

LANDSCAPE CONTRACTORS BOARD
Minutes of the May 15, 2015
Board Meeting
930 Chemawa Road NE, Room C/McNary
Keizer, Oregon

PRESENT

Board Members

Molly Dunston, Chair
William Bumgardner, Vice Chair
Larry Hoekman
Christine Hollenbeck
Loren Radford
John Gawlista
Annie Lee

Joanna Tucker Davis, Assistant Attorney
General
Tammy Hendricks, Oregon Government
Ethics Commission
John Wymore
Mary Giles

Staff

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

EXCUSED

None

Guests

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:37 am by Chair, Ms. Dunston.

B. Introduction of New Administrator, Elizabeth Boxall

Ms. Sneed introduced Ms. Boxall, new Administrator for the agency.

C. Approval of Agenda and Order of Business

Board Action

Moved by Mr. Gawlista and seconded to approve the May 15, 2015 agenda with additions. Vote: 7-0

D. Approval of Minutes

i. March 20, 2015

Board Action

Moved by Mr. Gawlista and seconded to approve the March 20, 2015 minutes. Vote: 7-0

ii. April 28, 2015

Board Action

Moved by Ms. Hollenbeck and seconded to approve the April 28, 2015 minutes. Vote: 7-0

iii .May 4, 2015

Board Action

Moved by Mr. Gawlista and seconded to approve the May 4, 2015 minutes. Vote: 7-0

2. ADMINISTRATOR'S REPORT

A. Office Update

The Board reviewed Ms. Sneed's report, which is attached and made a permanent part of these minutes.

Ms. Sneed updated the board regarding the online renewal project. Typically funds are designed to go through treasury; however, the LCB does not send funds through treasury so this has stalled the process. The approval committee will be meeting in August. Other licensing agencies have been meeting to discuss working on an online renewal project together. There is a new administrator with the another board of a semi-independent agency that used a database in Idaho that was similar to what the licensing agencies are looking for. This program may be a quicker and more economical option. Multiple semi-independent agencies will be meeting the first week of June for a demonstration to see if this would be a system that could be leveraged. Both Ms. Gladwill-Rowley and Ms. Boxall will be invited to attend the meeting.

Ms. Sneed stated that Ms. Gladwill-Rowley and Mr. Thomas have been working to document the hiring process so in the future it will be developed for future hires.

Ms. Sneed stated that she will be working with Ms. Boxall after the board meeting today as well as on Monday to help with the transition.

B. 2013-2015 Financial Report/Approval

The Board reviewed the financial statements as of April 30, 2015. The March and April balance sheets show that \$20,000 was transferred from checking to savings in April. This is the agency's positive cash flow period, so it was an opportune time to move money to savings. Ms. Boxall will be going to the bank to change over signature authority on the Board accounts.

The April balance sheet shows \$7,000 less current assets compared to last year at this time. Accounts payable is \$12,000 better than last year at this time, so the agency still has a positive net cash position. There is a negative accounts payable balance due to payroll liabilities that were paid prior to month end.

As of April 30, 2015 the agency's total income is nearly \$19,000 higher than last year at this time. The bulk of the increase is from civil penalties collected. The licensing income is down a bit, but penalties are significantly higher than last year.

Employee costs are primarily higher than last year at this time. The agency received a worker's compensation refund of \$1,144.60. There were also unemployment costs last year, so overall the payroll taxes total line item is nearly 25% better than last year.

Newsletter expenses are less than last year, and postage costs are lower than last year at this time. The Agency's AAG expense is higher than last year, which is due to the program review and the number of cases that are being represented by the AAG. Formal investigation is 102% greater than last year, which could be a factor in the increased civil penalties collected.

Board expenses are higher than last year due to having board members who travel from farther distances and the additional AAG time being used.

Trade show expenses are higher than last year due to an investment in giveaway items (pens and seed packets). The Agency is also broadening its reach and has invested in the new banner stands.

To date the agency's computer expenses have been lower than last year, but a small investment will be made with the new Administrator being hired. Overall the agency has a positive net income of \$14,345.51, which is \$13,000 better than last year at this time.

The budget numbers have not been updated at the time of the report. The rule has passed, but we are waiting to hire the new Administrator to train her in how to update budgets in QuickBooks.

Board Action

Moved by Ms. Lee seconded to approve the unreconciled financial report.

Vote: 7-0

C. Personal Leave Policy

DAS policy is that employees are granted 24 hours of personal business time as of July 1 once they have been employed for 6 months. The agency's handbook states they must work 1040 hours in order to receive this benefit. Ms. Sneed asked if the board would agree to follow the DAS policy for the accrual and use of the 24 hours of personal leave. In addition, Ms. Sneed stated that the employee manual needs to be updated and that it should include a statement that employees are at will, and that we will adopt the DAS Policies in regards to staff increases and the use of personal time.

Ms. Dunston stated that she thought this request was reasonable.

Board Action

Moved by Mr. Radford and seconded to accept DAS's personal use policy.
Vote: 7-0

D. Delegated Authority of Final Orders

The Administrator and the Program Manager have been given delegated authority to sign final orders, including consent orders, stipulated orders and final orders incorporating settlement agreements in a Board administrative proceeding, pursuant to ORS 183.411. The delegation was to remain in effect unless otherwise withdrawn by the Board. Upon reviewing the Board action that granted this authority and the letter given to the Administrator, it appears it was granted to Shelley Sneed and Kim Gladwill-Rowley, not just the specific positions.

Due to hiring a new Administrator, the Board discussed the delegated authority to determine if it is to remain granted to specific people or to specific positions within the office. A letter should be issued to the current Administrator. If signing authority is granted to the specific positions, it would not have to go back to the board for approval each time a new person is hired.

Board Action

Moved by Ms. Lee and seconded to grant delegated authority to allow the Administrator and Program Manager the authority to sign all final orders. The Chair will need to issue a letter stating this. Vote: 7-0

3. EXAMINATION/LICENSE/EDUCATION

The Board reviewed the examination statistics through April 2015. The number of tests taken in March 2015 is lower than the same month last year and April 2015 tests taken are higher than the same month last year. Overall the total tests taken for 2015 versus 2014 are very close.

The pass rates have been between 35% and 45%. In 2012, the exam was changed to open book except for backflow and all questions were referenced to the Sauter book.

The Board reviewed the license counts as of May 1, 2015. The number of licenses has remained steady for the last two years. There are now 18 Planting Only licenses and 4 Planting & Irrigation license held by Landscape Construction Professionals. There are 13 Planting Only Business Licenses and 3 Planting & Irrigation Business Licenses.

Ms. Gladwill-Rowley stated that the staff is trying to show that licensing can be a multi-step process that applicants can always start with a lesser license and then once other sections are passed and the agency is notified the license can be upgraded with no additional costs.

Ms. Dunston stated that she has received positive feedback from licensees regarding the ability to go through the process in steps.

The Board reviewed the CEH audit statistics from January 1, 2010 through the present.

APPLICANT WITH CONVICTIONS

The Board reviewed a Landscape Construction Professional Exam and License Application submitted by applicant on March 17, 2015. Applicant's application shows that he was convicted of Theft I in 1995 in Lane County and several counts in 2003 in Crook County, Oregon. Applicant submitted an explanation written by him, a judgment, an indictment, his plea, and his restitution schedule for the 1995 case. He also submitted a judgment of conviction and sentence for the 2003 case.

On May 13, 2015, Ms. Gladwill-Rowley spoke with his probation officer at the Linn County Parole who stated he completed his supervision on April 19, 2015 and was a medium risk. He did not have much contact with the applicant, which the probation officer said was a good sign. The probation officer could not release any information, including the police report. The applicant's fiancée stated they do not have the police reports because the cases were so long ago.

The Felony Theft 1 in Lane County was theft of \$750 or more of money and gasoline from a prior employer when fuel charges were not deducted from the final paycheck. Respondent was found to owe the money, convicted of Felony Theft 1 and was placed on a payment schedule.

The charge and sentencing in Crook County was for multiple offenses:

1. Theft in the First Degree (a gun) – 13 months in the custody of the Oregon Department of Corrections and 24 months of post prison supervision;
2. Driving while revoked, misdemeanor – 6 months in the custody of the Oregon Department of Corrections concurrent to count 1;
3. Felon in possession of a Firearm - 13 months in the custody of the Oregon Department of Corrections, concurrent to count 1 and 24 months post prison supervision;
4. Unlawful possession (concealed) of a Firearm - 6 months in the custody of the Oregon Department of Corrections concurrent to count 1; and
5. False Information to a Police Officer – 90 days in the custody of the Oregon Department of Corrections concurrent to count 1;

Applicant also paid a monetary judgment totaling \$405 plus attorney fees.

Board Action: Moved by Mr. Radford and seconded to approve applicant subject to meeting all the other application requirements. Vote: 7-0

Board Discussion: The Board discussed the process for reviewing applications where the applicant had a prior conviction. Ms. Lee stated that once someone has served their time they should not have to continue to pay for it and should be allowed to obtain a license. Ms. Hollenbeck agreed with Ms. Lee and stated that to give a person the

opportunity to do the right thing is important. The Board agreed that the prior conviction has no connection to the operation of a Landscape Contracting Business or the performance of the work.

4. ENFORCEMENT

A. Consent Agenda

1. Immediate Action

A listing of actions is attached and made a permanent part of these minutes. No items were removed from this portion of the consent agenda.

2. Investigate: No Action

A listing of actions is attached and made a permanent part of these minutes. No items were removed from this portion of the consent agenda.

3. Administrative Action

A listing of actions is attached and made a permanent part of these minutes. No items were removed from this portion of the consent agenda.

Board Action

Moved by Mr. Bumgardner and seconded to approve the consent agenda. Vote: 7-0.

B. Enforcement Cases for Discussion

1. Advertising without a License

a. Seth Berry dba: Dirty Boots Landscaping

SUMMARY

Respondent advertised: Dirty Boots Landscaping on a business card on a bulletin board at a nursery in southern Oregon and Design and Installation Services, Licensed by Oregon Landscape Contractor's Board, #8701, Front Lawn Install, Entry Flagstones, Paver Pathways, Front yard Renovation, Water-wise irrigation design and installation, Planting design and installation, decorative fencing, and Irrigation repairs and on a website.

The home page of the website at www.dirtybookslandscaping.com states: After five years, Dirty Boots Landscaping is closing its doors. We would like to send out a sincere thank you to all of you that we've had the pleasure of working with while we were in business. If we've installed landscaping for you, we'd like to hear how it's going and if you have problems or questions, we'd like to help, so please send us an email. Happy gardening to you! Seth and Angela

CONCERNS/ISSUES

Respondent has the announcement of closing it's doors on the homepage of the website, but continues to the remaining web pages to offer their landscaping services. Respondent may have hung the business card at

the nursery prior to closing the doors and losing their license, but forgot about it and did not remove it.

Board Action

Moved by Mr. Hollenbeck and seconded to assess a penalty for an advertising violation for both the sign on the door and the website.

Vote: 7-0

Board Discussion

The Board discussed the wording on the homepage of the website and determined it is an invitation for future discussion regarding landscaping work and with the remaining pages; it is an offer for landscaping work.

2. Operating without a License

None

3. Other/Misc.

- a. **Affordable Quality Landscape** (deferred until after Ms. Tucker Davis leaves)
(Ms. Tucker Davis left at 11:22, before this case was discussed)
(Mr. Radford recused himself)

SUMMARY

Raising irrigation heads

On March 31, 2015, LCB Contract Investigator observed respondent raising irrigation heads. Respondent stated he was putting in a large amount of top soil in an effort to raise the height of the grass.

CONCERNS/ISSUES

Does "raising irrigation heads" require an irrigation license?

Adjusting sprinkler head nozzles is considered landscape maintenance. Does "adjusting a sprinkler head nozzle" include "raising irrigation heads"?

OAR 808-002-0250 defines constructing an irrigation system and includes "altering an existing irrigation system". Could "raising irrigation heads" be considered "altering an existing irrigation system"?

Board Discussion

Ms. Dunston stated that the Board may need additional information regarding the actual work that was being done. Mr. Hintz stated that he could do some additional investigation regarding the specifics.

Ms. Dunston suggested that this item be tabled for a future meeting.

This case was deferred for further discussion at future meeting.

b. Sergio Ochoa, dba: Unique Landscaping

SUMMARY

On February 18, 2015, LCB Contract Investigator observed three workers' performing irrigation work. On February 19, 2015, LCB Contract Investigator spoke with one of the workers at the job site who told her he planted the trees, there was no supervisor on the site, they are paid with a check; not cash, and they are all employees of the respondent. LCB Contract Investigator also spoke with respondent (Sergio Ochoa) who stated he was hired by the homeowner to complete the irrigation system and plant the plants. He further stated his brother-in-law; Jorge Hernandez has an LCP license (#8996 for all phase) and will supervise the respondent's employees during the planting. However, Mr. Hernandez is neither on the company payroll nor on the job site that day.

1. Hiring employees while licensed as exempt (no employees; no workers' comp coverage)

Respondent had three employees working at this job site. On August 18, 2010, respondent submitted a landscape contracting business license application and was then granted the license on September 17, 2010. On that application respondent stated he did not have employees and his record has never changed from exempt (no employees) to nonexempt (has employees). Upon checking the website for SAIF, it appears respondent has had workers' compensation coverage since October 19, 2010, but has not updated his record with the LCB nor submitted a certificate of coverage. (Penalty: \$400 for the first offense if the licensee obtained coverage prior to the employee hire date – we do not have a hire date, but can go by the February 18, 2015 date when they were observed working – they were covered by SAIF). ORS 671.25(4)

2. Failing to obtain the correct amount of surety bond

The law (ORS 671.690) states the amount of bond the landscape contracting business must obtain based on the job charges. For jobs that are:

- Up to \$10,000, a \$3,000 is required;
- More than \$10,000, but less than \$25,000, a \$10,000 bond is required;
- \$25,000 or more, a \$15,000 bond is required.

The law (ORS 690(6) and OAR 808-003-0613(3) & (4)) requires a bond to be increased if the cost of a project will make that project subject to a higher bond.

Respondent has a \$3,000 bond, which allows them to perform projects up to \$10,000. On or about January 21, 2015, respondent signed and/or submitted a contract for landscaping work for \$29,796. Respondent should have increased the bond to \$15,000. (Penalty: \$1,000 for the first offense and suspension until the proper bond is received). ORS 671.690 & OAR 808-003-0613

3. Performing Work Outside the Scope of the License:

On or about January 21, 2015, respondent signed a contract with Greg Daniel's at the above job site. Part of what the respondent contracted to install was an irrigation system, backflow device and shrubs and trees. The total contract amount was \$29,796. At the time of the contract and the installation of the trees by the respondent's employees, respondent was licensed for Irrigation Plus Backflow and could not perform the installation of trees. Respondent held an Irrigation Only Plus Backflow license from September 17, 2010 to February 23, 2015. On February 24, 2015, respondent upgraded the license to All Phase Plus Backflow by hiring his brother-in-law on the payroll who holds an All Phase license. (Penalty: \$1,000 for the first offense). OAR 808-003-0040(1)(2)g)

4. Failure to Comply with Minimum Standards for Contracts

OAR 808-002-0200(1) Minimum Standards for Written Contracts

(1) Landscaping contracts and subcontracts with a homeowner or an agent of the homeowner shall include, but not be limited to, the following:

(a) Landscape contracting business name, license number, business address and telephone number;

(b) Consumer's name and address;

(c) Address or location of work to be performed, if different from the consumer's address;

(d) General description of the work to be performed and materials to be installed;

(e) Estimated time for completion or estimated completion date;

(f) Price and payment schedule;

(g) Description of guarantee; if no guarantee such a statement shall be included; and

(h) Signatures of the authorized business representative and consumer;

(i) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board;

(j) Effective January 1, 2012: If subcontractors will be used for the performance of landscaping work, the contract must include a statement notifying the consumer that there will be subcontractors used to perform landscaping work.

On or about January 21, 2015, respondent submitted and/or signed a contract for landscaping work. This contract did not include an estimated time for completion or completion date, a statement of guarantee or no guarantee, a statement that they are licensed by the LCB nor the current address and phone number for the LCB, a statement regarding subcontractors as required in OAR 808-002-0200(1)(1)-(j). (Penalty: \$500 for the first offense). OAR 808-002-0020(1)(e) (g)(i) & (j).

Board Action

Moved by Ms. Dunston and seconded to assess a civil penalty for hiring employees while licensed as exempt; failing to obtain the correct amount of bond; performing work outside the scope of the license; and failing to

comply with minimum standards for landscaping contracts and suspend until proper documentation of an increased bond has been received in the LCB office.

Vote: 7-0

c. Enchanted Gardens Landscape Services LLC

SUMMARY

Respondent's business entity had a change of ownership (members); the entity is an LLC.

ORS 671.600(1) states:

A new landscape contracting business license shall be required whenever there is a change in ownership, irrespective of whether the business name is changed. As used in this subsection, "change in ownership" does not include a change in the holders of corporate stock.

On or about March 12, 2015, the LCB received respondent's application for renewal of the landscape contracting business license for an expiration of March 31, 2015 – the license was renewed on March 26, 2015. However, on this form, respondent crossed out one of the owners (members) – Amy Jo Slagle-Swanson and changed the ownership percentage for the only owner (member) left – Gary Swanson to 100%. Staff researched ORS 671.600 and worked with legal counsel to determine if a new license was necessary. It was determined that a new license is necessary. On April 7, 2015 respondent was sent a letter showing the options available: withdraw the ownership change (Amy Jo Slagle-Swan would still be an owner/member), submit an application for a new business license, or withdraw the renewal of the license (business would no longer hold a landscape contracting business license). There has been no response to the letter with options.

On May 23, 2014, respondent submitted an "Information Change" form to the Secretary of State, Business Registry showing only one owner/member – Gary Swanson. The prior owner/member – Amy Jo Slagle-Swanson is no longer associated with this business as an owner/member with the Secretary of State's office.

Board Action

Moved by Mr. Bumgardner and seconded suspend respondent's landscape contracting business license for failure to obtain a new landscape contracting business license upon a change of ownership.

Vote: 7-0

5. CLAIMS (Dispute Resolution)

A. Consent Agenda

Board Action

Moved by Ms. Lee and seconded to approve the consent agenda.
Vote: 7-0

1. 8220-101, Jim and Anne Burbach vs.
Elite Homes and Landscapes Inc

SUMMARY OF COMPLAINT

Breach of Contract & Negligent or Improper Work

Claim was received August 2, 2012. Respondent filed a construction lien against the property for non payment for services.

Respondent filed a complaint with the Multnomah County Court to foreclose a construction lien and requesting the \$450 paid to the Multnomah County Clerk for filing and recording it claim of lien. He also requested an award for reasonable attorney fees incurred and for his costs and disbursements.

Claimant filed an answer stating they had paid in full (\$36,400) – even paying \$150% of the amount claimed under the lien. The lien was released. However, the respondent still contends they are entitled to further costs.

FINDINGS

This claim was received and placed in suspension until the court proceedings were completed. Claimant is required to submit a status report. From August 2012 to May 2014, claimant's attorney submitted four status reports.

The final report submitted by the claimant's attorney on May 27, 2014 stated the parties have agreed to resolve this matter through binding arbitration, which had been held and they were awaiting a decision.

On or about December 16, 2014 and again on February 2, 2015, LCB staff requested a status report. No report has been received as of this date to those two requests.

ORS 671.703(7) & (8) state that if a party to a claim files in court, the board shall suspend further processing of the claim and require the claimant provide status reports on the pending action. The board may dismiss or close a claim if the claimant fails to submit status reports on a pending action.

STAFF RECOMMENDATION

Issue Notice of Dismissal due to a non response from claimant.

2. 8539-001, Marc & Eileen Braiverman vs.
Hydroscapes LLC

SUMMARY OF COMPLAINT

Negligent work/installation of a water feature

FINDINGS

Claim was received March 23, 2015. Claimant stated the date the work ceased was July 24, 2013. Claim should have been received no later than July 23, 2014. March 23, 2015 is more than one year after July 24, 2013.

ORS 671.700(3) states the Board may not accept a claim against a landscape contracting business for processing if the claim is not filed with the board within one year after the business substantially completed the work.

OAR 808-002-0280 defines "date work completed" as (a) the date when all the provisions of the contract were substantially fulfilled, excluding warrant work; or (b) the date the landscaping business ceased work, if the landscaping business fails to substantially fulfill the provisions of the contract.

The claim has been filed more than one year after work completed and the claim cannot be accepted.

STAFF RECOMMENDATION

Issue Notice of Dismissal due to receipt of claim being over one year since work was substantially completed.

3. 8059-104, Loen Nursery Inc vs. Design Resource Group LLC

SUMMARY OF COMPLAINT

Respondent failed to pay for material supplies.

Claimant filed in Washington County Circuit Court. Respondent counterclaimed. Arbitration was held and an award was issued. The time to appeal that award has passed and claimant has submitted certified copies of the judgments and the arbitration award.

The claim was filed August 27, 2014. Only items purchased within the prior year can be included in the award. The claimant did not include invoices or amounts on the claim form older than August 26, 2013. However, the court order does include invoices older than August 26, 2013.

FINDINGS

The Arbitration Award states the claimant is entitled to final judgment in the sum of \$18,211.86 plus interest thereon at a rate of 18% per annum from June 2, 2014 until paid plus costs and attorney fees. This award is against Design Resource Group LLC & Todd Kroger (owner and LCP).

AWARD

1. Principal Amount of Judgment: \$18,211.86
2. Prejudgment simple interest from June 2, 2014 at a rate of 18% per annum
 - Accrued through January 30, 2015: \$2,173.45
 - Per diem thereafter until date judgment is entered: \$8.98
3. Post judgment simple interest from date of judgment at a rate of 18% per annum on the principal amount of judgment.
4. Court Costs: \$1,148.50
5. Attorney fees: \$8,612.50

LAWS & RULES

ORS 671.710(5) states: The total amount paid from any one bond for recovery of dispute resolution costs, interest and attorney fees may not exceed \$3,000.

OAR 808-004-0250(2) states: An order or arbitration award by the board awarding monetary damages that are payable from the respondent's bond...may include an award for attorney fees, costs, interest or other costs as follows:

(b) An order or arbitration award by the board may include attorney fees, court costs, other costs and interested included in a court order or award of a court, arbitrator or other entity that are related to the portion of the order or award...that is within the jurisdiction of the board if the court order or award...arises from litigation, arbitration or other proceedings authorized bylaw or the parties to effect a resolution to the dispute:

(A) That was initiated by the respondent; or

(B) That the agency required the claimant to initiate under ORS 671.703(12) due to the nature or complexity of the claim.

ORS 671.607(1)(a) states: "Landscape Contracting business debt" means an amount owed under:

(A) a final order or arbitration award issued under ORS 671.703; or

(B) A judgment or civil penalty arising from landscape contracting business activities in any state.

ORS 671.607(3) states: The board may suspend...a landscape contracting business license if:

(a) the business owes a landscape contracting business debt.....

(b) An owner or officer of the landscape contracting business owes a landscape contracting business debt.....

CONCERNS/ISSUES

This claim was filed August 27, 2014. Only items purchased within the prior year can be included in the award. The claimant did not include invoices or amounts on the claim form older than August 26, 2013. However, the court order does include invoices older than August 26, 2013.

The Board should be aware that \$18k cannot be awarded; only \$7,454.95 as that is the amount within one year from the date they filed the claim. However, the \$18k plus other costs could be considered a landscape contracting business debt and the respondent's license could be suspended if not paid in full.

STAFF RECOMMENDATION

Issue a Notice of Contested Case/Arbitration that respondent pay \$7,454.95 for invoices not older than one year from the August 27, 2014 claim filing and not including attorney fees, court costs, interest, etc.

B. Board Review of Claim Cases

1. AA Bark Blowers LLC vs. Patrick O'Connor

SUMMARY OF COMPLAINT

Failure to pay for material supplies and/or labor

FINDINGS

ORS 671.695 states a claim is payable from the bond **only** if the claim arises from the performance, or a contract for the performance of work that is subject to ORS 671.510 to 671.760 and be one of these: (5) a claim by a person furnishing material to the landscape contracting business; (6) a claim by a subcontractor against the landscape contracting business for unpaid labor or materials arising out of a contract.

If someone were to ask if bark blowing was landscaping, we may tell them it is maintenance. However, what if it is done in conjunction with the installation of nursery stock? OAR 808-002-0455(2) specifically excludes all placement of mulching materials, regardless of their composition, from the definition of "Install."

808-002-0455, Install

(1) For the purpose of ORS 671.520 "install" means the planting of lawns, trees, shrubs, vines and nursery stock outdoors. For the purpose of this rule, planting includes, but is not limited to, the excavation of the planting pit or hole, physically moving the plant into the pit or hole, backfilling the pit or hole, compacting the backfill and staking the plant if necessary.

(2) Installing does not include:

(a) the placement of mulching materials which includes, but is not limited to **bark dust**, chips, husks, shells or compost; and

(b) the planting of nursery stock for commercial sale or reforestation.

If a licensed business installs an entire front yard (irrigation system, lawn, nursery stock and bark dust), the only parts the bond covers is the irrigation system, lawn and nursery stock. If the bark dust was not the bark dust the homeowner wanted or if it is not paid for by the licensed business and a lien

is filed, it is not covered by the bond. A homeowner thinks they are hiring a business that is licensed and bonded and "assume" they are protected when, in fact, only part of their contract is protected.

CONCERNS/ISSUES

Staff wonders if installing mulching materials, such as bark dust when an installation of nursery stock or trees has been performed should be part of the installation of nursery stock.

STAFF RECOMMENDATION

Issue Notice of Contested Case for Dismissal of this claim because the materials are outside the jurisdiction of the board and the bond coverage.

BOARD DISCUSSION

The Board discussed bond coverage for mulching materials when installing nursery stock and/or trees. Installing bark dust is often part of the process of installing a landscape. Homeowners would believe this is part of the installation and that it would be covered by the bond

Possible rule change: Joanna Tucker Davis stated that when you make a rule you will need to be connected to the statute language: lawns shrubs, trees, vines or nursery stock.

Ms. Gladwill-Rowley asked if you could make this rule retroactive. Ms. Davis stated it is possible, but because this contract was completed at a time previous to the rule that changing it retroactively may be a little difficult because that was not the under standing or the rule when the contract was signed.

Ms. Hollenbeck stated that she does not feel comfortable making this rule retroactive, board agreed

BOARD ACTION

Moved by Mr. Bumgardner and seconded to dismiss this case. Vote: 7-0

Board directed staff to go through rule making process to include mulching as part of planting, Rule 808-002-455 directed.

6. LEGISLATION

A. SB 580/Landscape Work Group/Update

SB 580 is the bill from the Landscape Work Group that met over the last 2 years. The Senate passed this bill on April 29, 2015 with 29 Ayes and 1 excused. It has been referred to the House Committee on Business and Labor. Staff expects a public hearing this month. Ms. Sneed stated that the session will probably end in July.

B. HB 3304/Hands-on Practical Skills Testing & Translation to Spanish

HB 3304 requires a hands-on exam and translation of the exam into Spanish. Ms. Sneed and Ms. Gladwill-Rowley met with Representatives Greg Smith & Dallas Heard on May 6, 2015 to discuss several proposed changes requested by the LCB staff. There was support for funding the project at \$150,000, which is a one time allocation that would be funneled through DAS. The representatives will work with the Legislative Fiscal Office on how that would work.

Representative Heard agreed to be a member of the Implementation Committee, which will allow him to be part of the design process and hear the challenges to doing this work. Draft language will be written by the board's legal counsel and forwarded to Legislative Counsel to make the amendments agreed to by both of the Representatives.

Ms. Sneed reported that the National Association of Landscape Professionals is the national organization that holds the CLT designation. In Oregon, the CLT examination is given by OLCA. LCB and OLCA may be able to enter into an agreement to use the exam already developed for that CLT designation. Ms. Sneed stated that start up costs could be \$150,000 and that this request will be going to the Legislative Fiscal Office.

Mr. Radford wonders if the board has input regarding no testing on the business laws and rules section of the exam and whether that is to the benefit of the consumer.

7. OLD BUSINESS

A. ADA Requirements/Defer to future meeting

B. Jurisdiction of Water Features/Defer to future meeting

C. Proposed Rule Amendment/OAR 808-003-0065/Exam Scores for Managing Owner

OAR 808-003-0065 was recently amended to allow a passing score of the laws, rules, and business practice section of the exam to remain valid for two years after the date of application for licensing if that person has been a managing owner within the last two years.

This new rule did not take into consideration anyone who applies for the LCP license, but fails to obtain it; then, that person applies for the managing owner designation by passing the laws, rules and business practice section and taking the 16 hour course. This person continues to attempt the other sections of the exam and finally passes those sections required to obtain a license – more than two years after the initial LCP application.

A public rule hearing was held and no public comments were received.

This rule will clarify the intent was to allow the laws, rules, and business practices section to remain valid if the applicant has been a managing owner for the last two years.

Board Action

Moved by Mr. Gawlista and seconded to adopt the amendments to OAR 808-003-0065.

Vote: 7-0

8. PUBLIC COMMENT

At :00 pm, Ms. Dunston, Chair, opened the public comment session of the meeting. No public members were present.

Public Comment closed at 1:03 pm

9. OREGON GOVERNMENT ETHICS COMMISSION/TRAINING

Tammy Hedrick, Guest gave a presentation to the Board and staff about ethics laws and rules in Oregon.

10. NEW BUSINESS

A. Review Proposed Rule Amendment Re: Written Advertising/OAR 808-002-0010

OAR 808-002-0010 requires all written advertising to include the landscape contracting business license number. At the March 20, 2015 Board meeting, the Board reviewed an enforcement case where a licensee's advertisement on the side of the truck did not contain the respondent's 4-digit LCB number. However, the 4-digit number was on a sticker issued by the LCB in prior years on the back window of the truck.

The concern was that in the past, licensees were told if the number was any where on the vehicle (even on a sticker not in view of the ad) this was in compliance with the rule. The Board discussed a previous case that was dismissed because the number was there, but it was not legible. The Board reviewed a draft rule to be more specific about how the license number should be displayed in written advertisements. If the board is no longer going to accept vehicle stickers anywhere on the vehicle, that needs to be made clear to all licensees.

BOARD DISCUSSION

Joanna Tucker Davis stated restricting how people can advertise is addressing the first amendment. It needs to be justifiable and Oregon is very protective of free speech. Ms. Tucker Davis stated she has concerns regarding controlling the font size on someone's computer or a font size of 10 on business cards. She also stated the Board would need to justify why the sticker on vehicles is misleading to the public.

Board revised the draft rule to remove the items of concern and directed staff to proceed through the rule making process.

B. Proposed Rule Amendment for Resignation of Licenses

OAR 808-003-0220/voluntary Surrender/Resignation of License

OAR 808-003-0220 allows a current licensee to voluntarily surrender/resign their license. The language in the rule requires the Board to accept the resignation.

Staff would like to amend this rule to allow staff to accept a voluntary resignation. Upon review the legal counsel, other amendments need to be made to bring this rule into compliance.

Board directed staff to proceed through rule making process to amend this rule as proposed and change "shall" to "may" in the new #2.

C. Proposed Rule Amendment for a new license when there is a change in ownership, OAR 808-003-0100(4)

Staff is proposing the removal of OAR 808-003-100(4), which states a new license is required if there is an entity type change and a new Employment Identification number is required. However, upon further review of the statute, it looks like a new license is only required when there is a change in ownership – it has nothing to do with a change in entity type or identification number (see ORS 671.600 & 671.605). OAR 808-003-0100(4) has no statutory authority.

Upon review by legal counsel, Ms. Tucker Davis thought it might be good to also include a statement that the landscape contracting business license is transferable to a new business entity type, so long as the ownership does not change and to require new filing information from that business.

Board Discussion

The Board discussed how a change of ownership would affect a business license. If a change in ownership occurs a new business license is required. If a change in entity occurs a new business license is not required.

Legal council stated that if the legislature specifically included it in one place but didn't include it somewhere else, then that was the legislative intent. Most professional licenses are non transferable. ORS 671.580 specifically states that legislation did not intend for the landscape construction professional license to be transferable. ORS 671.605 addresses the business license, but does not state that the license is non transferable. In addition, partnerships are null and void if there is change in partnership or a percent change in partnership.

Board directed staff to proceed through rulemaking.

D. Warranty

The Board discussed how licensees would be able to uphold a contractual obligation with a warranty if they are no longer in business. It may not be clear to retirees how they can deal with warranty issues. Legal counsel advised that the Board should not be giving advice regarding warranties and that licensees may want to work with a lawyer to give them legal advice regarding setting up their contracts and establishing their warranties.

11. ADJOURNMENT AND NEXT MEETING SCHEDULE

The meeting was adjourned at 2:10 pm. The next meeting of the Landscape Contractors Board will be June 18, 2015 by conference call. The following meeting will be held on July 17, 2015 in Bend, Oregon.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jerri Jones". The signature is written in a cursive, flowing style.

Jerri Jones
Licensing Specialist



Office Update

May 2015

Things have been busy and hectic since the last Board meeting and my transition to the Optometry Board. My intention was to focus on the daily operations and have a smooth transition. As you all know, HB 3304 has taken on a life of it's own and is taking time that wasn't anticipated. I will do my best to make the transition to Elizabeth as painless as possible but I haven't had the time to complete some of the things that I'd hoped.

The staff has done an excellent job at keeping the operations going. Jerri is always courteous and helpful to callers and visitors. In addition to her normal licensing duties during this busy season, she attended a trade show in Medford.

Mi'khl is still learning his job and has been an asset at working with licensees on keeping their insurance, workers comp and bonds current to prevent license suspension. He keeps the filing up, which helps all of us that need to access the paper files.

Michael continues to work with licensees and our contract investigators to ensure timely follow up on reports of illegal landscaping. He's also working hard to mediate any disputes in the claims process and is very successful at that.

Kim, as you all know, is a rock. She's picked up more than her share in this transition and has been invaluable to the agency—as always.

Melissa King has helped with a trade show in Redmond and will work part time monitoring and following up on Craigslist.

Larry Thomas has been a consummate professional in his work on behalf of the board in the Administrator search process. He's been so diligent and willing to balance his business needs with the agency's needs in this process.

This time of transition has shown how valuable the LCB's staff is and also your constant support and hard work as a board. This hasn't been easy for any of us, and I want to thank everyone for banding together and working to make this transition as seamless as possible. I'll miss all of you and look forward to staying in touch.

It is with a grateful heart that I leave this agency. I appreciate each and every one of you for all you've done to nurture me as a leader and this agency.

A handwritten signature in cursive script that reads "Jilly Seward".

IMMEDIATE SUSPENSION
March 1, 2015 - April 30, 2015

15-04-127	TOMS NW LANDSCAPING INC	failure to maintain workers compensation	Dismissed
15-04-128	LANDSCAPE ELEMENTS LLC	failure to maintain workers compensation	Dismissed
15-04-129	THOMAS VARGAS LANDSCAPING INC	failure to maintain workers compensation	Suspended License
15-04-130	SOUTHWEST LANDSCAPE LLC	failure to maintain workers compensation	Dismissed
15-04-131	FRONTIER LANDSCAPING INC	failure to maintain workers compensation	Dismissed
15-04-132	GARDEN GATES OF OREGON INC	failure to maintain workers compensation	Dismissed
15-04-133	AMY COLLEEN SAUL	failure to maintain workers compensation	Suspended License
15-04-141	RAINSWEET LANDSCAPE SERVICES, LLC	failure to maintain workers compensation	Suspended License

H

ADMINISTRATIVE ACTIONS
 March 1, 2015 - April 30, 2015

15-03-106	DANIEL SARMIENTO SR	operating as a landscape contracting business without a license	Civil Penalty
15-03-107	JOSE ALVAREZ	operating as a landscape contracting business without a license and a claim has been filed for damages arising out of that work	Civil Penalty
15-04-109	MIGUEL A CABRERA	advertising without a license	Civil Penalty
15-04-114	VAUGHN MICHAEL B	failure to respond to the continuing education hour (CEH) audit	Suspended License
15-04-120	GARY NAUGHER	advertising & operating as a landscape contracting business without a license	Civil Penalty
15-04-121	ANDREW WILSON	operating as a landscape contracting business without a license and a claim has been filed for damages arising out of that work	Civil Penalty
15-04-145	BOB BUCKLEY DBA: EDENLANDSCAPE	advertising & operating as a landscape contracting business without a license	Civil Penalty
15-05-146	PICON PACHECO LLC & ANDRES PICON PACHECO DBA: ANDRES LANDSCAPE	advertising & operating as a landscape contracting business without a license	Civil Penalty
15-05-147	JUSTIN VEEKS DBA VEEKS LAWN MAINTENANCE	operating as a landscape contracting business without a license	Civil Penalty
	DUSTIN HOPE & HOPE FAMILY GARDENS LLC	advertising & operating as a landscape contracting business without a license	Civil Penalty
	A CUT ABOVE PROFESSIONAL LAWN CARE INC & DARRELL STEWART & CORY HAINES	operating as a landscape contracting business & landscape construction professional without a license	Civil Penalty

K

Investigated – no action

Received

MAR 23 2015

Landscape Contractors Board

Find products, services, businesses



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Home

+ Add your business

U.S. ~ Medford, OR ~ Other Business Services ~ Business Services, NEC ~ Medford Business Services (Unclassified) ~ All Seasons

Company Profile Page

Map

Web Results

All Seasons Property Maintenance LLC

Print

2030 Brookhurst #29

Medford, OR 97504 [map](#)

Phone: (541) 324-0066

Website: <http://www.allseasons541.wix.com/jeremie>

Jeremie Carter updated this company profile

Ads

Arrest Records: 2 Secrets 1) Type Name and State 2) Unlimited Secrets About Anyone. Takes Seconds

InstantCheckmate.com

Latest Activity

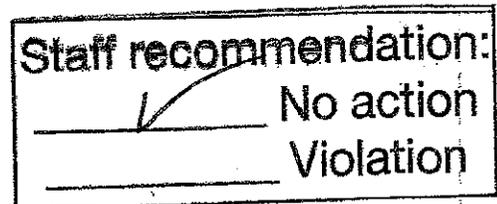
No updates available at this time.

Products and Services

About All Seasons Property Maintenance LLC

Business Categories:

Business Services (Unclassified) in Medford, OR

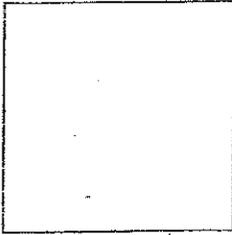


All Seasons Property Maintenance LLC Business Information

Business Information

J

Print 8+1 0



Jeramie Carter

Owner,
All Seasons Property Maintenance LLC

Do you know ?

Add as Business Contact

Latest Activity

No updates available at this time.

Received
MAR 23 2015

Landscape Contractors Board

Jeramie's Company

All Seasons Property Maintenance LLC
Medford, OR 97504

Ads

Arrest Records: 2 Secrets 1) Enter Name and State. 2) Access Full Background Checks Instantly.

InstantCheckmate.com

Work History

Owner

All Seasons Property Maintenance LLC Medford, OR
JUNE 2013 TO PRESENT

Owner

All Seasons Property Maintenance LLC Medford, OR
JUNE 2013 TO PRESENT

CONNECTED TO	RECOMMENDS	FOLLOWS
2	0	2

Member Since June 24, 2013

Number of Contacts 0

Following 2 companies

Received

MAR 23 2015

Landscape Contractors Board

Jeramie Carter

Owner Operator

Medford, Oregon (Medford, Oregon Area) Construction

Join LinkedIn and access Jeramie Carter's full profile. It's free!

As a LinkedIn member, you'll join 225 million other professionals who are sharing connections, ideas,

- See who you and Jeramie Carter know in common
- Get introduced to Jeramie Carter
- Contact Jeramie Carter directly

[View Jeramie's full profile](#)

Jeramie Carter's Overview

Current **Owner Operator at All Seasons Property Maintenance LLC**

Past **General Manager at Blue Skye Landscape Maintenance**

Education **Rogue Community College**

Connections **0 connections**

Jeramie Carter's Experience

Owner Operator

All Seasons Property Maintenance LLC

Currently holds this position

General Manager

Blue Skye Landscape Maintenance

July 2009 – June 2011 (2 years) Rogue Valley

Jeramie Carter's Education

Rogue Community College

Associate of Arts and Sciences (A.A.S.), Diesel Mechanics Technology/Technician

2004 – 2006

Contact Jeramie for:

- career opportunities
- new ventures
- expertise requests
- reference requests
- consulting offers
- job inquiries
- business deals
- getting back in touch

Jeramie Carter

Advertising with no license -
Soliciting with no license -

Received

MAR 23 2015

Landscape Contractors Board



Jeramie Carter

- Timeline
- About
- Photos
- Friends
- More

Do you know Jeramie?

If you know Jeramie, send him a message.

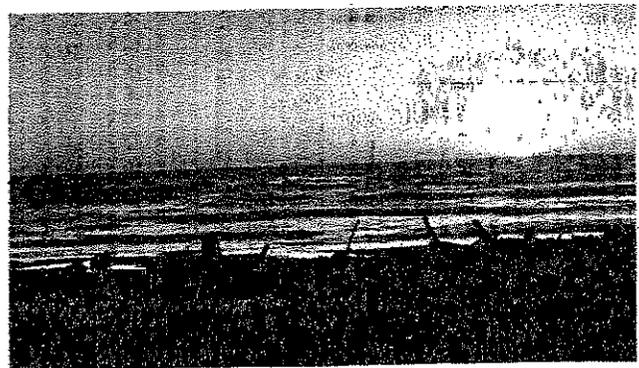
About

Worked at All Seasons Property Maintenance, Oregon

Lives in Medford, Oregon

From Grants Pass, Oregon

Jeramie Carter changed his cover photo.
August 4



Share

Friends · 301



Robby Merrill



Josh Washburn



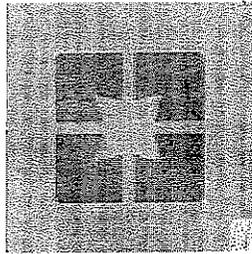
Jaelynn Wilson

Chat (3)

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Local



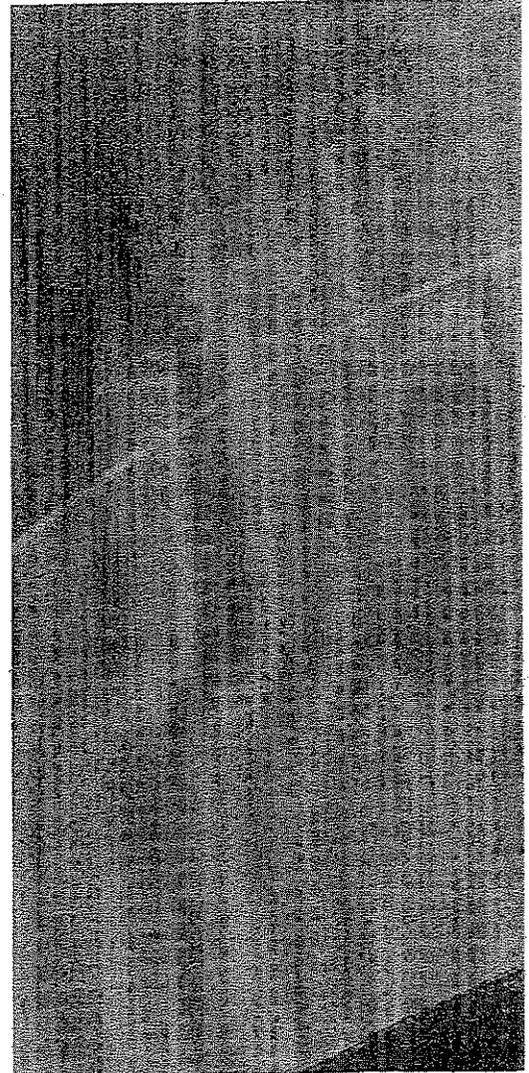
All Seasons Property Maintenance

2030 Brookhurst St Medford, OR 97504
(541) 324-0066

Gutter Cleaning Service
Today 6:00 am - 9:00 pm

Follow

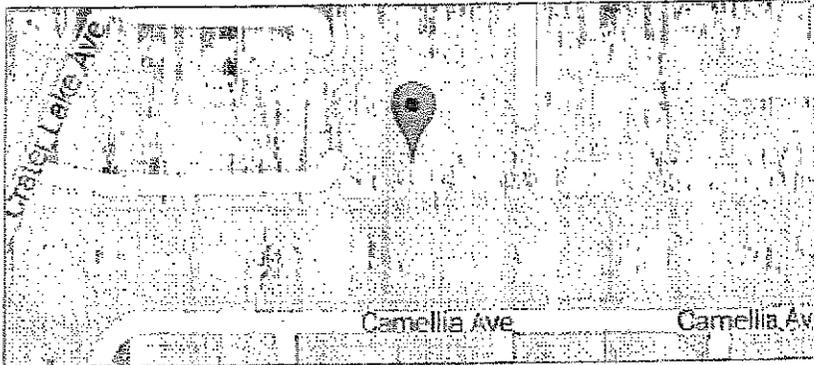
3,215 views



About

Posts

Contact Information



2030 Brookhurst St Medford, OR 97504
(541) 324-0066

Gutter Cleaning Service, Lawn Care Service · Today 6:00 am – 9:00 pm

We are a local Oregon based business that specializes in both commercial and residential property maintenance. From mowing lawns to removing fire hazard/slash from your land, you can count on us!

[Edit details](#)

Review Summary

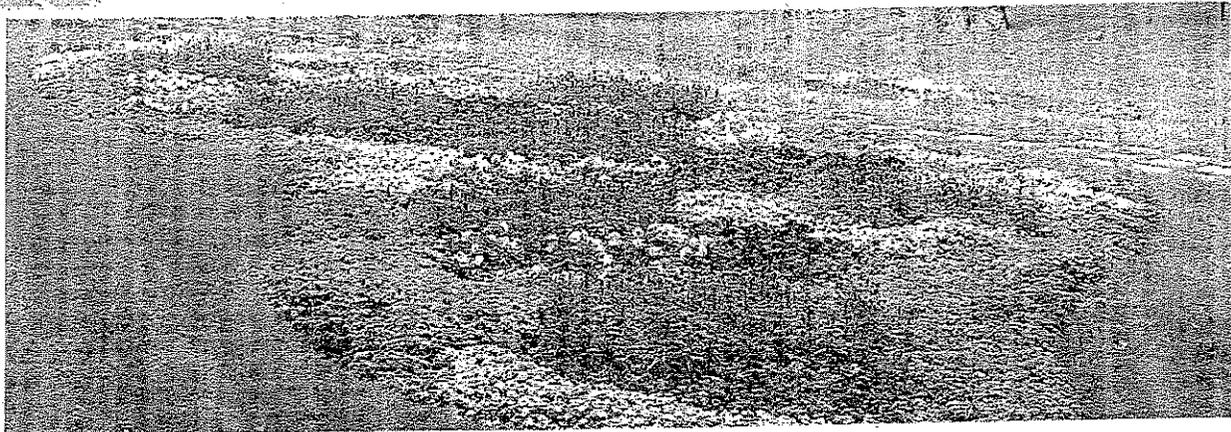
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Add your own contact details about All Seasons Property Maintenance. Visible only to you.

All Seasons Property Maintenance LLC

Create a site!

Call us now: (541) 324-0066



Quality landscape maintenance

Welcome to our page! All Seasons Property Maintenance LLC is a Southern Oregon based business. With over 15 years of experience and 30+ years in Southern Oregon you can always count on a job well done. We pride ourselves in professionalism and courtesy. Our focus is tailoring our service to meet your needs. At a time when we are all feeling the financial strain of this great nation, you deserve to feel confident that you are getting the best service for your dollar.

This site was created using WIX.com. Create your own for FREE >> [with all!](#)



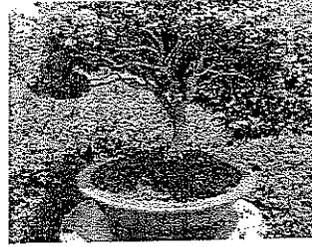
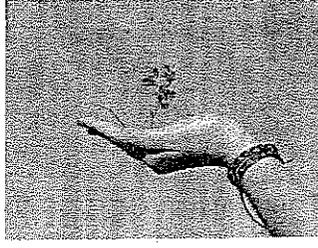
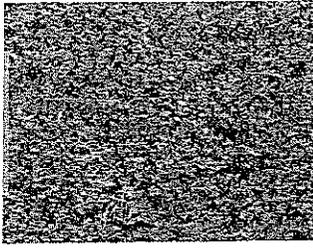
Summertime Watering

Growing up I was always taught that when the temperatures go up in the summertime I should mow frequently and water my lawns twice daily. Oh how times and views have changed!!! Around this time of year I find myself answering frequent questions regarding this very topic.

As temperatures rise the rate of evaporation rises as well. The shorter your grass is cut the quicker it will dry out. Not only does a shorter grass blade provide less water storage within itself, it also creates more exposed soil surface. At 3-5 inches the grass is able to keep more of its moisture and it provides a sort of shelter for the topsoil.

Watering the grass too frequently prohibits the roots from going deeper in search of water. As long as the roots remain close to the surface they not only dehydrate faster but they are also more susceptible to disease and parasites. Watering for longer periods of time on an every other day schedule will promote a healthier heartier lawn. Watering this way will also conserve water during months when so much is lost to evaporation.

Latest Projects



About Us

Family based business with 15+ years of experience maintaining gardens, lawns and commercial properties.

Services:

- Mowing
- Hedge Trimming
- Commercial/Residential
- Debris/Trash removal
- Pruning
- Parking Lot Cleanup

Let's Meet

Call us for a free quote (541) 324-0066
Ask for Jeremiell
Email: Allseasons541@gmail.com

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All Seasons Property Maintenance

Call us now: (541) 324-0066



Create a site!



Let's Talk

All Seasons Property Maintenance

Medford, Oregon

Email: allseasons541@gmail.com

Tel: (541) 324-0066



Name

Email

Subject

Message

Send

About Us

Family based business with 15+ years of experience maintaining gardens, lawns and commercial properties.

Services:

- Mowing
- Hedge Trimming
- Commercial/Residential
- Debris/Trash removal
- Pruning

Leaf Cleanup

Let's Meet

Call us for a free quote (541) 324-0066
Ask for Jeramie!!

Email: Allseasons541@gmail.com

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INVESTIGATION SUMMARY

BRIAN EARL BOWLES

NONE

Respondent

LCB/CCB #

DBA

INDIVIDUAL/SOLE PROPRIETOR

CORPORATION

PARTNERSHIP

LLC

NONE WITH LCB

License History

Job site address: 812 Crater Lake Avenue, Medford, Oregon

ALLEGED VIOLATION

Respondent allegedly violated ORS 671.530(3) – operating as a landscape contracting business without a valid license. Specifically the installation of a nursery stock.

SUMMARY

Operating without a license

On March 17, 2015, LCB Contract Investigator, visited the job site listed above. The investigator determined the respondent to be performing the replacement of shrubs. The irrigation system was already in existence. Both the respondent and the owner of the commercial business stated the respondent was helping clean up the place and was not being compensated. The business at this location is a bike shop and the respondent and owner know each other and have often ridden together.

ATTACHMENTS

None

EVIDENCE

None

CONCERNS/ISSUES

None

STAFF RECOMMENDATION

No Action; no compensation.

INVESTIGATION SUMMARY

SANDRIDGE CONSTRUCTION LLC

191330

Respondent

LCB/CCB #

DBA

INDIVIDUAL/SOLE PROPRIETOR

CORPORATION

PARTNERHSIP

LLC

NONE WITH LCB

License History

Job site address: 487 W Marine Drive, Astoria, Oregon

ALLEGED VIOLATION

Respondent allegedly violated ORS 671.530(3) – operating as a landscape contracting business without a valid license. Specifically the installation of a nursery stock.

SUMMARY

Installation of nursery stock

On March 17, 2015, the LCB received copies of photos of a job site where plants had been installed and the equipment had the respondent's name. LCB Investigator Michael Hintz spoke with Terry Ferguson, employee of Sandridge Construction LLC who stated he had replanted about 3 plants that the owner of the property had pulled out earlier in the construction process, but it was not part of the contract. Investigator Hintz spoke with John Carrier, owner of the property who reported the same thing and that this was on Mr. Ferguson's "off hours" as a favor to the owner.

ATTACHMENTS

None

EVIDENCE

None

CONCERNS/ISSUES

None

STAFF RECOMMENDATION

No Action; no compensation.

INVESTIGATION SUMMARY

ROBERT E. DRENDEL

8353

Respondent

LCB/CCB #

PREFERRED LANDSCAPE

DBA

INDIVIDUAL/SOLE PROPRIETOR

CORPORATION

PARTNERSHIP

LLC

LICENSE GRANTED: FEBRUARY 6, 2006

License History

Job site address: 14569 Se Mountain Ridge Avenue, Happy Valley, Oregon

ALLEGED VIOLATION

Failure to obtain appropriate bond amount as required by ORS 671.690.

SUMMARY

Failure to obtain appropriate bond amount (\$10,000 vs. \$3,000)

On March 27, 2015, LCB Contract Investigator, visited the job site listed above. The investigator determined the respondent to be performing landscaping work under a contract for \$17,996. The bond amount for job charges over \$10,000 and less than \$25,000 is \$10,000. Respondent's bond is only \$3,000. This agreement was signed by both parties on February 28, 2015.

On March 30, 2015, the LCB office received a Surety Rider for respondent's bond increasing the amount from \$3,000 to \$10,000. The bond increase is effective February 20, 2015. This is prior to the agreement dated February 28, 2015.

ATTACHMENTS

None

EVIDENCE

None

CONCERNS/ISSUES

None

STAFF RECOMMENDATION

No Action; bond was increased to appropriate amount effective prior to the contract date.