through. To date, 22 renewal certificates had been issued for licenses that expire December 31, 2022.

We continue to receive about 1-2 new license applications per month. Testing for new license applicants continues to be virtual. The test is emailed to the applicant on the day and at the time requested. They then have 24 hours to email their exam back to the Board's Administrator.

Board Finances: The Board's Administrator gave an update of the Board's present income/expense status. The Administrator received a financial update dated September 30, 2022. The fund balance at the beginning of Fiscal year 2023 is \$187,824. The Board received \$3,050 in revenue in Fiscal year 2023 through September 30, 2022. The total adjusted fund balance through September 30, 2022, is \$174,138. As of October 18, 2022, there is \$941 dollars left in funding for completion of Module 1. This funding will be sufficient to finish Module 1 training. In summary, the Board's financial status is sound.

Module 1 Update: Module 1, 'Maryland Tidal Wetlands Authorization' is on target to go live by the end of 2022. The power point video is approximately 40 minutes long, and with successful completion a marine contractor can earn 3 continuing education hours. There is a 20 question quiz at the end of the video. The voice over for this training video was eventually redone by a skilled videographer on MDE staff.

Module 2 Update: It is still the intension to create in essence, Part 2 of the training Module 1. This is envisioned as a more in-depth-dive into specifics of Tidal Wetlands authorizations. For example, different activities such as living shoreline creation, dredging and pier work will each have a detailed look at what is needed on their plans, and is involved in their review. There is funding available for this training of \$5000 in FY23. The Board Administrator and MDE Representative shared that creation of Module 1 training required significant more of their time than anticipated. They found that MES doesn't have the technical knowledge to create such a training. With this, it is anticipated that more of the work creating the power point for the Module 2 training will be done by MDE's Wetlands Program in cooperation with the Board's Administrator, and projected help again from MDE's professional videographer. MES will then put the pieces of the training together and post it online.

Board Member (re)appointments: With the change of the Administration, there is no action that can be taken by the Board at this time to proceed with the process. Gabrielle Leach, MDE's Deputy Director of the Legislative and Intergovernmental Relations Office, stated typically for reappointments we are told if they need new applications, but usually they are good with the previous information (resume, etc.). Information that the Appointments office has on the Board DNR representative will be shared with the new administration.

Draft Regulations: The Board's Counsel provided an update on draft marine contracting regulations. The Board MDE Representative, Counsel, and Administrator met with relevant MDE staff to timeline promulgation of the regulations. The goal will be to submit the draft regulations by late March to MDE for their internal approval, with planned publication in the Maryland Register May 19, 2023. The Board MDE Representative suggested that before the draft regulations go through MDE in-house review, that input be obtained from interested stakeholders. Stakeholder review could be of the actual draft regulations or summaries of them. The Board Chairman suggested that after Board review, they be shared with the Marine Contractors Association. The

Board's Eastern Shore Representative, also Director/Vice-President of the Marine Contractor's Association stated that the focus of the two Boards are fairly well aligned, and at this time there are no known issues. The goal with the proposed stakeholder review before MDE internal review and publishing in the Maryland Register, is to get buy-in by large stakeholders, and not be blindsided later with potential 'red flags.' All Board members agreed on the importance of this approach.

Key elements of the regulations will be establishment of license tiers. Related decisions to be made are license fees. The question raised is should the license fee be the same for all license tiers, or different. A discussion on this issue raising different considerations. Reason to have a single fee for all license tiers, is administrative work won't be different for different tiers. In addition, it was stated that potential for income for a marine contractor, is not necessarily tied to a specific tier of licensed marine work. It was stated that if the fee structure did change, a projected audit would be needed to make sure the Board maintained sufficient funding.

A key element of these regulations will be clarifying certain terms found in the Statute but not defined. The term 'similar' is in Title 17-302(1): an applicant shall 'have at least 2 years of experience as a full-time marine contractor or demonstrate *similar contractor experience*.' Board Counsel stated that the term 'similar' can't change via regulation, but it can be defined in these proposed regulations. Counsel suggested a specific definition of similar would be useful as a standard to move forward, but a better approach may be a different definition for the different license tiers.

Discussion continued about the concept of similar experience. Board Counsel stated that it makes sense that similar work experience be in the non-marine world. The Board MDE Representative suggested the similar work experience should be something related to water, for example in a lake, stream restoration, or non-tidal waters – but not building in an upland. A Board member suggested that work on projects such as cofferdams, work performed in upland sewer or drainage pipe projects, work that involved driving sheets or piles in these types of projects could be similar to driving piles in a water environment. Another Board member shared the example of a person who builds boat lifts at a factory, but never worked for a marine contractor and now wants to install them, even though he's never worked over the water. Another example shared was knowledge of a licensed marine contractor, specifically a boat lift contractor, who has never driven piles. However with their current marine contractor license they can drive piles even though they don't have the knowledge or experience in this marine contracting activity. Shared was the apprenticeship model in skilled trades such as electrical as related to marine contracting experience learned via working for a licensed Marine Contract. The importance of trying to be consistent was shared by a number of Board members.

Board counsel stated that the Statute doesn't specify how applicants can demonstrate experience. However, demonstration and judgement of whether experience is sufficient is within the discretion of the Board. Counsel further stated that the Statute requires a license applicant submit a complete application - that is created and approved by the Board. The Board can therefore change the application to allow for different types of proof of experience. With this, the Board has a fair amount of flexibility in terms of how the Board decides applicants can demonstrate their experience.

A White Paper (circa 2019) written for MCLB Review and Edit & titled 'Guidance for Determining Marine Contractor Experience' was referenced as a document that could be expanded. Counsel furthered that a non-exclusive lists of specific skills and tasks makes sense.

LUNCH BREAK - 11:50 to 12:30

NEW BUSINESS

Review of Current Pending License Applications

Two new applications for a license were discussed.

Charles Dolbey, Coastal Contracting, LLC applied for a new Entity License. Bob Murtha, the Board Southern Maryland Representative recused himself for review of this license application. After review and discussion, the Board all agreed that Mr. Dolbey met the minimum 2 years work experience requirements and that he be allowed to take the license exam.

Ethan Herman, Commerce Construction Corp. applied for a new Entity License. After review and discussion, the Board all agreed that Mr. Herman met the minimum 2 years work experience requirements and that he be allowed to take the license exam.

Other New Business

No new business was brought up.

ADJOURNMENT

The Board voted and approved adjournment at 12:45 pm. The next monthly Board meeting is scheduled for December 12, 2022, at 10 AM. This meeting will be via Virtual via Google Meet.

CLOSED SESSION - A closed session was convened at 12:50 pm. This session was for the Board to consult with counsel under Statutory Authority General Provision Article 3-305(b)(7): consult with counsel to obtain legal advice on a legal matter. This closed session adjourned at 1:10 pm.

**WRITTEN STATEMENT FOR CLOSING A MEETING
UNDER THE OPEN MEETINGS ACT**

Date: Dec 12, 2022 Time: 12:50 pm Location Wye Lodge NRMA Motion to close meeting made by Milton Rehbein (Board Chair)

Seconded by Bob Murtha Members voting in favor: T. Roberson, J. Schlepner, Bob Murtha

Opposed: 0 Abstaining 0 Absent 2

STATUTORY AUTHORITY TO CLOSE SESSION, General Provisions Article, §3-305(b) (check all that apply):

- (1) To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals;
- (2) To protect the privacy or reputation of individuals concerning a matter not related to public business;
- (3) To consider the acquisition of real property for a public purpose and matters directly related thereto;
- (4) To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
- (5) To consider the investment of public funds;
- (6) To consider the marketing of public securities;
- (7) To consult with counsel to obtain legal advice on a legal matter;
- (8) To consult with staff, consultants, or other individuals about pending or potential litigation;
- (9) To conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- (10) To discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including: (i) the deployment of fire and police services and staff; and (ii) the development and implementation of emergency plans;
- (11) To prepare, administer, or grade a scholastic, licensing, or qualifying examination;
- (12) To conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- (13) To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter;
- (14) Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

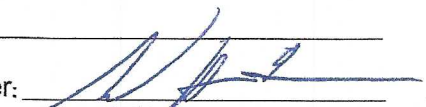
FOR EACH CITATION CHECKED ABOVE, THE REASONS FOR CLOSING AND TOPICS TO BE DISCUSSED:

§3-305(b) () Discuss term 'similar contractor experience' from Title 17 and relationship to Encompass Enterprises (Gene Benton) new application

§3-305(b) () _____

§3-305(b) () _____

This statement is made by Michael Eisner, MCLB Administrator, Presiding Officer:


SIGNATURE