

LANDSCAPE CONTRACTORS BOARD
Minutes of the May 20, 2016
Board Meeting
930 Chemawa Road NE
Keizer, Oregon

PRESENT

Board Members

William Bumgardner, Chair
Loren Radford, Vice Chair
Larry Hoekman (by phone)
Christine Hollenbeck
Molly McDowell Dunston (by phone)

Staff

Elizabeth Boxall, Administrator
Kim Gladwill-Rowley, Program Manager
Michael Hintz, Investigator

Guests

Catriona McCracken, Assistant Attorney
Arrived: 9:00 am and left at 2:00 pm
Brendan McMullen,
Arrived: 10:45 am . 11:05 am
James Hanson, Attorney,
Arrived: 10:45 am . 11:05 am
James Davies
Arrived: 10:00 am - 10:13 am
Larry Donner
Arrived: 1:30 pm . 1:45 pm

EXCUSED

John Gawlista

1. PROCEDURAL

A. Call to Order

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

B. Approval of Agenda and Order of Business

Board Action

Moved by Mr. Radford and seconded to approve the May 20, 2016 agenda with minor additions. Vote: 5-0

C. Approval of the March 18, 2016 Minutes

Board Action

Moved by Ms. Hollenbeck and seconded to approve the March 18, 2016 minutes with minor amendments. Vote: 5-0

2. Administrator's Report

A. Office Update

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

Ms. Boxall reported there has been no feedback regarding the letters of concern that have been issued. The board reviewed a matrix of the types of issues where letters of concern will be issued. Ms. Boxall has been working to recruit a new public board

members and soon an industry member as Larry Hoekman's second term will end in September.

B. 2015-2017 Financial Report/Approval

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

Ms. Boxall reported that \$45,000 was transferred to savings in April 2016. As of April 30, 2016, there is a 6.6 months reserve. The civil penalties collected are down 15% from last year at this time. This is partially due to time constraints in the office due to the practical skills exam requirement. Total income has decreased slightly from the last reporting period, while total expenses have increased slightly.

Board Action

Moved by Mr. Radford and seconded to adopt the unreconciled financial statements. Vote: 5-0.

C. 2015-17 Budget Modification Proposal

The Board reviewed proposed modifications for the 2015-17 biennium. The proposed modifications will bring the budget into alignment in some areas where costs are now more known and correct some calculations errors. The significant changes are: staff wages, benefits, PERS, AAG/Legal Counsel, practical skills development, audit, new business application fees, and individual renewal fees. This will leave the LCB in a loss the first fiscal year with the hope of making it up in the second fiscal year.

There are line items for income for the practical skills exam that will be passed through to OLCA and/or PSI. The expenses are line item 5400 and are being proposed for a budget of just over \$2,000.

Staff was directed to proceed through the rulemaking process to amend the 2015-17 budget.

3. EXAMINATION/LICENSE/EDUCATION

The Board reviewed the examination statistics through April 30, 2016. Ms. Gladwill-Rowley reported the overall passing rate had increased the first few months of the year, but has declined again. There are statistics on the Spanish version of the exam as well and the feedback regarding the translation has been positive.

The Board reviewed the license counts as of May 1, 2016. The number of individual licenses has remained steady for the last four years. And the number of business licenses has remained steady for the last two years.

4. ENFORCEMENT

A. Consent Agenda

1. Immediate Action

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

2. Site Check; No Violation

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

3. Investigated; No Violation

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

4. Administrative Action

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

Board Action

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

Vote: 5-0.

B. Enforcement Cases for Discussion

1. Advertising without a License

a. Andres Picon Pacheco, dba: Andres Landscape

SUMMARY

At the November 2015 board meeting it was determined that advertising without a license had occurred. Staff issued a Notice of Penalty for the following:

1. Advertising on a vehicle as %Andres Landscaping+
2. Advertising on a web site
3. Advertising on Facebook

Respondent's daughter submitted a letter stating that she created the Facebook page for him and was not sure he was aware of the page content on that page. Staff verified the website further and verified that it did not belong to Respondent.

An amended Notice of Penalty was issued for *only* the vehicle advertisement. Respondent submitted an invoice for the purchase of sign changes dated October 27, 2015 and pictures of new signs showing Andres Landscape Maintenance. This was a subsequent offense. The settlement included both advertising and operating without a license.

On or about June 14, 2015 respondent signed a Stipulated Order and paid a \$600 settlement for advertising without a license as a landscape contracting business (\$200) **and** operating as a landscape business without a license (\$1,000). LCB received the Respondent signed Stipulated Order on June

19, 2015 and LCB representative signed it June 22, 2015 making it in full force.

The Stipulated Order states, in part, that the Respondent agrees to ~~Not~~ violate ORS 671.510 . 671-760 in the next 12 months or the suspended civil penalty may become immediately due and payable upon the board's discretion.+ The new alleged violation reporting falls within the 12 month time period.

The original Notice of Proposed Imposition of Civil Penalty was on the first case was for \$1,500. This included \$500 for advertising without a license and \$1,000 for operating as a landscape contracting business. Settlement amounts paid were \$200 for advertising without a license and \$400 for operating as a landscape contracting business when a claim has been filed.

STAFF RECOMMENDATION

Assess a civil penalty for violation of ORS 671.530(2) and (4) by advertising as a landscape contracting business without a valid license . subsequent offense for \$1,000.00 with option to settle for \$800.00 if paid within 30 days **plus** the suspended amount of \$300.00 for advertising without a license portion for violating the first Stipulated Order.

-OR-

Assess a civil penalty for violation of ORS 671.530(2) and (4) by advertising as a landscape contracting business without a valid license . subsequent offense for \$1,000.00 with option to settle for \$800.00 if paid within 30 days **plus** the *total* suspended amount of \$900.00 (\$300 advertising with out a license portion and \$600.00 operating as a landscape contracting business) for violating the first Stipulated Order.

Board Discussion

Mr. Hintz reported this respondent has been very cooperative since the first violation. Documentation has been submitted to make the changes to the advertising violations.

Board Action

Moved by Mr. Radford and seconded to assess the first recommendation from staff. Vote: 5-0.

b. Brad Allan, dba: Silver Fern

SUMMARY

On or about April 4, 2016, Respondent advertised as a landscape contracting business. Specifically, respondent advertised on www.linkedin.com as ~~%~~Silver Fern Landscapes+. It further states, ~~%~~Silver Fern

Landscapes is a full service landscape company specializing in water feature construction, landscaping and installation.

On or about April 26, 2015 respondent signed a Stipulated Order and paid a \$1,200.00 settlement for advertising without a license as a landscape contracting business (\$200) and operating as a landscape business without a license where a claim had been filed for damages arising out of that work (\$1,000.00). LCB received the Respondent signed Stipulated Order on April 29, 2015 and LCB representative signed it May 5, 2015 making it in full force.

The Stipulated Order states, in part, that the Respondent agrees to not violate ORS 671.510 . 671-760 in the next 12 months or the suspended civil penalty may become immediately due and payable upon the board's discretion. The advertisement in the first case was for a Facebook page which appears to have been removed. The new alleged violation reporting falls within the 12 month time period.

The original Notice of Proposed Imposition of Civil Penalty was on the first case was for \$2,500.00. This included \$500.00 for advertising without a license and \$2,000.00 for operating as a landscape contracting business when a claim has been filed. Settlement amounts paid were \$200.00 for advertising without a license and \$1,000.00 for operating as a landscape contracting business when a claim has been filed.

STAFF RECOMMENDATION

Assess a civil penalty for violation of ORS 671.530(2) and (4) by advertising as a landscape contracting business without a valid license . subsequent offense for \$1,000.00 with option to settle for \$800.00 if paid within 30 days **plus** the suspended amount of \$300.00 advertising without a license portion for violating the first Stipulated Order.

-OR-

Assess a civil penalty for violation of ORS 671.530(2) and (4) by advertising as a landscape contracting business without a valid license . subsequent offense for \$1,000.00 with option to settle for \$800.00 if paid within 30 days **plus** the total suspended amount of \$1,300.00 (\$300 advertising with out a license portion and \$1000.00 operating as a landscape contracting business when a claim has been filed for damages arising out of that work) for violating the first Stipulated Order.

Board Discussion

Mr. Radford asked what LinkedIn is as often times one can get on websites which may not be easily edited. Ms. Boxall reported LinkedIn is not similar and noted an increase in connections from time of advertisement reporting

to preparation date of summary which notes activity. Ms. McDowell reported the section where it mentions about landscaping is written by the respondent. There are connections to be made while on LinkedIn that you have to intentionally access.

Board Action

Moved by Ms. Hollenbeck and seconded to assess the first recommendation from staff. Vote: 5-0.

c. Seth Barry, dba: Dirty Boots

SUMMARY

At the May 2015 Board meeting, it was determined that advertising with out a valid license had occurred. Respondent advertised on a business card on a bulletin board and on a website. The website announced that they were closing their doors, thanked their clients, and told them to contact them by e-mail if there are any problems or questions because they would like to help.

Staff issued a Notice of Penalty. Respondent requested a hearing and states:

1. The card on the bulletin board was placed there when the business was still licensed; and
2. The website was an announcement they were going out of business and the phone number was shut off in October 2014.

On March 2, 2016, Kim Gladwill-Rowley, LCB Program Manager called the business number and found it is no longer in service and LCB also received a copy of a closing statement dated November 3, 2014 from Century Link.

STAFF RECOMMENDATION

Dismiss case.

Board Action

Moved by Ms. Hollenbeck and seconded to approve staff recommendation. Vote: 5-0.

d. Brummell Enterprises Maintenance LLC

SUMMARY

Anonymous caller called in to report potential unlicensed landscape advertising on multiple websites for Respondent such as: Respondent's web site www.brummellentersprises.com, Facebook, Angie's List and possibly Yelp. Staff research found no landscape advertising on Respondent's website or any other websites located. Angie's List shows a profile created by Angie's list stating %s this your business? Claim your profile+.

A Facebook page was located for listed as BEM www.facebook.com/bemaintenance.com. Categories of services listed are

~~Repair Service . Landscaping . Contractor+~~ The page contains no advertisements for landscape work being offered.

CONCERNS/ISSUES

Facebook recently updated several business categories on behalf of the business based on what was most closely related. Email notifications were sent to Facebook administrative page owners with the opportunity to validate or change it. However, staff cannot locate evidence of this change.

STAFF RECOMMENDATION

No Action.

-OR-

Issue letter of concern for title usage of Landscape as a category.

Board Action

Moved by Mr. Radford and seconded to accept the second staff recommendation for the letter of concern. Vote: 5-0.

e. Craig De La Fe, dba: Ground Up Services

SUMMARY

Respondent advertised on their web site www.groundupservies.net for ~~Woodwork~~, Stone Work and Plantings+ and a notice was issued (approved on consent agenda from September 18, 2015). A hearing request was received in conjunction with a letter from Respondent on September 30, 2015. The letter states that the words ~~Woodwork~~, Stone Work and Plantings+ are tabs which were created as part of a school project and do not lead to actual web pages with any content.

This case was brought to the board for discussion in January 2016 where the board asked to see if any documentation existed to show that it was part of a school/class project as indicated by the Respondent. Respondent provided a new letter stating that he enrolled in a Word Press class at a community college, handwritten notes from that class and a copy of a blank class evaluation form.

Respondent has since obtained an all phase license. Respondent's web site is still up as of 4/26/16 advertising mostly maintenance work with the exception of the three tabs ~~Wood Work~~, Stone Work and Planting+ which still do not lead to any actual pages. LCP #15724 was issued on 1/20/2016 and LCB #9442 was issued 4/13/2016. As of 5/3/2016 no LCB number is contained on the website as required since Respondent is now licensed.

CONCERNS/ISSUES

Staff views the tabs as advertising, but acknowledges the class project to create tabs which staff verified led to blank pages. LCB #9442 was issued 4/13/16 and as of 5/3/2016 no LCB number is contained within the advertisement.

STAFF RECOMMENDATION

Assess a civil penalty for violation ORS 671.530(2) and (4) by advertising as a landscape contracting business without a valid license.

-OR-

Withdraw Notice for violation of ORS 671.630(2) and (4) for advertising as a landscape contracting business without a valid license and issues a new Notice for Failure to Include License Number in Written Advertising OAR 808-505-0020(9).

Board Discussion

Ms. Hollenbeck stated she understands the intention for the creation of this website. Respondent has submitted documentation proving this is what he was doing. She believes a letter of concern should be issued; not a penalty. The Board discussed that this website is now a licensed business but no number is listed.

Board Action

Moved by name and seconded to issue a letter of concern and include the information about adding a license number to the ad. Vote: 5-0.

2. Operating without a License

a. John Alex McEachern, dba: Mac's Custom Tractor Work

SUMMARY

Preparation of property for the installation of a lawn

On March 22, 2016, the LCB office received a Statement of Claim form from Dean Larson, homeowner against respondent for breach of contract and negligent or improper work regarding the preparation of property. Claim states respondent failed to remove sticks, rocks, branches and other woody debris from the site and failed to smooth or create a surface that was ready for planting a lawn.

Mr. Larson further explained by e-mail that he contracted with the respondent to prep the lawn area (about 30, sq ft) for lawn. Respondent was to take it to the point where all the homeowner needed to do was rake. The homeowner was going to plant the seed. The homeowner states the respondent was preparing the ground for installation of a lawn+.

Respondent was paid \$400 of the \$1,000 they agreed upon for this service.

CONCERNS/ISSUES

It appears the Respondent performed rough grading. OAR 808-002-0875 defines rough grading as the movement of earth by cutting and/or filling of a site to establish proper sub-grade elevations prior to the preparation and establishment of the final grade for seed beds or tree or shrub planting. Rough grading does not include grading done by raking or other mechanical means to establish a grade that is suitable for planting. This definition is used in when describing rough grading of plots and areas of land performed in conjunction with new or remodeling construction when performed by a CCB licensee.

Respondent is a CCB licensee, but was not remodeling nor performing new construction. Is the tractor work he performed considered part of preparing the property for the installation of a lawn if he did not do the final raking? The LCB does not define preparation of the property in rule.

STAFF RECOMMENDATION

Assess a civil penalty for operating as a landscape contracting business without a valid license when a claim has been filed for damages.

Board Discussion

Mr. Radford stated he has a difficulty drawing a line between rough grading and final grading. Respondent left sticks and things around and Mr. Radford does not believe this is rough grading. This is such a small area for tractor work. Staff reported this was filed as a claim with the CCB and dismissed because it was not construction work. The customer has a valid complaint, but is this rough grading or final grading.

Statute shows only preparation of property; not if it is rough or final grading. There is a letter in the file that shows the respondent knew he was preparing the property for seeding of grass to be done by someone else.

Board Action

Moved by Ms. Hollenbeck and seconded to approve the staff recommendation. Vote: 5-0.

b. Jamieson A. Benton & Fernando Ochoa, dba:

Dirt Cheap Landscaping Maintenance

SUMMARY

Installation of a lawn and walkway

On March 10, 2016, respondents contracted with the homeowner to install a sod lawn and a gravel path with edging for a total cost of \$6,219.

On April 11, 2016, the LCB office received a Statement of Claim form from Mike Johnson & Eric Larson, homeowners against respondents for breach of contract and negligent or improper work claim regarding the above landscaping work.

The contract has both Jamieson Benton & Fernando Ochoa name. However, the Secretary of State Business Registry shows an amendment to the Assumed Business Name in October 2015 that removes Fernando Ochoa name as an owner. The business card also does not include Fernando Ochoa name.

Advertising

On April 6, 2016, respondent's website at www.dirtcheappdx.com advertised for sod installation and landscaping work

STAFF RECOMMENDATION

Assess a civil penalty against respondents for advertising and operating as a landscape contracting business without a valid license when a claim has been filed for damages.

Board Discussion

The Secretary of State's website is clear that Mr. Ochoa's name is no longer associated with this business.

Board Action

Moved by Ms. Hollenbeck and seconded to assess a civil penalty against Jamieson Benton dba: Dirt Cheap Landscaping Maintenance for advertising and operating without a license when a claim has been filed for damages.

Vote: 5-0.

c. Samuel Omar Salmeron Puente

SUMMARY

Installation of a sod lawn and a walkway.

On May 12, 2015, LCB Investigator Michael Hintz spoke with respondent who stated he was working for the homeowners and performing the installation of rock borders, pathways and sod and the total amount of the job was \$2,800.

There were other works on the job site who stated they were working for the respondent.

The homeowner told the investigator he is a plumbing contracting and did not know there was a license requirement for laying sod and that the respondent had been referred to him by other contractors as someone who did a good job.

Subpoenas were issued to the Respondent and the homeowner for documentation, but no response has been received at this time from either party.

CONCERNS/ISSUES

The investigator did not observe respondent or the workers performing landscaping work. The photos submitted show them sitting on the front porch or standing by the trailer, which doesn't appear to have landscaping materials in it. There has been no response to the subpoena from the homeowner, so his appearance at a hearing cannot be relied upon. There appears to be insufficient evidence for a prima facie case.

STAFF RECOMMENDATION

No Action

Board Action

Moved by Mr. Radford and seconded to adopt staff recommendation.

Vote: 5-0.

d. Benjamin Uribe-Andrade & Dry Oak Inc

SUMMARY

Installation of an irrigation system

On or about July, 2015, Respondent subcontracted landscaping work to Sunset Landscape Maintenance Inc (Sunset). Sunset is actively licensed with the LCB for Standard; no irrigation or backflow. The contract provided to the LCB office is not specific in regards to what the landscaping work consists of.

On July 15, 2015, LCB Investigator, Michael Hintz observed the job site and took photos. At that time, there was an irrigation system being installed. Respondent told Mr. Hintz that Sunset only performed the planting on the job site and there was no irrigation work, except for the replacement of a couple of heads. When told that Investigator Hintz had observed and photographed the job site showing an irrigation installation in progress, respondent admitted he had installed the irrigation system.

ORS 671.540 lists the exemptions to the LCB license. Irrigation work performed by CCB licensees is not exempt from the LCB license.

CONCERNS/ISSUES

Dry Oak Inc is a new entity registered May 8, 2015 with no prior violation. Benjamin Uribe-Andrade has a prior violation, so this would be a subsequent offense for him. Staff wonders if the notice can be for a subsequent offense. Legal counsel stated this would be a first offense due to the new business entity.

STAFF RECOMMENDATION

Assess a civil penalty against respondent for operating as a landscape contracting business and landscape construction professional without a valid license.

Board Action

Moved by Mr. Radford and seconded to adopt staff recommendation.

Vote: 5-0.

e. Albion Kent Vickery IV

SUMMARY

Blowout of an irrigation system with compressed air

On or about October 22, 2015, LCB Contract Investigator observed a pickup, an air compressor trailer, and an air hose running from the trailer to the side of the house with the respondent holding the hose at the above job site. Respondent state he was performing an irrigation blow out and could do it for \$45. He further stated he took his test about two weeks ago for his irrigation license, has been providing blow-out services for a few days, and did not know his four-digit LCB number.

LCB records show the respondent does not have an LCB license, and, in fact has never applied nor taken the exam. LCB staff issued a subpoena to the respondent.

On March 16, 2016, LCB Investigator, Michael Hintz spoke with the respondent who stated he did not respond to the subpoena issued to him about the above job site because he did not have any written documentation to submit. He stated when he was advised he was in violation, he stopped the job and returned the compressor and did not perform any further blowouts and did not receive compensation for any blowout work.

CONCERNS/ISSUES

There is no proof of compensation. However, respondent did tell the LCB Contract Investigator he performs the blow outs for \$45 and had been doing it for a few days. He then told Investigator Hintz he did not receive compensation for any blow out work he performed. It appears there was an intent to be compensated.

STAFF RECOMMENDATION

Assess a civil penalty against respondent for operating as a landscape contracting business and landscape construction professional without a valid license.

Board Action

Moved by Ms. Hollenbeck and seconded to approve staff recommendation.

Vote: 5-0.

3. Other/Misc.

a. All Oregon Landscaping Inc.

At the March 2016 Board meeting, it was decided to issue a penalty against All Oregon Landscaping Inc. (All Oregon) for allowing an unlicensed

business to use its landscape contracting business license (see attached draft minutes).

The Notice of Penalty was issued and Craig Prunty of All Oregon has submitted a hearing request with a written statement that he never released or gave permission for any persons or other company to use my license. Nor did all Oregon Landscaping, Inc have any contracts with the builder or Mr. Valencia in this case.

LCB Investigator Michael Hintz spoke with Mr. Prunty. Mr. Prunty believes there was a misunderstanding in regard to his relationship with the unlicensed contractor. Mr. Prunty never gave the unlicensed contractor permission to use his license and that on the day Investigator Hintz contacted him, Mr. Prunty had received a call from the unlicensed contractor wanting him to come and do some planting work, but Mr. Prunty was unable due to other commitments. Mr. Prunty told the unlicensed contractor since there was not much to do that possibly the unlicensed contractor could do the work if it was under \$500. Investigator Hintz explained to Mr. Prunty that this exception has several conditions that must be met and this specific job did not meet all those conditions, therefore, was not exempt from licensure.

Mr. Prunty explained he had not given the unlicensed contractor permission to use his license, but was trying to empathize with him and help him through this situation because of a close tie he had in the past with the unlicensed father who had recently passed away.

Mr. Prunty stated he had only been trying to explain to Investigator Hintz the sequence of events and that the unlicensed had wanted to use All Oregon's license, but he did not allow this. Mr. Prunty further stated he even contacted the unlicensed contractor again and made it very clear that there was no way he could use his license.

CONCERNS/ISSUES

There is no documentation showing All Oregon allowed the unlicensed contractor to use his license. Only the unlicensed contractor is stating Mr. Prunty allowed the use of the license.

STAFF RECOMMENDATION:

Close; no action against respondent; withdraw Notice of Penalty.

Board Action

Moved by Mr. Radford and seconded to accept the staff recommendation.
Vote: 5-0.

b. Olson Landscaping and Garden Design
SUMMARY

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

On March 18, 2016, respondent advertised on a vehicle. This advertisement included a 5-digit number, which belongs to the LCP of the company (the LCP is also the owner). The 4-digit business number did not appear on the vehicle.

STAFF RECOMMENDATION

Issue a Letter of Concern

Board Action

Moved by Ms. Hollenbeck and seconded to approve staff recommendation.

Vote: 5-0.

c. A1 General Clean-Up and Landscape Company

This was reviewed at a prior board meeting, a Notice of penalty has been issued to the business for the alleged violations 1 through 3 listed below, and new information has been investigated. Anything new since the prior review is in ***bold, italics and underlined***.

ALLEGED VIOLATION

- 1. Respondent allegedly violated OAR 808-003-0040(2)(g) by performing the installation of a drip irrigation system with a Standard – No Irrigation or Backflow license (working outside the scope of the license).**
- 2. Respondent allegedly violated OAR 808-003-0040(1) & (2)(e) by advertising landscaping work outside the scope of their license.**
- 3. Failing to comply with minimum standard for landscaping contracts contract as required by ORS 671.625(2) and OAR 808-002-0020(1)(l) & (4) or performing landscaping work without a written contract as required by ORS 671.625(2).**
- 4. Respondent 1, A1 General Clean-Up and Landscape Company (business): Failing to require direct supervision of unlicensed employees by the appropriate LCP.
Respondent 2, Timothy Yokum (LCP):
Failure to directly supervise the unlicensed employees.**

SUMMARY

- 1. Performing Work Outside the Scope of the License:
At a prior Board meeting it was determined respondent had performed irrigation work, which is outside the scope of respondent's license. After the Notice was issued, staff were informed and were provided photos that there was no drip irrigation system installed, but that only**

a soaker hose had been laid out among the arborvitae and it was attached to a hose bib. (see attached photos).

2. Advertising the installation of full landscape services with a planting only license.

On April 17, 2015, respondent advertised on a truck for %sprinkler System+. As stated above, respondent does not hold an Irrigation Phase of license.

3. Failure to Comply with Minimum Standard for Contracts/No Written Contract:

On April 20, 2015, respondent's LCP, Tim Yocum submitted a copy of a contract for the above landscaping work. This contract was directly type into an e-mail with no signatures of either party, no guarantee language (or a statement if no guarantee), no statement about the LCB license and the Landscape Contractors Board current address and phone number, and no statement about the irrigation work being subcontracted. **A copy of a signed contract between the homeowner and the respondent was submitted with signatures. However, this contract is for maintenance work only; it does not include the planting of the arborvitae. It appears there is no written contract for the planting work.**

**4. Failure to require direct supervision/failure to directly supervise:
Respondent 1, A1 General Clean-Up and Landscape Company (business): Failing to require direct supervision of unlicensed employees by the appropriate LCP.
Respondent 2, Timothy Yocum (LCP): Failure to directly supervise the unlicensed employees.**

A1 General Clean-Up and Landscape Company is licensed with the LCB as a business. They employ Timothy Yocum as the LCP with a Standard license. Mr. Yocum is to supervise all landscaping work, including nursery stock installations.

On April 22, 2015, LCB Investigator, Michael Hintz contacted Yocum who is to be supervising the arborvitae installation. Yocum stated he was not aware of this job site until he was contacted that day by Eloy Sepeda, owner, after Mr. Sepeda was contacted by the contract investigator who was on the job site. He further stated there have been instances where things go "under the radar" and he has not know about them. He also confirmed there was no contract for this job site.

CONCERNS/ISSUES

Working outside the scope of the license . see e-mailed %contract+. This contract states %install 30 Arbor Videa shrub+ and %Repair soaker hose+. It does not mention the installation of the drip system and there are no photos of the system.

STAFF RECOMMENDATION

Issue a notice of civil penalty against A1 General Clean-Up and Landscape for:

1. Advertising landscaping work outside the scope of their license.
2. **Performing landscaping work without a written contract.**
3. **Failing to require direct supervision of unlicensed employees by the LCP.**
4. **Withdraw/Dismiss for the prior penalty for working outside the scope of the license.**

Issue a notice of civil penalty against Timothy Yocum for failure to directly supervise the unlicensed employees.

Board Discussion

Ms. McDowell asked if the respondent was selling the soaker hose as an irrigation system. Mr. Hintz reported there was no indication it was sold as an irrigation system and that it was hooked to a bib.

Board Action

Moved by Mr. Radford and seconded to adopt staff recommendation.

Vote: 5-0.

d. First Impressions Landscaping Inc.

At the March 18, 2016 Board meeting, the Board determined Respondent failed to include the 4 digit LCB number in an advertisement on a trailer. A Notice of penalty was issued and Respondent has requested a hearing stating: %Our stance on this issue is that the trailer in question was attached (hitched) to a signed truck which noted the license number. Since the day of the site visit we have updated the trailer with the license numberõ +

OAR 808-003-0010(1) states all written advertising shall include the landscape contracting business license number, shall be capable of being read (legible), and clearly visible. Respondent provided a photo of the truck with the license number on the truck.

On January 12, 2016, respondent's trailer did not include the 4 digit landscape contracting business license number.

CONCERNS/ISSUES

Staff wonders if the truck and trailer could be considered one unit or one piece of advertisement.

Board Discussion

The Board discussed the fact they added the license number as soon as they were notified of the violation. Legal counsel stated the truck and the attached trailer could be considered one advertisement.

Board Action

Moved Mr. Radford and carried to dismiss this case. Motion withdrawn

Further Board Discussion

Ms. McDowell stated that she doesn't agree this is an advertisement because they could unhitch the trailer, then the trailer would be a stand alone advertisement.

Mr. Radford stated that if the trailer had more to the advertisement, such as advertising the specific work they will perform, then he agrees this could be a separate advertisement. However, there is nothing on this trailer showing specific landscaping work.

Mr. Hoekman stated that this is not a case where the trailer was unhitched.

Ms. Hollenbeck stated that the rule is clear that all written advertising must include the LCB number and they have corrected this issue. She believes it is appropriate to send a letter to make the rule clear to the respondent.

Board Action

Moved by Ms. Hollenbeck and carried to dismiss this case and send a letter that all written advertisements have their license number included in the future.

JAMES DAVIES, Request to Appear Before the Board

Re: civil penalties imposed & suspension of business and individual licenses

Ms. Boxall recused herself and left the room during this discussion to alleviate any appearance of impropriety or bias.

SUMMARY

At the January 22, 2016 Board meeting the Board action was to uphold the staff recommendation of a \$17,000 civil penalty and suspension of both the business license and the landscape construction professional license, but without a settlement option. The suspension is to be the greater of either 6 months or until the respondent obtains the Backflow phase of license. This Notice was issued and Respondent requested a hearing and letter to the Board.

At the March 18, 2016 Board meeting the Board action was to offer Respondent a settlement:

1. Employee Issue: \$1,000 penalty reduced to \$400 if paid in 30 days or \$500 with monthly payments;

2. Backflow Installation Issue: Suspension of business license until backflow phase of license is obtained (hiring an LCP with that phase or taking backflow test and obtaining himself) and a \$15,000 civil penalty reduced to \$400 per violation (15 counts X \$400 = \$6,000) if paid within 30 days and backflow phase of license is obtained within 60 days; and
3. Dishonest Conduct/False Information Issue: Six month suspension and \$1,000 penalty (not to be reduced).

With settlement above total penalty to be \$7,400 if paid within 30 days or \$9,000 with monthly payments. The Board wants the monthly payments completed within 12 months and the six month suspension is not reduced.

Respondent has written a second letter for the Board's consideration (see attached).

Respondent's letter is a request for the Board to reconsider the suspension of his licenses. He believes he can pay the \$7,400 with a loan from another contractor, but that contractor is concerned about payments if the Respondent loses his licenses. Respondent has passed the Backflow section of the exam and now has an Irrigation Plus Backflow phase of license.

Mr. Davies appeared in person before the Board. He stated that he has been in landscape business since 1976 and obtained a license in the 1980s. Prior to that, he worked for the Department of Agriculture regulating pesticides.

Mr. Davies explained he did finally confess to the LCB Investigator about installing backflows without the valid license. As for those installations he obtained permits and worked with a plumber. He stated the problem with plumbers is that they are not always available when he needs the work completed. He worked with a specific plumbing company and he had to show them how to install them. After a few times of working with them, they offered to obtain the permits and Mr. Davies to install the backflows. He further stated that he never cut materials, always installed to code with a permit, and had them tested by Salem Backflow. He understands he was not licensed and it is a violation.

Mr. Davies stated that he got busy last year and started hiring people. He spoke with his insurance company to obtain the workers' compensation and then dropped the ball. He understands this was his fault. As soon as the Investigator brought this to his attention, he did obtain the workers' compensation coverage.

Mr. Davies stated that there were not a lot of backflows last fall and that the plumbing company installed all backflows for him through the winter. This spring, Mr. Davies took the backflow examination and passed after two attempts. He stated he knows what he is doing when installing backflows, but understands the license is required.

Mr. Davies believes that the penalty and suspensions are high. What really hits him is the suspension of the licenses. He talked with another licensed landscape contracting business about working for them. However, it seems like going around the suspension, they are in the busy season, and with Mr. Davies age he believes that he would not make a good laborer.

Mr. Davies stated that the \$7,400 hurts because he doesn't have that much money. He would make it with the penalty, but the suspension of the license will cause him to lose his business. He told the board he would not work without the license, but this leaves him in a huge hole with equipment payments. A suspension also affects the crew he has managed to put together and they are a good team that would lost their jobs. However, he believes they are hard working and they will all find other jobs. Mr. Davies explained that he is the main support of his family. He loves the people he works for too such as builders. Several builders who are going strong and he has contracted for landscaping on two homes to be done in June. He has contracts in place that could be affected. If he had to tell them he could not do the work for 6 months, they will need to find someone else.

Mr. Davies stated that he violated the laws and understands it. He believes he is a good contractor. He is not facing an issue where he took advantage of people. He now has valid workers compensation and workers are on payroll. He also has a mortgage payment. At his age with the license suspension, he would have to be out of business. He doesn't see any other options with his age. He put this company together through some good and hard times and would like to stay in business.

The Board members extended their appreciation to him for attending and speaking to the Board.

Board Discussion

The Board discussed the fact Mr. Davies has obtained the workers compensation covers, has employees on the payroll, and passed the backflow section of the exam.

Ms. Hollenbeck state that she is leaning towards not suspending either licenses, but requiring a reduction of the penalty to \$7400. She believes he is genuine and he knows that what he did was wrong. She understands this could set a precedence, but he did take the extra steps to write a lengthy letter and talk with the board in person.

Mr. Radford wonders how to assess the cost of a suspension if there are employees or only Mr. Davies. He further stated he believes that how much the suspension impacts a person and/or business, depends on when it occurs during the year. He doesn't disagree with the suspension and there are times when it is warranted. He will think these things through more when there is a suspension on the table in the future.

Ms. McDowell stated she agrees with Mr. Radford. He passed the backflow section. If only the individual license is suspended, he could hire another licensee.

Mr. Bumgardner stated he is in favor of reducing the penalty to \$9,000 in 3 months and no suspension of business license. If the penalty is not paid within 90 days, the personal license will be suspended for 6 months.

Board Action

Moved by Ms. Holleneck and carried to hold the personal suspension in abeyance pending payment of \$9,000 within 3 months and the business license will not be suspended. If the \$9,000 is not paid within 3 months, the landscape construction professional license will be suspended for six months. Vote: 5-0.

BRENDAN MCMULLEN, Request to Appear Before the Board

RE: civil penalties imposed on him

Brendan McMullen has requested to appear before the Board at the May 2016 Board meeting. Information about Mr. McMullen's history and assessed civil penalties is attached. He and his business (River Valley Landscape Inc) were licensed at one time.

History of Actions:

2003	McMullen's business was operating without a license (19 counts),
2006	McMullen was advertising (2 counts) and operating without a license (6 counts),
2006	Assurance of Voluntary Compliance (settlement),
2006	Stipulated General Judgment for Contempt filed with Marion County Circuit Court,
2007	McMullen was operating without a license (1 count),
2009	McMullen was operating without a license (3 counts),
2014	McMullen was operating without a license (1 count).

During 2006 through 2009 LCB staff entered into several different settlement agreements with Mr. McMullen. These agreements were to pay any homeowners for damages and to make monthly payments to the LCB to pay the civil penalty. Each time, Mr. McMullen failed to comply. During the negotiations LCB staff made sure the homeowners were paid first. All homeowners have been satisfied.

Assurance of Voluntary Compliance:

On August 11, 2006, McMullen agreed to be permanently restrained and enjoined, individually and in any business or corporate capacity from advertising and operating a landscape contracting business unless properly licensed with a \$15,000 bond.

Mr. McMullen did not comply with this settlement.

Stipulated General Judgment for Contempt:

On October 12, 2006, Marion County Circuit Court issued a Stipulated General Judgment for Contempt against Mr. McMullen. The judgment is an acknowledgement from Mr. McMullen of his violations and finds him in contempt. He agreed to:

- Confinement. 30 consecutive days in jail (of which 3 days were to be completed and the remaining were suspended so long as the judgment is not violated within 12 months);
- Money Award. Payment for LCB's attorney fees in the amount of \$800;
- Permanent injunction. Permanently restrained from landscaping work.

Mr. McMullen has been assessed a total of \$25,000 in civil penalties since 2006 for advertising and operating without a valid license. He still owes \$22,950 to the LCB. These files have been turned over for collection to our third party collection company, Cascade Collections.

Cascade Collection adds a percentage for a collection fee and interest calculated at the rate of 9% per annum, which is the statutory rate of interest in Oregon.

In May 2015, Mr. McMullen agreed to pay \$10,000 to satisfy all debt owed to the LCB and Cascade Collection. He failed to pay any amount towards the \$10,000 agreed upon.

On February 29, 2016, liens were placed on all properties owned by Mr. McMullen. In April 2016, he contacted Cascade Collection and offered the same \$10,000 to settle. Based on multiple properties in Marion County that Mr. McMullen had purchased (6 total) from April 2015 to April 2016 this \$10,000 settlement was not accepted. Cascade Collections presented an offer of settlement to Mr. McMullen on April 5, 2016 in the amount of \$25,000. If this is accepted, the LCB would receive \$18,750 (75% of the payment).

Mr. McMullen appear in person before the Board. Mr. McMullen provided a copy of a letter to each board member asking for leniency. He read the letter for the benefit of the board members who were joining the meeting by phone.

Mr. McMullen stated that the letter from Cascade Collections (Cascade) to his attorney conflicts with the verbal agreement. Per Mr. McMullen, Cascade told him they needed the board's permission to make this deal. Furthermore, Cascade told him they would not deal for \$10,000, but asked him to give a down payment. He wonders what he would be paying for if there was no agreement in place.

Mr. McMullen is hoping the debt can be returned to the board and he can deal with the board instead of Cascade. He believes they are not being fair or acting in the LCB's best interest. Before Cascade knew his name was listed on several properties, Cascade was willing to take the \$10,000. Now they have more leverage and want more money.

Mr. McMullen explained that his name is on properties, but it is other people's money. He has investors. He will have to borrow most of the \$10,000 to get this taken care of. He stated he cannot pay anything close to what Cascade is

asking for. He feels they are trying to put him out of work because these liens will not allow him to take more loans or sell the homes without payment of this debt. No investor will have an interest in working with that.

Mr. McMullen stated he never avoided the board and came into the office each time there was an issue. He understands there are a lot of issues and penalties in the past, but never avoided the board. He stated that he is finally in a position where he can take care of his past with the LCB. In years past he was not able to. He lost everything . his business and his house and was in no position to clear this up. He thought he had a verbal agreement with Cascade and is not in a position to pay what they are asking for now.

Mr. Radford inquired if he has complied with the 2006 Assurance of Voluntary Compliance. Mr. McMullen stated he has complied.

Ms. McDowell stated there are 13 years of non compliance and now he is interested in getting back on track. The history is the most difficult for her to process. She believes being back on track is good. Mr. McMullen stated that 13 years is the timeframe, but there was not ~~13~~ years of non-compliance+. He made a mistake here and there since 2003, but has not continued to work in the landscape industry and ignore the compliance issue.

Mr. Radford asked when was Mr. McMullen no longer in the landscape industry. Mr. McMullen stated it was in 2009. He explained the fine in 2014 was not the same as the other violations. He was not acting as a landscape company, but helping his brothersqfriend. They asked for his help and he was not working at that time so he said yes. He also had someone helping him. He was installing a retaining wall, but not actively advertising or looking for work. He was approached by his brother. So the last time he feels he was in the landscape industry was 2009.

Mr. McMullen feels he has attempted to resolve the debt, but that Cascade is asking for something he cannot do and it will put him out of work again.

The Board will consider further discussion at the next board meeting as today is a full agenda. The board requested staff obtain information about the contract with Cascade Collections and the collection process.

5. CLAIMS (Dispute Resolution)

A. 8483-101, Justin & Emy McGowan vs. Oregon Outdoor Landscaping Inc.

According to the initial statement of claim, the following claim items were listed:

1. Sport Court: Ground not prepped correctly to support concrete pour. Our sport court is now separating at the joint seams and sliding down the hill.
2. Patio Pavers not installed correctly and wall around pavers not installed correctly.
3. Landscaper put in a waterfall feature. He did not sub-contract anyone to run electrical to it, so the only way our pump is on and running is from an extension

- cord running from the outlet of our house across the property to the waterfall feature.
4. Gravel pathway is being washed away by erosion from rain going down the hill.
 5. Paver patio improperly installed creating a 12 inch drop from existing patio. In addition there is a 4 inch gap created underneath existing patio.
 6. Retaining on south side of property not properly installed to account for drainage.

Item # 1 - Sport Court: Ground not prepped correctly to support concrete pour. Our sport court is now separating at the joint seams and sliding down the hill.

Claimant Statement . Claimant explained that the %Sport Court+ is actually a multi-purpose patio that was to be used for a variety of purposes including entertaining family, guests and for children's play. They said that they contracted with Oregon Outdoor Landscaping Inc to do most of the work for their backyard project. They advised that Bret Penselin didn't want to do the concrete part and referred them to a concrete contractor whom he said he knew and who did good work. They advised that they paid Duane Bauley \$7000.00 to do the pour of the sport court / patio, but that Oregon Outdoor Landscaping Inc did the prep work and gravel compaction for the underlying surface on which the concrete was poured. The McGowans said that Duane Bauley, showed up on the site before the pour and talked to Bret Penselin who was laying down gravel and prepping the underlying surface for the pour and that they were discussing the job together. The McGowans said that they have photos of the two contractors working together on the site. The McGowans said that they trusted the recommendation of Mr. Penselin. They stated that that they later found out that Duane Bauley had no valid contractor's license after the job was complete and their concrete started to fail.

Respondent Statement . In his response to the statement of Claim Bret Penselin stated the following: %b) Sport Court: Failure to the concrete patio is due to an inadequate retaining wall. The work that was completed by Oregon Outdoor Landscaping was gravel compaction for the patio. No work on a concrete wall was completed by Oregon Outdoor landscaping. The McGowans worked with another contractor on the concrete pour and wall.+

Mr. Penselin made additional statements in response to the Mediation meeting onsite. See written statement for details.

Investigator Observations / Comments . According to the Estimate provided by Oregon Outdoor Landscaping Inc to the McGowans and according to the initial statement by Bret Penselin, the company was involved in gravel compaction for the %patio+ (Sport Court). Mr. Penselin uses the terms %Sport Court+ and %patio+ interchangeably and it is clear that even though his company did not pour the concrete, they were involved in the installation to some extent by admittedly preparing the subsurface and doing gravel compaction. They also interacted with the subject who did pour the concrete (Duane Bauley), and Bret Penselin did refer

Mr. Bauley to the McGowans as a concrete contractor who could do the work for them.

The LCB Investigator asked the McGowans and Mr. Penselin for a copy of a signed contract. Neither was able to produce such a document. The McGowans advised that they knew Mr. Penselin from the community and their kids played sports together and that they had trusted him and had not been concerned about that issue until they started having problems with the installation.

While on site at the McGowans residence, Mr. and Mrs. McGowan pointed out the problems with the patio and photos were taken. The LCB Investigator observed that the joint seams were separating and that there were several other additional large cracks in the concrete. See photographs for detail.

BOARD DISCUSSION

The contract shows gravel for the pavers and sport court. It doesn't show installation of the gravel. The Board discussed the LCB licensee referring the homeowners to the concrete guy who was not licensed and wonder if the referral was a recommendation and does that legally hold the LCB licensee responsible. There was no subcontractor relationship, no financial link, and they were paid separately.

Was the gravel compaction part of the installation? Is it the concrete guy's responsibility to make sure the gravel compaction meets the standards prior to pumping the concrete? Is the patio/sport court failing due to the concrete pour, gravel compaction, no rebar, or all of them? In this type of situation when putting concrete on fill dirt, it needs to be retained or it will fail.

Would another landscaper have compacted the gravel for this type of situation? Is it the LCB licensee's responsibility to identify it needed more support or the concrete person? Mr. Bumgardner believes it could be both. As a business owner, Mr. Bumgardner would tell the homeowners that without being retained, it will fail. Respondent does state he talked with the owners about a wall to secure the slope.

The LCB licensee did agree to bring in gravel and he did compact it. Then he provided the name and number of the concrete contractor. From this point, it would be on the concrete contractor and owner of the home.

Investigator Hintz stated that from the perspective of homeowner the LCB is the professional, they trusted him and knew him, so no contract. There is nothing in writing that he was installing the patio/sport court; only providing the gravel. Homeowners thought concrete contractor could come up with a less expensive solution than the wall Oregon Outdoor quoted.

Mr. Hoekman stated that if the base prep by LCB licensee failed, obviously the LCB licensee is liable. If concrete poured cracked, not due to substructure or base

failure, the concrete contractor is responsible. Mr. Hoekman further stated he has no comfort for this work on fill dirt, would not have done the job.

Ms. McDowell stated that if he knew that without a retaining all that the concrete would fail, why did he perform the compaction? The base is the most important part of any landscape and he states he did suggest the retaining wall.

If there is some responsibility, it may be minimal since he only compacted the gravel.. The board wonders as professionals in the industry, what is his responsibility and value on that?

The Board requested Investigator Hintz interview the homeowner about discussions about a retaining wall to deal with concrete pad. And determine if storm water retention was discussed.

Items #2 and 5 . 2. Patio Pavers not installed correctly and wall around pavers not installed correctly. 5. Paver Patio improperly installed, creating 12 inch drop from existing patio. In addition there is a 4 inch gap created underneath existing patio.

Claimant Statement . Claimant explained that patio pavers were rising up and or sinking in places and the surface had become uneven with trip hazards. They said that they believed there is a connection with the retaining walls, pavers and steps, and that the wall supports the pavers and steps. They also said that the pavers and associated retaining walls were not installed so as to interface properly with the pre-existing back patio and that a gap was created under the pre-existing patio during the installation. They said that they did not believe the wall had a proper cap to finish it off and that it looked unfinished. They advised that they were concerned that the steps were not installed correctly and were unsure about the adhesive used to put the smaller paver blocks in place that created the steps. They did not like the esthetic appearance and felt the steps were too short in width and may not be to code or industry standard. I had contact with Emy McGowan on 5/9/16 and she advised that the situation with the pavers and steps had gotten worse since the site visit. She advised that the adhesive had started to fail, and that some of the small paver blocks composing the stairs had come loose and that the larger patio paver blocks had been popping up when walked on. She advised that the surface was much more uneven now then when I had been there for the site visit and that she had been instructing her children and their friends not to use the steps and to be careful on the paver patio.

Respondent Statement . In his response to statement of claim the respondent said the following in relation to Statement #2: Paver Patio and wall blocks were installed and supplied by Mutual Material. The patio and wall were installed according to Mutual Materials installation specifications. This claim statement is the first time that I heard of a problem with the work performed. I have been to the property many times since the installation and noticed no problems. In relation to Statement #5, the respondent said The improper paver installation was addressed above in claim (2)+

Investigator Observations / Comments - Investigator took photos of the pavers, wall, steps and section of the pavers and walls that interface with the pre-existing patio. Investigator observed that the main retaining wall for the paver patio appeared unfinished and that the pavers were raised up and lower in places so that there did appear to be trip hazards.

BOARD DISCUSSION

Investigator Hintz reported the homeowners have reported the pavers have gotten worse since his site visit. It appears that poor base work is affecting these pavers. They will have to be torn out and re-installed, however some of the base gravel may be re-used. The Board believes the bid for \$8,500 should be awarded.

Item #3 – Landscaper put in a waterfall feature. He did not sub-contract anyone to run electrical to it, so the only way our pump is on and running is from an extension cord running from the outlet of our house across the property to the waterfall feature.

Claimant Statement . Claimant explained that they did not believe the installation that was done by the Landscaper was safe in terms of the electrical component and believe he should have subcontracted someone to run electricity to the pump. They also had concerns while I was on the scene about whether or not the feature was installed properly. Shortly after my site visit, the McGowans were contacted by the Sunrise Water Authority in February and were told that they were among the highest in water consumption in Happy Valley. Mrs. McGowan said that they had a \$2000.00 water bill. The company sent an employee out to determine what was going on and they advised that there had to be a leak in the pond and that this was the source of the water usage. Mrs. McGowan advised that after shutting off the pond auto-fill and draining it, their water bill went back to normal. She said that the boulders on the outside of the water feature appear to be starting to slough away down the hill and that she and her husband believe it may have been because of the leak, but also because of the slope of the property. At this point they believe their water feature needs to be replaced or eliminated, because currently it is a hazard to neighbor children and it has a significant leak. They have taped it off with barrier tape for the time being. Ms. McGowan advised that the water feature appeared to have a leak earlier on and that the contractor reported fixing it, but that it appears it developed a larger more significant leak according to the water authority official.

Respondent Statement . In his response to the statement of claim, Bret Penselin said %installed the water feature according to their estimate. I did not include the GFI. I had conversations with Justin about the GFI beforehand during the project. He asked if I knew someone who could do the work. I replied that I did not know of an electrician he could call. They have borrowed my extension cord for the mean time.

Investigator Observations / Comments – LCB Investigator photographed the water feature at the time of the site visit. See photos. Homeowner has advised that they

have had to drain the pond and stop using the water feature since my site visit in early February due to leakage and a high water bill. They also suspect the integrity of the outer wall of boulders on the downhill side of the water feature due to the leak.

BOARD DISCUSSION

The complaint is about no electrical to the water feature. However, LCB licensees cannot install electrical nor can they contract directly with an electrician for this work. The homeowners are required to contract with the electrician. There is nothing in the estimate showing any amount for electrical work.

The Board requested Investigator Hintz interview the homeowner about discussions regarding the electrical work.

Item # 4 . Gravel Pathway is being washed away by erosion from rain going down the hill.

Claimant Statement – Claimant showed me the area where there was erosion in the path on the lower area leading down to the patio. They were not sure why it was eroding and had the perception that perhaps it was not installed correctly and that there was an issue with drainage that should have been addressed by the respondent.

Respondent Statement – In his response to the statement of claim Mr. Penselin said %With a gravel pathway there may be maintenance needed throughout the year+. After the site visit, Mr. Penselin said the following in his %Mediation Response+ statement: %There is an area of gravel that is approximately 3 feet long and 2 to 10 inches wide that has washed away at the perimeter of the edging, house side in a gravel pathway and house side. After viewing this site, one of the reasons gravel could have washed aside in that area could be due to a plugged downspout. The area noted in their claim is directly under the gutter.+

Investigator Observations / Comments – Investigator took photos of pathway showing the erosion along the landscape edging on the house side of the pathway near the bottom with gravel washing onto the patio.

BOARD DISCUSSION

The Board members stated the photos very clearly show a washout of gravel at the bottom of the walkway. This gravel on that slope will move very easily, even if it is dug 8 inches deep, there will still be channels. Ms. McDowell and Mr. Hoekman stated that the fact the slope should have been taken into consideration with retention or drainage work and believe it may be negligent work. Mr. Bumgardner and Mr. Radford disagree. Ms. Hollenbeck wonders if the board could award an amount to have this walkway redone because it will be damaged repairing the other areas of the property. Other board members felt this would be fair. However,

The Board discussed the definition of %improper+ and found it includes: not correct, not following rules, legally or morally wrong, not suitable for situation, not

appropriate. Ms. Dunston feels the contractor ignored the slopes on the site and this is thoughtless. Legal counsel disagrees that thoughtless is negligent work . it doesn't fit into the definition.

The Board requested Investigator Hintz interview the homeowner about discussions about the choice of the size of the gravel installed.

Item #6. Retaining wall on South side of property not properly installed to account for drainage.

Claimant Statement – Claimant advised while on the site that they were concerned about the rock retaining wall running up the south side of the property that had been installed by the respondent. They said that they believe the water from the drip system above that was installed by the respondent is affecting the retaining wall that it is starting to fail. Claimant has contacted me since the site visit and advised that they believe the wall is failing more and is moving toward the pathway.

Respondent Statement – In his response to the statement of claim Mr. Penselin said "The South retaining wall is a boulder wall. I am not sure what drainage issue they are referring to." He said in his Mediation Response document: "After looking at the South rock wall, I did not note a failure."

BOARD DISCUSSION

The estimate states "Boulder retaining wall. The wall will be basalt boulders. The wall will retain the areas from the pathway to the pond area." The Board believes that what was written in the estimate and what was delivered are acceptable. No award will be issued for this item.

6 PUBLIC COMMENT

There were no members of the public present.

7. NEW BUSINESS

A. Executive Session (ORS 192.660(2)(f)) - Waterfeatures

B. Executive Session (ORS 192.660(2)(f)) – Matricular Consular cards

The Board moved into Executive Session under (ORS 192-660 (2)(f)) at 2:00 pm to discuss written attorney advice regarding waterfeatures.

The Board moved out of Executive Session at 2:27 pm. No decisions were made while in executive session.

Board Discussion – Matricular Consular

The Board discussed the issue of Matricular Consular identification for entrance into the exam. The Board discussed that a copy of the applicant's driver's license may need to be obtained prior to approval for examination/licensure or find an alternate way to determine applicants are aware US Government issued identification will be

required. Those applicants who have not obtained their licenses, but have been granted approval for testing will not be allowed to continue testing without a valid drivers license. New Board policy will be not to accept the Matricular Consular card as identification. The Board will accept US Federal Government or state issued identification similar to what the CCB accepts. Staff will advise all active applicants who have started and/or not yet started testing of this policy change.

Staff was directed to go through the rulemaking process to place this new policy in rule.

Board Discussion – Waterfeatures

The Board discussed the issue of the jurisdiction of waterfeatures. Staff was directed to discuss this issue with the CCB Administrator and determine the options for amending the statutes to include waterfeatures in the CCB statutes or as an exemption of the LCB statutes.

C. Application Extension Request

The Board reviewed a request from an applicant to extend his passed exam results for six months past the one year allowed. He states that for the past six months he has been taking care of his 88 year old failing mother as well as being a single parent of three teenagers, and is father-in-law dying of cancer.

Mr. Donner appeared before the Board. He stated that he has worked as a landscaper for over 40 years and has continued this work until the winter of 2014 with Down to Earth. His wife is in China taking care of her father who is dying of cancer. He is now acting as a single parent. The time not spent with his children he is working actively in the profession. Mr. Donner would like until the end of October to take his exams. He plans to continue in this profession to get his boys through school.

Board Discussion

The Board believes this is a reasonable request. Staff and legal counsel stated the rules do not give the board the authority to grant this extension. Mr. Donner's application documentation is within the last ten years so he only needs to submit a new application and the \$100 application fee to apply again. Mr. Donner was happy with this outcome.

D. Direct Supervision Discussion

Ms. Gladwill-Rowley reported that as of March 24, 2016 there are 1,353 active LCP's. Of those LCP's 40 are associated with more than one business. This is 2.6% of the LCP's.

Ms. Gladwill-Rowley also reported there are 1,158 active businesses. Of those active businesses 124 are not owned by active LCPs. That means 10.7% of the active businesses are not owned by active LCPs.

Over the last few months approximately six cases have been determined by the Board to be in violation of the supervisory requirements. The these five cases four businesses have owners who are not also LCPs, one has an owner that held a partial phase of license and the supervision issues was with the phase of license the owner did not hold, and the last business has 6 owners and one of the owners of the business is the LCP and also has his own attorney practice. This means that of the 124 businesses not owned by LCPs, four of them have had supervisory violations this year.

The Board believes this is powerful information to be aware of when other licensees bring up this issue. Ms. Dunston wonders if there are more in the Bend area because the perception in that area is there is a lot more of this going on. The Board wonders if there should be a limit to the number of businesses an LCP can be associated with. Ms. Dunston believes the requirement should be that an LCP can only be the LCP for one business. Mr. Hoekman reported he has been asked in the past to be the LCP of their business for a temporary time while the other LCP was out of the country. He believes there should be exceptions at times, but a restriction to one business at a time. Ms. Hollenbeck stated there is a very small amount of the licensees in this situation.

E. CE-Accredited College Courses

The LCB website states in that %all courses at accredited college are automatically preapproved though not listed.+ Ms. Boxall stated this is not in the administrative rules. Many colleges are obtaining pre-approvals for their courses, workshops or classes. It is unknown how many colleges may not be obtaining pre-approvals based on the working on the website. The Board believes that only classes for credit should be automatically pre-approved and they must comply with the acceptable subject matter listed in the rule.

Staff was directed to go through the rulemaking process to allow this.

8. 2015-2020 STRATEGIC PLAN REVIEW

The Board members were provided a copy of the 2015-202 Strategic Plan along with the framework for mapping against the seven identified initiatives. The road mapping is scheduled to be on the agenda at the July Board meeting.

9. OLD BUSINESS

A. Practical Skills Implementation Committee Update

The Board reviewed Ms. Boxall's memo, which is attached and made a permanent part of these minutes. Ms. Boxall reported the office has received the first registration for this test.

B. Proposed Rule Amendments, Hearing Held

i. Adopt Current APA

This rule amendment clarifies the Board adopts the current version of the Attorney General's Administrative Law Manual. A hearing was held April 5, 2016. No written or verbal comments were received.

BOARD ACTION:

Moved by Ms. Hollenbeck and carried to adopt the proposed rule amendments to OAR 808-001-0005 to include the most current version. Vote: 5-0.

ii. Claims Revisions

This rule amendment clarifies the claim process. A hearing was held April 5, 2016. No written or verbal comments were received.

BOARD ACTION:

Moved by Mr. Radford and carried to adopt the proposed rule amendments filed 2/10/2016. Vote: 5-0.

iii. Landscape Maintenance/Casual, Minor Work

This rule amendment updates the definition of landscape maintenance and clarifies exemptions of casual, minor or inconsequential work. A hearing was held April 5, 2016. No written or verbal comments were received.

BOARD ACTION:

Moved by Ms. Hollenbeck and carried to adopt the proposed rule amendments to OAR 808-002-0200, 808-002-0480, 808-002-0620 with the amendment discussed. Vote: 5-0.

iv. Active Duty Military

This rule amendment clarifies military experience, training, and education and procedures for an active duty licensee or respondent in a contested case hearing. A hearing was held April 5, 2016. No written or verbal comments were received.

BOARD ACTION:

Moved by Mr. Radford and carried to adopt OAR 808-003-0234 and amend OAR 808-003-0025, 808-003-0130, 808-003-0230, 808-040-0020, 808-040-0070, and 808-040-0080. Vote: 5-0.

v. Practical Skills Test

This rule amendment updates the examination rules to accommodate for the practical skills testing. A hearing was held April 5, 2016. No written or verbal comments were received.

LCB staff suggested the following revisions to the posted rules:

OAR 808-003-0910

Recommendation: Do not adopt subsection (2) of this rule. This rule requires that for any applicant that wishes to apply for the practical skills exam in July must submit an application form to the agency no later than June 1st.

Purpose: This deadline was not included in the written material regarding the practical skills deadline. Staff believe this deadline is no longer necessary.

OAR 808-030-0020

OAR 808-003-0910

Recommendation: Do not remove subsection (2), leave as is and renumber the remainder of the rule as appropriate.

Purpose: The intent of the removal of subsection (2) was to change the 16 hour class to 8 hours to become a managing owner or managing employee. However, due to the high volume of items that needed work in the LCB office, primarily due to legislative changes and the recent vacancy of the part-time office assistant position, this reduction has not been addressed.

BOARD ACTION:

Moved by Ms. Hollenbeck and carried to adopt, amend, or repeal all rules as stated on the Notice of Proposed Rulemaking Hearing filed February 12, 2016 and any minor revisions to those rules as discussed at this meeting. Vote: 5-0.

vi. Written Score Expiration to 2 Years

This rule amendment changes exam score expiration to 2 years for written exams taken 7/1/2016 or later. A hearing was held April 5, 2016. No written or verbal comments were received.

BOARD ACTION:

Moved by Ms. Hollenbeck and carried to adopt OAR 808-003-0820. Vote: 5-0.

10. ADJOURNMENT AND NEXT MEETING SCHEDULE

The meeting was adjourned at 3:22 pm. The next meeting of the Landscape Contractors Board will be June 16, 2016 by conference call. The following meeting will be held on July 15, 2016 in Keizer, Oregon.

Respectfully Submitted,

Kim Gladwill-Rowley
Program Manager

