

LANDSCAPE CONTRACTORS BOARD
Minutes of the November 20, 2015
Board Meeting
930 NE Chemawa Road
Keizer, Oregon

PRESENT

Board Members

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

Guests

Catriona McCracken, Assistant Attorney General

Staff

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

EXCUSED

Larry Hoekman

1. PROCEDURAL

A. Call to Order

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

B. Approval of Agenda and Order of Business

Board Action

Moved by Mr. Gawlista and seconded to approve the November 20, 2015 agenda.
Vote: 5-0

C. Approval of Minutes

i. September 18, 2015

Board Action

Moved by Mr. Gawlista and seconded to approve the September 18, 2015 minutes.
Vote: 5-0

ii. October 15, 2015

Board Action

Moved by Mr. Bumgardner and seconded to approve the October 15, 2015 minutes.
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 stated that staff is having some issues with the current payroll vendor and that they are not set up to support government agencies. When making corrections the Board is billed. Staff is considering having DAS provide some of the payroll services, helping with the benefits and tracking leave. Ms. Boxall stated that the increase would be roughly \$30 per month, however, this may be a wash based on the removal of these duties from staff time.

Ms. Boxall reviewed the risk and issue log with the Board as well as the enforcement counts:

33 cases in investigation status

51 cases pending to be opened

15 cases to be reviewed

77 cases closed, but still active, may be collecting fees.

B. 2013-2015 Financial Report/Approval

The Board reviewed the financial statements as of October 31, 2016.

Ms. Boxall discussed that at the September board meeting; there were two entry errors in the 2015-17 budget planning documents 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. In addition, a calculation error was discovered in staff salary schedules used to create the 2015-17 budget; totaling \$50,622 in expenses including salary and benefits paid by agency. This makes the total current discrepancy \$17,756 ($\$68,378 - \$50,622 = \$17,756$).

Ms. Boxall suggested that the Board *defer* budget modifications until January 2016 when staff hopes to have a clear pathway and better idea of costs related to the Practical Skills Exam (HB3304).

Ms. Boxall stated that because all budget line item adjustments have not been made, financials remain unreconciled and that additional notes have been made on the Budget vs. Actual report as well as the following:

1. Staff is tracking costs associated with the Practical Skills Implementation under 5400 Advisory Committee accounts.
2. Erroneous payroll expenses occurred related to unemployment and other taxes (line 5016 \$300.69) which the agency's current third party payroll service is working to resolve by year-end.

Total Income is down 4.34% from last year at this time. Renewals remain overall consistent. Total expenses are up 18.39% compared to last year at this time, primarily due to the

purchase of Sauter books made early in the biennium (without the purchase consideration the increase is approximately 7%).

Ms. Boxall stated that she has made transfers from savings to checking totaling \$17,000 in the last couple of months which is typical this time of year and the Board has approximately 5.5 months reserves. Staff will continue to monitor costs closely as the agency is in a slower season with some additional costs associated to Senate Bill 580 changes (publications, supplies, and human resource time).

Ms. Boxall stated that as of the most recent invoice received after financial statements were prepared, we are now at 100% of budget for our legal counsel. This is due in large to a few complex cases which are now wrapped up. Staff is exploring a new pilot option to have a flat fee monthly billing based on a three (3) year rolling average of the agency's use of DOJ on annual basis. Mrs. Gladwill-Rowley and Ms. Boxall are strategizing on how to best utilize this resource while insuring that the Agency is staying within the legal parameters. Ms. Boxall is looking at a possible quarterly fee for council and will evaluate how this would impact the budget and if it would be a good route to go.

Board Action

Moved by Mr. Gawlista and seconded to approve the unreconciled financial report.

Vote: 5-0.

3. EXAMINATION/LICENSE/EDUCATION

The Board reviewed the examination statistics through October 31, 2015. The number of tests taken in September and October 2015 are significantly higher than the same months last year. Overall the total tests taken for 2015 versus 2014 is very close and will likely be more for 2015 by the end of the year.

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

Board members and staff introduced themselves to the new AAG Catriona McCracken.

4. ENFORCEMENT

The Board reviewed a listing of final actions taken from September 1, 2015 through October 31, 2015. There were 71 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. Edward Pearson was removed by the consent agenda.

3. Investigated; No Violation

Documentation is attached.
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.

15-10-354 Quality Tree Service & Landscape Maintenance was removed by from the consent agenda.

Board Action

Moved by Mrs. Hollenbeck and seconded to approve the remaining consent agenda items.

Vote: 5-0.

15-10-354, **Quality Tree Service & Landscape Maintenance**, Advertising without a license.

Board Discussion

Quality Tree Service & Landscape Maintenance is a CCB Licensee; staff received an email from a third party who took responsibility for setting up the webpage, which has now been corrected. The word %landscaping+was also removed from the name of the business.

Board Action

Moved by Mr. Gawlista and seconded to follow the staff's recommendation of no violation.

Vote: 5-0.

Edward Pearson – Ag-Gro Systems LLC & Little Deschutes Garden, performing landscape work without a license.

Board Discussion: Mrs. McDowell Dunston recused herself.

Mr. Radford asked, if the respondents have just not responded why is this case being closed? Mrs. Gladwill-Rowley stated that the only way to move forward on this case is to take them to court to require they respond to the subpoenas, which can be pretty costly. Staff made extensive effort to investigate this case.

Board Action

Moved by Mr. Radford and seconded to follow the staff's recommendation of no violation

Vote: 4-0, Mrs. McDowell Dunston was recused.

B. Enforcement Cases for Discussion

1. Advertising without a License

a. All Backyard Construction

SUMMARY

At the September 28, 2015 board meeting this case was on the consent agenda as %ABC Lawn Maintenance+who does not hold a CCB license and was included in the motion to approve the consent agenda for violation.

Further investigation revealed that ABC was actually %All Backyard Construction+which does hold a CCB license for which items advertised are covered under that license (Stamped Concrete, Broomed/Exposed, Retaining Walls, and Decks/Fences).

STAFF RECOMMENDATION

No action as work advertised is covered with CCB license.

Board Action

Moved by Mrs. McDowell Dunston and seconded to uphold staff's recommendation of no action and to refer to CCB.

Vote: 5-0.

Board Discussion

Ms. Boxall stated that once staff recognized that this respondent was CCB licensed and the work was covered under that license that staff did not move forward with the investigation. Ms. Boxall stated that staff would refer it over to CCB.

b. Mountain Tree Care

SUMMARY

A photo of a business card for Mountain Tree Care, LLC was submitted from a contract investigator stating it was located in a store on a business board. The business card advertised for %Landscaping+and %Sprinkler Installation and Repair+.

Respondent had a prior advertising violation for which a stipulated order was finalized March 18, 2014. The violation for the prior case was a Craigslist advertisement offering %Landscaping+services.

A notice of civil penalty for subsequent offense was issued September 28, 2015. On October 7, 2015 LCB received a timely request for hearing. On October 21, 2015 Respondent submitted a letter stating that new business cards were ordered after the first violation in February 2014.

CONCERNS/ISSUES

Alleged advertising violation for this case is different than the prior. The current case includes %Sprinkler Installation & Repair+. However, when and how the business card was posted at the site cannot be determined..

Board Action

Moved by Mr. Gawlista and seconded to follow staffs recommendation to withdraw Notice of Civil penalty and dismiss case.

Vote: 5-0.

Board Discussion

Ms. Boxall stated that the respondent submitted an invoice showing that the business had ordered new cards and that staff cannot prove when the business card was posted.

2. Operating without a License

a. Christy Ditlefsen & David Crews

SUMMARY

Installation of an irrigation system.

On July 22, 2015, the LCB office received a Statement of Claim form from Janeane Reisner, homeowner who stated the respondent was hired to install a complete sprinkler system in her yard based on an article she read in her local newspaper (which she provided). She paid the respondent in full (\$2,500) and the system is not working correctly and the respondent will no longer accept her phone calls.

Advertising as a landscape contracting business

On March 11, 2015, there was a newspaper article in the *Hells Canyon Journal*. This article states there is a new business that offers "Landscape, Lawn Services". The article states that the respondent states he moved to Eagle Valley from California and specializes in sod, lawns, sprinkler systems and landscape work. It also quotes him to say that he loves to work with landscaping projects, planting "and we will create flowerbeds and plant them, we will fill your planters with flowers and hanging baskets, and, of course, we can put in watering systems for flowerbeds. We are a full service landscape and lawn service business." The article states that the respondent "noted he is available for odd jobs that you might need help with such as fencing projects. "Our focus is on landscaping, lawn and gardens; we are available and willing to work on any job you might need help with." He further states "But, I'm not a plumber?"

CONCERNS/ISSUES

Staff would like the Board to discuss the advertisement and determine if there is a violation or if this was a newspaper article written by someone else and therefore; not advertising.

Board Action

Moved by Mr. Gawlista and seconded to uphold staffs recommendation to assess a civil penalty against respondent for advertising & operating as a landscape contracting business without a valid license.

Vote: 5-0

Board Discussion

Staff stated that the article was written by the newspaper and that it was not advertising secured by the respondent. Mr. Gawlista stated that in the article it appears the respondent is stating that this is the type of work he does, which seems to appear as an advertisement.

Council stated that you cannot advertise or represent in any manor, including using the word landscape unless it shows the maintenance nature of the unlicensed business.

b. Mark Jenkins, Hardway Construction LLC

SUMMARY

Installation of an irrigation system, nursery stock and sod lawn

The contract investigator spoke with Mark Jenkins who stated he had installed the irrigation and was also installing the plant and sod. The homeowner, Paul Grout also verified this information. Mr. Jenkins thought he could not install the backflow because the front sprinklers are lower than the back sprinklers, so he thought a backflow was not necessary.

LCB exemption for CCB licensees allows a CCB licensee to perform up to \$3,800 of landscaping work in specific instances, but not the irrigation work and only for new residences. This job site was not new.

LCB staff subpoenaed the respondent and the homeowner for further documentation. However, the documentation submitted by both parties is not specific as to what specific work was being performed for \$590. However, one invoice shows on September 4, 2015, the homeowner paid Mariano Chavez to install new sod for \$638.

CONCERNS/ISSUES

The documentation submitted with the subpoena:

1. Does not show the specific work the respondent performed; and
2. Shows that Mariano Chavez, dba: Ledezma's Landscaping Maintenance performed new sod for \$638.

STAFF RECOMMENDATION

Close; no action against respondent.

Assess a civil penalty against Mariano Chavez, dba Ledezma's Landscaping Maintenance for advertising and operating as a landscape contracting business without a valid license.

Board Action

Moved by Mr. Radford and seconded to uphold staff's recommendation to assess a civil penalty against Mariano Chavez, dba Ledezma's Landscaping Maintenance for advertising and operating as a landscape contracting business without a valid license. Mr. Radford asked that this be referred to CCB.

Board Discussion

Mariano Chavez, dba Ledezma's Landscaping Maintenance is not licensed to install the sod. In addition, there appears to be an advertising violation for Mr. Chavez as well. If staff believes there may be a CCB violation, the case is referred to CCB. Mr. Jenkins provided a copy of an invoice that does not indicate the work was for the purpose of irrigation work.

Council stated that if an investigator took a specific statement from a respondent and the case went before an administrative law judge, she would have that person called to the stand and provide the information, which would be considered evidence. If a person makes a statement that they did work that they were not licensed to do, that is considered evidence.

Mr. Hintz stated that the Board has to weigh the evidence versus the cost associated with going to a hearing, and that in this case the Board has someone admitting to a violation.

The Board asked if at some point the respondent requests a hearing could the board withdraw the action at that time. Council stated the Board could do that. If the respondent chooses to make a settlement then the Board is done. Council stated that you don't want to get into a position where it appears that every time a respondent asks for a hearing the Board chooses not to go forward. That could set precedence.

Ms. Gladwill-Rowley stated that the previous legal council had advised that all the evidence should be collected before issuing a notice and that a statement heard by an investigator is not adequate evidence. Current legal council stated that the LCB could collect additional evidence as a part of discovery after the hearing request is received and that in her experience that once a case goes to Administrative Hearing, then the DOJ subpoenas for more evidence. Ms. Gladwill-Rowley advised legal counsel that the LCB staff represents the agency at most cases, so the agency staff will be issuing the subpoenas.

The Board asked if there is any liability when you don't have probable cause. Legal council stated that the Board should not move forward if the Agency does not have probable cause.

Mr. Radford withdrew his motion.

Board Action

Moved by Mr. Radford and seconded to issue a penalty to both Hardway Construction LLC for operating without a license and to Mariano Chavez, dba Ledezma's Landscaping Maintenance for operating and advertising without a license.

Vote: 5-0.

c. Meyers Construction Company

SUMMARY

Installation of an irrigation system

Respondent admitted to the installation of an irrigation system on three homes in the new subdivision. Respondent stated he was told by his plumber that the respondent is allowed to perform the irrigation installation, but not the hook up to the water meter.

LCB exemption for CCB licensees allows a CCB licensee to perform up to \$3,800 of landscaping work in specific instances, but not the irrigation work. Respondent stated the homes are all pre-sold. Respondent supplied a copy of the sales agreement for each of the 3 sites. These appear to be sales agreements, not contracts for construction. Two of the three agreements were signed prior to the August 27, 2015 on-site investigation; the addendum was signed September 4, 2015.

APPLICABLE LAWS & RULES

671.540 Application of ORS 671.510 to 671.760.

(1) Except as provided in subsection (2) of this section, ORS 671.510 to 671.760 and 671.990 (2) do not apply to:

(h) A residential general contractor licensed under ORS chapter 701 who performs landscaping work if the total value of the landscaping is less than \$2,500 (***this has been increased to \$3,800***) per residential dwelling and the landscaping work is performed on residential property for which the contractor is ***under contract for the construction of a new dwelling***. The exception provided by this paragraph ***does not apply to the performance of irrigation*** work by a residential general contractor.

CONCERNS/ISSUES

Staff believes the Board needs to discuss this as it is not a routine case.

Board Action

Moved by Mrs. Hollenbeck and seconded to uphold staff's recommendation to assess a civil penalty against respondent for operating as a landscape contracting business without a valid license (3 counts).

Vote: 5-0.

Board Discussion

Ms. Gladwill-Rowley stated that there appears to be no contract but only a sales agreement and that all the work was done by the homeowner and now he is selling.

The Board discussed whether the respondent built the house as a general contractor or as the homeowner. Ms. Gladwill-Rowley stated that what is in question is if the intent was that the house was built to sell, 671-540 (h)(g). The Board reviewed the sales agreements.

3. Other/misc

a. Multiple – failure to include license number in advertisement

SUMMARY

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

LCB staff received ten (10) enforcement reports from contracted investigators stating the businesses were licensed with the LCB, but were not showing their 4 digit number on their advertisement on their vehicles.

At the July 2015 Board meeting, the Board adopted a rule change regarding vehicle stickers and that they would no longer be valid as the 4 digit number on vehicles if there was an advertisement on that vehicle. This rule goes into effect January 1, 2016.

The cases received in the LCB office included photos of the vehicles, but not photos of all 4 sides of the vehicles. LCB Investigator, Michael Hintz contacted four of these businesses to discuss this issue. One business said the wrong number was put on the vehicle so he scratched it off since it was incorrect, but hasn't had the correct one

added; another said those vehicles are only used for maintenance work; the third said he has always used the LCB's green stickers on the windshield, but the windshield may have been replaced on that vehicle; and the fourth stated he has new vehicles and thought he could order these stickers from the LCB. Each one of them said they would take care of the issue immediately.

CONCERNS/ISSUES

In the past, licensees were told if the number was any where on the vehicle (even on a sticker not in view of the ad) this was in compliance with the rule. Staff is concerned that since the photos do not show all sides of the vehicles, the green sticker could possibly be out of view.

Board Discussion

The law states all written advertising must include the 4 digit license number. If an advertisement is on the vehicle the license number should be included. The Board asked if this could be deferred until January and if staff could send out warnings? Staff stated that the costs associated with that could be substantial. Does the Board want the investigators to spend more time taking photos of all sides of the truck, since it appears that the Board needs more evidence? Legal counsel stated that if an investigator made a statement that they checked the whole the truck would that be sufficient, but the photos would be better.

Mrs. McDowell Dunston stated that staff may want to include something in the newsletter regarding how important it is to have an LCB number listed in all written advertisements.

Board Action

Moved by Mrs. Hollenbeck and seconded to take no action on any of these cases.

Vote: 5-0

b. A1 GENERAL CLEAN-UP AND LANDSCAPE COMPANY

SUMMARY

Performing Work Outside the Scope of the License:

On or about April 17, 2015, LCB Contract Investigator observed landscape activities being conducted at the above job site. Specifically, the landscape activities included installation of about 30 arborvitae and a drip irrigation system. At that time the respondent was only licensed for Standard . No Irrigation or Backflow, which does not allow respondent's employees to perform any irrigation installation.

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.

Failure to Comply with Minimum Standard for Contracts:

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.

CONCERNS/ISSUES

Advertising outside the scope of the license . no concern. Advertisement on vehicle and the case includes photos of the advertisement.

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.

Contract issues: The Board just needs to decide which violation: failure to comply with minimum standards for contracts or performing landscaping work without a written contract. It appears the failure to comply with minimum standards is a violation, if the e-mailed contract is considered a %contract+without signatures.

Board Action

Moved by Mr. Bumgardner and seconded to follow staff's recommendation to Issue a notice of civil penalty for:

1. Performing the installation of a drip irrigation system with a Standard . No Irrigation or Backflow license (working outside the scope of the license).
2. Advertising landscaping work outside the scope of their license.
3. Failing to comply with minimum standard for landscaping contracts or performing landscaping work without a written contract. Vote: 5-0.

Board Discussion

Council stated that if there is no signature and no verification that an agreement was made, then there would be no contract. In addition Mr. Yocum stated that there was no contract.

c. FLI Landscape LLC

SUMMARY

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

On August 9, 2015, respondent's Newspaper ad did not include the 4 digit landscape contracting business license number.

CONCERNS/ISSUES

This newspaper advertisement was not specifically for landscaping work, but as a sponsor. It states:

FLI Landscape
Is a proud sponsor of the
WASCO County
FAIR & RODEO
August 13-16, 2015
Tygh Valley
www.flilandscape.com

541-296-1424

Board Action

Moved by Mrs. Hollenbeck and seconded to assess a civil penalty for advertising without including the four digit license number in the ad and on their website.

Vote: 5-0.

Board Discussion

The board reviewed the newspaper ad/article. Board stated that it appears to be an ad not a listing of sponsors for the event.

d. John R Gimby, dba: Omega Landscape Maintenance & Design

CONCERNS/ISSUES TO KNOW BEFORE READING THE SUMMARY

Respondent's landscape contracting business license expired May 1, 2015. This license was not renewed until May 6, 2015. The LCB Investigator was on respondent's job site on May 5, 2015. The board has never discussed when a timely renewal form is received in the LCB office, but the license is not renewed until after the expiration date due to respondent's lack of compliance with a specific requirement . in this case a business name registration with the Secretary of State.

SUMMARY

1. Operating without a valid license

On May 5, 2015, LCB Investigator, Michael Hintz visited a job site (1401 W Ellensdale #53, Dallas, OR) where the respondent had been performing landscaping work. The homeowner stated the respondent had been on the job site that morning. Respondent held an active license, but that license expired April 30, 2015. As of May 1, 2015, respondent did not hold an active license.

However, that license renewal form was received in the LCB office on May 1, 2015 with a postmark date prior to that date so the renewal form was not considered late. However, it could not be renewed due to the assumed business name being inactive with the Secretary of State. On May 6, 2015, respondent's business name was active, so LCB staff reinstated respondent's business license effective May 6, 2015. Respondent was expired from May 1 . 5, 2015.

OR

1. Failure to have LCB number on advertisement; and

2. Failure to change employment status and have workers' compensation when an employee is hired.

At the job sites listed above, respondent's signs were in the front yards. These signs stated respondent's business name and phone number, but did not include the 4 digit LCB number.

During the investigation, respondent admitted to the investigator to having a workers on both job sites who was not on his payroll and not covered by workers compensation coverage. On May 11, 2015, the LCB received a certificate of insurance showing respondent has workers comp coverage beginning May 9, 2015; this is after the respondent admitted the having a worker on the job sites. On May 12, 2015, respondent updated the employer status to %Non-Exempt (has employees)+

CONCERNS/ISSUES TO KNOW AFTER READING THE SUMMARY

Operating without a valid license

Respondent's license was expired May 1-5, 2015. LCB Investigator took photos of respondent's yard signs on May 5, 2015. Omega Landscape Maintenance & Design is the respondent's business name . without a valid license, this name is not in violation; therefore, the sign advertisements are not in violation for an unlicensed business.

A homeowner told the investigator the respondent had been working at her job site that morning, however, there is no other evidence that respondent performed landscaping work while the license was expired.

Failure to have LCB number on advertisement

If Respondent's license is considered %expired+ on May 5, 2015 when the investigator took photos of the signs, no LCB number would have been required (that day).

Failure to change employment status and have workers' compensation when an employee is hired

Respondent admitted over the phone to the investigator that he had a worker on the job site, but had not gotten him on the payroll yet, therefore, he was not covered by workers compensation insurance. However, there is no evidence this worker was on the job site at any time.

Board Action

Moved by Mr. Radford and seconded to assess a civil penalty for failure to comply with not having workers compensation, no license number in advertisement and no contract.

Vote: 5-0.

Board Discussion

Mr. Hintz asked if the contract was missing the license number. Mrs. Gladwill-Rowley stated that after looking at the contract it was not signed so does not appear to be a contract.

5. CLAIMS (DISPUTE RESOLUTION)

A. Consent Agenda

NONE

B. Board Review of Claim Cases

- 1. 8980-103, Gary D. Brown vs
Westside Landscape Main/Div LLC**

SUMMARY OF COMPLAINT – follows numbering of Investigation Report

- 1. No signed contract**
- 2. Depth of Barkdust**
- 3. Paver Color/Type and Amount**
- 4. Paver Path Contour**
- 5. Pavers “tip” under weight of airplane**
- 6. Planting Allowance**

REQUESTED MONETARY DAMAGES FROM CLAIMANT

- 1. No Signed Contract**
No award can be provided for this item. Refer to enforcement investigation

Board Discussion

Board discussed that there was no signature. Council stated that if you look at the statues one of the things you need is a signature to make a valid contract.

- 2. Bark Mulch**

Bid for Repair: No bid submitted.

- 3. Paver Color/Type and Amount**

Bid for Repair: \$3,985 (Remove lighter stones in serpentine path and aircraft parking area and replace with darker stone.)

Board Discussion

Additional cost for the replacement of stone of .06 per pound, in addition a restocking fee was charged. Council asked if the project took multiple days and was curious why the claimant didn't say something sooner. The struggle is that we don't know what anybody agreed on. There is no picture and no contract.

- 4. Paver Path Contour**

Bid for Repair: Included above in #3.

Board Discussion

Mr. Hintz stated that there was a discussion of how the stones would be laid and the claimant stated that the contractor told them that continuing the path off the drive would suffice. The contractor was aware the claimant would be driving his airplane on these stones. This type of installation did not work and the contractor came back and cemented some of the stones. The Board discussed what would the generic standard be for stone on sand and that if set in sand you would have some tipping of the stones. If you set the stone in cement you would not have this tipping issue. They believe this is a unique application.

Negligent work is defined as:

1. Marked by or given to negligent especially habitually or culpably
2. Failing to exercise the care expected of a reasonably prudent person in like circumstances
3. Marked by a carelessly easy manner

Council stated that failing to exercise the care expected of a reasonably prudent person in like circumstances appears to fit this situation based on what the Board members have been discussing.

5. Pavers “tip” under weight of airplane

Bid for Repair: \$1,765 (replace stone with pavers in aircraft parking area - cut and remove existing stones, rebase area to support aircraft, install 70 sq ft pavers and 5q circle paver area, cut to fit as needed, compact and finish sweep) (see board discussion above).

6. Planting Allowance

Bid for Repair: \$275 (replacement of tree only).

The landscaper had the customer show them that they wanted a particular type of tree and then called it a different type of a tree, and the contractor provided the type of tree that was stated, not the tree that the homeowner showed them.

7. Miscellaneous

Bid for Repair: \$75 for Removal of Debris.

Board Action

Moved by Mr. Bumgardner and seconded to award the claimant to replace the stone pavers in the airplane turn around area at \$1,765.00 and the exclude all other items due to no signed contract, so it cannot be determined what was agreed upon.

Vote: 5-0

Board Discussion

Council stated that only the items that are included in the complaint can be considered as part of the claim.

2. 8266-101, Bruce & Sandra Haskins

Paul W. Winterbottom, dba: Premier Irrigation & Landscape

SUMMARY OF COMPLAINT – follows numbering of Investigation Report

1. \$60 charge to drive to Klamath Falls from Medford to evaluate the drip system .
Claimants gave him \$100
2. Request for additional \$2,600 to make further adjustments
3. Prior existing drip system worked better than new drip system
4. Installed spray emitters instead of rings for rose bushes
5. Water is not reaching the last 1/3 of the emitters and where water is reading, the emitters are in the wrong place
6. Unsure if new equipment in the sprinkler boxes were used as stated in contract

7. Work took ½ the time he estimated

CONTRACT (scope of work)

Dig up existing drip valve, inside an underground valve box

Install a new drip valve, pressure regulator, filter combination valve

NOTE: This is only for the drip around the house and does not include the drip on beds that are not connected to the house

Remove all old drip tube around the house

Rake back the rocks to install new drip tubing

Install new .710+drip tubing

Tack down the new drip tubing using ~~white~~+staples

Install approximately 50 micro-spray riser assemblies

Cover up the new drip tubing as good as possible with the existing rocks that were raked back

Install new drip to both beds on either side of the entrance steps

Includes 1 hotel night stay as well as ~~per diem~~+for two days

Provide all labor, equipment and supplies needed

Contract total \$2,150

REQUESTED MONETARY DAMAGES FROM CLAIMANT

Claimant is requesting the full \$2,150 that was paid.

Claimant submitted 3 bids from licensed businesses.

The Board should review the photos provided at the Board meeting, discuss the on-site investigation with the investigator along with the written complaint and response from the contractor to determine if there are damages caused by the respondent.

Board Action

Moved by Mrs. Hollenbeck and seconded to award the claimants \$1,064.00 for negligent and improper work and breach of contract.

Vote: 5-0

Board Discussion

The Board reviewed photos submitted by the investigator and determined there was a new valve. The Board also determined that the drip system came with a filter; however, the respondent chose not to install it. The filter situation is more important than the pressure situation. Respondent breached the contract by not installing the filter as required.

The Board determined the claimantsq expectations were not met with a working irrigation drip system when their prior system worked better than the new system. A prudent person would expect to replace one system with another system that worked just as well, if not better. In this case, it appears the new system worked worse than the prior system. Therefore, the Board determined the respondent performed negligent or improper work

The Board determined there was a breach of contract and negligent or incompetent work when determining the issue with the prior existing irrigation system and not installing the filter. The Board took an average of the three bids submitted for an award of \$1,064.

6. OLD BUSINESS

A. Jurisdiction of Water Features/Defer to future meeting

B. Practical Skills Implementation Committee Update

On October 20, 2015, the Practical Skills Implementation Committee (PSIC) met with Renee Harber, Horticulture Chair at Clackamas Community College (CCC) . site of the current Certified Landscape Technician (CLT) exam. The objective was to learn what information was needed to determine the viability of leveraging the existing CLT exam.

From this discussion it was determined that a gap analysis was needed to better determine the additional modules and work that may be involved. A decision was made to start with a matrix of the CLT exam to the LCB written exam and flush this out with the committee subject matter experts in a work session on November 4, 2015. The committee also discussed several potential modifications to current law (HB3304). Representative Dallas Heard indicated potential to introduce more flexibility in the areas discussed.

On October 30, 2015 Ms. Gladwill-Rowley and Elizabeth Boxall met with the National Association of Landscape Professionals (NALP), Karen Barnett and David Hupman, via conference call to inquire about two areas:

1. Licensing: NALP said that OLCA holds the license and can share that license with the LCB. No additional licensing is required. If for any reason OLCA decided not to partner with the LCB, no license could be obtained under current contract. Though we do not currently anticipate this, it seemed prudent to inquire.
2. Raw Score Access: NALP releases pass/fail to applicants. If an applicant fails, they are provided a breakdown showing specific areas which resulted in a deduction. This complies with the current requirement by law (HB 3304).

On November 4, 2015 a committee work session was held in executive session to review both the CLT and LCB exam to determine a possible approach to meet requirements with modifications. Based on the outcome of that work session, it was determined that the best approach was to leverage the current CLT exam for the obtainment of Planting only or Irrigation only licensing to start. This will also require an additional LCB specific common core construction portion of the exam to be added. This also minimizes resource impacts to CCC at this time. The outcome from this meeting was discussed with Representative Heard who expressed support for all modifications as listed below. Due to the limited amount of bills Representative Heard can introduce (2) and tight timeframe to submit, a more detailed letter drafted to Representative Heard was sent to the Board on November 5, 2015 for feedback in preparation to send to Representative Heard on November 10, 2015. Below are the modifications proposed:

1. Amend the numbers of times the practical skills exam is required to be provided from three (3) times per year for two (2) consecutive days to one (1) time per year for one (1) day;
2. Amend the law to allow a combination of written sections and practical skills sections for licensure;
3. Amend the law to allow candidates to attend the business course at any time through the exam process;
4. Amend the law to only license for a partial phase license through the practical skills exam; specifically Planting only or Irrigation only.
5. Amend the law to allow a small review-type quiz at the end of the business course; and
6. Amend the law to add the allowance of written multiple choice in some sections.

Once the committee has confirmation that Representative Heard has received the modification letter and address any questions or concerns, if any exist, the PSIC committee will resume meeting to continue flushing out the details on how to implement based on proposed modifications. This will be critical in order to maintain traction to meet the accelerated July 2016 implementation to align with next the CLT exam.

Mr. Radford stated that he felt the last meeting was much more successful and that the committee seems to be in a good place.

The Board discussed staff to create a matrix to track to see how the hands on testing process impacts the licensees regarding enforcement issues and claims. The Board asked if there is an incentive for OLCA to help implement the exam. Staff stated that OLCA will be collecting all the fees and including it as part of the CLT exam. The Board had concerns that this may add too many candidates to OLCA's CLT testing. As far as the sections that the CLT will not cover, the LCB will be responsible for implementing that possibly through a collaborative effort with Clackamas Community College.

C. Review of OAR 808-002-0620/Landscape Maintenance

Fertilizer/Dunston & Hollenbeck

Mrs. Hollenbeck stated that she doesn't think that it is broken enough that this needs to be fixed. If fertilizer is misapplied over time it can build up in the soil, which can cause poor health of plants and the Department of Agriculture oversees that area

Start up and Winterization of Irrigation System/Hoekman & Radford

The Board discussed adding something in the Landscape Maintenance definition 808-002-0620 regarding winterization and compressed air, possibly also including something in Landscape Maintenance regarding sprinkler heads and adjustments. Mr. Radford and Mr. Hoekman will submit further information.

7. PUBLIC COMMENT

At 1:00 pm, Mrs. McDowell Dunston, Chair, opened the public comment session of the meeting. No public in attendance.

At 1:10pm, Mrs. McDowell Dunston, Chair, closed the public comment session of the meeting.

8. NEW BUSINESS

A. Discussion RE: RSMeans, Site Work & Landscape Cost Data Publication

RSMeans provides a framework for making decisions regarding claims that can be used in determining costs. The Board would likely use this as a resource for comparison against bids and it would be helpful in the claim process if bids came in using unit pricing. In addition, this resource would give the Board an industry standard and also provides a regional factor in order to adjust for pricing based on location.

Board Action

Board directed staff to purchase 1 copy of the RSMeans book for landscape cost.

B. Discussion RE: Prioritization for Enforcement Cases

Ms. Boxall stated that with the SB 580 language change from shall to may when imposing a civil penalty; the Board should discuss this in January.

Council stated that other Boards use a matrix and the Board may find this to be useful, the matrix may also include a section for ~~what~~ ^{whether}. The matrix might not show how much to impose, but whether or not to impose and what type of severity. Other Boards look at specific factors in order to make decisions. The Board may want to consider the type of license violation and then severity along with a first of subsequent offense.

The board agreed that setting up the matrix based on the type of violation makes the most sense. If the Board can agree on the parameters for the matrix the staff can move forward on setting up the matrix and have the Board review it in January.

The board directed staff to move forward using the matrix provided in the board packet as a starting point for creating the prioritization for enforcement cases.

C. January 2016 Board Meeting/Work Session Schedule

The Board reviewed a list of possible discussion items presented by staff for the January 2016 Board work session. It was determined that a Board member and staff will facilitate this meeting.

D. Executive Session, ORS 192.660(2)(f), to review written advice from legal Council re: Marijuana.

Mrs. McDowell Dunston, Chair, moved the Board into executive sessions at 1:39pm.

Mrs. McDowell Dunston, Chair, moved the Board out of executive session at 1:57pm.

No decisions or votes were made during executive session.

9. ADJOURNMENT AND NEXT MEETING SCHEDULE

The meeting was adjourned at 2:35pm. The next meeting of the Landscape Contractors Board will be December 17, 2015 by conference call. The following meeting will be held on January 14 & 15, 2016 in Keizer, Oregon.

Respectfully Submitted,

Jerri Jones
Licensing Specialist