

LANDSCAPE CONTRACTORS BOARD
Minutes of the November 21, 2014
Board Meeting
930 Chemawa Road NE, Room C/McNary
Keizer, Oregon

PRESENT

Board Members

John Gawlista, Chair
Annie Lee, Vice Chair
William Bumgardner
Larry Hoekman
Christine Hollenbeck

Guests

Katharine Lozano, Assistant Attorney
Matthew Triplett
Lisa Walter Sedlacek
John Dinges

Staff

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

EXCUSED

Larry Thomas
Molly Dunston

1. PROCEDURAL

A. Call to Order

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

B. Approval of Agenda and Order of Business

Board Action

Moved by Mr. Bumgardner and seconded to approve the November 21, 2014 agenda. Vote: 4-0

C. Approval of September 19, 2014 Minutes

Board Action

Moved by Mr. Bumgardner and seconded to approve the September 19, 2014 minutes. Vote: 4-0

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 that staff put together a CEH program with guidelines for licensees to earn CEH credit for speaking to different groups around their community. The presentation requires the licensee to provide licensing information from the Board along with other technical information and to keep a roster of all those who attended. This program is a way to do community outreach as well as provide CEH for licensees. Ms. Sneed

presented it at the OLCA Executive meeting and their concern was if a business was doing a bid and were required to do a presentation for this bid – would that qualify? Ms. Sneed stated the intent is not to procure business, but to provide information.

Ms. Sneed reported the OLCA Board was concerned about the claims being processed in open session during LCB meetings. The concern is that a competitor may find out about the claim and use it against the other business when competing for bids. Ms. Sneed invited OLCA to the meeting today for public comment at 1:00 when the LCB legal counsel is present. Claims are just like enforcement cases or if an issue goes to circuit court, they are a matter of public record and information. There is a limited list of people who are receiving board materials.

Ms. Sneed reported the online renewal/payment project is moving forward. There is a \$3 convenience fee for each transaction. The proposed 2015-17 budgets include this fee. The decision about whether or not to pass this fee onto licensees will need to be made at the January 2015 meeting in order to be presented to a state IT committee in February 2015.

Ms. Sneed stated the new auditor may be flexible on her fees this time. The bid is \$10,000 and includes time for her learning curve about the agency. This may be negotiated, if needed.

Both Michael Hintz and Jerri Jones have been with the LCB for one year!
Congratulations!

B. 2013-2015 Financial Report/Approval

The Board reviewed the financial statements as of October 31, 2014.

The numbers included are the original budget numbers; once the amended budget is approved Ms. Sneed will update the budget numbers in Quickbooks to reflect the amended budget--that will be presented at the next board meeting. The revenue is doing well and there have been no transfer of money from savings to checking at this time. The budget is doing well in all categories, except for licensing which is only 2% less than last year at this time.

Ms. Sneed reviewed the balance sheets for the past two months. As of September 30th the agency had current assets totaling \$364,060.84, which is over \$6,000 more than last year at this time and liabilities are over \$9,000 less than the previous year. As of October 31st there was a total of \$355,344.77 in current assets, that's \$400 less than the prior year and total liabilities were over \$7,500 less than last year.

The Profit & Loss Previous Year Comparison report shows the agency's overall net income/loss for this fiscal year to date is nearly (\$2,000). That is nearly

\$10,000 better than the previous year, so the cost cutting measures have been effective.

The income categories show that applications and study material sales are still up nearly 40%. Licensing fees are down nearly 2% but civil penalty income is up nearly 25% from last year. Overall the signs are good that licensing trends are on the upswing.

The employee costs show a nearly 5% increase, but there is a slight savings due to the lack of unemployment expense for this year, as opposed to last year. Overall payroll has become more consistent, since staff salaries have now evened out and we are no longer paying for unemployment.

Investigation costs are higher than last year, which is due to increased activity with our contract investigators. The two new investigators in Central Oregon have been very busy and have been able to find more unlicensed people during the busy blowout season

Board meeting expenses are up, but last year the board didn't meet in July, so that is the primary reason for the increased costs as compared to last year. We have also been using our AAG more than last year due to the program review the agency has been conducting.

The Profit & Loss Budget vs. Actual report shows that the agency is seeing a nearly 10% increase in income, which is \$5,000 for the first four months of the fiscal year. Expenses are nearly \$5,000 more than budgeted, but the overall net income is nearly \$20,000 better than the budget.

The budget numbers in this report are based on the earlier budget adopted by the board. Ms. Sneed will update the budget based on the revised budget once the budget amendment rule change has been approved by the board. That will show the revised staffing costs and revenue projections to give a truer picture of the budget to actual expenses. The January meeting's financial statements will reflect those changes.

It is expected that claim/hearing costs may be more this year; some claims have gone on for a bit of time, causing the costs to rise.

Board Action

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

C. Rough Draft of 2015-17 Budget Proposal

The board reviewed four different budget proposals for the 2015-2017 biennium. Previously, the full time Administrative Specialist 2 position was eliminated. The new budget includes upgrading the Administrative Specialist 1 position to a 2 and to advertise for a permanent part-time assistant position with limited benefits.

With the new part time position benefits may or may not need to be paid by the agency. The monthly hours are 79 hours or less. If the person hired is not in another PERS eligible position, the LCB will not have to pay PERS. Ms. Gladwill-Rowley is at the end of her position's range; Ms. Sneed would like to upgrade her position to allow for at least 2 more steps. The new level requires more interagency work which Ms. Gladwill-Rowley is already doing. This will not change her duties, just her title. The added position for 79 hours is covered in all of the budget scenarios.

Scenario 1 shows the income and expenses based on current trends with the proposed staffing changes and shows the \$3 online processing fee to be paid by the agency with a projected loss of \$20,057. An upgrade to Microsoft Office could change the number to close to \$24,000.

Scenario 2 shows the income and expenses the same as scenario 1, other than an increase to both individual and business renewal fees of \$5 with the agency paying the \$3 online processing fee. This gives the agency a positive net income of \$7,293.

Scenario 3 shows income and expenses the same as scenario 1, other than an increase to both individual and business renewal fees-- \$5 for the LCP and a \$15 increase for the business. This scenario includes the agency paying the \$3 online processing fee. This gives the agency a positive net income of \$11,873.

Scenario 4 shows income and expenses the same as scenario 3 (an increase of \$5 for the LCP and \$15 for the business license fees) but has the licensee paying the \$3 online processing fee. This gives the agency a positive net income of \$29,873.

After discussion, the board would like to minimize the impact to licensees. Ms. Sneed stated that the fee increase is very minimal; so maybe it is not time to do it. If the slight increase does not increase revenue enough; the board may need to do another fee increase again in a few years. It may be a little early to look at raising licensing fees. The four budget scenarios will be reviewed at the January meeting.

The primary decisions are: 1) does the board want to add the part time 79 hour office support position and 2) does the board want to pass the \$3 online processing fee on to the licensee without a fee increase.

During the slow season, staff is getting a chance to get some other projects done. However, after January 1st the work increases in the office. Ms. Sneed is worried that it may be hard for staff to keep up at the current staffing level.

If the board doesn't want to wait, the 79 hour position will be filled in January 2015 to get the new person trained and comfortable before the increase in workload. There will be a switch of responsibilities/duties for the Administrative

Specialist 2 position. The Board consensus is to hire the part time position in January 2015 and no other budget scenario options were requested for board consideration in January.

D. Ron Pugh & Associates Contract Amount/requires a motion

Ms. Sneed discussed that Ron Pugh's 2014-2015 contract amount is \$5,000 and that she would like to do an addendum to increase the amount to \$10,000. The request is based on his activity during blow out season and again in the spring. Based on activity to date, it is likely he will exceed the \$5,000 contract amount. The board was concerned about going over budget for this line item in the budget. Ms. Sneed stated that the budget for this item at this time has been consistently below budget, and this increase will not put this line item over budget. Ms. Sneed does not believe that this contract will get to the \$10,000 amount but needs the authority to pay any bills over \$5,000. Mr. Pugh does a good job for us and is very conscientious with his time.

Board Action

Moved by Ms. Hollenbeck and seconded to authorize the Administrator to increase Pugh & Associate contract from \$5,000 to \$10,000 through June 30, 2015. Vote: 5-0.

E. 2015 -17 Affirmative Action Plan

The Board reviewed the 2015-2017 Affirmative Action Plan requested by the Governor's Office. Ms. Sneed reviewed the agency's previous plan and drafted a new Affirmative Action Plan. The template for this is designed for large agencies that conduct outreach efforts and offer mentorships. The LCB does not have a lot of that.

The primary activities in the plan are: 1) To actively review the plan on a regular basis. This plan is for 2015-2017. 2) Dialoging and learning more about affirmative action. 3) The translation policy adopted by the Board requires a regular review based on the census data. This would probably be the year 2022. It also requires a review of the primary language in the state and to accommodate for that. 4) The only other addition to the plan is researching a translation of the exam into Spanish. This may not be until the prior biennium (2017-2019).

Board Action

Moved by Mr. Bumgardner to approve the Affirmative Action Plan for the 2015-2017 biennium. Vote: 5-0

F. Catalysis LLC & Strategic Planning

Ms. Sneed discussed contracting with Catalysis LLC to facilitate a strategic planning conversation with the Board. Ms. Sneed would like to focus the consultant's work on pre-session planning, full meeting facilitation and then the review of the final plan. Ms. Sneed will create the draft plan document in order to save the agency money. The consultant can do either two half day sessions or

one full day. The proposed cost is estimated at \$3,150. Ms. Sneed requested approval to move forward with the proposal for the January retreat session. This is not currently budgeted, but Ms. Sneed believes that there are some line items that are not currently being spent, so the costs should be covered. The board believes it is time to have an external facilitator for the upcoming annual meeting and there was consensus for Ms. Sneed to move forward with the facilitator.

3. EXAMINATION/LICENSE/EDUCATION

The Board reviewed the examination statistics through October 2014. The number of tests taken in August, September and October 2014 are lower than the same months last year. Overall the total tests taken for 2014 versus 2013 is very close and will likely be more for 2014 by the end of the year.

The Board reviewed the license counts as of November 1, 2014. The number of licenses has remained steady for the last two years. There are 8 Planting Only licenses and 1 Planting & Irrigation license held by landscape construction professionals. There have been more applications for the planting license than licenses due to the applicant upgrading to a standard license.

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 September 1, 2014 through October 31, 2014. There were 45 cases closed during that time period.

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 Mr. Bumgardner and seconded to approve the consent agenda.

Vote: 5-0.

B. Enforcement Cases for Discussion

1. Advertising without a License

a. Rototilling for Gardens and Sod

Respondent advertised on Craigslist for rototilling, reseeding or resodding lawn and new sod. The ad is a violation due to preparing property and installing a lawn.

Board Action

Moved by Ms. Hollenbeck and seconded to send an informational letter regarding advertising without a license.

Ms. Sneed discussed the definition of landscaping work, planting of vines, trees and shrubs, and preparing property for installation.

It seems that it is clear that they are advertising to prepare the property to plant and install a lawn. Ms. Hollenbeck stated that she would be ok starting a policy that first time offenders could receive an informational letter.

Ms. Lozano explained that if it is clear that an advertising violation happened, then sending a letter sets precedent. If you are unsure that the facts show a violation, then sending a letter may be appropriate. Another option is that the board could set a policy that first time advertising violators would receive a letter.

Mr. Bumgardner feels that no policy changes at this time should occur.

Mr. Hoekman stated that it appears that they may be advertising for the installation of sod. Any type of rototilling for vegetative purposes is soil preparation and requires a license. If it is made clear that this is for the installation of sod, LCB would have jurisdiction.

Ms. Hollenbeck withdrew her motion.

Moved by Ms. Hollenbeck and seconded to accept staff's recommendation of issuing a notice of penalty for advertising without a license. Vote: 4-0 (Ms. Lee was not present)

b. Arbor Now LLC

Respondent advertised on Facebook stating "It's time to plant! Get a hold of us to spring up your landscape....our prices includes delivery and free installation!!" There were photos showing before and after projects and the plants are not just replacement planting. Under "Description" it states "We help you with planning, planting..." However, the ad also states the installation is free.

Board Action

Moved by Mr. Bumgardner and seconded to issue a notice of penalty.

Ms. Lozano recommends issuing no notice. She recommending researching and issuing a subpoena to get more pricing information from the advertising business. The board needs to determine if the pricing actually includes installation, so that the installation is not really free but built into the pricing. She recommended getting pricing information from nurseries and LCB licensed businesses. The LCB will need to collect three estimates from each type of business—LCB licensee and nursery. There is a risk if the business will not cooperate with the subpoena. If the business doesn't comply with the subpoena, the case will come back to the board. If the business refuses to comply with the subpoena it can be enforced in circuit court. If the case went to circuit court, the agency would need to pay the legal costs.

Mr. Bumgardner withdrew the motion.

Mr. Hoekman suggested that staff should also ask if there is a warranty for the replacement of that installation. If the installation is free and it dies, will it be replaced? Is the compensation for planting built in to the costs?

Ms. Sneed suggested that the board request the staff to continue with the investigation and collect further information.

Board agreed with the staff recommendation to gather further information to determine if the pricing reflects installation costs or if installation is actually free.

c. Ground Control Southern Oregon LLC

SUMMARY

A notice was issued on October 3, 2014 after the board discussion at the September meeting. Respondent phoned Ms. Sneed and discussed the case. On October 22, 2014 a fax was received from Respondent with information about the case. Due to the unique nature of the product, it wasn't clear to staff if this is still landscaping work. Information was provided from the vendor's website with more information about the product and was provided for the Board's review. Staff requested the Board review the technical information to verify that this is indeed landscaping work before preparing the case for hearing.

This business was advertising for erosion control by using a vegetative wall. It was made of a component type of system. The question is whether this is landscaping or not.

Mr. Gawlista stated that he believes that they are planting and seeding, whether it is by a seed blanket or an applicator. There must be some sort of planting; they are referencing vegetation multiple times. The paragraph that states re-seed and live stakes makes it fall into planting. Mr. Bumgardner stated that it appears whoever is installing it is given direction to plant.

Ms. Hollenbeck stated that clearly it is a retaining wall and the preparation is done with the purpose of planting, it clearly states that one of the last things you are to do to is seed along the top and that for better anchorage you can use live stakes. It was only referenced at the time to install that they are plants. Ms. Hollenbeck does not consider the components as plants; it is construction of a retaining wall which they can do with their CCB license. Initial installation is the seeding you do on the very top or the use of live stakes.

Board consensus is that this is planting by stating that they will replant, which insinuates that they did the planting and will come back and reseed if something fails. Staff was directed to proceed to hearing on this case.

2. Operating without a License

a. Saul Calixto Telez

SUMMARY

Installation of a retaining wall, sod lawn, irrigation system and nursery stock.

On September 20, 2014, the LCB Investigator observed respondent and five other individuals performing the above landscaping work.

LCB Investigator, Michael Hintz spoke with respondent who stated:

- He was contracting with the homeowner for the above landscaping work;
- He did not have a CCB or LCB license;
- He does not have a company or business;
- The men working with him were hired for the day to come help him (one was his brother). They have other jobs.

LCB Investigator, Michael Hintz spoke with the other workers at the job site who stated:

- They were helping with the job just for the day
- They were being paid \$10/hour
- They believe they would be paid in cash;
- They were not actual employees; they have other jobs.

LCB Investigator, Michael Hintz spoke with the homeowners who verified they had hired the respondent to perform the above landscaping work.

CONCERNS/ISSUES

The five workers at the job site were not acting as subcontractors or independent contractors because they do not have their own businesses and they were being directed by the respondent. However, they were acting as landscape construction professionals (LCP) by performing the work without being directly supervised by a licensed LCP. ORS 671.540(1)(q) exempts employee(s) of landscape contracting businesses when they are performing the work under the direct supervision of an LCP. The five workers were not under the direct supervision of an LCP nor were they employees of a landscape contracting business.

In the past penalties were only issued against the business who contracted/arranged for the landscaping work. In some cases, it was difficult to determine who did the contracting, so all were issued a notice of penalty. If the business took responsibility, the notices against the individual workers were dismissed and only the business was fined.

Staff Recommendation

Issue a civil penalty against respondent for operating as a landscape contracting business without a valid license.

Board Action

Moved by Mr. Bumgardner and seconded to follow staff's recommendation of issuing a civil penalty against respondent for operating as a landscape contracting business without a valid license.

Vote: 4-0. (Ms. Lee was not present)

b. Travis Eiselle, dba: Black & White Designs and Black & White Landscape Construction LLC

SUMMARY

Installation of a nursery stock

On October 13, 2014, a LCB Contract Investigator observed Homero Cabrera Rojas and Oswaldo Hernandez Valtierra performing the installation of nursery stock.

The LCB Contract Investigator spoke with Homero Cabrera Rojas who introduced himself as the man in charge on the site. He stated he was working for "Travis", but did not know Travis' last name or the name of the company he says he is employed by. He stated he is an employee and gets paid by check. He called Travis and the investigator spoke with Travis.

Travis Eisele said his company is Black & White Design and gave his CCB number of 12066. He stated he did not know he needed an LCB number to do planting. The #12066 he gave the investigator is his LCP license number that he has had since 1992.

LCB Investigator, Michael Hintz spoke with Travis Eisele who stated:

- He has been using a business entity of Black & White Designs;
- He now realizes that entity is expired with the Secretary of State's office;
- The scope of the work at this job site was to remove an existing Holly hedge and replace it with a new Laurel hedge;
- Charging about \$2,000;'
- Travis provided all the plants;
- The two workers at the site were not his employees and they have their own business – Black & White Landscape Construction LLC;
- He pays them by the job, but this time was paying them by the hour with a check from his business account;
- He believes he only owes about \$1,200 on the landscaping debt from his prior business and would like to obtain a new business license with the LCB.

CONCERNS/ISSUES

Travis Eisele stated the two workers have their own business. The worker at the site said he was an employee for Travis, but did not know his last name or company name. It has been verified the two workers do have their own business that is actively registered with the Secretary of State as Black & White Landscape Construction LLC. It appears Travis Eisele was operating as a landscape contracting business subcontracting to Black & White Landscape Construction LLC.

In this case, it appears there are two businesses – Travis Eisele dba: Black & White Designs and Black & White Landscape Construction LLC. However, there were two workers (owners of the 2nd business) who were performing the landscaping work. This case is different from the last one in that in the last one, the workers did not have their own business. In this case the two workers do have their own business and it is actively registered with the Secretary of State.

Also, for this case, staff would like the board to discuss a business name violation for Black & White Landscape Construction LLC. In the past it was only determined to be a violation if the name was being used in an advertisement; not just registered with the Secretary of State. Does the Board want to change that policy?

Staff Recommendation

Issue a civil penalty against Travis Eisele for operating as a landscape contracting business license without a valid license; and issue a civil penalty against Homero Cabrera Rojas, Oswaldo Hernandez Valtierra, and Black & White Landscape Construction LLC (Jointly & Severally) for operating as a landscape contracting business without a valid license.

Board Action

Moved by Mr. Bumgardner and seconded to follow staff's recommendation and issue a civil penalty against Travis Eisele for operating as a landscape contracting business without a valid license; and issuing a civil penalty against Homero Cabrera Rojas, Oswaldo Hernandez Valtierra, and Black & White Landscape Construction LLC (Jointly & Separately) for operating as a landscape contracting business without a valid license. Vote: 4-0. (Ms. Lee was not present)

c. Humberto Raya/Raya Landscape Maintenance LLC

SUMMARY

Installation of a lawn and altering an existing irrigation system

On September 22, 2014, the LCB Investigator observed two individuals performing the above landscaping work.

LCB Investigator, Michael Hintz spoke with both workers who stated:

- They are Mario Venegas-Maya and Alfonso Radilla Rumbo;
- They are not regular employees, but that Mr. Raya hired them for the day;
- Mr. Venegas-Maya is being paid \$12/hour;
- Mr. Radilla Rumbo is being paid \$10/hour;
- Neither one of them have an LCB/LCP license.

LCB Investigator, Michael Hintz spoke with Humberto Raya at the job site who stated:

- He has to take whatever work he can in order to pay his taxes;
- He had taken the LCB test in the past and had not been able to pass;
- He admitted he was installing sod and installing a new sprinkler line to the existing system;
- He expressed that he knew he was breaking the law, but he has to pay his taxes;
- He is working for the homeowner;
- He was going to finish the job so he could have money to pay his fine.

LCB Investigator, Michael Hintz spoke with the homeowner who verified they had hired Mr. Raya's company to perform the above landscaping work.

CONCERNS/ISSUES

The two workers at the job site were not acting as subcontractors or independent contractors because they do not have their own businesses and they were being directed by the respondent. However, they were acting as landscape construction professionals (LCP) by performing the work without being directly supervised by a licensed LCP. ORS 671.540(1)(q) exempts employee(s) of landscape contracting businesses

when they are performing the work under the direct supervision of an LCP. The five workers were not under the direct supervision of an LCP nor were they employees of a landscape contracting business. Should they receive a notice of penalty for acting as LCPs?

In the past penalties were only issued against the business who contracted/arranged for the landscaping work. In some cases, it was difficult to determine who did the contracting, so all were issued a notice of penalty. If the business took responsibility, the notices against the individual workers were dismissed and only the business was fined. In this case, the two workers were not employees of the business.

Staff Recommendation

Issue a civil penalty against respondent for operating as a landscape contracting business without a valid license.

Board Action

Moved by Mr. Bumgardner and seconded to follow staff's recommendation to issue a civil penalty against respondent for operating as a landscape contracting business without a valid license.

Vote: 4-0. (Ms. Lee was not present)

d. Executive Session: Jan Goodwin, Jewel Box Designs LLC

SUMMARY

Respondent allegedly violated ORS 671.530 (3) by performing landscaping work without a license, specifically, the installation of nursery stock.

At the July 18, 2014 Board meeting, the Board voted to assess a civil penalty for operating as a landscape contracting business without a valid license. It was noted that the respondent had requested a hearing, but that hearing request was received late. The Board also voted to request documentation from her that her 1st hearing request was received timely. If she produced this evidence, they voted to accept her late hearing request.

Staff sent respondent a request for documentation, but it was not received. The Administrator spoke with respondent by phone and they discussed settling this case. A stipulated order was sent to the respondent for her signature. Upon receiving this document back in the LCB office, it was noted that the respondent had changed the language in several places.

The Board went out of public meeting session under ORS 192.690 to deliberate on the contested case in the matter of Jan Goodwin, Jewel Box Designs LLC at 10:17am. The Board went back into public meeting at 10:24 am. No decisions were made outside of the public meeting.

Board Action

Moved by Mr. Gawlista and seconded to find respondent in default and reject the revised Stipulated Order.

Vote: 4-0, 1 abstention (Ms. Lee).

3. Other

a. Peeters & Peeters Landscape Design Build Inc.

On November 10, 2014, the LCB received confirmation that the bond company paid the remaining \$2,100 of the arbitration award. Respondent no longer has an outstanding debt.

However, since respondent's bond company paid the claim amount awarded from the respondent's bond, the bond has been reduced and no longer meets the requirements of ORS 671.690.

On November 18, 2014 Ms. Gladwill-Rowley spoke with the Claims Examiner from respondent's bond company that handled this case and she stated they agreed he could make payments to the bond company to repay the \$2,100. Respondent is supposed to let them know how much the monthly payments will be right after Thanksgiving. If she does not hear from the respondent by the due date, she will contact Ms. Gladwill-Rowley and cancel the bond. As of this date, the bond has not been cancelled, but she did state the bond has been reduced by \$2,100. This means if there is another claim filed, that claimant only has access to \$12,900. The bond amount will increase with each payment the respondent makes until it is paid in full and up to \$15,000 again.

On December 4, 2007 respondent elected to increase from a \$10,000 bond to a \$15,000 bond. The LCB has not received any notice from the respondent that they now qualify for a lesser bond amount. In statute it states that when a bond is reduced a new bond should be in place.

Staff Recommendation

Suspend the business license for failure to have a replacement bond on file at the time of a reduction of the bond (ORS 671-601 (1) (g)). In lieu of suspension, if respondent no longer performs landscape jobs over \$25,000, respondent may submit either a new bond or a bond rider showing a new bond amount of \$10,000.

Board Action

Moved by Mr. Bumgardner and seconded to follow staff's recommendation and suspend the business license for failure to have a replacement bond on file at the time of a bond reduction. However, in lieu of suspension, if respondent no longer performs landscape jobs over \$25,000 respondent may submit either a new bond or a bond rider showing a new bond amount of \$10,000 or \$3,000.

Vote: 5-0

b. Advanced Landscape Group LLC

SUMMARY

The respondent signed a Stipulation with Oregon Workers' Compensation Division. Respondent stipulated he is responsible for \$39,916.32 for failure to maintain workers' compensation from May 2, 2008 to February 12, 2013. During that time period, respondent submitted six renewal forms to the LCB for license #8245, all showing the employer status as exempt (with no employees). Also, on May 18, 2009, respondent submitted documentation to the LCB stating that the business no longer had employees. This documentation and the renewal forms were submitted during the time period the Workers' Compensation Division found respondent had subject workers and should have had coverage.

The respondent holds an active LCB license and an expired CCB license. CCB has an exemption in their law for landscape contracting businesses to perform tree work without a CCB license. However, the LCB bond does not cover this work. On multiple occasions respondent entered into contracts with consumers for the performance of tree work after the CCB license expired. These contracts represented the respondent as licensed and bonded by the CCB when respondent was not so licensed and bonded. Respondent also had three vehicles which displayed respondent's business name and expired CCB license number, another indicator to the consumers and the public that the business should have been adequately licensed and bonded.

DETAILS

HIRING EMPLOYEES WHILE LICENSED AS EXEMPT

FAILURE TO COMPLY WITH ORS 656 (workers' compensation)

On or about February 24, 2014, the Oregon Department of Consumer and Business Services, Workers' Compensation Division, Employer Compliance Unit issued a Stipulation that was signed by the respondent, respondent's attorney and a representative from the Workers' Compensation Division. This Stipulation provided, in pertinent part, a modification of an Order of Noncompliance (No. 33561-AB) by assessing a civil penalty in the amount of \$39,916.32 for violating ORS 656.407, ORS 656.052, and ORS 656.017. The time period covered by this Stipulation was February 2, 2008 through February 12, 2013.

Respondent submitted documentation to the Landscape Contractors Board (agency) on May, 18, 2009 (during the time period covered by the above Stipulation) stating that the business no longer had employees; therefore, no workers compensation insurance was needed or required.

During the time period included in the Stipulation with the Worker's Comp Division, respondent submitted the following renewal forms to the agency

for license #8245, all showing the employer status as exempt (with no employees):

License Expiration Date	Renewal form Receipt Date
5/31/09	4/20/09
5/31/10	5/17/10
5/31/11	4/25/11
5/31/12	5/30/12
5/31/13	4/15/13
5/31/14	5/7/14

ORS 671.613 provides, in pertinent part, the Board may suspend the landscape contracting business license for failure to comply, or be in conformance with, the provision of ORS 656 (workers' compensation laws).

The above paragraphs show respondent failed to comply, or to be in conformance with ORS 656.

FAILURE TO COMPLY WITH ORS 671.562(1) (submission of evidence of workers' compensation coverage)

The Order of Noncompliance (No. 33561-AB mentioned above) provided, in pertinent part, that respondent was the employer of one or more Oregon subject workers and did not maintain workers' compensation coverage during the period of May 2, 2008 to February 12, 2013.

LCB records show that respondent signed a statement on May 18, 2009 that showed that they no longer have employees and are not bound by the requirement to carry workers' compensation insurance. Respondent requested their employer status to be changed to exempt (no employees). The above section shows that respondent continued to renew as exempt, with no employees after the May 18, 2009 form was submitted.

ORS 671.525 provides, in pertinent part, that landscape contracting businesses be either exempt (has no employees) or nonexempt (has employees). Based upon the respondent's May 18, 2009 response, respondent's employer status was changed to exempt (has no employees).

On or about January 1, 2011 a new law went into effect (ORS 671.526) that provides, in pertinent part, that a landscape contracting business that qualifies under ORS 671.525 to be classified as nonexempt (has employees) must maintain workers' compensation insurance coverage. Based upon the Stipulation signed by the respondent with the Workers' Compensation Division that references Proposed Order No. 33561-AB,

respondent had employees after May 18, 2009 until February 12, 2013, which means respondent should have been classified as nonexempt (has employees) and respondent was required to maintain workers' compensation coverage per ORS 671.562 as of January 1, 2011. ORS 671.525 and OAR 808-003-0090 require landscape contracting businesses to register with the LCB as non-exempt and to obtain workers' compensation coverage when they hire a subject worker. Respondent failed to change the employer registration status and failed to obtain workers' compensation coverage.

ORS 671.610(1)(i) & (j) provides, in pertinent part, in addition to any civil penalties assessed, the Board may suspend or revoke the landscape contracting business license for failure to comply with ORS 671.562 and failure to provide evidence of workers' compensation coverage as described in ORS 671.565.

ORS 671.565(3) provides, in pertinent part, at the time of renewal of a license to active status, the applicant shall provide evidence satisfactory to the board that any workers' compensation required of the applicant under 671.562 is in effect. It further states, in pertinent part, that during the license period, the licensee shall provide satisfactory evidence of continued workers' compensation insurance coverage, if required, under ORS 671.562.

The above paragraphs show respondent failed to comply with ORS 671.562(1), OAR 808-003-0090 and 671.565(3). (ORS 671.610(1)(i) & (j))

ENGAGES IN CONDUCT THAT IS DISHONEST OR FRAUDULENT OR THAT THE BOARD FINDS INJURIOUS TO THE WELFARE OF THE PUBLIC (providing false information to the board)

As outlined earlier, respondent submitted six years of license renewal forms that incorrectly stated the true employer status of the business was nonexempt. Those were the six years that were verified by the Oregon Department of Consumer and Business Services, Workers' Compensation Division in their investigation that led up to the Stipulation signed by the respondent and the Workers' Compensation Division, Employer Compliance Unit. Respondent provided false information to the board with each renewal showing an exempt status from 2009 through February 2013. (ORS 671.610(1)(q) and OAR 808-002-0330(10)).

The above paragraphs show respondent also provided false information to the board. (ORS 671.610(1)(q) and OAR 808-002-0330(10)).

MAKES MISLEADING STATEMENTS WHEN ADVERTISING SERVICES OR MATERIALS (whereby a reasonable person could be misled or injured)

According to CCB records on November 24, 2006, respondent was granted CCB license number 172906 as a residential general contractor, exempt status. This license was suspended on November 1, 2012 and expired on November 24, 2012. From November 12, 2012 to date and at all times herein, Respondent has not been licensed as a contractor by the CCB.

ORS 701.005 (5) defines a contractor that is required to have a license with the CCB. However, ORS 701.005(5)(e) provides that a contractor is NOT a landscape contracting business that is engaged to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying. This means that a landscape contracting business is not required to obtain a CCB license to perform these tree services. On multiple occasions Respondent entered into contracts with consumers for the performance of tree work, i.e. tree removal, trimming/pruning, removal of limbs or stump removal/grinding.

On the following dates and at the stated job sites Respondent entered into a contract for tree work and represented in the contract that they were licensed and bonded by the CCB when Respondent was not so licensed and bonded:

Date	Job Site Address	Homeowner
December 4, 2012	3355 Forest Avenue, Medford	Brian Parnell
January 2013	4671 Melrose, Roseburg	Nancy Atwell
February 12, 2013	868 S Shasta Ave, Eagle Point	Carol Irwin
August 26, 2013	1025 N Rose, Phoenix	Dorothy Goldsmith
December 26, 2013	207 Paradise Drive, Grants Pass	Lisa Keller
February 4, 2014	172 Skidmore, Ashland	Val Bachman

On the following dates and at the stated job sites Respondent entered into a contract for tree work. The bid/invoice and/or contract represented that Respondent was licensed with the CCB by using Respondent's expired CCB license number, and by instructing the customer to call the CCB if they have a complaint:

Date	Job Site Address	Homeowner
January 2013	4671 Melrose, Roseburg	Nancy Atwell
February 12, 2013	868 S Shasta Ave, Eagle Point	Carol Irwin
August 26, 2013	1025 N Rose, Phoenix	Dorothy Goldsmith
December 26, 2013	207 Paradise Drive, Grants Pass	Lisa Keller
February 4, 2014	172 Skidmore, Ashland	Val Bachman

Respondent also had three vehicles which displayed respondent's business name and expired CCB license number, which was another indication to consumers and the public that the business should have been adequately licensed. The vehicles were:

Toyota pick-up	License # UED 292
Toyota pick-up	License #TAM 132
Ford dump truck	License #224 FTB

Respondent made misleading statements to customers by indicating or suggesting respondent was licensed as a contractor with the CCB when Respondent's CCB license had expired. Respondent knew said license had expired, as demonstrated by Respondent having applied for renewal of said license in January 28, 2013 with the CCB. That application for renewal was denied by the CCB by Order issued June 23, 2014.

Respondent was legal to contract for the tree service work listed above by holding a landscape contracting business license and the definition of contractor in ORS 701.005(5)(e) that excludes LCB business licensees from CCB licensing for tree service work. However, in the contract and/or bid/invoices Respondent engaged in conduct as a landscape contracting business that is dishonest or fraudulent or that the board finds injurious to the welfare of the public by indicating or suggesting Respondent was licensed with the CCB by using the CCB license number and stating they were licensed and bonded and suggesting the consumer contact the CCB for complaints. This leads a consumer to believe there is a license and bond to cover any claims they may need to file against the Respondent. However, that was not the case. Respondent was not licensed with the CCB and Respondent's landscape contracting business license bond will not cover the tree service work Respondent performed. This is considered dishonest or fraudulent conduct and the board finds it to be injurious to the welfare of the public. (ORS 671.610(1)(e)).

CONCERNS/ISSUES

Respondent has been denied a license with the CCB, but can continue performing tree service work with the LCB license, but the LCB bond does not cover tree service work.

Staff Recommendation

Issue Notice to assess a civil penalty and suspension of the license until the respondent provides the agency with proof of workers' compensation coverage, requests the employer status be changed to nonexempt, and provides proof of accepted payment agreement with the Workers' Compensation Division.

Settlement of Civil Penalties:

Violation	Penalty Amount	If paid within 30 days, reduce to:	If payments are to be made, reduce to:
Failure to comply with ORS 656	\$1,000	\$400	\$500
Hiring employees while licensed as exempt	\$1,000	\$400	\$500
Failure to submit workers' comp or register as nonexempt	\$500	\$250	\$400
Conduct that is dishonest or fraudulent	\$1,000	\$400	\$500
Makes Misleading Statements	\$200	\$150	\$200
TOTAL	\$3,700	\$1,600	\$2,100

Board Action

Moved by Mr. Gawlista and seconded to affirm staff's recommendation to issue Notice to assess a civil penalty and suspension of the license until the respondent provides the agency with proof of workers' compensation coverage, requests the employer status be changed to nonexempt, and provides proof of accepted payment agreement with the Workers' Compensation Division. Vote: 5-0

Ms. Lozano thought that Advanced Landscape was possibly doing tree work and landscaping. Ms. Gladwill-Rowley stated that is not always the case and asked that if the contract has nothing regarding landscaping it would not be an issue then. The sanction imposed stays the same, the notice language needs to be tied to the specific evidence to each allegation.

c. Thomas Jefferson Enterprises Inc., dba: First Class Landscape Maintenance and Lighting

SUMMARY

ORAR 808-002-0200(2) Minimum Standard for Written Contracts

On August 2, 2014, respondent signed two contracts for landscaping work. These contracts are missing items – ORAR 808-002-0020(20)(b)(e) & (g).

Respondent admitted to LCB Investigator, Michael Hintz that he assisted the other contractor's employees when they installed the sod lawn. He admitted he had done some grading in preparation for the sod installation, but advised that the other contractor's employees had come in the following day and did some final grading and he learned some things from them. He also admitted he had carried sod to the employees that were laying it. He stated it is expensive for him to be paying the other contractor \$45/hour and so he wanted his own crews to do as much as they could.

CONCERNS/ISSUES

Staff would like the board to discuss the issue of rough grading by an LCB licensee for the installation of sod without the proper license type– with the final grading done by a business licensed to perform that work and carrying the sod to the licensed company's employees to install it. Are these violations?

Board Action

Moved by Mr. Bumgardner to follow staff's recommendation to Issue civil penalty for failure to comply with minimum standard for landscaping contracts.

Ms Sneed read the definition of rough grading, which does not include raking. Ms. Lozano stated that it would be good to have the details regarding the raking/rough grading be listed in the summary. Ms. Lozano reviewed the report regarding the specific language used and to verify what was stated in the report. Ms. Lozano stated that there should be a tie between Mr. Shoefield and Thomas Jefferson.

Mr. Hintz reviewed his recollection of the case and what was in the report he provided. Mr. Hintz stated that the respondent admitted to him that they were in violation. The only other witness requested to be anonymous.

Mr. Hoekman discussed the difference between rough and final grading.

Ms. Lozano reviewed the summary and investigation report and believes they should be revised to show exactly what the people were doing on the job site, i.e. raking with a rake.

Mr. Bumgardner withdrew the motion.

After Board discussion, it was determined that staff would review the Investigators Report and other information collected to determine if there was evidence of final grading done on the site. There was discussion about rough versus final grading.

a. Bar Inc, dba: Aspen Landscape Development

SUMMARY

ORS 671.625(2) requires all landscaping work to be performed subject to a written contract.

On August 26, 2014, respondent sent an invoice to the primary contractor billing \$675 for the installation of sod, plants, bark and rock at two different job sites. There was no written contract; this job was performed by the respondent based on a phone call from the primary contractor's office requesting this work be completed.

Staff Recommendation

Issue civil penalty for performing landscaping work without a written contract.

Board Action

Moved by Mr. Gawlista and seconded to follow staff's recommendation and issue civil penalty for performing landscaping work without a written contract. Vote: 5-0

b. Greg DeHaven, dba: Artspace by Design

SUMMARY

1. Failure to obtain the correct amount of surety bond

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

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

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

Respondent has a \$3,000 bond, which allows them to perform projects up to \$10,000. On October 22, 2011, respondent signed a contract for landscaping work for \$7,100. However, the claimant has written 14 checks totaling \$18,499.25. Upon discussing this with the claimant she stated she did not have anything in writing, but they just kept adding items to the landscaping job he was performing and she did not think to get it in writing. Based on the total of the 14 checks, the respondent did not increase the bond amount to the \$10,000 as required by law.

2. **Failing to comply with minimum standard for landscaping contracts** OAR 808-002-0200(1) Minimum Standard for Written Contracts

The contract signed October 22, 2011 is missing the statement of licensure and the LCB information. Also, the signed contract is for \$7,100. Claimant has written 14 checks totaling \$18,499.25 for further landscaping work that was performed without a written contract. Additional items included, but were not limited to, an alteration of an existing irrigation system, several plantings, and replacement of a low voltage lighting system.

CONCERNS/ISSUES

Failure to obtain the correct amount of surety bond

OAR 808-002-0495 defines "Landscape job" as the performance of, bidding on, contracting for, or arranging for landscaping work on a given job site, with the same owner **in any 12-month period** regardless of the number of contracts or bids submitted.

The 14 checks were written between October 22, 2011 and October 18, 2013. This is a 24 month period. The first 6 checks were written during the first 12 month period between October 22, 2011 and October 3, 2012 totaling \$9,940. This is within the \$3,000 bond amount for the first year.

The last 8 checks were written during the second 12 month period between November 30, 2012 and October 18, 2013 totaling \$8,559.25. This is also within the \$3,000 bond amount for the 2nd year.

Neither of these 12 month periods exceeded \$10,000 requiring a larger bond. However, the rule states "any 12 month period", all payments back 12 months and still none of them exceeded \$10,000 (see attached listing of payments).

Staff Recommendation

Issue civil penalty for failure to comply with contract standards and performing landscaping work without a written contract

Board Action

Moved by Ms. Hollenbeck and seconded to follow staff's recommendation to issue a civil penalty for failure comply with contract standards and performing landscaping work without a written contract. Vote: 5-0

c. **Alan D Hawk & Martha Hawk, dba: Best Buy Landscape & Irrigation**
SUMMARY
Failure to obtain the correct amount of surety bond

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

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

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

Respondent has a \$3,000 bond, which allows them to perform projects up to \$10,000. On May 2, 2014, respondent signed a contract for landscaping work for \$16,880. This would require the bond to be increased to \$10,000. LCB records show respondent's bond remained at \$3,000.

Failing to comply with minimum standard for landscaping contracts
OAR 808-002-0200(1) Minimum Standard for Written Contracts

The contract signed May 2, 2014 is missing items – OAR 808-002-0020(20(e)(g) & (i).

Staff Recommendation

Issue civil penalty for failure to obtain/increase to the proper bond amount and failure to comply with minimum standard for landscaping contracts. Items missing are:

- Completion date or statement regarding schedule of work;
- Description of guarantee; if no guarantee such a statement shall be included; and
- Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

Staff added that the staff recommendation should include a suspension of license.

Board Action

Moved by Mr. Bumgardner and seconded to follow staff's recommendation to issue civil penalty and suspension of the license for failure to obtain/increase to the proper bond amount and a civil penalty for failure to comply with minimum standard for landscaping contracts.

Vote: 5-0

d. Lewis Landscape Services LLC

SUMMARY

- 1. Failure to include landscape contracting business license number on advertisement**

On October 3, 2014, respondent's truck had the name of the business on the side, but did not include the business license number.

2. Respondent failed to require direct supervision by LCP as required by OAR 808-003-0018(2); and LCP's failed to directly supervise unlicensed employees

On October 3, 2014, 2014 LCP's on record were:

- Steven Gustafson, #15018, All Phase License;
- Nikolaos Miller, #15613, All Phase License; and
- James Lewis, #14756, Irrigation and Backflow Only

On October 3, 2014, LCB Investigator, Michael Hintz visited the job site and observed two of respondent's employees building a retaining wall paver patio (see pictures). They also stated they were going to do some planting and install a gravel walkway.

Investigator Hintz spoke with the following individuals in this order:

- LCP Steven Gustafson who stated he was not involved in supervising a project located at the job site above. He further stated he is on a monthly retainer of \$500/month as a consultant for respondent and helped them out with projects at times if needed.
- LCP Nikolaos Miller who stated he was not involved in supervising a project located at the job site above. He further stated he work mostly doing sprinkler and irrigation work for the respondent.
- Jim Lewis, owner of the above business who stated Steven Gustafson was the LCP for this project. When the investigator stated he spoke with Mr. Gustafson who had no knowledge of this job site, Mr. Lewis stated that Mr. Gustafson has the paperwork and knows about the project now.

The retaining wall, paver patio installation should have been supervised by Mr. Gustafson and/or Mr. Nikolaos.

Ms. Gladwill-Rowley further investigated the \$500 retainer being paid to Mr. Gustafson and found he is paid for 261 hours of work each quarter for a total of \$1628 per quarter as of this date.

Staff Recommendation

Assess a civil penalty against the landscape contracting business for

- failing to require direct supervision (OAR 808-003-0018(2)); and
- failing to include landscape contracting business license on advertisement.

Assess civil penalty against Steve Gustafson & Nikolaos Miller for failing to directly supervise the unlicensed employees (OAR 808-003-0018(1) and 808-002-0328).

Board Action

Moved by Mr. Hoekman and seconded to follow staff's recommendation to assess civil penalty against the landscape contracting business for:

- failing to require direct supervision (OAR 808-003-0018(2)); and
- failing to include landscape contracting business license on advertisement.

Assess civil penalties against Steve Gustafson & Nikolaos Miller for failing to directly supervise the unlicensed employees.

e. Juan Gutierrez-Florez, dba: Garden View Landscaping and Maintenance

SUMMARY

Performing the installation of nursery stock with an Irrigation Only license; Plus Backflow license.

On April 19, 2014, the LCB Contract Investigator performed a site check and found respondent carry two plants and a small tree to a raised bed in the front corner of the property. He placed them on the raised bed where it appeared they would be planted. There were several new plantings around the home and some other plants in their containers on the driveway. There were two other men in the back that appeared to be dispersing dirt. The front yard had a large mound of deep, rich planting soil.

The LCB Contract Investigator spoke with respondent who stated he was hired by the builder of the homes and had subcontracted the planting to Gumaro Figueroa of Figueroa's Landscaping (active license #8924). He explained he was placing the plants just to see how they would look.

LCB Investigator Hintz spoke with Gumaro Figueroa who stated he did submit a proposal for the planting at that job site, but he didn't contract nor perform the work. Mr. Figueroa submitted a copy of his estimate he had given to the respondent on 4/9/2014.

LCB Investigator Hintz spoke with the respondent who attempted to say Mr. Figueroa had done the planting. When warned by Hintz that Mr. Figueroa had already stated he did not perform the planting, he stated he remembered Mr. Figueroa placing the plants, but that he and his crew had helped by planting them and he thought it was ok for his crew to do that since Mr. Figueroa had been there and was involved.

CONCERNS/ISSUES

OAR 808-002-0440 defines “install” as planting of lawns, trees, shrubs, vines and nursery stock outdoors. For the purpose of this rule, planting includes, but is not limited to, the excavation of the planting pit or hold, physically moving the plant into the pit or hole, backfilling the pit or hole, compacting the backfill and staking the plant, if necessary. Planting does not include the placement of mulching materials and the planting of nursery stock for commercial sale or reforestation.

Whether or not Mr. Figueroa performed any work at this job site, the respondent admitted that he and his crew had helped by planting the nursery stock.

Staff Recommendation

Assess a civil penalty for performing work outside the scope of the license.

Board Action

Moved by Ms. Hollenbeck and seconded to follow staff’s recommendation to issue a civil penalty for performing work outside the scope of the license. Vote: 5-0

f. Moises Chavez Garcia, dba: Moises Garcia Maintenance

SUMMARY

Installation of a lawn.

LCB Investigator, Mr. Hintz spoke with the homeowner, Robert Beaty who stated:

- He hired the respondent to completely remove the old lawn and then to replace it with sod or seed;
- Respondent decided to bring in more dirt and fill in over the old lawn and was then planning to re-seed;
- There is no written contract;
- There was an oral agreement for \$1,200, but they were re-negotiating the terms upon investigator’s arrival as it seems the work was much less involved now;
- He had received a bid from a licensed landscaper prior to hiring the respondent.

The respondent was present during the above discussion between the LCB Investigator and the homeowner. The homeowner sent a letter of explanation that the respondent had performed odd jobs for him in the past and the respondent was going to do the “heavy work” for him. He was not aware a license was required for the preparation for putting in a lawn. He requested leniency.

Staff Recommendation

Issue a civil penalty against respondent for advertising and operating (offering to perform) as a landscape contracting business without a valid license.

OR

Perform further investigation to determine if this case fits within the business maintenance exemption of \$500 of casual, minor, or inconsequential landscaping work and bring findings to a future meeting.

Ms. Lozano stated the initial bid for \$1,200 is still a violation, regardless of any renegotiation of the contract.

Board Action

Moved by Ms. Lee and seconded to follow staff's recommendation to issue a notice for operating and advertising as a landscape contracting business without a license. Vote: 5-0

k. Gary Krause, dba: Gary Krause Landscaping

SUMMARY

At the last Board meeting, the Board determined to issue a civil penalty against Gary Krause Landscaping for failure to comply with minimum standards for landscape contracts. The items missing were the business address and telephone number and description of the work to be performed and materials to be installed.

A notice was issued and Mr. Krause has provided the following information:

- A copy of an estimate and an e-mail explaining at that time he always attached/incorporated the estimate as part of the contract.
- A copy of the contract with exhibit A attached showing a description of the work and materials to be used, which was also missing from the contract submitted to the LCB office.

It appears the missing items in the respondent's contract were included with the contract, but not included with the copy received in the LCB office from an attorney on behalf of his clients who are in a current litigation case against Mr. Krause. He asserts his clients do not remember signing the contract and believe their signatures are suspect on the contract. Mr. Krause believes they have misplaced their copy.

Respondent has requested a hearing on the Notice issued by the LCB if the items submitted do not clear up the contract issue.

Staff Recommendation

Dismiss case and withdraw Notice of penalty.

Board Action

Moved by Mr. Gawlista and seconded to follow staff's recommendation to dismiss the case.

Ms. Lozano stated the copy of the contract provided by Mr. Krause does not have the homeowner's signature(s). She further stated that it is the respondent's responsibility to prove the documentation at a hearing. Ms. Sneed reviewed the statute regarding changes to the contract, Ms. Lozano stated that it was not a change to the contract; it was an attachment to the contract.

Mr. Gawlista withdrew the motion.

Board directed staff to gather additional information from Mr. Krause and bring back to the board if he sends further documentation. If not, proceed to hearing.

I. Alpine View Landscaping & Maintenance LLC

SUMMARY

OAR 808-003-0010(1) states all written advertising shall include the landscape contracting business license number. This includes "websites".

On October 20, 2014, the LCB Contract Investigator observed a sign on NW 14th Street in Bend, Oregon that belongs to the respondent. This sign had advertising for irrigation winterization for the respondent's business. However, the advertisement did not include the license number, but was later found – see concerns/issues section below.

CONCERNS/ISSUES

Upon further investigation, the 4 digit number appeared to also be missing from the respondent's website. However, upon investigation of every page on that website, the number was located. The website shows the number when you hover over the word "Landscaping" it shows a dropdown list, and when you hover on "Irrigation" it shows another option – "Sprinkler Maintenance". When you open the sprinkler maintenance page, the LCB number is listed there.

In the past if the number was ANYWHERE on/in the website, no action was taken. The rule states all written advertising shall include the number and this includes "websites". The rule is not specific about where this number should be. In a prior case staff remembers this number being in a video on a licensee's website. Staff wonders where the LCB number should be located on a website.

Staff Recommendation

Issue civil penalty for failure to include the 4 digit landscape contracting business license number in an advertisement on the sign.

Board Action

Moved by Mr. Bumgardner and seconded to follow staff's recommendation to issue a civil penalty for failure to include the 4 digit landscape contracting business license number in an advertisement on the sign.
Vote: 5-0

Ms. Sneed discussed the placement of the license number and the ability to see the number. Ms. Lozano suggested that if the board wants the number to be legible and have a particular placement we would need to put that in the rules. She discussed that you can be super detailed or at least be more detailed then the board is right now.

Board directed staff to draft a proposed rule amendment regarding legibility and website placement of the LCB number.

m. Clint Decker/Decker Landscaping Co

SUMMARY

Respondent failed to pay a court judgment.

On or about January 29, 2014, the Deschutes County Circuit Court issued a General Judgment against Clint Decker and Decker Landscaping Co stating the amount due to Hooker Creek Companies LLC is over \$14,000 plus attorney and court fees.

Clint Decker is a licensed landscape construction professional
Decker Landscaping Co is a licensed landscape contracting business and also a CCB license holder.

The invoices submitted show the debt is for unpaid rental of equipment, i.e. bobcat.

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.

Hooker Creek Companies did not submit all invoices, but just a sampling to show they were landscape related to meet the definition of "landscape contracting business activities".

ORS 671.563 requires an LCP or landscape contracting business, at the time of renewal, to provide the Board with notice of any unpaid court judgments that require the applicant to pay damages arising out of the

performance of landscaping work. On the last renewal for Decker Landscaping Co, they did not notify the LCB of this debt. They did, however, notify the LCB of a different outstanding debt and that they were making payments. They further stated "This is the only thing I'm aware of at this time." This was dated September 19, 2014. The attached court judgment was issued January 29, 2014.

Both Mr. Decker and Hooker Creek Companies LLC have stated they have worked out a payment arrangement. The arrangement is \$2,000 per month for seven months. Payments are due by the 15th of each month starting with November 15, 2014.

Staff Recommendation

Issue a Notice of Suspension against the landscape contracting business and hold the final order against the business in abeyance as payments are made. If payments are not made, the final order of suspension should be issued.

Board Action

Moved by Ms. Hollenbeck and seconded to follow staff's recommendation to Issue a Notice of Suspension against the landscape contracting business and hold the final order against the business in abeyance as payments are made. If payments are not made, the final order of suspension should be issued. Vote: 4-0, (Ms. Lee was not present)

5. Public Comment

At 1 pm, Mr. Gawlista, Chair, opened the public comment session of the meeting.

Matt Triplett, Willamette Landscape Services.
Past LCB Board member, past chair

Mr. Triplett stated that Shelley attended an OLCA board meeting and it was mentioned that claims were being reviewed by the board in the board meeting. He wanted to attend a LCB Board meeting to see what it is about. His concern was bore out when he read the packet. There is a lot of information in there while things are in the claims process. He's not sure as a contractor or citizen that he wants it made available that easily. He understands it is public information, but the Board does not have to make it that way.

For instance there was a case with a lengthy packet and as he read it, a consumer's personal address, e-mail and phone number was included. He felt it was pre-mature to provide that much information to the public about the claim. Why is that much information about this citizen available through a zip download? Public record requests are fine due to a request being made. The Board needs to trust staff more. He was wondering why board members come to a board meeting and still have to work things out before you get here.

The Board packet confirmed his fears. Watching the board in action with the consent agenda there were a lot of cases that were just rubber stamped. There were also several rescinded motions. Watching the Board did not inspire a lot of confidence. If he was a consumer, he would not make a claim if he knew all his personal information would be shared in a public meeting.

In the world today there is a lot of over sharing that happens. The LCB is a public agency and works for transparency. He believes the agency can do their work without all that information being out there.

Final, he was wondering if a lot of the discussions could be held with the personal information redacted. Instead of names, use contractor says – consumer says...., His observation is that names may not be germane to the discussion.

Lisa Walter Sedlacek, past board member and chair.
She stated that she currently serves on the OLCA board and OLCA's government affairs committee. She is from Florence, Oregon

Ms. Walter Sedlacek stated she is in attendance as herself, not representing OLCA, but OLCA has concerns about the cases being discussed at the meeting. She stated it used to be that staff handled almost all cases, and that only certain cases came before the board if it was very complex., Many discussions were held in executive session. Ms. Walter Sedlacek felt it was always a great relationship and that staff handled it well and if expertise was needed, staff would bring it to the board. If the cases went to a higher level, the Board saw them. There is a lot of information out there now and she wonders if it is against the law to give out this information. She reminded the Board that when the board first started publically providing information about licensees, there was a lot of contention between board members. She has seen a lot of changes since that time. Ms. Walter Sedlacek feels that the staff could handle things better with less chance of bias than the board.

John Dinges

Mr. Dinges stated he is concerned about the number of executive sessions the board has. He further stated the industry does not understand what happens during executive sessions. There is only a narrow list of what executive sessions are to be used for. Mr. Dinges knows several other boards and commissions and this one has had more executive sessions then the rest of them combined. The industry wants to know what each one is about.

At 1:11 pm, Mr. Gawlista closed the public comment session of the meeting.

6. Claims (Dispute Resolution)

A. Consent Agenda

Moved by Mr. Bumgardner and seconded to approve the consent agenda.

Vote: 5-0

1. 7843-001, Raymond W Elder vs. Blessing Landscapes LLC

SUMMARY OF COMPLAINT

Sod lawn is dying.

Claim was received October 1, 2014. Claimant states sod lawn is dying.

FINDINGS

The date work started was March 25, 2013 and the date work ceased was April 18, 2012 (for purposes of this claim, we are going to assume the claimant mean April 18, 2013 – also the proposal is dated 2013, so the job could not have been completed in 2012). April 18, 2013 is more than one year from October 1, 2014 - 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 warrant 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 lawn installation work was completed in April 2013, it is over one year and the claim cannot be accepted.

On October 22, 2014, LCB staff issued a Notice of Dismissal of this claim. On October 28, 2014, the claimant requested a hearing. The claimant agrees the claim was filed more than one year after the business substantially completed the work, but states it is only because the business was unable to property complete warranty work in a timely manner to correct the problem. Respondent’s letter is attached.

Staff Recommendation

Issue Notice of Dismissal due to receipt of claim being over one year since work was substantially completed. Proceed to hearing at claimant’s request.

Board Action

Approved on the consent agenda.

2. 7039-101, Chehalem Mountain Nursery Inc vs. JW Wren Co Inc deb:

Emerald Landscape and Garden

SUMMARY OF COMPLAINT

Failure to pay for material supplies

At the September 2014 Board meeting, the Board determined that if job site addresses were provided, a Notice of Contested Case/Arbitration be issued

that respondent pay claimant the remaining balance and, if no job site addresses were provided, to issue a Notice of Dismissal of the claim.

FINDINGS

Job site addresses were provided, however, they were addresses in Washington. OAR 808-04-0320(7) states a claim will be accepted only for materials or equipment supplied or rented for installation for use on property located within Oregon. Therefore, this claim should be dismissed.

Staff Recommendation

Issue Notice of Dismissal of this claim because the job site is not within the boundaries of the State of Oregon.

Board Action

Approved on the consent agenda.

B. Board Review of Claim Cases

1. 8077-103, Christine Susan Furnish vs. Greg Dehaven, dba: Artspace by Design

This claim was deferred to a future meeting.

2. 8393-103, Judy Siviglia vs. Paradise Restores Landscape Management Inc.

At the July 2014 Board meeting, the Board determined to issue a notice awarding the claimant \$3,220. This was the amount the estimate showed to make the repairs to a paver patio where the pooling of water was occurring. Both parties agreed there is a slant of the paver installation and that the water pooled on the side near the metal edging instead of draining towards the lawn side. The respondent did not contract to install a drain of any sort.

The LCB discussed this claim and believed 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 flower bed.

Claimant's bid from another licensed business to perform the corrective work by using the existing pavers was \$3,200. The LCB issued a notice for that amount and the respondent requested an arbitration hearing.

An Arbitration Award issued November 17, 2014 by the Administrative Law Judge awarded the claimant \$600. The judge believes the claimant proved there is a \$500 average estimate to install a catch basin and perforated pipe plus \$100 to correct high spots on the patio.

It was noted that at the hearing, the contractor brought in new information not presented to the Board. The Board discussed whether this is a flaw in the LCB process or the purpose of the arbitration hearing? When the Board

met in July, they did not have the information that was brought to the hearing, so that option was not on the table.

Ms. Lozano stated the hearing is part of the investigative process. It does simplify the process to ferret all of that out before hearing, but that may not always be available. It is uncertain that adjusting the investigative steps within the claim process will prevent this from happening. At the hearing, either party may bring forth witnesses. It is probably best to leave that piece at the hearing level. However, she suggested the board give the respondent an opportunity to provide more information during the investigative process and prior to a notice being issued. If the respondent does not submit anything in writing to defend their side and the mediation is unsuccessful, staff will request respondent submit their explanation in writing prior to going to the board for final review.

Ms. Lozano stated that the board may want to change this in rule because the statute is very broad. There is not a lot of detail as to what you do before it gets to the board. Once the petitioner provides you with his or her evidence, the respondent will then be given an opportunity to respond. This will provide more information for the Board to make decisions.

7. OLD BUSINESS

A. Proposed Administrative Rule Amendments for final approval

1. OAR 808-001-0008, Operating Budget

Amends operating budget for July 1, 2013 through June 30, 2015. A typo was noted in the rule language that affects the budget totals. This rule will have to be filed again.

2. OAR 808-003-0065, Exam Scores/managing Employee

The Board reviewed a proposed rule amendment regarding the exam scores to become a managing employee/owner to be valid one year after receipt of license application if that managing employee/owner has been in a managing employee/owner for the last two years.

Board Action

Moved by Ms. Lee and seconded to approve proposed administrative rule amendment. Vote: 5-0

3. OAR 808-008-0425, Issuance of Arbitration Awards

Clarifies when an arbitration award is considered "issued". This rule amendment takes the filing of motions to amend the award into consideration when determining the award to be final.

Ms. Lozano stated that the rule amendment more clearly defines the parameters for the modification of the award, so that there is finality at some point

Board Action

Moved by Mr. Bumgardner and seconded to approve proposed administrative rule amendment. Vote: 5-0

4. OAR 808-003-0231, Restoration of a Revoked License

This rule amendment clarifies how to restore a revoked license that has not been permanently revoked and is retroactive for two years in order to capture previous issues/concerns.

Board Action

Moved by Mr. Gawlista and seconded to approve proposed administrative rule amendment. Vote 5-0

B. OSLAB/LCB June 11, 2014 Minutes

The Board reviewed the revised minutes from the June 11, 2014 joint OSLAB/LCB meeting. OSLAB made some changes and requested that the LCB board informally adopt the revised version as the minutes for the meeting.

OSLAB made some suggestion for change in some of the language. Keep it the way it is but add in plan irrigation systems. Mr. Gawlista promotes having the certification. If the two boards agree then together they could come up with what those qualifications would be.

The changes show their willingness to work board to board. On December 8th the landscape work group will be meeting. If this change goes through Ms. Sneed will inform them they were reviewed and it is agreeable and a meeting will be scheduled.

There was a consensus to approve the revised minutes from the June 11, 2014 joint OLSAB/LCB meeting.

8. NEW BUSINESS

A. Active Duty Armed Forces Licensees and Respondents, Service members Civil Relief Action (SCRA)

Contested Case Process:

OLCB staff received advice from legal counsel regarding active duty armed forces, licensees, and respondents. Based on this advice, when a respondent in a contested case process is on active duty, the LCB cannot begin counting any period of time for a hearing request until the respondent's military service is completed. LCB staff has the ability to check all respondents' military status online and will not issue a default judgment against those on active duty. Staff will sign an affidavit that this search was completed.

Military Fee Waiver for LCB Licensees:

ORS 408.450 requires a suspension time for active service members with regard to their licensure renewal fees. If the LCB has a licensee that enters active duty, the licensee does not need to pay the renewal fee for the duration of their service, until they are discharged. Active duty and honorably discharged military personnel are exempt from LCB license renewal fees, but civilian military personnel are not. LCB staff recommended that OAR 808-003-0130 be amended to comply with OR408.450 which exempts active duty and honorably discharged military personnel from license renewal fees, including late fees.

Military Waivers:

Suspension of the continuing education requirements during a license's active duty service is consistent with the SCRA. LCB staff recommended waiving CEH requirements for active duty service members who are licensed with the LCB. Provide an "inactive military" status for those LCP licensees on active duty. OAR 808-040-0070(1)(b) already allows this waiver, but should be amended to show the "inactive military" status change with no status change fee.

Inactive Military Status for Landscape Contracting Businesses:

The Board discussed an "inactive military" status for landscape contracting businesses as well as LCP's. Inactive status does not allow the landscape contracting business to operate and would not include insurance or bond. The "inactive military" status would allow a business and LCP license not to expire; and therefore, be allowed to reinstate to active status after two years. The Board discussed allowing this only for sole proprietorships, or for all businesses that can prove an owner/member is on active duty military status and the business will no longer operate while that person is on active duty.

Staff was directed to proceed with the above recommendations for rule changes.

B. Delegated Authority of Final Orders

LCB staff requested the authority to sign a final order, including a consent order, stipulated order and final order incorporating settlement agreement in a Board administrative proceeding, pursuant to ORS 183.411. The delegation would be effective as of October 1, 2013 and remain in effect unless otherwise withdrawn by the board.

Board Action

Moved by Ms. Hollenbeck and seconded to grant John Gawlista signing authority to allow the Administrator and Program Manager the authority to sign all final orders. Vote: 4-0 (one abstention Mr. Gawlista)

C. Policy on Settling Default Cases

LCB staff reviewed the current policy/process on settling default cases, and requested the board discuss if they wish to continue the practice of allowing a

respondent to request to settle and allowing the staff to offer a settlement of the case after the 21 day period if the case is in default due to no response.

Under the law the Board does not have to settle with a respondent that is in default. From the staff perspective if someone contacts us after the 21 days and want to settle the staff believes it's effective. If no response is received, Michael contacts them and tries to come to settlement. This allows more settlements to happen and more cases are being closed rather than going to collections. Respondents feel like they have options with the current process.

Ms. Hollenbeck stated she feels that staff should continue with settlement discussions after default, it is working and not causing any harm

Board decided not to make a policy change, so staff will continue to negotiate settlements after default.

9. ADJOURNMENT AND NEXT MEETING SCHEDULE

The meeting was adjourned at 2:00 pm. The next meeting of the Landscape Contractors Board will be December 18, 2014 by conference call. The following meeting will be held on January 15 & 16, 2015, in Keizer, Oregon.

Respectfully Submitted,

Jerri Jones
Licensing Specialist