

LANDSCAPE CONTRACTORS BOARD
Minutes of the December 18, 2014
Board Meeting Conference Call
Salem, Oregon

PRESENT

Board Members

John Gawlista, Chair
Annie Lee, Vice Chair
William Bumgardner
Christine Hollenbeck
Molly Dunston
Larry Thomas

Staff

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

Others

Katharine Lozano, Assistant Attorney General

Absent

Larry Hoekman

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 2: 05 p.m. by Mr. Gawlista, Chair.

B. Approval of Agenda and Order of Business

Board Action: Moved by Ms. Dunston and seconded to approve the order of business and agenda. Vote: 6-0

2. ENFORCEMENT

A. Consent Agenda

1. Immediate Action

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

2. Administrative Action

No items were removed this portion of the consent agenda.

Board Action: Moved by Mr. Thomas and seconded to approve the consent agenda. Vote: 6-0

B. Enforcement Cases for Discussion

1. Thomas Jefferson Enterprises dba: First Class Landscaping
Ms. Dunston recused herself from this discussion.

SUMMARY

OAR 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 – OAR 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 requested that the board discuss the issue of grading by raking 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?

Staff Recommendation

Issue civil penalty for working outside the scope of the license (only if raking and/or carrying sod is "preparation of the property") and failure to comply with minimum standard for landscaping contracts. Items missing are:

1. Consumer's name
2. Estimated Completion date
3. Description of guarantee; if no guarantee such a statement shall be included; and
4. Statement the business is licensed by the LCB and the LCB's current address and phone number

Board Discussion

Ms. Sneed reviewed the discussion from the previous board meeting regarding the clarification of final grading and what is rough grading. Ms. Gladwill reviewed the meaning of rough grading and that it would not include hand raking.

The Board determined that grading by raking is not rough grading, but part of the preparation of the property for the installation of the sod lawn or final grading.

The Board discussed the fact that sod is delivered to the job site by a truck, trailer, or fork lift. Placing the sod where it is to be unrolled is part of the installation; not the delivery.

Board Action

Moved by Mr. Thomas and seconded to follow staff's recommendation to issue a civil penalty for working outside the scope of the license and failure to comply with minimum standard for landscaping contracts. Vote: 5-0 (1 abstention (Dunston))

3. CLAIMS (Dispute Resolution)

8077-103 Christine Susan Furnish vs.

Greg Dehaven, dba: Artspace by Design

SUMMARY OF COMPLAINT (language from revised claim listing)

Negligent or improper work and breach of contract. This claim includes several items:

Claim Item #	Description of Claim Item	Issues	Estimated Cost for repair
1	Irrigation System Update	Insufficient water coverage and spraying decks, fences, house, pathways, & driveways with some planting areas not being sprayed at all	\$3,190
2	Outdoor Lighting System	Replaced with high voltage using extension cords buried in the ground – tripped breakers, fixtures full of water, plug ends sealed with a glue mixture; lights on the two spiral trees were to be special long-lasting lights for over 440 a string – instead installed Christmas lights	\$4,490
3	Dead Plants & Trees	Lack of water due to insufficient irrigation system and burlap coverings and plastic ties not removed	\$1,108
4	Fence	No fence posts; nailed to neighbor's old fence; and falling apart	\$2,935
5	French Drain	Inoperable; solid pipe and not surrounded with rock; holes poked in with a pick	\$1,195
6	Patio	(front & back) breaking off at the edges (nothing to retain the edge); not set to grade; gray stones dyed brown – dye did not last and are partially back to their original gray color with some brown	\$1,205
7	Gravel Path	No filter or barrier fabric – used thick layers of plastic which does not allow water to absorb into the ground; gravel runs off when raining	\$1,095
8	3 Decorative Bamboo Structures	Falling apart	Not claimed on Monetary Damages Itemization
9	Paving stone walkway	Moved by respondent to the corner edge of the wood deck. Needs to be moved back to the original location as the trees he planted are overgrown and the path ends at the corner of the deck, which present a danger to those using the path	Not claimed on Monetary Damages Itemization
Total Cost for Repairs:			\$15,218

Claim was received and a copy sent to the respondent. Issue not resolved, so an on-site meeting was held to investigate the complaint. The landscape contracting business refused mediation and was not present, but the homeowner attended.

Claimant and respondent entered into a contract for only a portion of the landscaping work completed for a total of \$7,100. During the project the scope of the work increased, but no contract was written for the additional work. Claimant has paid respondent a total of \$18,499.25.

INVESTIGATIVE FINDINGS

LCB Investigator issued a report that mirrors the claim items/concerns listed in the claimant's revised claim listing. There are some items mentioned during the on-site meeting that are in the Investigator's report, but are not listed in the revised claim listing nor included in the estimates from another licensed landscape business. These items will not be taken into consideration because estimates were not received.

Board Discussion

Ms. Sneed reviewed a revision to the claim submitted by the claimant. Mr. Gawlista asked if there was a staff recommendation and Ms. Sneed stated that no recommendation was provided and that the claim should be decided upon by the board using their expertise.

#1 Irrigation System

Mr. Hintz stated that he could tell irrigation work had been done, however the placement of the sprinklers was poorly done; some heads did not reach the plants and some heads were focused on the fence. Ms. Gladwill stated that she believes the irrigation work was agreed upon by a verbal agreement.

The Board discussed the payment and invoicing for this case and if the checks stated on the memo what the work/payment was for. The memos on the checks were not specific as to what the payment was for. The Board asked if there were invoices related to each check. Ms. Sneed stated that there is not very much documentation. Mr. Gawlista stated that the type of irrigation installed would help to decide what the costs would be.

Ms. Dunston stated that the install was poorly done and it appears that they had no irrigation experience or education. In addition, they should have used drip irrigation and not spray.

Ms. Sneed asked if the concern was what type of irrigation was agreed upon and installed. If that is the concern, the board can give an itemized list to the contractor, listing as an example, claim number one: drip irrigation at this price. The contractor would be able to respond and could come back with no it was agreed that we would use and repair what is there.

Ms. Hollenbeck stated the estimate of \$3,190 for the irrigation seems reasonable and the board agreed.

#2 Outdoor Lighting System

Mr. Gawlista stated that the pictures show extension cords on the ground and that the high voltage fixtures were not installed to code. Mr. Hintz stated the electrical cords were all plug and play and there were no splices. Mr. Thomas stated that licensees can only perform low voltage lighting, and using extension cords exposed in the weather can only be used for 60 days. He further stated that household current with extension cords requires an electrical license. The Board believes the outdoor lighting was not done professionally. The cost of \$4,490 seems reasonable for the repair.

Ms. Lee requested an explanation of what some of the dangers were. Mr. Hintz stated this was not a low voltage installation, but an inappropriate installation and these are the types of cords you would use if you were using power equipment outside, not permanent lighting. The Board discussed that circuit breakers can be worn down and that technically a circuit breaker should not have more than 80 percent of the load. In addition, all circuits should be grounded. If absent, electricity could still be supplied and the electrical current could be escaping and if someone picked up the line in the rain they could be electrocuted.

The Board agreed that \$4,490 was a fair estimate.

#3 Dead Plants and Trees

The Board agreed with the estimate of \$1,108.

#4 Fence

The Board discussed that by not putting in new fence posts and by tacking onto the neighbor's fence, which was obviously rotting, it made the fence installation a total failure. The fence was included in the written proposal; and was valued at \$5,100.

The Board agreed with the estimate of \$2,935.

#5 French Drain

The Board discussed that the wrong pipe was used and was surrounded with rock, allowing no way for water to get into the pipe. The drain was not installed using industry standards and using a pick to make drainage holes would not last, eventually the holes would close up. The Board asked if the French Drain was on the property line, Mr. Hintz could not verify if it was or was not on the fence line. The fence estimate was missing the length or other information, but the Board believes the estimate of \$1,195 is fair.

#6 Patio

The stones on the patio were dyed, but the color would not last. The estimate for repair states what would be done to fix the patio. The board agreed that the proposed repair work would be the correct way to make these repairs.

The Board agreed with the estimate of \$1,205.

#7 Gravel Path

The plastic that was installed does not allow for drainage.

The board agreed with the estimate of \$1,095.

#8 Three Decorative Bamboo Structures

No estimates were submitted, so no award is determined.

#9 Paving Stone Walkway

No estimates were submitted, so no award is determined.

Board agreed that the total claim for \$15,218 is reasonable. Staff will send the claimant's Monetary Damages Sought form and estimates to the respondent for a response. The response will be brought to the next board meeting. If no response is received, staff should proceed with issuing the notice/arbitration award for \$15,218.

Board Action

Moved by Ms. Dunston and seconded to issue a Notice of Contested Case/Arbitration that respondent pay claimant \$15,218 unless a response is received from the respondent, then staff will return the claim to the board for review. Vote: 6-0

4. OLD BUSINESS

A. Landscape Work Group Update

Ms. Sneed discussed the list of recommendations that was reviewed at the final meeting of the Landscape Contracting Work Group. After each recommendation she added in bold what the outcome was. (See below)

The work group came to consensus on each of the items. The recommendations will be given to Legislative Council to draft the bill. It is expected to be completed in time for introduction in early February when the Legislature convenes.

Mr. Thomas stated the meeting was low key and was attended by industry members as well as those at large. An item by item review was conducted by the group, with very little discussion of every item and general consensus by the group. Ms. Sneed thanked Larry Thomas for helping to facilitate the meeting and for his dedication.

The items discussed are:

- 1) Require both a business license beyond workers' compensation coverage for employees, liability insurance and a construction bond and an individual landscape construction professional license as currently established in statute. **The group was OK with this, so there will be no changes to the agency's current statutes for this recommendation.**

2) Change the annual business license to an annual business registration as it would result in less confusion with the individual landscape construction professional license. **The group didn't agree to this change so there will be no changes to the agency's current statutes.**

3) Retain the LCB as the regulatory agency as opposed to the CCB. **The group agreed with this recommendation, so no legislative change will be proposed.**

4) Add a \$20,000 bond and a \$500,000 insurance requirement for landscaping projects of \$50,000 or more. This change will bring LCB licensees up to the CCB standards and adds extra consumer protection for work done and any damage done. **The group added the two requirements: 1) increasing insurance to a \$500,000 minimum (currently at \$100,000) and 2) adding a \$20,000 bond for landscaping projects of \$50,000 or more. The current bond amounts will remain, so this is just adding another layer for businesses doing larger projects.**

5) Allow LCB to collect the costs of hearings for claims cases up to \$5,000 of the costs incurred (with a CPI adjustment to cover future cost increase). **The group agreed with this recommendation.**

6) Construction work less than \$2,000 per customer per year does not require a written contract. **The group agreed with this recommendation.**

7) CEH would be required by LCB as follows:

a. Individuals licensed for 0-6 years take 16 hours of CEH credit per two year reporting period

b. Individuals actively licensed for more than 6 years take 8 hours of CEH credit per two year reporting period

The group agreed with this recommendation and the water purveyors also requested that the statute include a minimum CEH requirement of 8 hours per biennium. The group agreed with that recommendation as well. The statute change will include the minimum of 8 hours of CEH credit per biennium. The Board will need to make the other changes through the rule making process.

8) Make the statutory changes to ORS 671.997 and elsewhere that relate to penalties and discipline by changing the word "shall" to "may" to give the Board discretion in how discipline is handled. **The group agreed with this recommendation.**

9) Delete requirement that licensees record CEH class date, course name and number of CEH hours on licensing renewal form and instead authorize LCB to perform random audits to ensure compliance. **The group did not agree to this, so no change will be recommended.**

10) Clarify that licensees may install artificial turf. **The group agreed with this recommendation. The group also agreed to adding it to work covered by the landscaping bond.**

11) Revise LCB's statutes to allow agency staff to have the authority to issue stop work orders rather than the Board. **The group agreed with this recommendation.**

12) Currently, LCB statutes - ORS 671.540(1)(d)(e)(h)(i) - exempt CCB licensed businesses from LCB licensing. When the exempted business is both LCB and CCB licensed, clients of those businesses are not allowed to file claims for dual jurisdiction areas of work with the LCB. Clarify that property owners have the right to file claims for work that falls under the jurisdiction of both licenses by changing the statutes to allow consumers the right to file claims with the LCB, not just the CCB. The agency's AAG recommended this change:

- a. ORS 671.540(1) except as provided in subsections (2) and (3)...
- b. (3)ORS 671.690 to 671.710 apply to a person described under subsection (1)(d)(e)(h) and (i) if also licensed under ORS 671.560. **The group agreed with this recommendation.**

13) Change ORS 671.520(c) to: "Plan, install or repair, ornamental water features, drainage systems or irrigations systems." Current language is: Construct or repair ornamental water features, drainage systems or irrigation systems. This will clarify on-going discussions with the Landscape Architect's Board about LCB licensed businesses planning without installing. **The group agreed with this recommendation, which wasn't what OSLAB had requested.**

Ms. Sneed stated OSLAB had sent comments that they had concerns with LCB licensees planning (without installing) water features and drainage systems. Ms. Sneed doesn't want the two agencies to be in conflict about this section of the bill and would like to schedule a meeting between the two boards to look at changes to the recommended language. Ms. Sneed's recommendation is that the two groups should get together, through the designated representatives that met in the past, and look at some acceptable language to then pass on to Legislative Counsel.

Mr. Thomas stated that the work group has several months to finalize things. Ms. Sneed stated that the agency wants a positive outcome and suggested getting both boards together. The Board agreed that Ms. Sneed should organize the meeting between both boards.

14) Change the 10-day period to notify LCB of an address change to 30 days. **The group agreed with this recommendation.**

15) Change ORS 671.520(e) which currently allows licensed businesses to "plan or install fences, decks, arbors, patios, landscape edging driveways, walkways or

retaining walls“ to also maintain or repair the things they can install. **The group agreed with this recommendation.**

16) Allow LCB licensees to subcontract with specialty trades outside the scope of the LCB license for the work required for landscaping jobs such as the installation of water features, sprinkler systems and other items that require natural gas, water and electrical work. Currently LCB licensees aren't allowed to subcontract for that work which forces consumers to directly contract with those specialty contractors. **The group agreed with this recommendation.**

Ms. Sneed stated that items 15 & 16 have been tried in the past and were not successfully passed into statute. The agency needs to work with Associated General Contractors (AGC) and the Home Remodelers Association to discuss any concerns they might have with the proposed legislation and attempt to diffuse them. Ms. Sneed stated that she would be more than willing to work on the issues, but it would be helpful to have Board members actively involved in the conversations as well. Mr. Thomas and Ms. Hollenbeck stated that they would help with these conversations. Mr. Hoekman has been involved in legislative issues in the past, so Ms. Sneed will check with him to see if he'd be willing to be involved as well.

17) Address the question of whether tree trimming should be regulated by a single jurisdiction rather than two. If a tree business wants to plant trees, they are required to have a LCB license. Tree work (certain pruning and tree removal) are regulated by the Construction Contractors Board. There are exemptions in CCB law to allow LCB licensed businesses to perform the work. The LCB Board would like to request statutory authority to allow arborists and those businesses that perform tree work to be licensed solely with the LCB rather than the CCB. The current CCB exemption allows our licensed businesses to perform the work, but their LCB bond doesn't cover the work. We'd need to update the agency's bond statute language to cover tree work if this piece was approved. If the license stays with the CCB, we'd like to request statute change language to allow LCB licensees that fall within the exemption and perform the work, to have their LCB bond cover that work.

The group agreed with adding the work to the LCB bond, but didn't tackle moving the work from the CCB. The group would support the CCB pursuing this issue in the future if they choose to do so.

The Work Group does not want to move tree work to the LCB, but would like to see the LCB bond adjusted to include coverage for tree work. Ms. Sneed asked if she should meet with CCB to see if moving tree work to the LCB is something the CCB would like to take on with the LCB support. Mr. Thomas stated that he would like to see this addressed in the future and that the discussion should include all the stakeholders involved. The Board agreed Ms. Sneed should start the conversation with the CCB.

5. NEW BUSINESS

A. OLCA Draft Response

Below is the draft response prepared by Ms. Sneed regarding the public comments made at the November Board meeting by OLCA representatives. These comments were regarding several issues of concern to OLCA and its members. The following is the verbiage proposed by Ms. Sneed:

At the November 7th OLCA board meeting, your board brought up several concerns about LCB's discussion of claims in open session, redacting of information in board packets and the Board's use of Executive Sessions to conduct business.

Matt Triplett, Lisa Walter-Sedlacek and John Dinges came to the Board's November 21, 2014 meeting and brought up the issues during the public comment period.

These are important issues and it's important to the Board and the agency that we address these concerns. The Board has always worked hard to operate as transparently as possible. There are times that information cannot be shared due to potential legal issues. This memo will outline current practices and attempt to address the issues that have been brought up by OLCA and several members.

First, you are all aware that the agency has been going through a program review process. After a thorough review of the agency's statutes and rules, it became clear that the Legislature gave the agency's Board authority in ORS 671 to take care of certain matters for the agency. Some function can be delegated to staff and others cannot.

One of the questions brought up by OLCA members was related to claims being reviewed in public session. There's no authority in statute for claims to be reviewed outside of public meeting or in executive session. After further review, there's nothing in statute that protects any claims related information. That means that the board cannot redact information or go into executive session to review claims. Being that the agency isn't involved with any protected health information, there is very little information the board can redact from public records. Social Security numbers, bank account and credit card numbers are protected information and should be redacted from any public records or documents.

There was a concern about the Board's use of Executive Session. There are several instances when the Board can meet without members of the public being in attendance. The Board can go into Executive Session to review legal advice from Council. That advice can be about a myriad of topics.

The Board can go out of public meeting in several instances:

- 1) to deliberate on a contested case, or
- 2) to conduct the exceptions process, which is when a case has gone through the contested case process and the Respondent requests a board review of specific items in the case or process.

The Board can meet outside of public meeting, but no decisions can be made outside of public session. When the board completes their review and deliberations in either of the above mentioned situations, they must come back into public session to make the final decision. That way the decision is made in public session for everyone in attendance to hear and to be documented in the minutes; the permanent record of the meeting.

Your questions have brought up several other issues. First, we have been providing full board packets to everyone on the list of individuals who have requested Board information. After further review, it has been determined that the board is not required to provide the full board packets.

The board will continue to provide agendas to everyone on the list, as was past practice. After January 1, 2015, anyone wanting anything other than the agenda will need to request the information through a public records request and pay the public records fee for the information. Interested parties can request the full board packet or portions thereof and pay the related fee for the information provided.

***Ms. Sneed reviewed the agency's response and stated that currently staff provides full board packets to those that request it, but that this could be limited by requiring a public records request form and fee. Mr. Thomas stated it is reasonable to charge a fee when requesting a full board packet and that this is a good way to provide the information to those interested parties.

The board agreed and instructed staff to send the letter. Ms. Sneed will send the letter via email and will copy Ms. Lee and Mr. Gawlista.

B. CEH Memo

Ms. Sneed reviewed the CEH audit process and requested clarification regarding the procedure if someone doesn't meet the CEH requirements. Specifically, can the licensee change to inactive status and then not be required to meet the CEH requirement? Does staff then dismiss the case and the licensee would not have to pay the fine?

Ms. Sneed stated that licensees report the CEH they completed on the renewal form. If the required CEH is listed on the renewal form it is then processed. On the 15th of the month following their expiration date, Ms. Sneed audits the licensees' CEH. In some cases the licensee does not respond to the audit request and the agency sends a contested case notice that they have 21 days or the license will be suspended. Sometimes licensees will then respond. Sometimes licenses will admit also that they did not complete the CEH by the deadline. Other times licensees will then complete the CEH after the required date.

Mr. Thomas stated that licensees are required to complete 16 hours of CEH and that if the violation occurred; licensees should be held responsible. It is a failure to

not meet the requirement and licensees should not be able to then move it to the next term of their licensing.

Ms. Hollenbeck stated that they should have been working on it over the past two years and that the point of CEH is to show that you are upholding the standard so that you can keep abreast of the industry.

The Board feels that licensees should pay the fine and complete the CEH hours or the license should be suspended.

Staff will review the rules and check with Ms. Lozano to make sure that the rules are in compliance with the Board's decision.

6. PUBLIC COMMENT

Chair Gawlista opened the meeting for public comment at 3:19 p.m.

No public comment

Chair Gawlista closed the meeting for public comment at 3:20 p.m.

7. ADJOURNMENT AND NEXT MEETING SCHEDULE

Board Action: Moved by Ms. Hollenbeck and seconded to adjourn the meeting. Vote: 6-0. The meeting adjourned at 3:20 p.m. The next meeting of the Landscape Contractors Board will be held on January 15 & 16 in Keizer, Oregon.

Respectfully Submitted,

Jerri Jones
Licensing Specialist