

LANDSCAPE CONTRACTORS BOARD
Minutes of the July 18, 2014
Board Meeting
930 Chemawa Road NE, Room C/McNary
Keizer, Oregon

PRESENT

Board Members

John Gawlista, Chair
Annie Lee, Vice Chair – via phone
William Bumgardner
Larry Hoekman
Molly Dunston
Larry Thomas
Christine Hollenbeck

Others

Katharine Lozano, Assistant Attorney
General
John Dinges, OLCA
Stan Jessup, CCB
Dylan Morgan, BOLI
George Kral,

Staff

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

EXCUSED

None

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:30 am by the Chair, Mr. Gawlista.

B. Approval of Agenda and Order of Business

Board Action: Moved by Mr. Thomas and seconded to approve the July 18, 2014 agenda. Vote: 7-0.

C. Approval of May 16, 2014 Minutes

Board Action: Moved by Mr. Thomas and seconded to approve the May 16, 2014 minutes with a minor edits. 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 reviewed the adjustment to Ms. Gladwill-Rowley's adjusted pay. Mr. Gawlista asked Mr. Hintz if he has found the Tracer program useful, Mr. Hintz stated that he likes using the program. The Tracer program is secure in that each user has their own sign in and the Tracer program tracks the searches. The program is managed by a private organization.

B. 2013-2015 Financial Report/Approval

The Board reviewed the financial statements as of July 1, 2014. Not all of the June 30th expenses are included. The State of Oregon charges have not been billed yet, and they are major expenses. These include:

- State car usage (about \$450 per month)
- Attorney fees (this one is hard to estimate since we've needed to use Katharine more than we have in the past with the system reviews we are doing)
- Mail delivery and postage (this one runs about \$2,500 per month)
- PERS
- Hearing Officer Panel (this fluctuates and we've had a major claims case that hasn't had a final billing yet)

Ms. Sneed reviewed the balance sheets for the two months. The Sauter manuals were purchased on May 2, 2014 and that moved about \$22,000 of the cash reserves into the book inventory. The May balance sheet shows that our cash position is about \$60,000 less than last year. June total current assets is nearly \$20,000 less than last year at this time. This is due to several factors: 1) the investment in the manuals, which was a major purchase, 2) the accounts payable balance is nearly \$23,000 less than last year at the end of June and 3) the investment in nearly \$7,000 in computer equipment.

The income and expense graph shows that February, March, April and June were positive net income months, with May being nearly breakeven.

The Profit & Loss Previous Year Comparison report shows the agency's total income is \$11,323, which is \$38,500 better than last year at this time.

- The Applications/Examinations income is up more than \$14,000 as compared to last year.
- Licensing fees are virtually the same as last year.
- Civil penalties are 6% less than last year, and that affected the overall total income.

Ms. Sneed is projecting that the actual year end net income will be close to zero given the outstanding agency charges. That still puts the agency's net income at about a \$25,000 increase over last year at this time.

The major cost savings as mentioned in previous months is in employee costs. Between wages, benefits and taxes, the agency has saved about \$33,000 from last year at this time.

There are some items that exceeded last year's expense and some that are lower. The budget revision will make adjustments for those cost categories to align the budget more closely with the actual expenditures and income.

The Profit & Loss Budget vs. Actual report shows that the overall income is \$25,000 more than projected and agency expenses are nearly \$50,000 less than projected, so the overall net income is \$70,000 better than the budgeted levels.

Board Action: Moved by Mr. Thomas and seconded to approve the unreconciled financial report. Vote 7-0.

C. Proposed Budget Revisions

The Board reviewed the proposed amended budget for the 2013-15 biennium. As mentioned earlier, the actual expenses are missing several State of Oregon fees, but the actual end of year net income/loss should be close to zero.

The revised budget shows increased revenue projected for the 2nd year of the biennium. The projections for the 2nd year of the biennium are anticipating increased licensing activity. That's based on the increased LCP applications. The total projected 2014-15 income is \$635,915 which is 10% greater than the originally budgeted income for the 2nd half of the biennium. The total income is only 6% higher than the actual income earned in the first half of the biennium.

The 2% COLA will be implemented in September rather than December. The 2% COLA early implementation impacted wage expense for the agency, so that line item reflects the current staff with the 2% COLA being implemented on September 1st.

Wages also include two part time employees:

- Part-time clerical support doing filing and routine office duties. That position is currently paid at \$10.25 per hour. The position is budgeted at an average of 40 hours per month. There will be months during the spring that the position will incur more than 40 hours, and during the off season the position will be 16-30 hours per month.
- Part time clerical support doing Craigslist and Angie's List research and any other higher level office support. That position is budgeted at \$16.25 per hour as of July 1st. Currently Melissa King is doing the work for \$16 per hour and there is no increase in the wage at this time. The additional extra funds are in the case of needed additional support. The position is budgeted at 40 hours per month with an additional 136 hours for the entire year, in the event of additional work needed to be done.

The Contract labor line item (5024) for the first year of the biennium was increased due to temporary staffing and Bob Rambo's consulting services on the enforcement program review. Those costs will be minimal in the second year of the biennium.

The State mail service charge (5035S) was adjusted to actual anticipated expense. The original budget was \$24,000, which was overestimated. Other costs were adjusted to more closely reflect anticipated actual expenses.

The board costs were increased in case the board decides to adopt a committee to work on enforcement and claims cases outside of the regular board meeting schedule.

The budget includes money for new conference room chairs and a possible new desk for the Administrator. The 8 chairs needed are between \$150 and \$200 each.

The other discretionary item is the option of having two monitors for the Administrator's work station.

The year two budget also includes the possible purchase of one desktop computer and one lap top and new monitors (for staff who want to move to two monitors on their systems). The Administrator has ordered a new laptop for Mrs. Gladwill-Rowley that will arrive in July.. The new laptop will be used for a desktop and as a laptop, so the purchase of a desktop may not be necessary.

The projected income income/loss with the revised budget is:

2013-14	(\$1,163.33)
2014-15	\$3,609.27

There are still several variables that will need to be watched in the next year. Civil penalty collections have been below budget. With a significant increase in contract investigators, there may be more enforcement of illegal landscaping. The licensing projections are significant based on the flat license trend we had been experiencing from 2011 through 2013. The past year has shown increased activity and with the economy looking more and more promising, there are indications that the numbers will keep improving.

Ms. Sneed discussed the collections process with the board. Mr. Thomas suggested that the chairs be looked at to see if they could be fixed, if not then ok with purchase of new chairs.

Board Action: Moved by Mr. Thomas and seconded to approve proposed budget revisions for 2015 as presented with a total income amount of \$1,244.730, a total expense of \$1,244,284.06 with a projected net income of \$2,445.94. Vote 7-0.

D. On-Line Renewal Discussion

Ms. Sneed discussed the online renewal/payment project. Costs could be paid by the contractor or by the board. The online process would allow more convenience for contractors to pay. As of today, no additional cost other than staff time has been incurred with the project. If implemented, there could be a budget impact later in the biennium. Ms. Sneed does not believe there is any hardware or software necessary, since it is a web-based project.

Mr. Gawlista felt on-line renewal would be a huge benefit to licensees, especially at the end of the month. The Board directed staff to move forward on this project.

3. EXAMINATION/LICENSE/EDUCATION

The Board reviewed the examination statistics through June 2014. The number of tests taken in May & June, 2014 is higher than the same months last year.

The Board reviewed the license counts as of July 1, 2014. The number of licenses has remained steady for the last two years.

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

4. ENFORCEMENT

The Board reviewed a listing of final actions taken from May 1, 2014 through June 30, 2014. There were 78 cases closed during that time period.

Staff requested feedback from board members to make this process smoother, easier and informative for them. The issue of board packets is being discussed by staff on how to make them easier to receive and review. This board has always had a great relationship between the staff and board and staff want to keep that. The other hope is that some of the operating cases will become routine cases.

The board's role is to approve discipline. This means a notice may be issued, but staff will still settle those cases. The rules allow settlement and settling is considered clerical. At the next face to face meeting the settlement matrix will be reviewed and approved by the board.

There may be a decision by the board to assess a penalty, but staff may not be able to locate that person. This case may come back to the board to close if staff is unable to locate a good address. Every effort is made to find the respondents.

A. Consent Agenda

1. Immediate Action

No items were removed from this portion of the consent agenda.

2. Administrative Action

No items were removed from this portion of the consent agenda.

3. Investigated; No Violation

No items were removed from this portion of the consent agenda.

4. Initial Jurisdiction Determinations; No Action

No items were removed from this portion of the consent agenda.

5. Site Checks; No Violation

No items were removed from this portion of the consent agenda.

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

B. Enforcement Cases for Discussion

Chair Gawlista moved the meeting into executive session to hear advice from legal council at 9:23 am.

Chair Gawlista moved the meeting out of executive session and back into public session at 9:31 am.. No decisions were made in executive session.

Board Action: Moved by Mr. Thomas to waive privilege on the legal advice given during executive session regarding artificial turf. Vote: 7-0

1. Advertising without a License

a. Turf-N-Oregon

This is an advertisement for artificial turf installation.

Board Action: Moved by Ms. Dunston and seconded to affirm the staff recommendation of no action and refer this case to the CCB. Vote:7-0.

b. Epperson Putting Greens

This is an advertisement for artificial turf installation.

Board Action: Moved by Mr. Thomas and seconded to affirm staff recommendation of no action by LCB and refer to the CCB. Vote: 7-0.

c. 14-04-145 Floating Mountain Landscape and Property Services LLC

On September 13, 2010, respondent was issued a final order for advertising with the same business name (without "maintenance" in the name). Respondent was told that Floating Mountain Landscape and Property Services LLC is read conjunctively as Floating Mountain Landscape Services and Property Services, which does not in itself reflect the maintenance nature of the business.

Respondent's current advertisement on the side of the truck states "Floating Mountain Landscape & Property Services" and "The Rogue Valley's experts in Landscape and Property Services."

Respondent's business name registered with the Secretary of state is: "Floating Mountain Landscape & Property **Maintenance** Services." Respondent has not used the "maintenance" word on his truck.

On April 28, 2014, a Notice of Proposed Civil Penalty and Opportunity for Hearing was issued to respondent. On May 15, 2014, the LCB received a request for hearing from the respondent. Respondent states he was told to always include the word "maintenance" in any advertising and that the week before he removed the signage from his truck and changed the wording on his website to place the word "maintenance" directly after the

word “landscape”. He states he did not intentionally misrepresent himself and originally changed his advertising.

Board Action: Moved by Mr. Thomas and seconded to affirm staff recommendation of assessing a civil penalty for advertising as a landscape contracting business without a valid license; proceed to hearing. Vote: 7-0.

d. 14-04-131 Michael J Woodrow

dba: Water Wise Management

On February 28, 2012, respondent’s business license (#8488) expired and on March 31, 2012, respondent’s LCP license (#14962) expired due to failure to renew. On October 29, 2012, respondent was issued a Final Order for advertising and operating with the lapsed license number. The order was specifically for offering irrigation services.

Respondent’s business name registered with the Secretary of State is inactive as of April 2012.

On April 25, 2014, a Notice of Proposed Civil Penalty and Opportunity for Hearing was issued to respondent. On May 9, 2014, the LCB received a request for hearing from the respondent. Respondent states:

- his LCP license is now current (he reinstated it on April 1, 2014)
- he has done no advertising for his business and removed all cards and advertisements that he was aware of over the last 18 months because of the previous citation in 2012
- he has not put out any new ones, if there are any, they have been there since before 10/12
- he believes one of his cards must have been hidden behind other people’s cards because this is a location he checked more than once.
- He is still in the Yellow Book (2013), but did not order it
- He is in the process of getting a bond and insurance to obtain a business license
- Requests the board reconsider the citation and drop this action

Board Action: Moved by Thomas and seconded to affirm staff recommendation to assess civil penalty for advertising as a landscape contracting business without a valid license; proceed to hearing. Vote: 7-0.

e. Douglas County Landscape/Christopher Wray

Advertisement for irrigation systems, sod, walls, trees, shrubs/bushes, pathways and patios, landscape edging, water features and ponds, fences, deck sand outdoor lighting.

Respondent's CraigsList ad offers 24% off all landscape projects and 35% of all Plants & Sod. It does not specifically state "installation".

Respondent's website at www.douglascountylandscape.com states they have "expertise in the design and installation of everything from Sprinklers & Drip Systems, Sod, Decorative Stone Walls, Flowers, Trees, Shrubs/Bushes, pathways and Patios, Tree & Driveway Borders, Planter Boxes and Edging to Water features and Ponds, Retaining walls, Fences, Decks and Outdoor Lighting." They do not specifically advertise to do installation, but state they have experience and expertise.

The website also talks about Pre-Assembled Irrigation and Pre-Batched Materials. Packages are pre-assembled in a warehouse. They state "years of experience completing, hundreds of landscape projects has allowed us to develop pricing lists and material formulas." They talk about measuring and a batch of supplies being delivered with a design for the project. It further states "installation is always free!"

This business has two previous cases with the LCB for advertising, but they have not been paid. The current ads are different than the previous ones that were in violation. They sell packages and installation is free.

Legal Counsel advised the board that in order to have a case, they will need evidence that the installation is not free, but a subterfuge to escape the landscaping laws in Oregon. However, she noted at the end of the advertisement it states they also do work in Washington & California and that "not all services are available in every location". She believes this would be difficult to prove and the LCB might be able to obtain the evidence necessary.

Board Action: Moved by Mr. Thomas and seconded to take no action at this time. Vote: 7-0.

The board directed staff to continue with the investigation.

**Crowley Landscape Management
Advertisement for seasonal color installation.**

Respondent's website states they do "seasonal color installation".

Board Action: Moved by Mr. Thomas and seconded to affirm staff recommendation to assess a civil penalty for advertising without a valid license. Vote 6-0 (Hollenbeck out of room)

f. Ace Aeration

The board discussed "lawn renovation". They believe that if the lawn is killed and new lawn installed, that is a new installation. However, if the lawn is still alive and seed is put over it, this is not installation of a lawn.

Board Action: Moved by Thomas and seconded to affirm staff recommendation of no action. Vote 5 yes; 1 no; 1 abstention (Hollenbeck); and 1 out of room (Hoekman).

**g. TR/Robert Moscaritolo
Advertisement for irrigation services.**

The contract investigator called the phone number of "TR" and found:

- "TR" is a 12 year old.
- he has experience working on irrigation systems at his house, but that he also worked on other people's systems since he was 7 year old.
- he can do it all, including a complete installation.
- he doesn't use a ditch witch, just a shovel.
- he has no bond, insurance or any license.
- he charges \$11.00/hour
- goes by TR, but his name is Robert Moscaritolo
- buys his irrigation supplies at that ACE Hardware where the flyer was found, but could not give any name of anyone who he works with at the store in terms of knowing him or helping him pick out supplies.

The Board discussed the complications when trying to issue penalties against children. However, if no action; there is no consumer protection. They applaud his industrious spirit, but believe he and his parents need further education on the landscape laws in Oregon.

Board Action: Moved by Mr. Thomas and seconded to assess no penalty, but direct staff to write an informational letter to the respondent and his parents because this is a 12 year old. Vote: 7-0.

The informational letter is to be reviewed by board members prior to mailing.

h. 14-04-120 Lyall C Olson

Advertisement for “landscape, irrigation services”.

An advertisement in the Medford CraigsList was forwarded to the LCB office. There is no name in the advertisement, so staff subpoenaed the phone company for the name and address. The response was Sam Doe, so a file was opened, but both the certified mailing and regular mailing were returned by the USPS marked not deliverable as addressed.

Staff did a search of the phone number on the new search program, Tracers and found this number belonged to Lyall C. Olson. The case name was changed and a notice issued to Mr. Olson.

On June 25, 2014, Mr. Olson submitted a written response that he does not have a landscape business, nor did he advertise in the Medford CraigsList – he is in Baker City.

CONCERNS/ISSUES

The website advertisement does not state the name of the person advertising. It is unclear who the phone number belongs to. We have no evidence that either Mr. Doe or Mr. Olson actually posted this advertisement. This is a fairly common occurrence.

Board Action: Moved by Ms. Hollenbeck and seconded to affirm staff recommendation to dismiss and withdraw the notice. Vote: 7-0.

2. Operating without a License

- a. 14-06-183 Desert Sun Irrigation Inc/operating & advertising Installation of an irrigation system, nursery stock and a sod lawn and advertising as a landscaping business by use of “irrigation” in business name. A Notice of Non Compliance was issued by the LCB Investigator**

Respondent’s trailer states “Desert Sun Irrigation Inc. 509.574.6475, DESERS1964Q3”. This is a business registered in Washington.

Paul Smith, employee of Desert Sun Irrigation Inc told the LCB Investigator they were charging \$8,200 and were doing irrigation and planting of plants and sod for the owner of the Dental Group (commercial site where the work was performed). Mr. Smith stated he knew the dentist because he does dental work for Mr. Smith’s family. Mr. Smith had arranged for the respondent to do this work.

When told it was not lawful for this company to be performing this work in Oregon, Mr. Smith said that he was aware of this, but that this was the only instance this company had ever done work in Oregon due to the relationship with the dentist.

There were two others employees on the job site who stated they were working for respondent.

BOARD ACTION

Moved by Ms. Dunston and seconded to affirm the staff recommendation to assess a civil penalty for operating and advertising as a landscape contracting business without a valid license in violation of ORS 671530(3) & (4). Vote 7-0.

- b. 14-06-184 Design Resource Group LLC
Repair of an irrigation system and installation of a sod lawn, trees, and nursery stock.**

LCB Contract Investigator observed respondent's signs in the front yard and a truck and trailer with respondent's name in front of the residence. On May 29, 2014, an employee for respondent told LCB Contract Investigator they had already fixed, repaired and moved some of the existing irrigation system. A Notice of Non Compliance was issued. On June 5, 2014, LCB Contract Investigator was on the job site and the owner (Todd Kroger) was on the job site and stated he knew his LCB license had expired. Since the last visit, they had installed the sod lawn, trees, and nursery stock.

The contract shows respondent is being paid \$21,000 for this job. The scope of the work includes installation of a new sod lawn, trees, and plants, preparation of the property for this work, and repair existing irrigation system as necessary.

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

- c. 14-06-185 Caleb Folsom dba: Diligence Landscape
Installation of an irrigation system.**

On June 2, 2014, LCB Investigator observed:

- Vehicle with respondent's advertisement with LCB #8189
License number was for a business that terminated in May 2010. Respondent went from a sole proprietor to a corporation in 2010 and obtained license #8917. Then respondent went from a corporation to a sole proprietor in May 2013 and obtained license #9174.
Respondent stated he had not taken time to change the number.
- Installation of an irrigation system without a valid license.
On 6/2/2014 respondent showed the LCB Investigator the irrigation project he was working on in the back yard. The individual license expired 4/30/2014. The business license was suspended 5/13/2014 for failing to employ or be owned by an active landscape construction professional. This irrigation installation was after respondent's license was suspended.

Respondent stated he had been very busy lately, but would take care of it right away. Respondent submitted the renewal for both the individual license and the business license the same afternoon.

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

**d. 14-06-188 Corey Haines
Installation of a paver patio.**

On June 6, 2014, LCB Contract Investigator spoke with respondent at the job site. Respondent told the investigator his name and that he was building the patio/deck. He also mentioned he has a current irrigation license with the LCB. He stated he had passed the CCB test and was waiting for the results. He does not have a current business name.

BOARD ACTION

Moved by Ms. Hollenbeck and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

**e. 14-06-189 Pat Vargas
Installation of an irrigation system, a sod lawn and nursery stock.
Ms. Dunston recused.**

On May 9, 2014, LCB Contract Investigator observed Eric Gribb spreading gravel around the perimeter of a newly installed lawn at a newly constructed home. Mr. Gribb stated:

- he worked for respondent and provided a business card for Three Bar Construction Inc.
- Javier Rivera (license #7930) installed the sod and irrigation system in the front yard
- he thought the homeowner had installed the nursery stock
- he was just spreading gravel in back yard.

Upon inspection, LCB Contract Investigator observed newly installed sod, nursery stock and an irrigation system in the back yard as well. Mr. Gribb again stated Javier Rivera did the work.

Javier Rivera, Rivera Brothers Landscaping, stated he had done the front yard only and thought respondent had completed the landscaping and irrigation in the back of the house.

Respondent told the LCB Contract Investigator he:

- was just helping a buddy finish the back yard
- did not do any landscaping, nor did his employee Eric Gribb

- hates landscaping
- did not install the irrigation system, doesn't know who did
- did not build the home, doesn't know who did
- recommended investigator speak with the homeowner about all this, Ralph Rock.

LCB Investigator, Michael Hintz spoke with the homeowner, Ralph Rock, who stated he:

- hired Pat Vargas to perform the landscaping in the back yard
- two workers named Eric and Walter were performing the work
- stated it involved installing an irrigation system, sod and some plants
- was under the impression that Mr. Vargas was licensed with the CCB
- stated Three Bar Construction Inc had nothing to do with the work, he had an agreement with Pat Vargas and that is who he paid

LCB Investigator, Michael Hintz spoke with the Carrie Jo Ann Rick of Three Bar Construction Inc, who stated:

- her company had not done the work at the job site listed above
- Pat Vargas represented her company in sales
- Eric Gribb is not her employee

LCB Investigator, Michael Hintz spoke with Pat Vargas, who initially denied performing the landscaping work. Eventually, he said:

- He was helping a general contractor friend (Levi's Dirt works) who had been putting in the patio in the back yard
- He spoke with the homeowner and told him he could do the landscaping in the backyard
- He is being paid a little less than \$2,000
- He had paid Walter and Eric to help him perform the work – they used to work for Javier Rivera
- He paid them in cash and had no workers' compensation on them as they were not his employees
- Purchased the irrigation materials from Ewing Irrigation and bought the sod at Lower Valley.

BOARD ACTION

Moved by Mr. Bumgardner and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 5 yes; 1 abstain (Dunston); 1 absent (Lee).

f. 14-06-190 Frank Contreras

Mr. Thomas recused himself due to a potential conflict. He did not participate in the discussion and the vote.

Installation of an irrigation system, installation of nursery stock and preparing the property for the installation of nursery stock and a lawn.

On June 5, 2014, LCB Contract Investigator observed:

- A newly constructed home
- A “sold” sign attached to the front porch area
- About 25, 3-5 gallon in size, recently installed nursery stock in the front and parkway
- About 50 or more recently installed nursery stock in the back yard
- Irrigation heads were installed and two control boxes were observed
- Recent topsoil placed in preparation for the sod
- About 20 sod rolls and 2 yards of mulch material

LCB Contract Investigator spoke with respondent who stated:

- this was a side job (his first) for the owner of the property, Dan Mahar and he has been working off and on this job site for the past several weeks
- Mr. Mahar is the builder and principal with the real estate company listing this house and this is Mr. Mahar’s personal home
- The backflow and trenching was done by a plumber
- Respondent has an oral agreement for labor at \$28 per hour and has been paid a “few hundred dollars” here and there and estimated that the final amount will be around 3-4 thousand dollars
- The plants, sod, and material were bought and paid for by Mr. Mahar. Sometime the respondent would pick up the materials and deliver them to the job site
- He is a previous employee of Figueroa Landscaping, a licensed business with the LCB
- He wants to learn English so that he can take the LCB test

BOARD ACTION

Moved by Mr. Bumgardner and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 6 yes 0 nay; 1 abstain (Thomas).

g. 14-06-202 Ramone Mejia

Mr. Thomas recused himself due to a potential conflict. He did not participate in the discussion and the vote.

Installation of a paver driveway.

On June 10, 2014, LCB Contract Investigator spoke with:
John Anderson who told him:

- he works for respondent occasionally when respondent has a big job and needs help
- respondent performs the landscape maintenance for this job site

- he is being paid \$10-\$12/hour – depending on the job
- laying pavers for the driveway and will be done by the end of the day

Ramone Meija who told him:

- He is working as a sub contractor for New Image Painting & Remodeling
- Laying the pavers, cutting the edges of the pavers to make an edge on each side
- Job would be finished today.
- Being paid \$14,000 for this job
- He has no workers' compensation insurance for John Anderson

Elizabeth Flores (owner of New Image Painting & Remodeling – actively licensed with CCB) who told him:

- They subcontracted the driveway to respondent because he is a landscaper
- They have no LCP overseeing the job
- They have no employees working with respondent
- They are being paid \$16,000 for the work

Paul Frank, James Frank Construction Inc (general contractor – actively licensed with CCB) who told him:

- His company had done an addition to the home.
- He subcontracted some of the work to New Image Painting & Remodeling
- He was aware of the subcontract with the respondent for the driveway

Later, Mr. Frank sent an e-mail:

- refusing to provide a copy of the contract; would need a court order to obtain a copy of the contract
- Checked with CCB and they did not know who this investigator was
- Ramone Meija is an employee of New Image Painting & Remodeling
- He believes the subcontractor has the right to install the driveway under their CCB license even though no employee of New Image was working on the site during the investigation

LCB Contract Investigator issued a Notice of Non Compliance on this job site.

BOARD ACTION

Moved by Ms. Hollenbeck and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 6 yes; 0 nays; 1 abstain (Thomas).

- h. 14-06-203 Matt Holt & Grass Stains LLC**
Bidding/contracting for work prior to obtaining landscape contracting business license.

On December 3, 2014, respondent contracted with Mark Desbrow, Waverly Commons LLC for landscaping work.

On January 3, 2014, respondent was granted an LCP license. On January 28, 2014, respondent was granted a landscape contracting business license. These dates are after signed contract/quote of December 3, 2013.

There are no concerns with the alleged violation of operating without a valid license. The quote labeled D1 is the initial contract that was prior to being licensed that clearly shows correct dates. It is contracts labeled H1 and D2 that differ and cause the concern.

It appears Mr. Holt may have submitted a fraudulent/altered contract. See contract labeled H1 (bottom right hand corner). The upper right-hand of page one has no dates. The contract submitted by Mark Desbrow (labeled D2) is identical to H1 except that H1 does not have that date on the first page. D2 also contains an additional page for raised beds for \$2,845 signed and dated 3/11/14 and an invoice dated 3/10/14 which states: "Presentation of Waverly Commons at D Street Village 1/16/14" for \$170. The address and e-mail provided for Grass Stains in the two documents are different.

The original of these documents appear to show that D2 is a scanned copy of the original contract document (there is blue ink). H1 appears the dates on the front page were removed from this copy. A possible motivation for this alternation could be an attempt to deceive the LCB as to when this contract was originated. Page 5 of both documents show a date of February 11, 2014, however, Mr. Desbrow attested in an e-mail (dated March 27, 2014) that this was a date that Mr. Holt had backdated the document to and that it had actually been signed on March 11, 2014.

In D1, the signature page bears Mark Desbrow's signature and date of 12-2-13. Below that it shows a start date of February 1st, 2014 with a tentative, weather dependent start date of January 1-15, 2014. In D2 and H1 the signature pages are identical and have Mark Desbrow's name and signature, but with a start date of February 15th, 2014 and a tentative weather dependent start date of February 1-15, 2014.

STAFF RECOMMENDATION

- 1 Assess civil penalty for operating as a landscape contracting business and landscape construction professional without a valid license.
- 2 Discuss possible violation for providing false information to the board.

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3) and for providing false information to the Board. The penalty is \$1,000 for each violation and

suspension of the license (may stay the suspension if the \$1,000 for the false information is paid within two months). Vote 7-0.

**i. 14-06-207 John Adamski/Claim Filed
Installation of a retaining wall, patio, and walkway and a claim has been filed for damages.**

On Jun 17, 2014, the LCB office received a Statement of Claim form from Mark Salsbery against respondent for damages regarding the installation of a retaining wall. The claim states:

- Poorly structure rock walls with no drainage system
- Incomplete water irrigation system (another company completed)
- Damaged siding w/concrete overspray
- Damaged/broken TV antenna line (another company repaired)
- Rental backhoe had a hydraulic leak – pumping 5 gallons of fluid on property
- Incomplete grading over most of the 8/10 acre property – bumps & ditches unfilled, numerous plants unremoved
- Left large 10" X 20' cotton wood root in lower driveway

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3) when a claim has been filed for damages. Vote 6 yes; 0 nay; 1 abstain (Lee).

**j. 14-06-210 Jose Alvarez dba: Creative Design,
Irrigations & Landscape LLC
Installation of a retaining wall and drainage and advertising for full landscaping services including, irrigation, water features, lighting, repair and installation and using LCB#7358**

On June 17, 2014, the LCB office received a Statement of Claim form from Heidi Lennefer against respondent for damages regarding the installation of a retaining wall and drainage. The claim states:

- A written estimate of \$1,600 with ½ paid up front
- \$800 was paid on 4/23/14
- Work started on April 24, 2014
- On April 25, 2014 they agreed to extend the wall for an additional cost of \$800
- \$400 was paid April 25, 2014
- There was no written contract for the additional work
- Respondent stated he would finish April 30th and a check for \$1,200 was left for him under the doormat.

- Wall was not finished and there was damage to the wooden stairs leading up to the area of the retaining wall – neighbor states they dumped the wheel barrow, causing the damage
- No return calls after that
- Business card shows LCB #7358, BF#3823 and bonded and insured.
- The job is 2/3 complete
- Several other neighbors hired respondent too. One has unfinished work.

ADDITIONAL INFORMATION

The business card had an LCB number of 7358. This number belongs to an expired business. Upon further review, the owner of the expired business states he does not know Jose Alvarez and did not authorize anyone to use his business license number.

A second complain was investigated:

Installation of a driveway & walkway, and drainage and using “LCB#15028” (2 instances)

On June 17, 2014, the LCB office received a Statement of Claim form from Heidi Lennefer against respondent for damages regarding the installation of a retaining wall and drainage. The claim states listed other neighbors who had also hired the respondent.

On July 7, 2014, LCB Investigator, Michael Hintz spoke with Roger Rothrock, homeowner who stated:

- He hired respondent on two different occasions. 1) June 2013 for replacement of a new paver driveway, 2) November 2013 for a walkway;
- Paid \$9,678 for driveway, which expanded to include low voltage lighting and drainage;
- Paid \$5,000 for walkway;
- He is happy with all except the railroad ties were to be disposed of for an extra \$100 that was paid, but they are still in his yard;
- Respondent had one person helping with the walkway and 4 or 5 helping with the driveway;
- He showed the investigator a copy of the proposal for the walkway that included a hand written license number of 15028.

LCB #15028 belongs to Bruno Sotelo who states:

- He knows the respondent (he is a friend of a good friend);
- Respondent wanted Mr. Sotelo to work with him and use his license, but Mr. Sotelo had not agreed to do this;
- He had no knowledge of the job sites listed above;
- When Mr. Sotelo confronted respondent with this information, respondent stated he did not remember the job or what Mr. Sotelo was talking about.

On July 8, 2014, LCB Investigator, Michael Hintz spoke with Bruce Armstrong, homeowner who stated:

- He hired respondent to install a paver driveway and walkway to the front door, along with some maintenance work;
- He is happy with the work, except he did not complete the planting of the vinca along the creek
- Paid around \$10,000;
- Work completed in March/April 2014.

On July 8, 2014, LCB Investigator, Michael Hintz spoke with respondent who stated:

- He had used Mr. Sotelo's number because he thought Mr. Sotelo was going to work with him and supervise that job, but that Mr. Sotelo backed out;
- He remembered the job for Mr. Armstrong and believes he only has a few plantings left to complete;
- He is sorry and wants to get licensed; had applied, but did not pass the tests.

BOARD ACTION

Moved by Ms. Hollenbeck and seconded to assess a civil penalty for operating as a landscape contracting business without a valid license for each violation (1 advertising & 2 operating) in violation of ORS 671530(3) & (4) when a claim has been filed for damages. Vote 6 yes; 0 nays; 1 abstain (Lee).

k. 14-06-212 Leonel Orsi Cabrera Escobar Installation of nursery stock.

On April 5, 2014, LCB Investigator, Michael Hintz spoke with:
Respondent (Leonel Orsi Cabrera Escobar) who stated:

- he was waiting to meet a guy
- he refused to show his ID at first, then showed it

Respondent (Jefferson Momotic) who stated:

- he is working with his uncle (Escobar)

Both Escobar and Momotic were wearing raingear and muddy boots

Sean Foushee who stated:

- He was not doing anything in terms of work at the site, except helping a friend who owns the property and who had been out of town
- The property owner is Chris Marsh (verified by LCB)
- That respondent is an associate of Chris Marsh's girlfriend and that's how he came to be doing the planting at this job site
- Respondent was being paid \$3,000 to do all the planting

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

**I. 14-06-213 Jesus Rodriguez Hernandez
Installation of an irrigation system.**

On April 5, 2014, LCB Investigator, Michael Hintz spoke with:
Respondent (Jesus Rodriguez Hernandez) who stated:

- He works for Green Art Landscaping
- This is a side job and Green Art Landscaping was not involved and knew nothing about it
- He agreed to do the irrigation job for \$3,500 in labor and materials
- He is not licensed and has no liability insurance, bond or workers' compensation coverage
- He only knew Foushee; not one else
- He was paying other workers by the hour

Sean Foushee who stated:

- He was not doing anything in terms of work at the site, except helping a friend who owns the property and who had been out of town
- The property owner is Chris Marsh (verified by LCB)
- That he had arranged for the respondent to perform the landscaping work and Chris Marsh was paying respondent
- He thought respondent was licensed

Mr. Foushee instructed Respondent to put the irrigation materials away in the garage at the residence for the time being until they could figure out how to get someone who was licensed to complete the work.

BOARD ACTION

Moved by Ms. Hollenbeck and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

**m. 14-06-206 Phong Kim Ngo
Installation of an irrigation system.**

On June 5, 2014, LCB Contract Investigator spoke with:
Respondent (Phong Kim Ngo) who stated:

- he works for Tree Top, but then said later he was just working for a cousin
- he could not provide an LCB number, but provided a CCB number of 161460
- he would be paid \$2800 for the finished job

- he is being paid by Pho' Lavang, Vietnamese Cuisine

Jose Gomez and Balta Lararo who stated:

- they were being paid \$12/hour
- they were picked up in Portland on Ankeny and 6th Street looking for work
- they had never met Mr. Ngo

LCB Contract Investigator issued a Notice of Non Compliance on this job site.

On June 16, 2014, the LCB office received a copy of an invoice from Beaver Landscape Concepts, Inc (#8669) to Pho Lavang showing "PAID" and a \$0 balance. LCB Investigator, Michael Hintz spoke with Marcelo Castaneda, owner of Beaver Landscape Concepts, Inc who stated that on June 9, 2014 (4 days after the initial site check) he installed irrigation valves and tested the system to make sure the sprinklers were working. He did not know the people he did the work for at Pho Lavang and was not involved in installing the irrigation system except for the valves.

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

n. 14-06-215 Michael St. Arnold

dba: Top Notch Lawn & Garden

Installation of plants, irrigation system, sod lawn and preparation of the property

On June 23, 2014, the LCB office received a Statement of Claim form from William & Judith Gilman against respondent for damages regarding the above landscaping work. The claim states:

- A contract was signed November 13, 2013 for \$20,000
- \$10,000 was paid November 14, 2013
- Landscaping service began November 23, 2013 – 9 yards of soil was spread around
- No one ever returned to the job site; after many phone calls, messages and broken promises
- City of Medford advised claimants to call Jackson County Sheriff – criminal matter.

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3) when a claim has been filed for damages. Vote 7-0.

14-04-122 Jan Goodwin,

dba: Jewel Box Designs LLC/Hearing Request

This is being referred to the Board due to a late hearing request made by the respondent. The Board may either deny her late hearing request or accept the late hearing request.

There are two decisions with this one:

1. Determine if there has been a violation of the landscaping laws; and
2. Accept or deny the late hearing request.

On April 16, 2014, LCB Contract Investigator stopped at the job site listed above. She observed several plants and trees in pots getting ready to be planted. She spoke with Jorge Luis Barajas (Barajas) who stated he was working for a woman, but was not sure of her name.

LCB Contract Investigator spoke with Ms. Goodwin (employee's boss) who stated she is a garden designer and that she has no LCP license. She further stated she was just changing the foundation plants and the scope of the work was not big enough to need an LCP license. She stated the scope of the work was \$5,000 to \$7,000 and that she was not adding any irrigation system and had all the correct permits with the City of Lake Oswego.

A Notice of Civil Penalty was issued and Ms. Goodwin requested a hearing. The deadline to file a hearing request was May 9, 2014 and this hearing request was received in May 20, 2014 by fax. The top of the fax stated "2nd REQUEST". No other request had been received. It does appear that just before the late hearing explanation was received a blank page came through the fax from "Goodwin-Two Cool Inc – Cold" on June 3, 2014. Staff returned the fax showing that nothing had come through. It could be possible that this was her initial hearing request also came through blank.

Respondent's letter states:

- She is a friend/neighbor and she volunteered to check on the work being done that day;
- She only came to the location on that day because the day laborer felt intimidated and called her;
- The day laborer (Barajas) was not contracted by her to install nursery stock;
- The day laborer contacted her to assist with the language problems;
- Admitted she had quoted to the investigator the scope of the project was "\$5-\$7K";
- Claimed she told the investigator she was not the licensed contractor leading the job and didn't know who was;
- She has structured her new career so as to avoid the burden/expense of a full service contractor
- Refers that work to Vesta Remodeling (CCB #199050).
- All services that day were provided and staffed by Vesta.

- Day labor was cleaning up and removing debris
- It had not been decided if this was a DIY installation of the foundation plantings or if Vesta would be doing that

LCB Investigator, Michael Hintz did some further investigation. He spoke with the worker who was on the job site, Jorge Barajas and was told:

- On the day the contract investigator was at the job site, he was mostly spreading bark dust and cleaning up, but he was also placing plants around the property where they might be planted
- He was not involved in the planting of any of them;
- He was working for “Jan”;
- He and another Hispanic gentleman had installed the trees along the driveway a week or two prior to the site check, but didn’t know the other gentlemen’s name or who was paying him;
- He was paid \$15/hour to plant the trees
- “Jan” paid him cash;
- He used to work for Vesta about a year ago, but was not on this job site as their employee.

LCB Investigator, Michael Hintz spoke with Tim Douglass of Vesta Enterprises LLC and was told:

- Jan subs a lot of stuff through me and I do stuff with her;
- Jorge Barajas works for me part time and he works for Jan;

Mr. Douglass has not responded to an e-mailed request for further information/documentation

LCB Investigator, Michael Hintz spoke with homeowner, William Swift and was told:

- He and his wife had been working on the landscaping of their place and had help from several different neighbors;
- He did not hire the Hispanic gentlemen;
- Jan Goodwin helped with the project, but there was no contract and she is his neighbor;
- He paid Jan Goodwin for the trees that she had gotten for them, but was not sure of the amount;
- recommended the investigator speak with his wife.
Mrs. Swift has not returned Mr. Hintz phone call.

BOARD ACTION

Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3) and request documentation that her 1st request was sent timely. If she produced this evidence, accept late hearing request. Vote 7-0.

14-04-220 Dennis Harvie Saylor
dba: Sticks and Stones

Ms. Dunston recused.

On June 25, 2014, LCB Investigator and Contract Investigator spoke with Respondent (Dennis Saylor) who stated:

- His business is installing pavers and planting some trees
- Yes, he is a landscaper
- Only has a CCB license; not a LCB license
- Planted 12 trees at this job site
- Each tree was \$200

On June 26, 2014, LCB Investigator, Contract Investigator spoke with Respondent (Dennis Saylor) again who stated:

- He is new here from Texas and not familiar with Oregon laws;
- He was not aware that a separate license to do landscaping was required;
- He did this work for the homeowner;
- He had a contract, but no longer has a copy of it;
- He does not recall the dollar amounts involved, but he was to plant trees and install pavers;
- He purchased the trees at "Eastside Gardens".

At <http://www.manta.com/c/mxfkmn9/sticks-and-stones> website it states the types of work provided by this business is:

- Landscaping Services
- Landscape Construction Services
- Decks
- Retaining Walls
- Sod
- Trees
- Shrubs

This advertisement also states it was updated by Dennis Saylor and he has been a member since April, 2012.

On or about April 12, 2012, respondent applied for a Landscape Construction Professional license and qualified, but has never taken the exam. Respondent's application in 2012 shows a Bend, Oregon address showing respondent knew about the requirement for a landscape contracting license in 2012.

BOARD ACTION

Moved by Ms. Hollenbeck and seconded to affirm the staff recommendation to assess a civil penalty for advertising and operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 6 yes; 0 nays; 1 abstain (Dunston).

14-06-221 Juan Carlos Benitez

On June 25, 2014, LCB Investigator, Contract Investigator spoke with Jerry Flowers, homeowner, who stated:

- Respondent has installed the sod and irrigation system;
- Respondent is expect to return to complete the job;
- He had agreed to a quote of \$3,000, however a final amount had not been agreed to until the completion of the work;
- He did not recall if respondent told him he was licensed or not.

On or about January 11, 2013, respondent applied for a Landscape Construction Professional license and qualified, but has never taken the exam.

BOARD ACTION: Moved by Mr. Bumgardner and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

**o. 14-06-222 Phillip Albert Beaumont
dba: Beaumont Home Maintenance
Installation of a pathway.**

On June 26, 2014, an LCB Contract Investigator spoke with respondent who stated he did not have a landscape contracting business license. Respondent is not licensed with the CCB.

BOARD ACTION: Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

**p. 14-06-225 Garden Valley Landscape Maintenance Corp
and Victor M. Flores Rodriguez
Installation of nursery stock.**

On May 27, 2014, an LCB Contract Investigator spoke with respondent who stated he did not have a landscape contracting business license. There were three men digging and planting bushes over 4 ft tall. There were several plants that had just been planted and some new small trees waiting to be planted. There was also some PVC pipe lying on the ground. The homeowner, Mark Rutkowski stated he was paying respondent \$300 for today's work, the homeowner bought all plants himself, and the PVC pipe was being used by another contractor he had hired.

On May 29, 2014, LCB Investigator Michael Hintz spoke with the homeowner who stated:

- He is an attorney and had reviewed the landscaping law;
- He does not believe the respondent was in violation of the landscaping law;

- Respondent is his regular maintenance contractor for at least 10 years;
- He hired a general contractor to lay a new patio and he did damage to the landscaping;
- The scope of work involved the repair and replacement of an area of landscaping that had been damaged when the general contractor had constructed a new patio;
- Replaced plants and added some compost;
- Paid respondent \$350 for the work plus \$40 mileage (gas);
- He believes this falls within the exception for a landscape maintenance business since the contracted amount was less than \$500 dollars in a calendar year and the scope of work was replacement planting;
- Respondent did not do any irrigation repair work.

The exception in ORS 671.540 states “The value of all labor, materials or other items supplied for landscaping work at a job site does not exceed \$500 in a calendar year...”. The homeowner paid \$350 for the labor and \$40 for mileage (which may be considered “other item”) for a total of \$390. However, if the “value of all...materials...” are also taken into consideration, the plants may put this over the \$500 limit.

Legal counsel advised that the \$500 limit does not include materials or supplies provided by the homeowner; only those provided by the respondent and respondent’s labor.

BOARD ACTION: Moved by Ms. Hollenbeck and seconded to take no action. Vote 6 yes; 0 nays; 1 abstain (Lee).

**q. 14-07-230 Ramon Castro Lara
dba: Del Sol Landscaping Maintenance
Preparation and installation of sod lawn.**

On April 19, 2014, a LCB Contract Investigator spoke with the homeowner, Carl Green who stated:

- He had removed the old sod and found root wads;
 - He has a verbal contract with respondent to remove the root wads, install new sod on a small part of the yard and put in bark mulch on the rest of the yard;
 - Work to cost no more than \$1,200.

On April 19, 2014, an LCB Contract Investigator spoke with the respondent who stated:

- They bid this job for \$1,200, but were only charging \$12/hour and materials (sod and bark);
- Cost of sod was \$190, labor was \$144 for a total of \$334 on the sod and the rest (\$700) was for the removal of root wads in flower beds and purchase and placement of bark.

On May 29, 2014, LCB Investigator Michael Hintz spoke with the homeowner, Elke Green who stated:

- They wrote a check for \$1260 for the above work to the respondent;
- She and her husband wanted the roots and root wads removed out of the area where the sod was to be planted that were left over from several trees that had been removed a couple years before;
- Respondent removed the roots, added in soil and laid sod, and bark in the flower beds;
- Respondent does not do regular maintenance at this job site;

The invoice received from respondent shows:

- \$200 for sod;
- \$90 dollars for soil;
- \$60 for bark;
- The labor was not broken down, but that leaves \$700 for labor.

The exception in ORS 671.540 states “The value of all labor, materials or other items supplied for landscaping work at a job site does not exceed \$500 in a calendar year...”. The invoice shows \$290 for the sod/soil install and \$700 for labor. The photos appear to be very clear that new sod was installed on most of the front yard; a majority of the labor involved was to prepare the area where the sod was laid and then to lay the sod. The spreading of the bark dust would have been a minimum part of the labor involved.

If even only half the labor \$350 was for the sod install and the sod and soil were \$290, that is \$640, which is over the \$500 limit.

BOARD ACTION: Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

**r. 14-07-23 Green Sweep Grounds Services Inc
Installation of a paver walkway.**

Advertising “Landscape Installations” “Sprinkler Installations”, “Sprinkler Repairs”, “Ponds/Water Features Rock Walls/Patios/Walkways”. Use of LCB #12908 & #7100

On July 1, 2014, LCB Investigator Michael Hintz spoke with the homeowner who stated:

- He hired respondent to construct the walkway between the two homes;
- He was sure they were licensed – produced a door flier for respondent showing two license numbers (#12908 and #7100);
- The person he had contact with was Marty Hoidahl;
- He was paying respondent \$4450 for the pathway and some barkdust;
- Respondent has installed barkdust for him in the past.

BOARD ACTION: Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for advertising and operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

s. **14-07-232 Donald Robert Bullis**

dba: Agape Lawn Services LLC

Preparation and installation of a lawn and repair of an irrigation system.

On July 1, 2014, an LCB Investigator, Michael Hintz spoke with Mrs. Lyons, homeowner who stated she:

- Contracted with respondent to remove the old lawn, till it up and re-seed it with a new lawn, dig up and repair a malfunctioning sprinkler and smooth out the front flower bed;
- Paid a deposit of \$500, but the bid was for \$950;
- Respondent does not do maintenance work for her;
- Originally received a bid from someone else for \$950, respondent's bid was \$1,100, but her husband knows someone who knows the respondent, so the respondent matched the lower bid.

BOARD ACTION: Moved by Ms. Dunston and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license in violation of ORS 671530(3). Vote 7-0.

t. **Louis Angel Vergara**

dba: Angel's Gardening Service

Excavation of planting pit or hole (preparation of property).

On June 17, 2014, the LCB office received a Statement of Claim form from Randy Webb against respondent for damages regarding the excavation of a hole so that a tree could be planted. The claim states:

- He was hired to excavate a large hole for planting a tree and do some weeding;
- Paid \$400 by check, which was cashed;
- Respondent knew the purpose of the hole was for the planting of a tree, but he did not plant it;
- Costs were not broken down – but the hole took longer than the weeding;
- Used a mattock to remove soil – they removed the top soils from a large area about 30 ft long by 5-8 ft wide;
- Hole was at least 4 ft wide, 4 ft long, and 4 ft wide.

The board discussed the definition of "install" with legal counsel and believe installation does not have to be each of the examples given in the definition.

BOARD ACTION: Moved by Mr. Bumgardner and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license when a claim has been filed for damages in violation of ORS 671530(3). Vote 7-0.

**u. Dale Allan Alexander & Alexander Gardens LLC
dba: Alexander Gardens Landscape maintenance
Installation of a lawn, walkway and soil.**

On July 8, 2014, the LCB office received a Statement of Claim form from Tim Wells against Dale Alexander, Alexander Gardens Services LLC. On the form Mr. Wells states:

- Respondent misrepresented themselves as licensed landscapers,;
- the work was not completed; contract was not fulfilled; and
- the partial refund was not negotiated.

The proposal shows:

Lawn	\$5,000
Walkway	\$1,500
Soil	\$1,000
Garage Area	\$3,000
Gravel around Garage	\$750
Total	\$11,250

It further states "We hereby propose to furnish the materials and perform the labor necessary for the completion of 3850 square ft lawn, soil around lawn, walkway, retaining wall for garage, soil for garage, backfield and boulder".

Both the LLC and the Assumed Business Names are registered with the Secretary of State, Business Registry in Josephine County showing Dale Allan Alexander as the registrant & manager.

BOARD ACTION: Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license when a claim has been filed for damages in violation of ORS 671530(3). Vote 6 yes; 0 nays; 1 abstain (Lee).

3. Other

a. 14-04-110 Dwight John Klein

**b. 14-04-109 Dwight John Klein dba: Three Sisters Landscaping
Respondent failed to pay a court judgment for a landscape contracting business debt.**

Ms. Dunston recused.

On or about April 28, 2011, the Deschutes County Circuit Court issued a General Judgment against Dwight J Klein, Sheila A Klein and the dba

Three Sisters Landscaping stating the amount due to Horizon Distributors Inc was \$8,245.73.

Dwight J Klein is a licensed landscape construction professional
Dwight J Klein dba Three Sisters Landscaping is a licensed landscape contracting business. The judgment & invoices show the debt is for unpaid irrigation supplies.

ORS 671.610(1)(o) states the board may suspend, revoke or refuse to renew a landscape construction professional or landscape contracting business license that does any of the following: (o) fails to pay in full any amount owed to a claimant under a judgment rendered in this or any other state.

ORS 671.607(3) states the board may suspend the business license if the business owes a landscape contracting business debt. ORS 671.607(1) defines a "landscape contracting business debt" as an amount owed under a judgment arising from landscape contracting business activities in any state.

On April 15, 2014, LCB staff issued a Notice of Suspension of license to Mr. Klein (LCP # 15471) and to Mr. Klein dba: Three Sisters Landscaping (#7833). A Final Order has not been issued for either license.

Ms. Gladwill-Rowley received an e-mail from the collection agency that turned this in to the board that states they have come to a payment arrangement with Mr. Klein and Three Sisters Landscaping and they are requesting the LCB reserve suspending the license based on this agreement. Mr. Klein has agreed to pay \$500 per month from April to November because those are his busiest months. He also committed to \$200 from December to March with these being his slow months. He states he will contribute more towards the debt when available.

ORS 671.607(4) states the board may hold the suspension of a license under subsection (3) of this section in abeyance if the person owing a landscape contracting business debt is adhering to a board-approved plan for restitution of the amount owed. Subsection (3) referred to above is about the suspension of a business license; not an individual license.

This case is about the suspension of both a business and an individual license. Seems unfair to be able to "hold the suspension in abeyance" for the business, but not the individual when it is a sole proprietor as in this case.

BOARD ACTION: Moved by Mr. Thomas and seconded to withdraw the Notice of Suspension against the LCP and hold the final order against the business in abeyance as payments are made. If payments are not made,

the final order of suspension will be issued. Vote 6 yes; 0 nays; 1 abstain (Dunston).

c. David Conant failure to complete CEH by the deadline

Respondent renewed his license that was to expire April 30, 2014. On May 15, 2014, respondent was selected for the CEH audit and requested to submit documentation to show the 16 hours of CEH he submitted for renewal.

The certificates were all verified and totaled 16 hours. One of the courses was completed on May 1, 2014 (one day after the April 30th deadline). The certificate has a note that says the course was completed on midnight, April 30th and has the respondent's initials.

The course was an OSHA course and OSHA stated respondent had called them on June 2nd stating he was having trouble printing his certificate. He originally took this class in April 2012 and somehow when he tried to do it again in 2014, instead of starting a new course, he opened the existing course and redid the modules. This created two dates for each module and confused the system so it would only print the 2012 date on his certificate. This may have been why he had trouble completing the course by midnight.

OSHA provided a screen shot from their computer system showing the course information was updated 5/1/14 at 00:24:23.

Respondent has no other courses completed by April 30th.

Legal counsel advised having a policy regarding these late completions of on-line courses. There are no consumer protection issues involved in this one. This policy does not need to be in rule, but must be written.

BOARD ACTION: Moved by Mr. Bumgardner and seconded to take no action Vote 7-0.

**d. 14-06-211 Northwest Landscape Service
Of Oregon LLC/failure to require direct supervision page**

Ms. Lee recused herself due to a potential conflict. She did not participate in the discussion and the vote.

On day of site investigation (May 5, 2014) LCP's on record were:

- Thomas Ashland, All Phase License and
- Frank Corzine, Standard; No Irrigation license.

On May 12, 2014 (after site investigation) additional LCP:

- Eric Sitton, Irrigation only license.

As of 5/20/14 – Thomas Ashland employment was terminated.

On May 5, 2014, LCB Investigator, Michael Hintz visited the job site (a PGE substation) and observed the site had been recently landscaped with new plants, trees and bark, along with irrigation work that needed to be completed. No workers were present on the job site.

On May 5, 2014, LCB Investigator, Michael Hintz spoke with:

- Thomas Ashland, LCP for respondent who stated was not supervising the work and had no knowledge of the job at the above listed job site.
- James Kleinke who is the landscape services supervisor for PGE who confirmed they had hired respondent to perform landscaping work at the above listed job site. Mr. Kleinke provided a copy of the contract dated March 21, 2014.

Until May 12, 2014, any irrigation installation should have been supervised by Mr. Thomas. Mr. Corzine and/or Mr. Thomas could have supervised the planting work.

Upon review of the contract, it appears to be missing the job site address, estimated completion date and statement of licensure with the LCB and LCB contact information, and license number

Is Thomas Ashland in violation for not directly supervising the unlicensed employees on this job?

BOARD ACTION: Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess civil penalty for

1. failing to require direct supervision in violation of OAR 808-003-0018(1) & (2); and
2. failing to comply with minimum standards for contracts in violation of OAR 808-002-0020. Vote: 6 yes; 0 nays; 1 abstain (Lee).

Moved by Mr. Thomas and seconded to assess a civil penalty against Thomas Ashland for failure to directly supervised the unlicensed employees. Vote: 6 yes; 0 nays; 1 abstain (Lee).

**e. 13-12-404 Joseph Jacobson dba: Joe's Hauling & Yard
Work Plus/No Action Required**

The board reviewed an e-mail correspondence from an individual who received a fine for advertising. This was informational only.

f. Theron Nebeker failure to complete CEH by the deadline

Respondent renewed his license that was to expire May 31, 2014. On June 15, 2014, respondent was selected for the CEH audit and requested to submit documentation to show the 16 hours of CEH he submitted for renewal. These were to be from June 9, 2012 to June 10, 2014 because he submitted his renewal application late (June 10, 2014).

The certificates were all received and totaled 16 hours. Four of the courses totaling 14 hours were completed on June 24, 2014 (after the May 31 deadline).

The four courses were OSHA courses and OSHA verified that all the courses, except one, were started and completed on the same date (6/25/2014). The other course was started on 6/24/14 and completed on 6/25/14.

Ms. Sneed spoke with respondent by phone to see if he had any other courses that could be post approved or volunteer time. He stated he did not. He stated he hand delivered his renewal form on June 10, 2014. He had finished the courses prior to June 10th, but hadn't taken the exams due to problems with their system. Ms. Sneed stated she did not believe the courses were completed until the exams were completed.

Mr. Nebeker's response was that he believes that as a long term licensee there shouldn't be the same CEH requirement and that he continuously learns to stay on top of changes in the industry.

As of this date, respondent has no other courses completed by June 10, 2014.

BOARD ACTION: Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess civil penalty for failing to complete the continuing education hours by the deadline in violation of OAR 808-040-0020(1)). Vote 7-0.

g. All Seasons Home & Yard Care LLC

Respondent allegedly violated ORS 671.530 (2) & (4) by advertising for landscaping work without a license. Specifically, the installation of sod & "planting projects" on the internet.

This was brought to the May 2014 board meeting:

All Seasons Home & Yard Care LLC

Staff reported this case was opened for advertising without a license. The Respondent requested a hearing. The advertisement was for sod installation services.

Board Action: Moved by Ms. Hollenbeck and seconded to direct the staff to move forward with the hearing process. Vote: 7-0

Request to Reschedule Hearing

A hearing was scheduled on July 2, 2014 by phone. Respondent failed to appear. The Administrative Law Judge waited 15 minutes and declared a no show.

This is being referred to the Board due to a request made by the respondent to re-schedule that hearing. He states he wasn't able to get through on the original date and time and that he tried later in the day...got through, but found that he would have to ask to have it re-scheduled to another date and time. When asked for a reason why he did not attend the hearing at the scheduled time, he stated in writing "The phone I had wasn't working." (see attached e-mail).

The Board may either deny or accept his request to reschedule the hearing.

1. Attached is Mr. Anderson's e-mail with the request and reason why he did not attend the scheduled hearing.
2. Also attached is an e-mail from the Office of Administrative Hearings with some information about Mr. Anderson's attempt to appear.
3. The last attachment is a rule regarding the Office of Administrative Hearings. #7 defines "good cause".

There is only one decision to be made (accept or deny the request to rescheduled the hearing) because the Board already determined they believed there was a violation.

BOARD ACTION: Moved by Mr. Thomas and seconded to affirm the staff recommendation to assess the civil penalty for advertising without a valid license under ORS 671.530(4) and deny the request to reschedule the hearing. Vote: 6 yes; 0 nays; 1 abstain (Lee)..

**h. Artistic Touch Landscaping & Maintenance Inc
An owner/officer of respondent failed to pay a civil penalty.**

Mr. Thomas recused himself due to a potential conflict. He did not participate in the discussion and the vote.

Kevin & Michelle Moore were owners of another landscape contracting business, Scapes & Stones (#8737) and owners/officers of an unlicensed business (Lawncare Inc). Both of these businesses received civil penalties that are unpaid totaling \$3,700. Payments have been made totaling just over \$1,200. This debt was sent to private collections.

Because payments were being made when the Moore's purchased a licensed landscape contracting business & wanted to remain licensed, they were told they could keep this license as long as payments were made to Cascade Collections. The last payment was November 2013 and Cascade Collections has requested the LCB file liens. Respondent has placed their license on inactive status.

ORS 671.607(3) states: The Board may suspend a landscape contracting business license if.... (b) an owner or officer of the landscape contracting business owes a landscape contracting business debt...(c) An owner or officer of the landscape contracting business was an owner or officer of another business at the time the other business incurred a landscape contracting business debt that is owing...

The debts mentioned above are due from Kevin & Michelle Moore and LawnCare Inc (a corporation they were listed as owners). They are now listed as owners/officers of Artistic Touch Landscaping & Maintenance Inc (#9210).

BOARD ACTION: Moved by Ms. Dunston and seconded to affirm the staff recommendation to suspend the landscape contracting business license because respondent's owners/officers owe a landscape contracting business debt. The license is to remain suspended until the debt is paid in full. Vote 5 yes; 0 nays; 2 abstain (Lee & Thomas).

5. Public Comment

Chair Gawlista opened the public comment session of the meeting.

John Dinges

Mr. Dinges wondered if the six CEH he was getting today would be able to carry over to his next reporting cycle since he has all his hours completed for this reporting cycle. He was told there is no carry over of hours.

Chair Gawlista closed the public comment session of the meeting.

6. CLAIMS (Dispute Resolution)

A. Executive Session/Pursuant to ORS 192.660(2)(f)

Chair Gawlista moved the meeting into executive session to hear advice from legal council at 2:35 pm.

Chair Gawlista moved the meeting out of executive session and back into public session at 3:00 p.m.. No decisions were made in executive session.

The Board discussed continuing the mediation option within the claims program when both parties agree to mediation.

Board Action: Moved by Ms. Hollenbeck and seconded to continue the mediation program, if all parties agree. Vote: 7-0

The Board discussed arbitration hearings versus contested case hearings.

Board Action: Moved by Mr. Thomas and seconded to send all claim hearings on dismissals as contested case hearings and all other claim hearings as arbitration hearings. Vote 7-0.

The board reviewed a memorandum regarding staff's plan for changes to the claim program process. Ms. Sneed explained that the staff's role is to help keep the board on the right track. LCB staff wants to ensure that the board is clear as to what happened in the past and to be aware that any changes will set precedent for the future.

The board reviewed the closed claims from May 1, 2014 to June 30, 2014. There were two cases closed during that time period.

B. Board Review of Claim Cases

1. Homeowner Claims

a. 6008-102, Gail Leopold vs. Fred Swisher dba: Bend Pine Nursery

Ms. Dunston Recused.

Placement of boulders and rocks similar to the style of placement that was presented and for which was initially agreed to and sloppy replanting of pine trees.

Claim was received and a copy sent to the respondent. Issue was not resolved, so mediation was scheduled. Vince Salomone was contracted to perform this mediation as Michael Hintz had prior conversation with the contractor. The mediation did not result in a settlement. Vince Salomone then investigated the complaint.

INVESTIGATION FINDINGS

Both parties visited another residence for an example (vision) of the type of landscape the claimant was looking for. Contract states "Gail to OK all rock choices." and "Collaborative design w/Gail."

Claimant stopped work when she was not happy with the boulder placement and respondent would not change the placement.

Complaint Item #1 is an insurance issue.

Complaints items #2 – #6 - The respondent stated that the example/vision property was laid out differently and had more room between the house and the sidewalk and that the claimant's site is a different situation and that using smaller boulders would take more labor and cost to construct.

Complaint item #7 - The two pine trees that were transplanted have declined due to the lack of water and one is dead.

There is an \$1,100 budget for plants from the Bend Pine Nursery (also owned by the respondent). Plant materials observed at the site and stated by the claimant to be the only plant materials included in this contract are as follows;

- One 5 gal size Western Hemlock

- One 2 gal size Blue Spruce
- One 5 gal size Tamarack
- Three 1.5 inch size B&B Mugo Pines
- Three 1.5 inch size B&B Blue Spruce

Items not completed: drip irrigation, setting large step stones, spreading of soilbuilder and hemlock bark, planting of landscape plants, and walkways graveled and pavers installed by others.

CONCERNS/ISSUES

Respondent states he told the claimant that the boulders for her property were going to be larger, but the rock would be the same type. He is unwilling to refund any money and believes she breached the contract and is requesting full payment of \$3,000 due on completion. He believes the job to be over 90% complete.

An additional item was brought up at the on-site investigation regarding the plant materials. Claimant states the amount of nursery stock does not come close to the \$1,100 plant budget stated in the contract.

LCB CONTRACT INVESTIGATOR RECOMMENDATION

Respondent to complete the following items and claimant to pay the balance of the contract (\$3,000.00).

- Complete the drip irrigation system per contract.
- Set the large step stones per contract.
- Plant landscape plants per contract.
- Spread soilbuilder and hemlock bark per contract.
- Completed landscape to closely resemble the landscape depicted in photos.

ADDITIONAL DOCUMENTATION SUBMITTED

Claimant submitted additional photos and letters from other licensed businesses regarding this job site. She also submitted an estimate/bid for correction work. This bid appears to be for everything listed above under Items not completed and the LCB Contract Investigator Recommendation for a total cost of \$15,422.06.

LCB staff wonders if these boulders from the example/vision site would be considered a retaining wall or even preparation of property for the planting.

BOARD DISCUSSION

The Board discussed the boulders and determined based on the photos of the "vision property" or the example of the type of landscape the claimant was looking for in a completed project the boulders are retaining other items. They

also determined that in order to install the plant material, the boulders would have to be in placed prior to the plant installation, so this would be considered "preparation of the property". Therefore, the boulders do fall within the jurisdiction of the LCB.

The Board determined they need the following documentation from the respondent:

- All invoices issued to Gail Leopold
- All invoices from material suppliers (including Bend Pine Nursery) for all supplies/materials used at this job site. This also includes the pit/rock cost and the delivery cost.
- An itemized contract. The only item listed separately from everything else is the plant costs.

Mr. Salomone stated there was a conflict between the two parties regarding the plant materials at the job site. The Board would also like the claimant to send a listing of all pant material delivered to the job site for the work performed under this contract by the respondent.

**b. 7251-110, Kent Winter vs. AR Landscape Inc.
Poorly installed synthetic lawn.**

Claim was received and a copy sent to the respondent. Issue not resolved, so mediation was scheduled. Mediation did not result in a settlement. Vince Salomone investigated the job site and complaints. Both parties were present.

FINDINGS

Upon inspection of one corner of the installation revealed the base material consisting of $\frac{3}{4}$ minus crushed rock with $\frac{1}{4}$ minus crushed rock on top. The total depth of the base material was measured at 2 to 2 $\frac{1}{2}$ inches with no fabric barrier under the base materials. Excavation was made 3-3 $\frac{1}{2}$ inches below the top of the concrete.

Manufacturer is Synthetic Turf Industries Inc and is clear about procedures and specifications in their installation video. Investigator spoke with company owner, Chris Heptinstall who state:

- Fabric barrier is required in order to prevent the base material from sinking into the native soil.
- There needs to be at least 4 inches and better to have 6 inches of compacted base material for proper installation.

Seams inspected show gaps as much as $\frac{3}{4}$ inch between the two sections of the turf. Manufacturer specifications are for seams to be nailed so that they butt against each other closing any gap.

INVESTIGATOR RECOMMENDATIONS:

Respondent to remove the entire installation and construct to manufacturers specifications as shown in the manufacturer's installation video (this video is online).

CONCERNS/ISSUES

Respondent did not agree with the investigator's findings and requested a hearing. This was referred to Office of Administrative Hearings (OAH). A pre-hearing conference call was held on January 3, 2014 because the respondent wanted to withdraw his hearing request and perform the recommendations of the investigator.

The Administrative Law Judge (ALJ) allowed this and stated it needed to be completed in early spring. She further advised them that they needed to stay away from each other and to have their own neutral party. The ALJ told Mr. Winter not to go out and make Mr. Rhodes (respondent) and his crew angry because that only leads to disaster. Mr. Winter stated he intended to have an independent third party on the job site to interact with Mr. Rhodes and his crew.

On April 8, 2014 Ms. Gladwill-Rowley sent respondent an e-mail regarding the dates for the replacement of the sod. No response was received. On April 15, 2014 a letter was sent to the respondent about scheduling this work. On May 15, 2014 an e-mail was received from Mr. Rhodes scheduling the work for May 23rd. On that same date (Thursday), Ms. Gladwill-Rowley contacted Mr. Winter to see if this date would work for him. On Tuesday an e-mail was sent to Mr. Winter. A response was received on Wednesday (May 21, 2014) stating this date did work for Mr. Winter. However, when notified, Mr. Rhodes called to say he could no longer wait for a reply and scheduled other work that day.

Due to the delay in responding to each other Ms. Gladwill-Rowley gave the respondent a deadline of May 30th to give at least 2 days they and their representative would be available between June 16th through June 30th. Mr. Rhodes response on May 30th was to state he would have the dates by 5PM on Monday, June 2. On June 3rd, no response has been received, so Ms. Gladwill-Rowley sent an e-mail to both parties that based on the lack of response from the respondent with dates by May 30th, this claim would move forward and a proposed order would be issued.

This claim has been reviewed by legal counsel and determined it should come before the board at this time for a determination. The claimant has provided a bid from another licensed business to replace this synthetic turf for \$4,643.11. However, his bid is not to reinstall the same material, which was Mr. Rhodes intention.

After the conversation with legal counsel regarding turf installation, it is clear to both the staff and the board that this claim should be dismissed; the LCB does not regulate the installation of artificial grass; unless it is for a patio or walkway. This appears to be the front lawn.

BOARD ACTION: Moved by Mr. Thomas and seconded to dismiss this claim for lack of jurisdiction, specifically, artificial turf installation for a front lawn. Vote 7-0.

**c. 8358-115, Rogue Valley Backflow Service LLC vs. Patrick O'Connor Jr dba: Patrick O'Connor Landscaping
Non payment for backflow testing services.**

Claim was received and a copy sent to the respondent. The issue was not resolved between the parties. As part of the file, staff received an invoice and copy of the test report for each address listed on the claim form. LCB Investigator, Michael Hintz performed an investigation into each address listed on complaint form.

The respondent (O'Connor) states the form that was completed by the claimant is incorrect because it is a material /equipment claim form. It should be noted that the LCB does not have a specific claim form for backflow testing services; therefore, the material supplier/equipment form is the closest form the LCB has.

The respondent further states he has no record of ever receiving any invoices or test reports for those addresses listed. He also states he has no contract for those services. He states his understanding is that all backflow testers are required to provide the test reports to the contractor for which they were hired within 10 working days of the test. If so, he has not received them and plans to file a counterclaim with the LCB and the Oregon Health Authority. As of the date of Board meeting, no counterclaim has been received from Mr. O'Connor. He requests this claim be dismissed.

The claimant responded to Mr. O'Connor's letter. He states the backflow services were requested verbally either in person or over the phone. He stated he has done prior work for Mr. O'Connor with payment and Mr. O'Connor indicated he did not want copies of the test reports and was testing only to get the city to stop pressuring him. He states a precedent was set and copies of the tests have been available, if requested by Mr. O'Connor. He further states if he was not hired, then anyone else Mr. O'Connor hired should have filed the test reports.

INVESTIGATION FINDINGS

The City of Medford, Building Department advised that for each job site in Medford (all but 2 listed on the Claim form) a backflow permit had been

obtained by Patrick O'Connor, but that no test reports had been filed and that no final inspection had been performed. They further stated it is the responsibility of Mr. O'Connor to report back to the City of Medford regarding the permitting and testing being accomplished. Sometimes testers will send in the reports, but it is not a requirement. Each of those permits are now expired and there is a reinstatement fee of \$67.20 for each permit. The Medford Water Commission does require the testers to report.

The Medford Water Commission advised that for each job site in Medford they do have the test reports on file – they were sent by Rogue Valley Backflow Services.

The City of Ashland advised that the job site on Ashland Street had a backflow permit obtained by Patrick O'Connor, Mark Jamieson of Rogue Valley Backflow performed the backflow test and the City did a final inspection on October 23, 2013.

The City of Talent advised that the job site on Lithia Way had a backflow permit obtained by Patrick O'Connor and it had a final inspection on July 2, 2013.

BOARD ACTION: Moved by Mr. Thomas and seconded to issue a Notice of Contested Case/Arbitration that respondent pay claimant \$675 for backflow assembly testing services provided by the claimant. Vote 7-0.

**d. 8774-102, Urban Housing Development LLC vs.
Green Pro LLC**

Grading sloped towards the house; causing water damage to finished basement, Sprinkler heads over-installed, times set for excessive watering periods causing damages to basement.

Claim was received and a copy sent to the respondent. The landscape contracting businesses response is that the homeowner requested a big pile of dirt from his yard be spread around the back yard, so they did it and sloped it towards a drain hold for the gutter. The bid did not include any drainage work.

Staff issued a letter to both parties that the damages to the claimant's home should be filed with the landscape contracting businesses insurance agent. Insurance information was provided and claimant was told to provide a copy of the insurance clam filing by March 21, 2014. No response has been receive.

Claimant provided copies of two checks payable to Green Pro LLC. One for \$5,265 and one for \$2,500, totaling \$5,515.

Claimant requested an extension to file the insurance claim stating they are restructuring within the company and the filing of this insurance claim was neglected.

BOARD ACTION: The board agreed to grant the claimant an extension.

**e. 8920-102, Marian B Porterie vs. Graham Landscape
And Design LLC**

This is being provided as information; there is no action to be taken by the board at this time.

Soil condition, drainage and irrigation systems are unsatisfactory.

Claim was received and a copy sent to the respondent. Issue not resolved, so mediation was scheduled. Michael Hintz performed this mediation. The mediation did not result in a settlement. Michael Hintz investigated the complaint.

INVESTIGATION FINDINGS

The Investigation Report & Recommendations are attached. Here is a very brief synopsis:

- Contract does not state the manner or method the irrigation and hook up to water is to be installed. The shut off valves are down stream of the hose bib. Plumbing code prohibits this.
Recommendation: Correct the irrigation installation so that it is according to code
- Contract states removal of 18 inches and import new soil to 18 inches.
Recommendation: Remove 18 inches of soil and replace with new soil.
- From downspout to drain is approximately 14 feet. Receipt indicates 10 feet of solid pipe was purchased. That leaves 4 feet not accounted for. Employees believe there was 2 feet of perforated pipe.
Recommendation: Remove any perforated pipe from the standpipe to the drain and replace with solid pipe.
- Contracts states to set auto front lawn water monitor for 20 minutes once a day. Respondent did not show claimant how operate electric and battery automatic water systems.
Recommendation: provide instruction manual for irrigation system.
- Drip system is run off an existing anti-siphon hose bib. Contract does not provide for a backflow. There are shut off valves downstream of the hose bib. Plumbing code prohibits shutoffs downstream of the built in atmospheric vacuum breaker.
Recommendation: Correct the installation so that it is according to code.

Respondent agreed with some of the recommendations, but not all and requested a hearing. Claimant was required to obtain bids/estimates from another business to correct the work. Claimant submitted a Monetary Damages Sought form and bids totaling \$9,115.66.

An arbitration hearing was held May 20, 2014. An Arbitration Award was issued June 20, 2014 stating the respondent is to pay claimant \$592.58. The award is attached (see page 2). Claimant submitted documentation requesting the award be amended (see page 24). On July 8, 2014, An Amended Arbitration Award was issued. This award did not change the initial award – the claimant’s petition to modify the award was denied.

**f. 8393-103, Judy Siviglia vs. Paradise Restored Landscape Management Inc.
Poorly installed patio.**

Claim was received and a copy sent to the respondent. Issue not resolved, so mediation was scheduled. Respondent declined mediation. Michael Hintz visited the job site to investigate the complaint. Both parties were present and met with the investigator separately.

FINDINGS

Both parties agree the patio slopes so that water pools on the side near the metal edging, instead of draining out toward the lawn side (see attached photos).

CONCERNS/ISSUES

Respondent says claimant wanted the slope of the patio to be towards the metal edging instead of draining out toward the lawn side. He was under the impression that she was going to be doing more development of the elevated dirt side and possibly even removing the large tree in the corner of the yard.

Claimant states she never had any intention of taking down the large tree in the corner of her yard and never would have said anything like that. She didn’t have any reason why she wouldn’t want the installation to run off into the grass.

BID FOR CORRECTION

Bid from Cornerstone Hardscapes Inc for \$3,220 to correct the work by using the existing pavers. Their intention is to re-lay the pavers so drainage occurs to the lawn and away from the home.

BOARD DISCUSSION

The Board believes grading is essential for any paver laying work and the patio should have drained towards the lawn and away from the home and/or landscape edging between the patio and the garden/flower bed.

BOARD ACTION: Moved by Mr. Thomas and seconded to issue a Notice of Contested Case/Arbitration that respondent pay claimant \$3,220 for correction of the paver patio for damages caused by respondent. Vote 7-0.

2. Material Supplier Claims

a. 8059-103, Site One LLC vs. Design Resource Group LLC Failure to pay for material supplies

Claim was received and a copy sent to the respondent. The LCB received an e-mail from respondent that stated they are waiting on the balance owed them from the General Contractor. They also stated they are working on a payment plan, but it all rests on receiving the monies owed from the General Contractor.

FINDINGS

On June 17, 2014, Kim Gladwill-Rowley, Program Manager, spoke with claimant who stated they do not have an agreement for payments at this time. They were unsure if the different job sites are the same General Contractor

STAFF RECOMMENDATION

Issue Notice of Contested Case/Arbitration that respondent pay claimant the remaining balance.

BOARD ACTION: Moved by Ms. Hollenbeck and seconded to issue a Notice of Contested Case/Arbitration that respondent pay claimant \$3,189.93 for unpaid materials. Vote: 7-0.

7. OLD BUSINESS

A. Reforestation Discussion

Dylan Morgan
George Kral

(George Kral) a forester since 1988. He has been in private practice and has worked for the City of Portland and private companies.

In describing what forestry is Mr. Kral stated that foresters take a broad view when describing what forestry is. They are called to manage habitats and natural resources including timber, wetlands, alpine meadows and other kinds of habitats that may be found throughout the state. As foresters, they understand the functions of these complex natural systems and what makes up these types of resources. Part of managing these resources includes: controlling weeds, mowing, spraying and planting.

Mr. Kral is currently a licensed company through BOLI, and has worked for decades with foresters. From a forester's perspective, Mr. Kral stated that it used to be like the Wild West back in the 80's, there was a lot of labor abuses. The farm/forest labor contractors were established to insure that they are following rules for managing employees and laws.

Mr. Kral stated that he became aware of the LCB's revised statute which broadens the purview of the board's jurisdiction over planting in Oregon outside of reforestation areas. The rule states it does not include reforestation but he is not sure what that means.

Mr. Kral's definition of reforestation would include his working in wetlands where there is not a tree to be seen. He has concerns about the lines between a Forester and a Landscaper. The crossover may be the planting of wetlands, where they are restoring habitat, not reconfiguration of wetlands. This may include getting rid of evasive grasses and restoring appropriate native plants.

Mr. Thomas stated there may be concern that these plantings and reconfigurations can go right up to the foundation of a home, crossing over into landscaping. Mr. Thomas stated that his understanding of forestry is for the management, maintenance, and production of forest products. He does not consider this type of work landscaping.

Mr. Kral stated that the Oregon Department of Forestry's (ODF's) point of view and the states point of view of what is considered reforestation may be different. He is unsure of where to go from here. Currently forestry does not license practitioners; but this has been brought up many times. Foresters have resisted licensure as a whole.

Mr. Thomas stated that the ultimate mission of the LCB is consumer protection. He asked Mr. Kral to explain what measures he is required to do through BOLI to secure the same. Mr. Kral stated that most carry bonding and insurance, but it is not a requirement, he believes most hold them, and that there are bonds in place to insure payment of employees.

Mr. Kral stated that reforestation in his view includes planting commercial species in areas where trees may have been removed, or areas that are not currently in forest production by planting commercial species. Most of their work is in greener areas, rural areas. Not typically in urban areas. Aforestation is a time honored tradition in forestry. It takes areas that were forest or never had been and turning them into forests. An example would be planting trees on edges of Willamette valley, or trees in cotton fields in the south.

Mr. Thomas stated that it is not the LCB's intent to define Mr. Kral's work but to define where landscaping work starts. The reach of the board goes beyond parking strips and developed areas. His definition of reforestation is planting commercial

species in areas where trees have been removed or areas that are not currently in forest production by planting forest species, the planting of wind breaks, or on marginal agricultural lands. The LCB is not taking jurisdiction over this type of activity and he prefers that the board not be in conflict with state statutes. The vast majority of this work is not a concern of the LCB. The concern is the immediate zone around human development. The LCB needs a clear definition of what forestation land vs. landscape land is, because sometimes forests go right up to pavement or a ditch line on public lands. These would be considered forest landscapes, when it goes right up to a roadway. The LCB needs something to help in stopping the use of "It's forestry" as an excuse.

Ms. Hoekman asked if Mr. Kral's work only happens on public lands? Mr. Kral stated that it can be public and/or private land. Ms. Hoekman stated what is the overlay between the two? If the board is interested in regulating what occurs in the overlay, then the Board should define what the overlay is.

Mr. Kral stated that natural resources don't stop at an artificial boundary. There are also rights of ways where forests go up to pavement/ditch line. He believes these are forest landscapes and should be managed with that knowledge. The LCB needs to establish where the line is. What about green space around freeways (e.g. I-205), who has oversight? There must be a legal definition of where that space is. Mr. Kral is specifically concerned with the statute change that occurred that removed the word "decorative" from the definition of landscaping.

Ms. Hollenbeck asked what are the best management practices for landscaping and also best for forestry. The Board needs to look at the two and determine an agreement.

The board needs help to define the three areas:

1. Definition of landscaping;
2. Definition of reforestation; and
3. Definition of natural resource restoration (natural area) (land restoration)

Ms. Sneed stated we should look at:

1. what the land is used for;
2. the current zoning; and
3. its intended use and who is the user

Mr. Thomas stated that the board needs to consider a rule change, and that the board will need help with precise descriptions of those 3 areas. The board needs them in writing and there needs to be a way to provide an exemption. The board can define landscaping and Mr. Kral could help to define reforestation and restoration.

Mr. Kral's recommendation is to have a conversation with the Board of Forestry. It is peripheral to their mission, so it would be appropriate to involve them, so they can consider licensure for specific types of activity. Maybe they are not opposed to

creating a specific license for this type of work, with oversight possibly by ODF or LCB.

Ms. Dunston stated that the board should discuss; what is the intended use for the space with public protection in mind.

LCB staff were directed to research this topic and bring additional information to a future meeting.

(Dylan Morgan, Boli) (Compliance Manager)

Licensing program for farm/forestry contractor:

Mr. Morgan stated the law requires anyone who recruits or solicits employees to perform labor for a farm or reforestation of lands, or, that employs someone to work on land that they do not own needs to be licensed with BOLI. Some requirements include; having a bond, record keeping requirements, and submission of payroll reports. BOLI monitors those who supply farm labor. The bond is to recover employee pay and consumer issues. Or if land owner advanced money towards a contractor, that money can be recovered from the bond.

BOLI's enforcement wing is the wage & hour division. Compliance specialists oversee violations that pertain to licensees and enforce laws. The Licensing unit is a single person that processes annual licenses, insures that bond and workers' compensation are in place and that proper insurances are kept up to date. BOLI is part of ICN

Mr. Morgan stated that they do not have a definition for a forest, but that Forestation is defined in their rules. Licensees are harvesting plant materials, but it is limited to a certain list. Worker protection is the main oversight of BOLI. The perception for some licensees is that if you have this license you do not need a different license, and that is not the case. If the scope of work falls under a different licensure entity they would need that license as well

B. 2014 Strategic Business Plan

The board reviewed the meeting packet. No discussion of this item.

C. Joint OSLAB and LCB Meeting Update

The board reviewed the meeting packet. No discussion of this item.

8. NEW BUSINESS

A. New Proposed Rule Amendment (request to go through rulemaking process)

1. OAR 808-003-0065/Exam Scores for Managing Employees

When a person takes the 16 hour class and passes the Laws, Rules & Business Practices (LRB) section of the exam, they are eligible to be a managing owner or employee. There are a few of those individuals that

want to obtain the Landscape Construction Professional (LCP) license. However, if it has been over one year since they passed the LRB section, they have to retake that section.

The current rules for expiration of the LRB section to obtain an LCP license require the applicant to pass all sections necessary for any type of license within one year of passing the first section. Staff recommends allowing the managing owner to use the passed section of the Laws, Rules & Business Practices section to obtain an LCP license, if they have been a managing owner within two years of applying for an LCP license:

808-003-0065

Scoring; Exam Section Transfer March 1, 2014

- (1) Each exam section shall be scored separately.
- (2) Based on 100 percent, the passing score shall be 75 percent or higher for each section.
- (3) Except as provided in subsection (4) **& (5)**, a passing score shall be valid for one year from the date the exam section was taken. An applicant who fails to pass all the sections required for a particular license within one year of passing a section shall retake that section.
- (4) A passing score for an applicant for a Probationary All Phase Plus Backflow license will expire upon expiration of the application as stated in OAR 808-003-0030(3).

(5) Effective January 1, 2014 a passing score of the Laws, Rules and Business Practice section will remain valid for any applicant that passed this section and has been the managing employee or managing owner of a licensed landscape contracting business within two years of the date of the license application. The scores will remain valid for up to one year from the date of the application for licensing.

- (5) Effective March 1, 2014 the following sections will transfer to the new exam sections as follows:
- (a) Laws, Rules and Business Practice transfers into Laws, Rules and Business Practice;
 - (b) Plants and Turf transfers into the Plants and Turf Section;
 - (c) Grading and Drainage transfer into the Design, Grading and Drainage section;
 - (d) General Safety, estimating, soil science, chemicals and landscape design does not transfer into another exam section;
 - (e) Irrigation transfers into the Irrigation section; and
 - (f) Backflow Prevention transfers into Backflow Prevention.

Staff was directed to proceed through rulemaking.

2. OAR 808-008-XXXX/Arbitration Awards

ORS 671.703(9) states:

- (9) If a final order or arbitration award is issued under this section and the

landscape contracting business does not pay the claim on or before the 30th day after receiving the order, the board shall order the claim paid out of the bond, letter of credit or deposit filed under ORS 671.690.

This appears to be a good timeframe for a final order in a contested case hearing. However, an arbitration award issued in an arbitration hearing is different. When an arbitration award is issued both parties have 21 days to file a petition for modification to the arbitrator. The other party has a specific timeframe to respond to that petition. Then the arbitrator needs time to make a determination to modify the award or not. 30 days is not enough time for all this to take place after an arbitration award is issued. To further clarify this process, legal counsel has suggested the Board write a rule. Here's the proposal:

OAR 808-008-XXXX

Arbitration Awards

1. Arbitration awards are not considered "issued" for the purposes of ORS 671.703(9) until:
 - a. the time to file a petition to modify the award has expired with no request for modification; or
 - b. the arbitrator has determined to modify the award or not, if there was a timely petition for modification of the award filed by one or both parties.
2. Each party may file one petition to modify an initial Arbitration Award within 21 days after the award is signed by the arbitrator. Once the arbitrator makes a determination on all timely petitions filed, no additional petitions for modification may be requested. Neither party may file a petition to modify an Amended Arbitration Award. For procedures to respond to petitions for modification or seek judicial review of Amended Arbitration Awards, see OAR 808-008-0430.

Item 2 is there so it is clear that they may only file one petition per party and this petition may only be issued for the initial award; not the amended award.

Staff was directed to proceed through rulemaking.

3. OAR 808-003-XXXX/Restoration of a License that has not been Permanently Revoked.

ORS 671.610(4) & (6) shows

(4) A person whose license is revoked under this section is not eligible to apply for a license under ORS 671.510 to 671.760 until two years after the effective date of the revocation.

(6) The board shall provide by rule a process and criteria that must be met for restoration of a license that has not been permanently revoked.

There are no rules written by the board to comply with subsection (6). Staff worked with legal counsel to draft the rule below.

OAR 808-003-????

Restoration of a License that has not been Permanently Revoked

As provided in ORS 671.610(6) a license that has not been permanently revoked may be restored. This rule shall be effective as of July 1, 2012. The license may be restored under the following circumstances:

(1) Revocation for nonpayment of a claim under a final order of the board or an arbitration award or under a judgment rendered in this or any other state. To restore license, revoked licensee must pay the claim under a final order of the board, arbitration award, or judgment rendered in this or any other state in full, or make arrangements for payment of a claim under a final order of the Board if approved by the Board. If restored licensee fails to timely comply with payment arrangements approved by the Board, licensee is subject to revocation, including permanent revocation.

(2) Revocation for non-payment of civil penalty. To restore license, revoked licensee must pay all civil penalties assessed and owing in full, or make arrangements for payment of civil penalty approved by the board. If the restored licensee fails to timely comply with payment arrangements approved by the Board, licensee is subject to revocation, including permanent revocation.

Staff was directed to proceed through rulemaking with the following rule:

B. Decker Landscaping Company Request for Reinstatement of Revoked License

Ms. Dunston recused herself due to a potential conflict. She did not participate in the discussion and the vote.

Respondent failed to pay in full an amount owed to a claimant under a final order of the board. An order for payment became final on February 3, 2014. Respondent's bond paid \$10,000; leaving \$2,500 plus interest and attorney fees.

At the May 16, 2014 Board meeting, the board voted to revoke respondent's license for failure to pay in full on a claim. After the revocation became final, respondent has made payment arrangements for the debt and is requesting the license be reinstated.

Ms. Gladwill-Rowley reported she has sent a couple of e-mails and voice messages to the attorney who she spoke with a few months ago about no payments having been made. No response has been received from the attorney

or her office as of this date. The May 16, 2014 minutes do not state it was a permanent revocation.

Mr. Decker states he offered to pay \$1700 per month for 12 months. There is nothing in writing as of this date between the parties.

STAFF RECOMMENDATION

Reinstate the landscape contracting business license so long as payments are being made. If payments are not made, revoke license without reinstatement.

BOARD ACTION

Moved by Ms. Hollenbeck and seconded to reinstate the landscape contracting business license when proof/confirmation of the first \$1700 has been made and the payment plan has been agreed to by both parties. Vote: 6-0.

The Board discussed the operating without a valid license cases. They believe any of those cases that the staff have no concerns should go on the consent agenda.

The conference calls that are scheduled every other month were for legislative affairs. With the board reviewing all claims and enforcement cases, these meetings will be utilized more often, but only for consent agenda items and cases that were already reviewed by the board but needed for information. This will keep the cases flowing.

Ms. Sneed reported she and Ms. Gladwill-Rowley met with the Engineers and Land Surveyors Board and went over how they process enforcement cases. They have a committee made up of three board members who meet separately from the board meetings and work with staff on the cases. Then, when they are at the board level, board member's peers bring forth the recommendations. Ms. Sneed would like to wait and see how it goes having the full board review. Staff believe adding another committee will increase staff work load with the meetings, notices of meetings, agenda, and minutes that will need to be prepared.

9. ADJOURNMENT AND NEXT MEETING SCHEDULE

Board Action: Moved by Ms. Hollenbeck and seconded to adjourn the meeting. Vote: 7-0. The meeting adjourned at 4:40 p.m. The next meeting of the Landscape Contractors Board will be August 21, 2014 by conference call. The following meeting will be held on September 19, 2014 in Salem, Oregon

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager

Jerri Jones
Licensing Specialist