

**LANDSCAPE CONTRACTORS BOARD**  
**Minutes of the September 19, 2014**  
**Board Meeting**  
**930 Chemawa Road NE, Room C/McNary**  
**Keizer, Oregon**

PRESENT

Board Members

Annie Lee, Vice Chair by phone  
William Bumgardner  
Molly Dunston  
Larry Thomas  
Christine Hollenbeck

EXCUSED

John Gawlista, Chair  
Larry Hoekman

Others

Katharine Lozano, Assistant Attorney

Staff

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

Guests

Nick Dunston

**1. PROCEDURAL**

**A. Call to Order**

The meeting was called to order at 8:30 am by Larry Thomas, Acting Chair.

**B. Approval of Agenda and Order of Business**

**Board Action**

Moved by Ms. Dunston and seconded to approve the September 19, 2014 agenda. Vote: 5-0

**C. Approval of May 16, 2014 Minutes**

**Board Action**

Moved by Ms. Dunston and seconded to approve the July 18, 2014 minutes with a minor edits. Vote: 5-0.

Moved by Mr. Bumgardner and seconded to accept the amended minutes.  
Vote: 5-0.

**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 reported the individual who has conducted the agency's prior financial review has retired. Staff will meet with the replacement in two weeks to talk about the costs, information regarding an audit versus a review, and their recommendation.

Ms. Sneed also reported that the online renewal process is moving forward and a meeting is scheduled in two weeks.

**B. 2013-2015 Financial Report/Approval**

The Board reviewed the financial statements as of September 1, 2014. Ms. Sneed stated that we are still in a good situation, there are a couple of additional expenses to come in but she expects there will be a positive net income for July & August.

Ms. Sneed reviewed the balance sheets for the two months. As of July 31<sup>st</sup> the agency had current assets totaling \$363,296.30, which is over \$17,000 less than last year at this time. That's due to several factors: 1) computer equipment purchased during this fiscal year and 2) the difference in accounts payable. Those two things total nearly \$15,000. As of August 31<sup>st</sup> there was a total of \$365,077 in current assets—that's \$18,751 less than the prior year. Looking at the accounts payable balance, you can see that over \$22,200 was paid out more than the previous year.

The Profit & Loss Previous Year Comparison report shows the agency's total income for the first two months of the fiscal year is \$11,323, which is nearly \$8,000 better than last year at this time. The total income is virtually the same as last year. Expenses are \$8,558.93 less than last year, but there are several expenses that aren't included due to the early preparation of the financial statements. None of the state agency bills were included at the time of the meeting—the DAS vehicle, hearing expenses, postage, and attorney costs, etc. Based on those missing expenses, the agency should still have a positive net income of between \$4,000 and \$5,000.

The Investigations expense is higher and that's due to the increased number of active contract investigators. Board expenses are higher than last year due to the fact that there was not a July board meeting last year. Income and expenses are leveling off at least in the first two months of the fiscal year. Ms. Sneed feels that the agency will have a better feel for licensing and civil penalty collection changes as the busy season ends and the off season starts. This is a time when many people begin thinking about licensing for next year's activity.

The P & L Budget vs. Actual report shows that the overall income is nearly \$14,000 more than projected and agency expenses are nearly \$9,000 less than projected, so the overall net income is nearly \$5,400 more than budgeted.

The net worth graph shows that the financial position improved nearly \$6,000 between July and August. The income and expense graph shows that both July and August were positive net income months. The July 2013 through June 2014 shows that August 2013 wasn't a positive net income month. That's due to the first year of the biennium being a period we pay insurance and several other state fees for the two year period.

**Board Action**

Moved by Ms. Dunston and seconded to approve the unreconciled financial report. Vote: 5-0.

### **3. EXAMINATION/LICENSE/EDUCATION**

The Board reviewed the examination statistics through August 2014. The number of tests taken in June 2014 is higher than the same month last year. The number of tests taken in July 2014 is slightly lower than the same month last year.

The board recommended that staff add something to the exam approval letter reminding candidates that it is an open book test, but that they still need to prepare.

Ms. Dunston asked if there are any statistics regarding the number of times a candidate takes an exam section before they pass. It may be a good time to start gathering these statistics since the exam has recently changed. Ms. Sneed will check with PSI regarding gathering these statistics.

The Board reviewed the license counts as of September 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.

The Board discussed retirement and the selling of businesses, Ms. Lozano asked if the board has a rule regarding the selling of a business, and that we should outreach to the purchasers to insure that they have adequate information. Possibly the staff/board should do outreach to professional organizations, such as OLCA, regarding the sale of businesses.

### **4. ENFORCEMENT**

The Board reviewed a listing of final actions taken from July 1, 2014 through August 31, 2014. There were 78 cases closed during that time period.

Mr. Thomas asked why the board was seeing stipulated orders. Ms. Gladwill explained that a stipulated order is where both parties are coming to an agreement and that a final order is when an agreement was not reached and the board would move forward on the case.

#### **A. Consent Agenda**

##### **1. Immediate Action**

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

##### **2. Administrative Action**

Case number 14-08-290 & 13-09-303 were removed by staff.

##### **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: 5-0.

**Case number 14-08-290, Taufui Naaniamotu**

Ms. Sneed reported that she had received an e-mail yesterday afternoon from Kyle Anderson. He stated that he was hired by the respondent to develop and maintain the respondent's website. Mr. Anderson is taking responsibility for the website violations because the respondent didn't choose or approve the language. Respondent is a CCB licensee and the website developer added landscape language, which was not requested by the respondent.

**Board Action**

Moved by Mr. Bumgardner and seconded to dismiss the case. Vote: 5-0.

**Case number 13-09-303, Garrett T Vollstedt**

Mr. Vollstedt did not complete the continuing education for renewal of his license. He has since submitted CEH that has been reviewed and is in compliance.

**Board Action**

Moved by Ms. Hollenbeck and seconded to dismiss the case. Vote: 5-0.

**B. Enforcement Cases for Discussion**

**1. Advertising without a License**

**a. Ground Control Southern Oregon LLC**

This is an advertisement for a vegetation retaining wall. Ms Sneed reviewed the advertisement and informed the board that the respondent is a CCB Licensee. Mr. Thomas requested that staff review a previous rule 808-403-0126.

Mr. Thomas stated that they are using sprigs and plugs which are both nursery stock and that this could possibly be a consumer protection issue with plant material being added to a wall. Ms. Dunston concurred with Mr. Thomas. Ms. Hollenbeck stated that it is defined as landscaping, under landscaping services.

Mr. Bumgardner stated that this company used to have a LCB License.

Mr. Thomas asked if the staff could inform them that they are advertising for landscaping services and that the vegetative wall is also of concern.

Ms. Lozano discussed pictures vs. verbiage, if the picture is of them installing a tree that could be a violation. If doing something near the tree, then no violation – picture needs to be clear. Respondent can construct a retaining wall, but it crosses the line when installing growing medium or a lawn. Engineer shows there is a structure.

**Board Action**

Moved by Ms. Hollenbeck and seconded to issue a notice of intent for advertising without a license. Vote: 5-0.

**b. Xtramile Landscape Maintenance**

This was reported to the LCB office. Staff believes there is no violation. The e-mail address and website address uses “landscape” without indicating the maintenance nature of the business. However, when the home page is opened, it shows the word maintenance. The Board discussed the word “landscape” in an e-mail address and website address and determined it is not a violation.

**Board Action**

Moved by Ms. Dunston and seconded to affirm staff recommendation of no violation/no action. Vote: 5-0.

**c. Always Green Reforestation & Farming**

The business card talks about irrigation; however, in the context of this business card are they talking about landscaping? Nowhere on the card does it allude to landscaping.

There are now companies that are providing farming services for homeowner’s backyard.

The definition of irrigation system includes – installed for the purpose of watering lawns, shrubs, trees & nursery stock. Agricultural products are exempt from LCB licensure.

**Board Action**

Moved by Mr. Bumgardner and seconded to affirm staff recommendation of no violation/no action. Vote: 5-0.

**d. Sprinkler Experts (Portland metro) - Craigslist**

This advertisement is about a craigslist ad that uses the term “Sprinkler”. LCB statutes use the term “irrigation”. There is not a lot of verbiage or photos to show what they are doing with the sprinklers.

Sprinkler encompasses a lot of variables – sprinklers on the ceiling of buildings and out in lawn with a sprinkler attached to it. The photos with this ad are a pop up fan head. However, the definition of maintenance of

an irrigation system that does not require a license is the adjustment of sprinkler head nozzles.

Staff was directed to contact the respondent and send him educational information regarding the LCB license.

**Board Action**

Moved by Mr. Bumgardner and seconded to take no action. Vote: 5-0.

**e. Garcia's Landscape Maintenance, LLC**

This advertisement is for use of a shortened version of the name that does not include maintenance. There is also a link to landscape services, but when you go there it is all maintenance or CCB work and respondent is licensed with the CCB.

Staff was directed to contact the respondent and send him educational information regarding the LCB license and the use of the word "landscape". Let them know landscape services is a violation and that it has been noted on their website

Under mission statement they use designing and building under Garcia's Landscaping. It talks about paver installation and they do have a CCB license. However it states he is building landscapes.

**Board Action**

Moved by Ms. Dunston and seconded to issue a notice of intent for the violation of advertising without a license. Vote: 5-0.

**2. Operating without a License**

**a. Francisco B Ramirez**

**dba: Ramirez Landscape Maintenance**

**Performing the installation of a walkway.**

On July 22, 2014, the LCB received a Field Incident Report from the CCB. This report shows that respondent was installing a paver walkway. Both the homeowner and the respondent admitted the respondent had installed the paver walkway.

CCB issued a warning and closed the file. They did not believe they had a violation based on their exemption law and their definition of casual, minor or inconsequential exemption which states a license is not required if the work does not require a permit, does not affect the health or safety of the occupant, does not include work done as a subcontractor and the aggregate contract price for all work on one structure is less than \$1,000.

**CONCERNS/ISSUES**

CCB issued a warning. Should LCB issue a penalty?

**STAFF RECOMMENDATION**

The board discussed that there was a violation; however, since the CCB took action by issuing a warning; no further enforcement action should be taken by the LCB.

**BOARD ACTION**

Moved by Ms. Dunston and seconded to affirm the staff's 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: 4-0. (Ms. Lee excused)

**b. Alejandro Cruz Gonzalez, Leonel Hernandez Roses, & Santiago Cruz Hernandez  
Installation of an irrigation system and nursery stock.**

On May 19, 2014, LCB Contract Investigator observed:

- 3 men working around the back of a new home;
- Ditches were dug and some irrigation pipe was being laid;
- Man in charge, Leonel Hernandez Rosas said:
  1. He was working for "Alex". He did not know his last name, but that Alex was the owner and contractor of the job site.
  2. He provided Alex's phone number;
  3. He is being paid \$18 per hour from Alex by check.
  4. The trucks on the job site were rented to Marcelo Ramirez from a business named "Greenwood".
  5. He and the other two workers sometimes do work for Mr. Ramirez and provided a phone number.

The LCB Contract Investigator spoke with "Alex":

- CCB License #160342;
- Would call back with LCP license #;
- Stated he is the homeowner and his friends were helping him plant the trees and do a little work;
- He is building the home for himself;
- He refused to sign the site check report unless the LCB Contract Investigator changed the notes so it did not show the 3 guys working for him.

According to Clackamas County Tax Assessor, this property is owned by Aleksandr Horyelov and Olena Samoplavska.

On July 31, 2014, LCB Investigator, Michael Hintz spoke with Alejandro Cruz Gonzalez (a worker at the job site) who stated:

- He works for Marcelo Ramirez of Greenwood Landscape Maintenance;

- On the date of the site report he and two others had been working for Alex as part of a trade (Alex was to build a fence for Mr. Gonzalez, so he and the two others workers were to get credit for the amount of \$18/hour for 6 hours of work);
- Alex told them that they had to purchase the materials for the fence and he would build it, but they have not been able to afford the materials yet. He also stated that building the fence would cost more than what they had provided him in labor and that they would end up owing him money.

On July 31, 2014, LCB Investigator, Michael Hintz spoke with Marcelo Ramirez, owner of Greenwood Landscape maintenance LLC who stated:

- Alejandro Cruz Gonzalez and Leonel Hernandez Rosas work for his company, but not the 3<sup>rd</sup> worker (Santiago Cruz Hernandez);
- His company had nothing to do with the irrigation, but had contracted to install pavers at that site;
- The workers had used his trucks that day; it was their day off. He allows them to borrow his trucks, but was not happy they had been doing work behind his back for one of his own customers;
- He had no knowledge of the details of the deal between Alex and the workers.

### **CONCERNS/ISSUES**

The investigators were able to obtain the name and address of only one of the workers. The other workers were identified, but no other information (address, phone) has been determined.

### **STAFF RECOMMENDATION**

Assess a civil penalty for performing landscaping work without a valid license on the three workers OR assess a civil penalty for performing landscaping work without a valid license on Alejandro Cruz Gonzalez – the worker receiving the trade (fence).

### **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) on Alejandro Cruz Gonzalez. Vote: 4-0. (Ms. Lee excused)

#### **c. Jose Angel Olvera-Soto Installation of a retaining wall.**

On June 20, 2014, LCB Contract Investigator observed respondent building a retaining wall. He stated John Darby hired him to build the retaining wall and he was not working for his own company, but for Mr. Darby.

LCB Investigator, Michael Hintz spoke with Mr. Darby who stated:

- The other two men on the job site were his employees;
- Respondent was employed by him a while ago and then split off and formed his own company;
- He did not contract out the work to the respondent, but asked for his help with this job; however, he is not Mr. Darby's employee;
- He pays the respondent out of his business account;
- Respondent usually only work 2-5 days for him at a time.

On September 8, 2014, Mr. Darby provided a copy of his contract with the homeowners and copy of a check payable to Jose Angel Soto, but deposited/cashed by Angel's Landscape.

### **CONCERNS/ISSUES**

Was the respondent acting as an employee or an independent contractor? The board reviewed the laws and rules regarding independent contractor and employee status.

### **STAFF RECOMMENDATION**

If the Board determines the respondent was operating as an independent contractor in this instance, assess a civil penalty for performing landscaping work without a valid.

### **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: 4-0. (Ms. Lee excused)

#### **d. Richard Frates Installation of landscape edging.**

On June 16, 2014, LCB Contract Investigator:

- Observed a newly installed irrigation system – it was determined it was installed by Lawn Express (licensee #8956 – active – all phase, plus backflow);
- Was told by Aaron Dahle, owner, that respondent installed all the curbing.

On July 29, 2014, LCB Investigator Ms. Hintz spoke with Aaron Dahle who stated:

- The respondent was hired to install the landscape edging (curbing) that separated the planting beds from the grass in early June 2014;
- Mr. Dahle and his employees did a lot of the planting;
- He hoped Mr. Frates was not fined; he believes times are tough for him already.

**CONCERNS/ISSUES**

ORS 671.520 states, in part... The planning and installing of fences, decks, arbors, patios, **landscape edging**, driveways, walkway and retaining walls....is landscaping work.

**OAR 808-002-04990**

**Landscape Edging**

"Landscape edging," as used in ORS 671.520(1)(d), means concrete, metal, plastic, wood or other material that is used to separate different planting elements of a landscape from each another.

**ADDITIONAL INFORMATION**

In 2003 Mr. Frates was fined for operating without a valid license. He had the LCP license, but not the business license. Mr. Frates obtained a business license and this penalty was reduced. Based on the previous case, this would be a subsequent offense and the fine is \$2,000.

**STAFF RECOMMENDATION**

Assess a civil penalty for operating as a landscape contracting business without a valid license for a subsequent offense.

**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: 4-0. (Ms. Lee excused)

- e. **Mariano Chavez/dba Ledezma's Landscape Service  
Installation of a walkway and nursery stock and advertising without a license.**

On August 21, 2014, Respondent initially stated he was doing work for the lady who lives in the house whom he has known for years – her name is "Sue", but did not know her last name. He gave his name as Ricardo Ledezma. When asked to see identification, he stated his name is Mariano Chavez. Ricardo Ledezma owns the company and he thought he lived in the house at the job site. Respondent has a Medford City business license, but not one for Ashland because he doesn't do work in Ashland (note: job site is located in Ashland).

He stated the dry creek bed was installed by another guy and the top soil was delivered by someone else. Eventually, he finally admitted he didn't have a license and he was building the walkway (bridge) without help and that he had installed the dry creek bed and dispersed the soil. He would not admit to the installation of the new sprinkler heads.

The Secretary of State, Business Registry shows that Mr. Chavez owns Ledezma's Landscape Service and that Ledezma is his middle name.

The homeowner admitted she contracted with the respondent to build the walkways, to do some irrigation work and some planting for her. Once she found out this was a violation, she contacted the LCB office for information and ordered the study materials for the respondent. On August 23, 2014, the LCB Contract Investigator visited the job site again and the respondent was performing the landscaping work again. The homeowner then stated she was not paying him for his bridge (walkway) work "that day".

Respondent's business card states "Sprinkler Repair".

#### **STAFF RECOMMENDATION**

Assess civil penalty for operating and advertising as a landscape contracting business without a valid license.

#### **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: 4 yes; 1 abstain (Dunston)

#### **f. Edward Pearson – Ag-Gro Systems LLC & Little Deschutes Garden**

On August 26, 2014, the LCB Contract Investigator observed and spoke with two unidentified males at the job site planting shrubs. They told him he needed to speak with the boss, but didn't know the license number or name of the business. They left the job site stating they needed to go help the boss who had a dead battery at Big Belly Burger Deli. The vehicle they were driving was towing a trailer identified as "Little Deschutes Gardens". When the investigator drove by this restaurant, the two unidentified males were no where in sight and no one was there with a dead battery.

On August 26, 2014, LCB Contractor Investigator spoke with the homeowner who stated:

- He hired Little Deschutes Nursery;
- Chad Grebb, owner came to the house and gave him a quote, but there was no written contract "yet";
- Little Deschutes was sub-contracting with Ag-Gro Systems LLC to install the irrigation system;
- Little Deschutes was to install a lawn, nursery stock, a drainage system, mulch and some rocks.

On August 26, 2014, LCB Contractor Investigator spoke with Ed Pearson who stated:

- He is the owner of Ag-Gro Systems LLC;
- He is working under his father's plumbing license;
- He is only installing the irrigation system;
- Little Deschutes Nursery was doing the rest of the work;
- He was subcontracted by Chad with Little Deschutes Nursery;
- He can legally work under his father's plumbing license to install the irrigation;
- His father's business is Rigid Plumbing (Thomas Pearson);
- He was told a few years ago by a man at the LCB that he was legal.

On August 27, 2014, Mr. Pearson told the investigator the homeowner told him to tell the investigator to leave, that he was not working under his father's license, in fact, the homeowner is doing all this work himself and he is just helping him out.

On August 28, 2014, Chad Greb, owner of Little Deschutes Gardens told the investigator:

- He heard there was confusion at the job site;
- He is not providing landscaping services; only nursery materials;
- Homeowner was confused and thought Little Deschutes Gardens was also doing the work, but they are not;
- He does not know the two males who were planting on the 26<sup>th</sup>;
- He has no employees;
- Ed Pearson is not working for him and he does not know who Pearson is working for.

On August 29, 2014, the homeowner told the investigator:

- Chad Grebb was a friend of a friend;
- Grebb was only delivering materials and showing the homeowner how to install it;
- Grebb did not plant or anything else except deliver the material;
- He did not know who the two men were that were planting shrubs on the 26<sup>th</sup> – maybe just helping their friend "Chad."

### **CONCERNS/ISSUES**

Who are the two unidentified males planting the shrubs?

No written contract for the work.

No other work performed, except irrigation and planting (by two unidentified males).

Little Deschutes states they are not subcontracting to Ed Pearson. Who is paying Ed Pearson?

**STAFF RECOMMENDATION**

None

**BOARD DISCUSSION**

Ms. Dunston recused herself. The Board directed staff to subpoena records and bring the case back to the board.

**g. NFN Investments LLC**

On June 2, 2014, LCB Contract Investigator observed three employees of NFN Lawn and Garden installing an irrigation system. The investigator spoke with Kurt Rice who identified himself as the landscaping division supervisor for the company. Mr. Rice stated NFN Investments LLC and NFN Lawn and Garden are a brother/sister operation and that they, along with other investors, buy multi-family rental properties and manage them in house.

The property where the landscaping work was being performed is owned by Groves Apartment Investments, LLC (The Groves). Mr. Rice stated The Groves invoiced NFN Investments LLC for the work performed. He further stated that he believes the same account handles both businesses and that the Noecker's who own NFN Investments, LLC also have the majority ownership in The Groves and other properties associated to their property management group. They also have other investors that are partial owners of their various properties.

Below are the different business entities associated with this job site:

The Groves Apartment Investments, LLC:

- Member: Spencer Noecker

NFN Investments, LLC:

- Manager: Spencer Noecker
- Active record with Employment Department

NFN Lawn and Garden – ABN – sole proprietor

- Registrant: Spencer Noecker
- Inactive account record with Employment Department

NFN Contracting – ABN – sole proprietor:

- Registrant: Spencer Noecker
- Inactive account record with Employment Department

NFN Maintenance - ABN – sole proprietor:

- Registrant: Spencer Noecker
- Inactive account record with Employment Department

It appears that Spencer Noecker is listed for each of these businesses. NFN Investments, LLC holds an active CCB license showing only Spencer

and Lauren Noecker as members. NFN Investments LLC also has a current record with the Employment Department and is reporting employees.

On September 10, 2014, LCB Investigator, Michael Hintz spoke with Megan Harris who is the Human Resources Director for NFN Investments LLC who stated:

- All the employees of NFN Lawn and Garden are actually employees of NFN Investments LLC;
- NFN Investments LLC was formerly owned completely by Spencer and Lauren Noecker, but that in either June or July, Nicolas Berggruen was made 50% owner;
- NFN Investments LLC employs all who work at The Groves Apartments;
- Groves Apartment Investments LLC is owned by a holding company called NBT Capital;
- NBT Capital is owned by the Noeckers', Mr. Berggruen and additional investors;
- NBT Capital owns all the properties that are associated to NFN Investments LLC;
- NFN Investments LLC invoices Grove Apartment Investments LLC and other property entities when they do landscaping work for them;
- Groves Apartment Investments LLC pays NFN Investment LLC for the landscaping work;
- It is fairly complicated, but the companies are housed under the same roof and all have common interest.

### **CONCERNS/ISSUES**

None

### **STAFF RECOMMENDATION**

Assess a civil penalty for performing landscaping work without a valid license.

### **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: 4-0 (Ms. Lee excused)

### **3. Other**

#### **a. Gary Krause/dba: Gary Krause Landscaping**

**Failing to comply with minimum standard for landscaping contracts as required by ORS 671.625(2).**

### **SUMMARY**

On September 9, 2014, the LCB office received correspondence from an attorney who is representing homeowners in a current litigation case against Gary Krause. The attorney asserts noncompliance of agency rules regarding contract standards stating the above requirements in bold are missing from the contract or (as is the case with the LCB name showing Oregon Contracts Board) are not shown correctly. He further asserts his clients do not remember signing the contract, yet the contract has their signatures. The homeowners believe that their signatures are suspect on the contract.

### **CONCERNS/ISSUES**

The issue regarding the signatures of the homeowners is not within the expertise of the LCB.

The issues regarding the retaining wall are being resolved through current litigation and are too old for a claim to be filed.

### **STAFF RECOMMENDATION**

Issue civil penalty for failure to comply with minimum standard for landscaping contracts. Items missing are:

1. **Business address and telephone number;**
2. **Description of the work to be performed and materials to be installed.**

The issue with the LCB name of Oregon Contractors Board should not be included because it also lists the LCB's correct address and phone number.

### **BOARD ACTION**

Moved by Ms. Dunston 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: 4-0 (Ms. Lee excused)

### **Site checks**

#### **Incorrect license # on ads/vehicles**

The staff has received site checks from contract investigators that show incorrect license numbers. Some of them show the LCP (5 digit) number and some of them show an old business number. Staff is sending letters to these businesses explaining which number they are to use and requesting they check all advertisements and vehicles to insure the correct number is listed.

Board believes this number is important for the consumer to be able to locate their license information. Staff is sending an educational letter letting licensees

know they are using the wrong number and encouraging them to check all advertisements and to change the number.

Mr. Bumgardner asked what the reasons are that they are not changing it. Is it possibly for financial reasons? If not using the correct number – it is a violation/penalty. By not having the correct number it can lead to confusion. Mr. Thomas stated that licensees took steps to become a different business entity and made changes with the state for tax purposes. ORS 671.997 states the penalty shall be paid. The LCB does not have the authority to issue warnings.

### **BOARD ACTION**

Moved by Mr. Bumgardner and seconded that licensees who use old license numbers or LCP license numbers be assessed a \$50 Civil Penalty which in settlement may be stayed and considered satisfied if licensee corrects the license # on all ads and vehicles and provides proof of correction to the agency within 60 days. Vote: 4-0 (Ms. Lee excused)

## **5. CLAIMS (Dispute Resolution)**

### **A. Consent Agenda**

Moved by Ms. Dunston to approve the consent agenda. Vote: 4-0 (Ms. Lee excused)

#### **1. 7039-101, Chehalem Mountain Nursery Inc vs. JW Wren Co Inc/dba Emerald Landscape and Garden Accents Failure to pay for material supplies**

Claim was received and a copy sent to the respondent. Claimant stated they are willing to work with the respondent to satisfy the debt. The landscape contracting business has written that they have had a delay in payment from a client (due to a large quantity of plants dying). Replacement plants were purchased and then more plants died. The plant material issue has been resolved with the property owner. However, then the landscape contracting businesses' bank account was garnished by the state due to tax issues resulting from a divorce. The money that was to go to the claimant was taken before they could pay the claimant. Business has been slow and they need to collect more funds to get the invoices paid.

### **FINDINGS**

Respondent owes claimant for landscaping materials. However, claimant has not provided job site addresses for the plant material.

OAR 808-004-0340(5) requires a material supplier claim to include job site addresses.

### **CONCERNS/ISSUES**

None

**STAFF RECOMMENDATION**

If job site addresses are provided, issue Notice of Contested Case/Arbitration that respondent pay claimant remaining balance. However, if no job site addresses are provided, Issue Notice of Dismissal of this claim.

**2. 8596-101, Geoffrey Goldman vs. Total Irrigation LLC  
Irrigation repair.**

Claim was received September 9, 2014. Claimant states work was “not done properly”. There are broken pipes leaking and gushing down the driveway and lines hitting the wood on the bottom of the roof and causing water damage.

**FINDINGS**

The date work started was May 20-25, 2013 and the date work ceased was May 26-27, 2013. This is more than one year from the date the claim was received in the LCB office. ORS 671.700(3) states the Board may not accept a claim against a landscape contracting business for processing if the claim is not filed with the board within one year after the business substantially completed the work.

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

If the irrigation repair work was completed in May 2013, it is over one year and the claim cannot be accepted. Based on the claimant’s statement that “the job was not done properly (page 2 of his letter), it appears the job was completed; just not “properly”.

If the irrigation repair work was not completed in May 2013, based on the claimant’s letter, the respondent did not return to the work site for further work, so it is over one year since the landscaping business ceased work.

**CONCERNS/ISSUES**

None.

**STAFF RECOMMENDATION**

Issue Notice of Dismissal due to receipt of claim being over one year since work was substantially completed or since work ceased. Provide insurance information for water damage.

**Board Action**

Moved by Ms. Hollenbeck and seconded to Issue Notice of Dismissal due to receipt of claim being over one year since work was substantially completed or since work ceased.

**B. Board Review of Claim Cases**

**1. Homeowner Claims**

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

**\*\*\*Molly recused herself from this discussion\*\*\***

**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 conversations 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 5g al 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 corrective work. This bid appears to be for everything listed above under items not completed and in the LCB's Contract Investigator's Recommendations; the total cost of this work is \$15,422.06.

LCB staff wonders if these boulders from the example/vision site would be considered a retaining wall or 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 that the boulders are retaining other items. They also determined that in order to install the plant material, the boulders would have to be in place 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 reviewed additional documentation submitted by the claimant and the respondent since the July 18, 2014 board meeting. The Board determined

the work completed and the materials left on the job site were valued at or near the amount the claimant did not pay the respondent (\$3,000) towards the contract total.

### **BOARD ACTION**

Moved by Ms. Hollenbeck and seconded that the board has determined that facts do not exist to support an order for payment.

Vote: 4-0 (Ms. Dunston abstained)

#### **b. 8469-001 Paula Fleitall vs. Sweet Pea Gardening & Design**

**Per the homeowner (claimant) the work was to include weed driveway and back yard, trim plants, mulch & remove an invasive plant and star jasmine and replace jasmine with a plant to be decided by the homeowner. This was an oral agreement – nothing in writing. Oral estimate of \$885 and work was to be completed by June 6<sup>th</sup> as her daughter who rents the house was getting married the following week and company would be coming into town and staying at the house.**

#### **Claimant's Account**

Claim was received September 12, 2014. Claimant states the entire front yard had been cut, weeded, and mulched – the front yard work was not requested. In fact, claimant states she told them not to do the front yard as she had just added mulch in April. One third of the back yard was weeded and a very light sprinkling of mulch was applied. The invasive plant had not been removed. The homeowners completed the weeding, trimming, and removal of the invasive plant.

Claimant states the respondent called her on June 9<sup>th</sup> and demanded a meeting at the job site that morning. The claimant could not make it due to the wedding. On June 18<sup>th</sup> both parties met at the job site and decided to have respondent finish the job. On June 23<sup>rd</sup> respondent's employees did some of the work, but no mulch was installed. On June 30<sup>th</sup> mulch was dumped at the back end of the property at the fence line in a pile – not spread and the mulch smelled like manure; not mint.

Claimant received an invoice for \$1,384 and paid \$1,000 and hired another landscaper to weed and mulch the backyard for \$337.

The claimant believes the respondent owes her \$552. She figured: \$885 (oral estimate) minus \$337 (amount paid to another landscaper) minus \$100 (work she and her husband did on their own) which equals \$448 (amount she believes she should pay). She paid \$1,000 and wants \$552 refunded.

#### **Respondent's Account**

This claim has not been sent to the respondent as of this date.

### **FINDINGS**

ORS 671.695 defines the different types of claims. However, it also states a claim must arise from the performance, or a contract for the performance, of work that is subject to ORS 671.510 to 671.760. The only part of the oral contract as stated by the claimant that could be landscaping work subject to ORS 671.510 to 671.760 is replacement of the star jasmine with a plant to be decided by the homeowner. The complaint about this is that it was not removed, so nothing was planted.

### **CONCERNS/ISSUES**

ORS 671.695 states the work must be subject to ORS 671.510 to 671.760 – landscaping work. The replacement planting is the only part of the oral contract as stated by the claimant that may fall under the claim jurisdiction.

ORS 671.540(1)(c) states there is an exemption from licensing for landscape maintenance businesses for a customer that receives primarily landscape maintenance services from that business, the value for the landscaping work does not exceed \$500, and the work is of a casual, minor or inconsequential nature – replacement planting with varieties that are similar in habit and culture. Respondent may fall under this exemption. If so, the work (replacement planting) is not subject to ORS 671.510 to 671.760.

### **STAFF RECOMMENDATION**

Issue Notice of Dismissal due to lack of jurisdiction – work was maintenance work; not landscaping work and the replacement planting falls under the ORS 671.540(1)(c) exemption and is, therefore; not within the LCB jurisdiction – a claim cannot be accepted.

### **BOARD ACTION**

Moved by Mr. Bumgardner and seconded to dismiss this claim for lack of jurisdiction, specifically, the work was not landscaping work. Vote: 4-0 (Ms. Lee excused)

## **2. Material Supplier Claims**

None

## **6. Public Comment**

At 1 pm, Mr. Thomas, acting chair, opened the public comment session of the meeting.

At 1:01 pm, Mr. Thomas closed the public comment session of the meeting due to no public comment being made.

## 7. OLD BUSINESS

### A. Reforestation Discussion

The board reviewed the meeting packet.

Merriam-Webster definitions

re·for·es·ta·tion

noun \ (,)rē-,fôr-ə-'stā-shən, -,fār-\

: the act of planting tree seeds or young trees in an area where there used to be a forest

af·for·es·ta·tion

noun \ (,)a-fôr-ə-'stā-shən, ə-, -,fār-\

: the act or process of planting a forest

Full Definition of AFFORESTATION: the act or process of establishing a forest especially on land not previously forested

There was discussion about ODOT right of ways and LCB jurisdiction. Staff has a good relationship with ODOT. ODOT will make changes to their RFP's when an LCB license should be required. Tribal or federal lands are outside the LCB jurisdiction. Public lands would be state, city county, special districts.

The Board would like to take some time to think about this rule amendment.

The proposed rule refers to landscape work. The activities this rule amendment exempts are the same activities that require a license. Legal counsel will review this proposed amendment and help wordsmith it

This is deferred to a future meeting.

### B. 2014 Strategic Business Plan

Ms. Sneed reported the Oregon Tourism Department has a nice strategic plan and Ms. Sneed would like to review it and come up with a template. The current strategic plan is more of a task list. This will be discussed at the January retreat.

### C. Joint OSLAB and LCB Meeting Update

Ms. Sneed reported that based on the meeting conversations this discussion went further than ever before between the two agencies. The group discussed that our licensees have technical expertise to plan without installing irrigation systems. OSLAB members present at the meeting thought they would be agreeable to looking at a statute or rule change to accommodate that change. The landscape designers had a representative present during the meeting who participated. LCB board members that were present were very encouraged with the discussion.

**D. Administrative Rule Hearing/July 29, 2014**

**1. OAR 808-002-0145/Agricultural Planting Exemption**

The Board reviewed a request to make the rule retroactive five years. Legal counsel cautioned the board that making this rule retroactive based on one persons request could set a precedent to make rules retroactive based on private litigation. The recommendation was to only make this rule retroactive if there is a broader policy reason and make that clear.

**Board Action**

Moved by Mr. Bumgardner and seconded to adopt this rule. Vote: 4-0 (Ms. Lee temporarily excused)

**2. OAR 808-001-0020/Changes & OAR 808-002-0330/Dishonest**

**Board Action**

Moved by Ms. Hollenbeck and seconded to adopt the rule change 808-001-0020 and 808-002-0330. Vote: 4-0 (Ms. Lee temporarily excused)

**E. Landscape Work Group**

Based on the discussions at the Landscape Work Group and the proposals submitted by OLCA and Oregon Landscaping Alliance (OLA), Ms. Sneed prepared a memo outlining the issues discussed and several new proposals to be introduced by LCB. Following is an overview of the topics covered in the memo.

**BONDING AND INSURANCE**

Ms. Sneed mentioned the idea of adding a 4<sup>th</sup> tier of bond coverage because bonds or assignment of savings are required. The \$3,000 bond allows those who have poor credit to maintain a \$3,000 savings. Ms. Sneed also mentioned that larger commercial projects may require a \$15,000 bond, but that doesn't cover the job. The LCB may want to require a \$20,000 bond. CCB residential contractors are required to hold a \$20,000 bond.

LCB currently has a \$100,000 insurance requirement and Ms. Sneed reported many licensees say that their insurance company won't write a certificate that low. She wonders if this needs to be increased.

Mr. Thomas asked if the bond needs to be increased or if a 4<sup>th</sup> tier should be established for higher priced jobs.

The proposed changes are (the \$3,000 and \$10,000 bonds would remain as is):  
\$15,000 bond to cover projects that are more than \$25,000, but less than \$50,000; and  
\$20,000 bond to cover projects that are \$50,000 or more.

\$500,000 liability insurance. (increase)

### **HEARING COSTS**

Request a \$5,000 limit with a 5 year CPI adjustment.

### **\$2,000 MINIMUM CONTRACT**

Board discussions in the past have been \$400. Ms. Sneed wants to be clear that the claims process is maintained even without a written contract.

### **CEH**

Possible tiered requirements. CCB has agreed to get their courses approved by the LCB. Staff recommendation is 16 hours if actively licensed for the first 6 years. 8 hours after being actively licensed over 6 years.

### **MAY VS SHALL**

Gives the board discretion in how discipline is enforced.

### **ARTIFICIAL TURF**

There was a past agreement with CCB about LCB installing – no enforcement against them, but does not include sports fields. Board would like to be able to install and have consumer protection. The request is to add this clearly to our jurisdiction.

### **STOP WORK ORDERS**

Statutes talk about only the board having authority to issue stop work orders; past practice, investigators were issuing.

This is a discretionary function – it's a function of board and cannot be delegated. If the board wants enforcement staff to issue stop work orders; then the statute needs to change from board to agency. These are only the immediate stop work orders. With this change, contract investigator's are NOT employees and Ms. Lozano will give legal advice about this and then board can decide if they are included in "agency". Currently, staff waits 2 days to issue the stop work order, after issuing a non-compliance order. If board is ok with that, no change is necessary.

Contract Investigator's may perform follow ups on stop work orders.

There was some discussion on how to issue stop work orders if contract investigators cannot do that. Staff wondered if Michael can issue stop work orders remotely.

### **CLAIMS AGAINST DUAL LICENSED WORK**

ORS 671.540 – exempts CCB licensees for 8 items. If they hold an LCB and CCB license – LCB cannot do anything about it. That means that LCB cannot accept a claim if the work is within the dual jurisdiction areas and the business has both a LCB and CCB license.

### **PLANNING IRRIGATION SYSTEMS**

Change to plan, install or repair..... means they could do any of these things. Board members on joint committee to talk with OSLAB members about this so it is not a surprise. Ms. Sneed will check with Mr. Gawlista about initiating the discussion with OSLAB's board chair.

### **ADDRESS CHANGE**

Staff recommends changing to 30 days.

**For hardscapes work, add the right to maintain and repair..** Currently, LCB licensees are only allowed to plan or install. NO right to maintain or repair.

### **SUBCONTRACT WORK OUTSIDE THE SCOPE OF THE LCB LICENSE**

Staff is recommending a statute change to allow LCB licensee to subcontract work. Subcontracted work must be related to landscaping work. An example would be to subcontract to a painting company to paint a giant pergola because the landscape company may not want employees on a ladder. Another example would be subcontracting out to an electrician because the landscape company may want irrigation control outside and need a plug installed.

### **TREE WORK/ARBORISTS**

Tree install requires LCB license but tree work under the CCB. Exemption allows LCB licensees to perform the work. LCB licensee's bond doesn't cover the work. Shelley read from a letter Mike sent out about 2005 legislation about: tree care. At that time the proposed legislation recognized ISA skills – and would allow pruning and planting. The final version of the bill would allow two avenues to transfer licenses from the CCB. Arborists with ISA certification would have only taken the laws & rules exam. A tree care license would bring current tree care from CCB to LCB and would that licensees only take the business laws & rules section of the exam.

**Add tree work to bond coverage.**

## **8. NEW BUSINESS**

### **A. ODOT - Invitation to Bid Correction/Informational**

### **B. 2015 Meeting Schedule**

The board discussed the Keizer venue and would like to stay in Keizer in 2015.

The Board discussed having a meeting in Bend in July 2015. The Board also discussed possibly having a board meeting in Beaverton, or elsewhere in the state. Ms. Lee suggested Portland. Tigard may also be an option, possibly in March. Ms. Sneed will try to schedule the meeting for March or November.

**9. ADJOURNMENT AND NEXT MEETING SCHEDULE**

**Board Action**

Moved by Ms. Hollenbeck and seconded to adjourn the meeting. Vote: 4-0. The meeting adjourned at 2:50 p.m. The next meeting of the Landscape Contractors Board will be October 16, 2014 by conference call. The following meeting will be held on November 21, 2014 in Keizer, Oregon.

Respectfully Submitted,

Kim Gladwill-Rowley  
Program Manager

Jerri Jones  
Licensing Specialist