

LANDSCAPE CONTRACTORS BOARD
Minutes of the September 18, 2015
Board Meeting
Ewing Irrigation
1013 Paiute Way
Bend, Oregon

PRESENT

Board Members

Molly McDowell Dunston, Chair
William Bumgardner, Vice Chair
Larry Hoekman
Christine Hollenbeck
Loren Radford
John Gawlista

Staff

Elizabeth Boxall, Administrator
Kim Gladwill-Rowley, Program Manager
Jerri Jones, Licensing Specialist

EXCUSED

None

Guests

Katharine Lozano, Assistant Attorney
Larry Thomas, PSCI member, via phone
Joey Pollard, State Police
Gary Dalesky, Gary Dalesky Irrigation & Landscape
Joe Lymp, Deschutes Environmental Services
Jenney Lymp, Deschutes Environmental Services
Angela Snell, Pronghorn
Ken Erickson, Crystal Lake Maintenance
Ted Thacker, Landscape the Valley
Mark S Van Buskirk, Landscape the Valley
Aaron McKelvy, Green Life Outdoor Living
Mark Kellenbeck, Kellenbeck Development
Cody Owen, Green by Nature
Cory Haines, Central Oregon Landscaping
Jacob Reece, Narrow Gate Lawn Care
Alana Police
Fred Swisher, Bend Pine Nursery
Ron Pugh, LCB Contract Investigator
Chris Hart-Henderson, Heart Springs Landscape Design
Trevor Varcoe, Complete Irrigation Services

1. PROCEDURAL

A. Call to Order

The meeting was called to order at 8:30 am by Ms. McDowell Dunston, Chair.

B. Approval of Agenda and Order of Business

Board Action

Moved by Mr. Gawlista and seconded to approve the September 18, 2015 agenda.
Vote: 6-0.

C. Approval of Minutes

i. July 24, 2015

Minor edits were requested by Ms. Lozano.

Board Action

Moved by Mr. Gawlista and seconded to approve the amended minutes for July 24, 2015.
Vote: 6-0

ii. August 20, 2015

Board Action

Moved by Mr. Radford and seconded to approve the August 20, 2015 minutes.
Vote: 6-0

2. EXAMINATION/LICENSE/EDUCATION

Request for CEH Waiver

Chair Dunston McDowell moved the meeting into executive session at 8:51 a.m.

Chair Dunston McDowell moved the meeting out of executive session at 8:58 a.m. No decisions were made during executive session. The documents reviewed during executive session were exempt because they were medical documents.

Board Action

Moved by Mr. Gawlista and seconded to follow staffs recommendation to approve the CEH waiver for license number 15027.
Vote: 6-0

The Board reviewed the examination statistics through August 2015. The number of tests taken in July and August 2015 are higher than the same months last year. Overall the total tests taken for 2015 versus 2014 are very close. Ms. Gladwill Rowley reviewed statistics from PSI regarding first time pass rates vs. second time pass rates.

The Board reviewed the license count as of September 1, 2015. The number of licenses has remained steady for the last two years.

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

3. MARK VAN BUSKIRK/EXCEPTION REVIEW RE: DENIAL OF A LICENSE

Mr. Van Buskirk stated that he appreciates the Board's time and for allowing him to speak. He stated that the biggest concern is that he is being reconvicted and serving time all over again. He said he has a new start, with a new truck and trailer and is licensed in the city of Medford. He stated that he has future plans and to accomplish those a license is required. He stated that he just wants to carry on and asks the Board for mercy. Mr. Van Buskirk stated that 16 letters from community members have been submitted regarding his work and he believes that speaks volumes about who he is today.

Chair Dunston McDowell moved the meeting out of public session at 9:04 am and in to executive session for board review of documents exempt from public inspection per ORS 192.660(2)(f).

Chair Dunston McDowell moved the meeting back into public session at 9:25 am.

No decisions were made and no votes were taken outside the public meeting.

Ms. Lozano outlined three decision options for the board:

1. Uphold proposed order, deny the license
2. Amend proposed order, approve the license
3. Dismiss the proposed order and reset for a rehearing on one or all issues

Board Action

Moved by Ms. Hollenbeck and seconded to uphold the Administrative Law Judge's decision to uphold the proposed order.

Vote: 6-0

Board Discussion

The Board discussed its role as it relates to consumer protection and that it must always be considered first and foremost. The Board encouraged Mr. Van Buskirk to continue with the good work he is doing resulting in positive customer feedback. He could reapply at a future date.

4. Administrator's Report

A. Office Update

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

B. 2013-2015 Final Financial Report & 2015-17

The Board reviewed the financial statements as of August 31, 2015. Ms. Boxall stated that the fiscal year end invoices for 2014-15 have been processed and final reporting for the 2013-15 biennium is attached. Net income is \$25,967.75 over the budgeted amount of \$3,609.27. The July and August 2015 balance sheets show a larger variance from savings to checking due to the \$20,000 transferred for the purchase of additional Sauter books. After this payment the agency still has roughly a 6 months reserve which is important as the agency trends into a typically slower season.

During the entry of the adopted 2015-17 budget into QuickBooks, two calculation errors were identified in the Excel spreadsheet (used for proposed planning) totaling \$68,378. Adjustments were made to line items of the budget so that the total income, expenses and projected net income align with the current adopted budget.

Ms. Boxall's recommendation is that the Board leave the 2015-17 budget as is for now and discuss again at year end. The agency is very early into the new biennium and has some known unbudgeted items (e.g.; change of director audit, exam Spanish translation, etc.) but also some unknowns (e.g. practical skills testing). By year end, staff hopes to have more information on some of the unknowns that will lend well to a more accurate budget modification.

Ms. Boxall reviewed the Department of Administrative Services (DAS) policies regarding: the Cost of Living Adjustment (COLA) which includes, a 2.25% increase for staff effective December 1, 2015, a change from 250 to 300 vacation hours that can be cashed out upon separation, and an additional holiday for the day after Thanksgiving. In the past the

agency has followed DAS, except in regards to furloughs in 2011-13. Also, during 2011-13 staff did not receive COLAs which impacted the alignment to DAS compensation. Ms. Boxall's recommendation is to stay in line with the DAS policy.

Ms. Lozano announced that she will no longer be the LCB's assigned legal counsel as of November 1, 2015. Ms. Lozano will bring the newly assigned AAG to the November 2015 meeting, and will likely be back-up to the new AAG for this board's legal services.

Board Action

Moved by Mr. Gawlista and seconded to approve the un-reconciled financial report 2013-2015. Vote: 6-0

Board Action

Moved by Mr. Radford and seconded to adopt the recommendation to align with DAS policies. Vote: 6-0

5. ENFORCEMENT

The Board reviewed a listing of final actions taken from July 1, 2015 through August 31, 2015. There were 54 cases closed during that time period.

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 Checks; 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

A listing of actions is attached and made a permanent part of these minutes. Removed from the consent agenda are the following cases:

15-07-253, Roots Landscape Management LLC, Advertising without a license.

15-08-254, ABC Inc, Advertising without a license.

Board Action

Moved by Mr. Bumgardner and seconded to approve the remaining consent agenda items. Vote: 6-0

15-07-250, Hernan Hernandez, Advertising without a license, will not be discussed today.

15-07-253, Roots Landscape Management, Advertising without a license.

The Board discussed the meaning of landscape management and that it does not always mean landscape construction. Board agreed that %management+typically refers to maintenance.

Board Action

Moved by Mr. Radford and seconded to dismiss this case because using the word %management+in a business name is not a violation of LCB laws or rules.

Vote: 6-0

15-08-254, ABC INC, Advertising without a license.

The Board discussed the staffsqprocess for cross referencing items with CCB. Ms. Gladwill-Rowley stated that staff checks to see if businesses are licensed with CCB prior to referring cases to the Board.

Board Action

Moved by Ms. Hollenbeck and seconded to follow staffsqrecommendation to issue a civil penalty for advertising without a license.

Vote: 6-0

B. Enforcement Cases for Discussion

1. Advertising without a License

a. Glen Terpening

SUMMARY

At the July 24, 2015 board meeting this case was pulled from the consent agenda for further inquiry based on an underlined item (indicating potential violation) which had then been struck-through on the original advertisement. The board asked staff to verify that the items contained in the Notice of Proposed Imposition of Civil Penalty were violations.

Below is what was contained in the Notice issued on June 11, 2015:

On or about March 2, 2015, respondent advertised as a landscape contracting business. Specifically, respondent advertised for %Grading+, %Repair Draining issues+, %Augers for Posts, Tree, & Shrub Planting (Will Lift large trees into place)+ The item previously underlined as %Re-Gravel Driveways+ was not included in the notice.

CONCERNS/ISSUES

None

STAFF RECOMMENDATION

Assess a civil penalty for advertising without a valid license in violation of ORS 671.530(2) & (4) based on items listed in the Notice of Proposed Imposition of Civil Penalty.

Board Action

Moved by Mr. Radford to issue a civil penalty for a violation for the auguring for trees and shrub planting.
Mr. Radford withdrew the motion.

Board Discussion

The Board had requested staff review the notice to make sure that all items included on the notice we violations, specifically regarding the stricken through section which was not to be included. How does staff distinguish the difference between CCB grading, vs. landscaping grading, may want to strike through grading as well. Ms. Lozano stated that the Board could motion and vote to direct staff to issue the notice with the removal of grading.

Board Action

Moved by Ms. Hollenbeck and seconded to issue a civil penalty for a violation for the auguring for trees and shrub planting only, then refer to CCB for other items contained in the advertisement.

Vote: 6-0

b. Joe Merino

SUMMARY

LCB Contract Investigator performed a site check and observed work being performed on a deck at the job site. Respondent said they were not hired to do landscaping, but to stain the deck. The investigator observed two men staining a deck. The homeowner told the investigator that she was paying \$1,200.00 to pressure wash, sand and stain the deck.

There was a vehicle with a sign for %Merino's Lawn Service+with no LCB number on the signage. The advertisement offered services such as; %Sprinkler Systems+and %Landscape Repair+.

CONCERNS/ISSUES

1. No evidence that work outside of ORS 671.520 was being performed.
2. Advertising contains %Landscape Repair+and board needs to discuss what this means to determine if a violation.

STAFF RECOMMENDATION

1. No action for operation without a license as deck staining is not a violation of ORS 671.520.
2. Assess a civil penalty for advertising without a valid license in violation of ORS 671.530(2) & (4).

Board Action

Moved by Mr. Gawlista and seconded to follow staffs recommendations that no action for operation without a license as deck staining is not a violation of ORS 671.520, and to assess a civil penalty for advertising without a license in violation of ORS 671.530(2) & (4).

Vote: 6-0

Board Discussion

Ms. Boxall asked for the Board to discuss %Landscape Repair+. Ms. Lozano stated that repair work is often exempt from being licensed with CCB and there may be some cross over terminology. The Board may want to send a letter or put on the website information and what type of repair work needs a license.

c. Arbor Now LLC

SUMMARY

This case came to the Board at a prior meeting and the issue was that the company advertises that installation is free.

Michael Hintz, LCB Investigator, contacted Jason Lee Catherman, Managing Member of Arbor Now LLC on January 27, 2015 via phone. They discussed the advertisement and how the business is operated. Mr. Catherman said that he doesn't have a price list of trees and plants that he uses. He works with wholesale nurseries and gets really good prices on them. One of the nurseries he works with is D and J Retail Nursery on Foster Road. They give him reduced contractor prices. Mr. Catherman said that he gets wholesale plants and then looks at the prices at Portland Nursery. He sells his plants and trees at less than full retail per Portland Nursery's price list but there is mark up and profit. He's used the planting work as a marketing tool for his business and didn't know that it required a license. He offers a \$100 discount if a customer buys more than \$600 worth of tree work. The customer can either have the \$100 discount or choose to have a tree planted for free if they prefer.

At the prior Board meeting, legal counsel suggested staff investigate further and obtain a customer list and then subpoena invoices from those customers to get a better sense of what the actual charge is and what is invoiced. Then compare that to what others in the same area are doing . he may only be charging for the trees and installing for free, but this check will show that.

LCB staff obtained a copy of an invoice from the respondent for %20 ft sod, rack, roll, lay, roll+for \$620 with %Grading & extra Removal+for \$100 for a total of \$720. The work was performed in Clackamas and the invoice is attached.

Board Discussion

Ms. Gladwill-Rowley stated that it does not appear to actually be free installation since they are charging for rolling and raking and that grading would be an additional cost. Ms. Lozano stated that the board could possibly issue a letter of concern that they are advertising the service of planting.

Ms. Hollenbeck stated that the ad says this is the plant cost and that it includes delivery and free installation. Ms. McDowell Dunston stated this is why the board has a planting license. Ms. Lozano stated it show intent to perform the work for compensation. Ms. Lozano stated that the Board may have a better case for

conduct than the advertising violation since they advertised that the installation was free.

Board Action

Moved by Ms. Hollenbeck and seconded to direct staff to issue a violation for planting without a license.

Vote: 6-0

2. Operating without a License

None

6. Claims (Dispute Resolution)

A. Consent Agenda

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

Vote: 6-0

1. 9210-101, Mark Coriglian dba: Southfork Ranch & Excavation vs. Artistic Touch Landscaping & maintenance Inc

SUMMARY OF COMPLAINT

Failure to pay for labor (subcontractor)

FINDINGS

ORS 671.695 states a claim may be filed from the performance, or a contract for the performance, of work that is subject to ORS 671.510 to 671.760 and the claim must be one of the following: (3) A claim against a licensed subcontractor by a licensed landscape contracting business or by a construction contractor licensed under ORS chapter 701 for negligent work, improper work, or breach of contract; (4) A claim filed by a person furnishing labor to a landscape contracting business; (6) A claim by a subcontractor for unpaid labor or materials arising out of a contract.

Respondent states this claim is for excavation work he performed as a subcontractor. This work included rough grading that was completed with his equipment involving moving more than 100 yards of soil on the residential site. He also moved 20 yards of mulch on the commercial site. The work also involved raising the grade against the building for proper drainage and eliminating water in the crawl space on both sites. The final grade for the sod installation would have been done by hand after the irrigation system was installed.

There was not a written contract for this subcontracting work. Claimant states the work was performed from April 20, 2015 to April 22, 2015. Claimant's invoice is for 3 days work for 28 hours at \$60 per hour (\$1,680) with a 1 hour credit (\$60) and a \$150 credit for Miller Fee+, totaling \$1,470.

Respondent stated in an e-mail on July 31, 2015 that he will have the money to the Claimant on the 8th.

STAFF RECOMMENDATION

Issue Notice of Arbitration/Contested Case in the amount of \$1,470.

B. Board Review of Claim Cases

1. 9070-101 & 102, Divya & Amarinder Pal Malhi vs. Innovative Landscape Inc.

SUMMARY OF COMPLAINT

- A. poor health of the lawn;**
- B. weeds and bark mulch depth;**
- C. dry creek bed shape and depth**
- D. size of boxwoods;**
- E. no topsoil**

At the last board meeting, it was determined some of the items in claim 9070-101 were not allowed because they were not part of the original filing. At that time the board only took action on the items listed with the original claim. The homeowners have filed a second claim to include the remaining items listed above.

Contract total was \$10,250. Claimant has paid \$10,250.

Items awarded at the last meeting:

Dead plants and trees (negligent or incompetent work)

Complaint: Dead plants and tree

Observation: There was one plant in the front that was clearly dead and another at the end of a flower bed bordering the black metal fence that appeared to be dying.

Bid for Repair: Replace the weak maple tree. Bid amount: \$172.00 plus labor at \$38/hour.

The Board determined the work was negligent or incompetent and awards the claimant \$172 plus \$38 per man hour for two (2) hours for labor to replace the maple tree.

Contractor response: they replaced 6 box woods in the back at no charge. The plants that died in November were due to the drip zone valve left on and constant water killing the plants. They were not hired to maintain the irrigation system and were not aware someone had manually opened the valve.

Drip System (negligent or incompetent work)

Complaint: Drip system may not be installed properly or functioning correctly

Observation: This was corrected as stated above in F by the neighboring landscaper.

Bid for Repair: Irrigation repair. Bid amount: \$69 plus labor at \$38/hour. The Board determined the work was negligent or incompetent and awards the claimant \$69 plus \$38 per man hour for two (2) hours for labor to repair the drip irrigation system.

Contractor response: They looked into the broken valve immediately and did not find one, but did find a valve that had been turned on and left on. This valve operated the drip zone and watered the plants. They turned off the valve and told the homeowner that it had been turned on. Also, there is a bike path next to the backyard and on multiple occasions, things were stolen. They were not hired to maintain the system, but to just install it. There is no way they can know if someone turns on the valve.

CONTRACT – SCOPE OF WORK

1. Install 1 ¾" double check backflow assembly.
2. Install 4 station hunter score timer in garage.
3. Install two lawn zones. 1 front yard spray zone and 1 backyard MP Rotator Zone.
4. Install 1 drip irrigation zone to irrigate all proposed plants.
5. Install 1 load topsoil to front yard and 3 loads topsoil to backyard. Any additional soil will be added on to total bill as an extra.
6. Install 750 sq ft pavers currently on project site and paid for by homeowner.
7. Install snap edging around pavers to secure them. Innovative is not liable or responsible for structural stability of patio once installed as we did not purchase the material. Once installed Innovative releases all liability and will not provide a warranty for product purchased by owner.
8. Install a \$750.00 plant budget. Any additional amount will be charged to the client as an extra.
9. Install no more than 3000 sqft sod. Any additional sod will be charged to the client at a rate of \$.50 per sqft installed.
10. Install 2 units or 14 yards of bark in all planter areas.

Respondent's contract does not mention the CC&Rs that the claimant states they were to follow.

Claimant's bids do not completely separate each item and labor is one line item.

FINDINGS

A. Poor health of the lawn (negligent or incompetent work & breach of contract)

Complaint: poor health of lawn. Claimant believes soil was not tilled and no sufficient soil added as required by the CC&R.

Observation: Lawn appeared to be dying in places and very thin in spots. Half the lawn appeared to be yellowed and different from the other half.

Bid for Repair: Remove the back lawn and enough native soil to allow for the placement of 6 inches of imported loam, soil, sod. Bid amount: Dump

fees \$453, 34 cubic yards soil by conveyor \$1,209, 12 cubic yards of compost \$304, Sod \$580, Test & repair irrigation component: no amount listed. Total: \$2,546 plus labor at \$38/hour.

Contractor Response: The Rexus evaluation states the lawn was in poor health due to lack of fertilization. Claimant did not contract with Respondent for maintenance of the lawn.

B. Weeds and bark mulch depth (negligent or incompetent work & breach of contract)

Complaint: insufficient depth of bark mulch and lots of weed growth. Only 1-1.5+in depth. CC&R requires it to be deeper.

Observation: Contract states 14 yards of bark in all planter areas. There is no mention of specific depth of bark in the contract.

Bid for Repair: Owner to remove weeds and debris, contractor to install 3 inches of fir bark mulch. Bid amount: \$1,711 plus labor at \$38/hour.

Contractor Response: The Rexus evaluation states there are lawn clippings and vegetative debris piled in planting beds. Claimant did not contract with Respondent for maintenance of the planting beds to ensure they stay weed free.

C. Dry Creek Bed Shape and Depth

Complaint: ground not tilled and the bed is not as round and deep as was represented to be.

Observation: Contract does not include a dry creek bed. See photos of dry creek bed.

Bid for Repair: No bid submitted.

Contractor Response: There is no contract for the dry creek bed. This was an idea proposed by the Respondent after signing the contract and the claimant was in favor and was not charged for this. There is contract/charge, so no depth or slope dimensions agreed to.

D. Size of Boxwoods

Complaint: bushes are smaller than expected and no planting soil or loam added for some.

Observation: Contract does not state size of planting material. See Photos.

Bid for Repair: Dig up the boxwoods. Remove excess soil. Amend soil with organic amendment and fertilizer. Replace 4 weak boxwood plants, Reinstall the drip irrigation. Bid amount: Boxwoods: \$89, Fertilizer: \$34, Irrigation repair parts: \$69. Total: \$192 plus labor at \$38/hour.

Contractor Response: No response from contractor on this item.

E. No Topsoil

Complaint: Assessment from Rexius mentions there was claim found in the back and no top soil found in the front as well. The area of boxwood shrubs also did not have planting soil.

Observation: None. See Photos.

Response from contractor:

Bid for Repair: 34 cubic yards imports soil, placed in the back with conveyor: \$1,209; 12 cubic yards of compost, \$304.

Staff comments: These bids amounts for soil are included under item A regarding the replacement of the lawn.

Contractor Response: The contract was very clear there were to be 4 loads of topsoil. The contract does not specify an exact depth; just a volume amount and that was followed. They can provide documentation, if necessary.

CONCERNS/ISSUES

Claimant believes several items were to be completed based on CC&Rs. However, the contract (verified with the claimant is only the one page) does not appear to include any CC&R requirements.

Staff requested evidence the CC&Rs were given to the Respondent. Claimant responded that the Landscape Guidelines were attached to a May 30, 2014 e-mail sent to the Respondent, which is included in this packet. The contract was signed by the Claimant May 29, 2014, prior to providing the guidelines to the Respondent.

Most e-mails are between the claimant and Jennifer Lydon, President of the Valley River Village Homeowners Association, Inc. It is unclear from the e-mails if the agreement between the Claimant and the Respondent included the CC&Rs.

Board Discussion

Ms. Lozano stated that the Board may note from the documentation that some items that were not included in the first claim are included in the seconded claim and that while a year had gone pass it was not because the claimant did not file in time but that the delay was caused by staff, and that the claimant did not know they would need to file an additional claim.

The Board discussed how to determine a fair evaluation of work considering it is subjective. There are resources available, such as, RS Means that are nationwide and there are factors to align that with a particular region. When you don't have something easily identifiable from the contract, then you need an objective 3rd party. Using a resource like this would remove the pressure from the board and would also deal with claims of bias or decision making

from board. The Board directed staff to research and add as a future agenda item.

Claim 1

1. Dead plants and trees . Keep the award as before

Ms. Lozano stated that one of the things that we looked at during the previous meeting was the manual tinkering of the valve, and that was not an issue with the maple but an issue with the boxwoods. Ms. McDowell Dunston stated that the reason the plants and trees died were that someone opened a valve and supplied too much water.

The Board determined the work was negligent or incompetent and awards the claimant \$172 plus \$38 per man hour for two (2) hours for labor to replace the maple tree.

2. Drip irrigation system . No award

Claim 2

1. Poor health of the lawn . No Award

Claimants believe several work items were to be completed based on CC&R's. However, the contract does not include any CC&R requirements. Claimants state the Landscape Guidelines were attached to a May 30, 2014 e-mail sent to the Respondent. The contract was signed May 29, 2014, prior to providing the guidelines to the Respondent. Therefore, the CC&R's are not part of the signed contract

The Board determined the CC&R's were not included in the contract so there is no breach of contract or negligent or improper work. The Board awards claimant zero (\$0) for this item

2. Weeds and bark mulch depth . No award, not maintain

Insufficient depth of bark mulch and lots of weed growth. Only 1-1.5+in depth. CC&R requires it to be deeper.

The Board determined the CC&R's were not included in the contract so there is no breach of contract or negligent or improper work. The Board awards claimant zero (\$0) for this item.

3. Dry Creek Bed Shape and Depth

Ground not tilled and the bed is not as round and deep as was represented to be.

The Board determined there was no contract for this item and no bid was submitted for this item and awards claimant zero (\$0) for this item.

4. Size of boxwoods

Bushes are smaller than expected and no planting soil or loam added for some.

The Board determined the contract does not specify the size of the boxwoods and awards claimant zero (\$0) for this item.

5. Backflow Permit & Valve Boxes

Broken Valve/leak/water bill excessively high. Irrigation will not function. No permit or test of backflow assembly. A landscape worker from another company on site next door came over and notices a valve between the backflow and main water line was turned off. When turned on, the system appeared to work. Landscaper stated one of the valves had to be turned a little further than the others in order to close it down. It is believed that valve is the one that controls the drip systems to the front yard dry creek bed area where there as one dead plant.

The Board determined no bid was submitted for repairs or for the permit & testing and awards claimant zero (\$0) for this item.

6. Drip System

Drip system may not be installed properly or functioning correctly. This was corrected as stated above by the neighboring landscaper. Respondent stated they found a valve that had been turned on and left on and that this valve is accessible by a bike path next to the claimants backyard. Respondent was not hired to maintain the system.

The Board determined there is no breach of contract or negligent or improper work. The Board awards claimant zero (\$0) for this item.

7. Additional Bid Amounts/Other Items:

The remainder of the bid for repair of damage includes lifting the plants in the front yard planting areas: cost not specific, replace 1 dwarf spruce: \$27, and the hedge along the iron fence, \$116, Equipment and truck costs: \$698 plus labor costs at \$38/hour. The total labor cost for all items in this bid is 210 hours at \$7,980.

Separate bids for:

Wash the exterior of the house with soap: \$920

Excess water bill: \$390.89

The Board determined there were no leaks in the valve box and is unable to determine who was directly responsible for turning on the valve to the drip system, which is the most likely explanation for the elevated water bills. The respondent walked around the landscaping with Mrs. Pal Malhi after the work was performed and the exterior of the house was cleaned at that time and final payment was made. The claims for washing the exterior of the house and the excess water bill may be an insurance

matter as it is alleged damage to the claimants from the installation process. The Board determined there is no breach of contract or negligent or improper work. The Board awards claimant zero (\$0) for this item.

The Board determined there was negligent or incompetent work, but only with respect to the dead maple tree. The Board awards claimant \$248 for the replacement of the dead maple tree (\$172 plus labor at \$38 an hour for two man hours).

7. OLD BUSINESS

A. Jurisdiction of Water Features/Defer

The Board decided to wait to discuss this until the new AAG starts as she is also CCB's AAG.

8. PUBLIC COMMENT

At 1:03 pm Ms. McDowell Dunston, Chair, opened the public comment session of the meeting.

Chris Hart Henderson, contractor and designer, came before the board about three years ago regarding the architecture law in Oregon that there seems to be a conflict. It is her understanding that LCB has been in active dialogue with Oregon State Landscape Architects Board (OSLAB) and is aware progress has been made, especially in the area of irrigation. Ms. Hart Henderson said she has been designing landscapes and irrigation systems professionally for 35 years and licensed with LCB for 25 years. Oregon has an unusual restrictive law and changed from a title law to a practice law in mid-2000. If you did not call yourself a landscape architect you could call yourself a designer. She is looking for clarity; and said she knows the LCB is searching for clarity too. She wants it to be closer to how other states have engaged with Landscape Architecture. Ms. Hart Henderson is looking for an exemption that would change the architecture law so that it would support what they do. This does not prohibit or restrict others from doing what they do through education, continuing education hours, etc. Oregon law stipulates very restrictive requirements for a person to sit for an exam to be become registered, restrictive of practice and lateral movement within the industry. There is not much opportunity for those to do what they have historically done.

ASLA . American Society of Landscape Architects, website.

Ms. Hart Henderson stated that APLD looked at the ASLA's website and took information off of it. How other states have handled this situation may provide ideas for a solution. Many states have just exempted people such as; Landscape Contracting Professionals, gardeners, golf course designers, etc., and is interested to see how they arrived at that.

The industry needs more diversity; the simplest solution would be to eliminate some of the haggling. Ms. Hart Henderson doesn't want to change the law, but rather ask

for an exemption, proposing the Landscape Contractors Board would be responsible for dictating regulation of all. In the beginning one could pretty much do a sketch (e.g.; little figure 8 for backflow device). Over the last 30 years, municipalities have new concerns, sustainability issues, and homeowner guidelines.

Guidelines, standards and criteria that dictate what that is, not who does it. Either you meet it or you do not. No licensing or permit. If no permit then why be a Landscape Architect? The City has decided its not a health, safety or welfare issue, so why restrict it?

Ms. Hart Henderson is hoping for some guidance from the LCB in helping to have a conversation with OSLAB. She wants to be respectful but help them understand that this law does not actually help support Oregon health, safety and welfare. In rural areas you cannot even find a Landscape Architect. Ms. Hart Henderson would like to hear what the LCB has to offer in wisdom and guidance and would like to take this to OSLAB and ask for an exemption. She would like to have a community of landscape folks, Landscape Architects, civil engineers, gardeners, and nurserymen, help with language that is collaborative to allow those in these industries to do what they have done in the past with oversight of all agencies. Industries themselves take on friendlier, proactively sharing of knowledge.

Ms. Lozano provided a few approaches/options:

It would be a change to OSLAB statutes. Some would involve LCB, some would not. The Board could add this to the agenda in the future to see if they want to take a position on the exemption. It is not LCB's statute, so the board would have to decide if this was important for the LCB or not. Another option would be to try to start a work group.

The Board could decline to get involved, unless someone else proposes legislative input, possibly could come from OSLAB. Advising Ms. Hart Henderson on how to go about this change is not the Board's role. Ms. Hart Henderson could meet with staff regarding history or to review past minutes.

The Board could advise Ms. Hart Henderson to approach his/her own congress person to get a legislative concept through. If there is no state agency to start a legislative concept, a private person is welcome to approach their own senator or representative. Ms. Hart Henderson could also work with professional associations to promote individual professions. How to approach another agency is outside the Board's role.

Mr. Radford stated that it may be nice at some point to discuss this in the future. Ms. McDowell Dunston thought maybe the January work session meeting would be a good time to discuss.

Ken Erickson, Local landscaper, is licensed with CCB, and also a property manager. Mr. Erickson thinks LCB is easiest to deal with and finds the website to be user friendly. He said he attended the board meeting to earn CEH and has enjoyed being at the meeting. Mr. Erickson said he wants to make sure he does a good job with clients and not be a subject of discussion at the board meetings.

Ms. McDowell Dunston, Chair closed public comment at 1:25PM.

9. NEW BUSINESS

A. Delegated Authority/Acceptance of Claims

Staff requested the Board grant delegated authority to the staff to determine if a claim should be accepted or not. Ms. Lozano stated that as long as there is not some type of conflicted dispute then staff would be able to make the decision. If there is a dispute it would come before the Board.

Board Action

Moved by Ms. Hollenbeck and seconded to grant staff the delegated authority to decide which claims should be accepted.

Vote: 6-0

B. Policy Discussion for LCB Enforcement Action if Action already taken by CCB

The Construction Contractors Board (CCB) refers enforcement cases to the LCB. Sometimes these cases are sent to the LCB because they have determined all the work to be landscaping. However, sometimes they send them over and the work includes items that crossover between both boards (fences, decks, patios, retaining walls, arbors, driveways, walkways, and landscape edging).

When the cases referred to LCB include landscaping work only or landscaping work and some crossover work and a violation has been determined, the LCB takes enforcement action.

When the cases referred to LCB do NOT include landscaping work and are only those cross over areas, staff would like the Board to discuss whether or not action should be taken by the LCB if CCB has already taken action.

Ms. Lozano asked if when staff says takes action, does that mean issue a notice or a final order. A notice, a final order, collections are all enforcement actions. They could be other things, such as issue a civil penalty. Staff clarified, they do mean a final action and that this would be effective January 1, 2016.

If the LCB has taken action then staff would only refer it to CCB if there was something that concerned only CCB.

Board Action:

Moved by Ms. Hollenbeck and seconded to adopt the policy that if an enforcement investigation determines there is a violation for ONLY those areas of construction work that both the CCB & LCB have jurisdiction and the CCB has issued a final order, the LCB will not also issue a final order. If the CCB has not issued a final order, the LCB should determine whether to open a case or not.

Vote: 6-0

C. Review of Draft Proposed Rule Change/Landscape Maintenance

At the last meeting, the Board voted to amend the rules to clarify bark mulching is landscaping work when a tree, shrub, vine, and/or nursery stock are planted. This was added to the definition of ~~install~~, but was not removed from the definition of ~~landscape maintenance~~.

Also, in discussion with legal counsel, the pruning of trees is not within the LCB jurisdiction and, in fact, falls within the CCB jurisdiction. The LCB cannot state it is maintenance work. That is for the CCB to determine. Based on this, the pruning of specific sized trees needs to be removed from the definition of landscape maintenance. Also, staff wonders if the application of fertilizer needs to be removed as well.

808-002-0620

Landscape Maintenance

"Landscape Maintenance" means the regular and practical care of existing landscapes and would include, but is not limited to:

- (1) The mowing, trimming and edging of lawns;
- (2) ~~Pruning of trees to a height of no more than 15 feet above ground level, removal of trees up to 15 feet in height where the diameter of the tree is 4 inches or less when measured at 6" to 12" above soil line. Limbs may be removed when the diameter of the limb is 3 inches or less at its origin;~~
- (3) The placement of mulching materials including, but not limited to, bark dust, chips, husks, shells or compost **when a tree, shrub, vine, and/or nursery stock have not recently been planted;** or
- (4) The application of fertilizer to lawns, trees and shrubs using fertilizer as defined in ORS 633.311.
- (5) The planting of outdoor pots and containers when the pots and containers can be placed without the assistance of power equipment when empty or filled.
- (6) In an irrigation system **landscape maintenance is only:**
 - (a) The adjustment of sprinkler head nozzles; or
 - (b) The programming of irrigation controllers

Ms. Lozano is concerned about the language ~~recently been planted~~. It was suggested that it be ~~planted~~ within the last 30 days, for example, to specify amount of time.

Ms. Lozano stated the issue regarding fertilizer is accurate because it states it is as defined in another statute. Ms Dunston and Ms. Hollenbeck will draft something regarding fertilizer.

Mr. Hoekman stated that turning on the irrigation system, winterizing other than using compressed air, may only need to open up the valves to prepare for winterization.

Mr. Radford said that another topic came up where he had raised the grade of an irrigation system. Adjusting sprinkler heads may be considered changing the grade. Or is adjustment just the spray pattern. As long as they are not cutting pipes that would seem like an adjustment. Ms. Hollenbeck says that it seems that the issue is with the word adjustment and that could be the main issue, since it could mean anything. Mr. Radford stated that the replacement of three heads means there can be no grade change.

Ms. McDowell Dunston stated adjusting irrigation controls is concerning to her. Almost all the properties that she has been to are over irrigating. Ms. Hollenbeck says that consumers have to pay for it, there is no excuse to over irrigate your lawns and beds. Ms. Hollenbeck says that there is a lot of information out there. Ms. Hollenbeck feels that is fair. Mr. Gawlista stated that when it doesn't change from month to month people don't really notice.

Activation of the irrigation system without compressed air is considered maintenance. Mr. Hoekman stated that he hears from the public that asks why they should have to pay you 65 dollars an hour for this work.

Mr. Hoekman and Mr. Radford will work on language about activation and winterization of irrigation system without compressed air.

D. Review of Draft Proposed Rule Changes/SB 580

The Board reviewed proposed administrative rule changes prepared by Ms. Gladwill-Rowley to further clarify Senate Bill (SB) 580. Ms. Lozano clarified several items with Ms. Gladwill-Rowley and changes will be made as appropriate. The Board discussed several sections where staff needed help with technical aspects of the rule. The rules will be filed for rulemaking hearing and the Board will vote to adopt/amend them at the December 2015 conference call meeting.

One of the items the Board discussed is the definition of drainage system. The new law allows maintenance of drainage systems. Mr. Gawlista stated that may

include: cleaning out cache basins, cleaning drain tiles (removal of silt), cleaning out French drains. With storm water drainage systems, it can be quite a process to deal with this.

The Board discussed the maintenance of irrigations systems and determined it includes but is not limited to the replacement of debris screen nozzles, and any project with the replacement or cutting, raising, and /or changing of irrigation heads grade by 4 inches.

The Board determined they did not want to list any maintenance to water features in the rules.

Staff stated they are pulling enforcement statistics to be reviewed by the Board to help determine potential enforcement priority policies based on SB 580 changes. The Board will discuss this at the November meeting.

E. Review of Draft Proposed CEH Rule Change

Ms. Boxall reviewed 3 potential CEH rule with proposed amendments. These amendments include the requirement to hold an active license for at least five (5) years before teaching or presenting CEH can be awarded, allow LCB staff to determine if courses comply with the requirements and not have to be reviewed by the board, and remove the requirement for an official transcript as documentation. The Board direct staff to proceed through the rulemaking process for these amendments.

F. 2016 LCB Meeting Calendar

The Board reviewed the 2016 Board meeting schedule. The January 2016 work session and meeting will be held in Keizer.

G. Potential rules for the Irrigation Design Section of SB 580

SB 580 allows LCB licensees to plan irrigation systems without installing them and leaves it open for the Board to determine the qualifications in rule. The Board reviewed some recommendations from OSLAB. They are separated into two sections; minimum education and experience requirements and definition of types and sizes/scopes of projects.

Ms. Lozano stated that the workgroup is not part of the legislative history. She further stated the items listed in the second group from OSLAB is concerning because the LCB does not have jurisdiction in statue to limit the scope of work. Therefore, these items cannot be adopted by the LCB.

The board agreed the licensee must hold an active irrigation or all phase license and either own or be employed by a landscape contracting business. The other requirement they agreed with was the two years of experience or meeting the Board alternative experience in OAR 808-003-0025.

One item listed in OSLAB's second set of requirements is about public projects. Legal counsel stated there is nothing in the laws or rules that now exclude public works projects and if OSLAB wants to change that, they would need to go through the legislation process.

Ms. Lozano reminded the Board that this work performed by a licensed landscape contracting business is covered by the bond and is subject to the LCB's claim process, which provides another layer of consumer protection that OSLAB does not have.

The Board directed staff to proceed through the rulemaking process with a rule to clarify the licensee must hold an irrigation or all phase license, be employed by or be an owner of a landscape contracting business, and have two years experience or meet one of the alternative experience requirement in OAR 808-003-0025.

10. ADJOURNMENT AND NEXT MEETING SCHEDULE

The meeting was adjourned at 3:18pm. The next meeting of the Landscape Contractors Board will be October 15, 2015 by conference call. The following meeting will be held on November 20, 2015 in Keizer, Oregon.

Respectfully Submitted,

Jerri Jones
Licensing Specialist