

**LANDSCAPE CONTRACTORS BOARD**  
**Minutes of the January 22, 2016**  
**Board Meeting**  
**930 NE Chemawa Road**  
**Keizer, Oregon**

PRESENT

Board Members

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

Guests

Katherine Lozano, Assistant Attorney  
General

Staff

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

EXCUSED

Christine Hollenbeck  
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 January 22, 2016 agenda.  
Vote: 4-0

**C. Approval of Minutes**

i. November 20, 2015

**Board Action**

Moved by Mr. Bumgardner and seconded to approve the November 20, 2015 minutes with minor corrections.  
Vote: 4-0

ii. December 17, 2015

**Board Action**

Moved by Mr. Gawlista and seconded to approve the December 17, 2015 minutes as written.  
Vote: 4-0

## **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.

The Board stated that they thought it was a great idea to continue to do presentations in the future in class room settings.

Mr. Bumgardner asked if staff has had any other leads for the public board member position. Ms. Boxall stated that she is working on following up on a lead, but has not been able to solidify. Mr. Bumgardner suggested Julie Smitherman, Chair for SOLA.

### **B. 2015-2017 Financial Report/Approval**

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

The Board asked when was the last time the agency had a positive net income. Ms. Boxall will follow up with the Board regarding this matter. Ms. Boxall stated that she is currently working on an estimate of staff resource time in regards to implementing the practical skills exam so that the agency may provide a cost analysis in the future. This may be very important to show how much time/money the practical skills exam is costing the Board. In addition, Ms. Boxall stated that staff is trying to structure the Board meeting agendas to most effectively utilize legal counsel at Board meetings and minimize the cost. Staff wants to ensure that the Board is not put at risk, while at the same time controlling the costs.

The Board thanked Mrs. Gladwill Rowley for her time in utilizing the legal counsel advice during the lunch break at board meetings.

#### **Board Action**

Moved by Mr. Bumgardner and seconded to approve the unreconciled financial report. Vote: 4-0

### **C. 2013-15 Financial Review/Draft**

The Board reviewed the 2013-15 Financial Review/Draft, which is attached and made a permanent part of these minutes.

#### **Board Discussion**

It appears that staff is doing a good job managing the office. Ms. Boxall stated that the auditor's report is a draft and that minor revisions could come through. The Board made no requests for revisions to the feedback response prepared.

### **D. Change of Director Audit/Draft**

The Board reviewed the Change of Director Audit/Draft, which is attached and made a permanent part of these minutes.

### **Board Discussion**

Ms. Boxall stated that it is not required to submit the Change of Director Audit in the Governor's report, however; in the past it was included and intends to include it in the upcoming report. Ms. Boxall stated that the auditor's report is a draft and that minor revisions could come through. The Board made no requests for revisions to the feedback response prepared.

### **3. PRACTICAL SKILLS IMPLEMENTATION COMMITTEE UPDATE**

In early December 2015 staff received confirmation that the proposed modifications to HB3304 from the 2015 legislative session will be introduced during the February 2016 legislative session (modifications are listed below as a reminder). Staff provided Legislative Counsel with proposed draft language changes and has been working with counsel to clarify questions related to the draft. Staff have not received the final draft bill language, but anticipates it by the end of January 2016.

#### **Proposed Modifications:**

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.

In order to maintain traction on what is now a smaller scope, but an accelerated timeline, the Practical Skills Implementation Committee met again on December 16, 2016. The purpose of the meeting was to continue development of the exam concepts. The meeting was again held in executive session where portions of the LCB exam were reviewed.

The committee worked to finalize the mapping of the CLT modules to the LCB exam topics for Plants and Turf, Design, Grading and Drainage and Irrigation sections. The committee also discussed options regarding the gap areas requiring multiple choice questions. One idea was to use the CLT written portions and create additional questions to be administered by LCB. However, this made the test quite lengthy. In the end, the committee decided the best option would be to utilize the relevant CLT hands-on portion of the exam in conjunction with a shortened version of the related LCB exam sections. Advantages to this option are that the Board can utilize a portion of the LCB exam which has already been reviewed and approved, and it keeps the administering, scoring and statistics with PSI (the written exam provider). The only exception to this is the possibility of having LCB or Clackamas Community College staff administer the written portion on the CLT site on the day of the exam.

There are still several details that will need to be flushed out, requiring board feedback, approval and legal counsel. Because of the rule making timeline, Ms. Gladwill Rowley has started on the necessary rule amendments, based on an assumption that the modification to the law will pass the 2016 legislative session.

Next steps:

- Continue to work with PSI regarding their ability, willingness and cost to administer a smaller sub-section of the exam.
- Meet with CLT coordinator to find out other considerations that need to be made and help determine if will be viable to applicants to obtain both their planting only and irrigation only license in one day.
- Ms. Boxall attended OLCA meeting on January 21, 2016 to talk about pricing and fee structure with OLCA.

**Concepts – proposed rule amendments for HB3304**

The Board reviewed proposed concepts for rule amendments for the practical skills exam. Mr. Radford requested clarification regarding the business class and whether a test would be required at the end of the business class. Staff stated that there would not be a test following the business class, but a review. Staff is looking at an option to create an online interactive course. The new business class will be offered one time at OLCA and potentially throughout the year online.

Mr. Radford has concerns that the business course does not include a test. The concern is there is some disparity. Some candidates may be upset that they had to take the 50 question exam and that others were only required to attend a class. This would be a change to existing law and require a change to the modifications already requested for the 2016 legislative session. The Board decided that applicants can not take the business class in lieu of taking the Laws, Rules and Business Exam section unless going through the hands on exam and passing at least one module.

Mr. Radford has volunteered to put together the syllabus for the business class to be reviewed by the Board. Ms. Gladwill Rowley stated that it would be nice to have the syllabus for the next PSIC meeting.

**Board Action**

Staff was directed by the Board to proceed through the rule making process.

**4. EXAMINATION/LICENSE/EDUCATION**

The Board reviewed the examination statistics through December 31, 2015. Ms. Gladwill Rowley stated that there has been an increase in the amount of exams taken in the past year, but the licensing count has been consistent over the past few years. In addition, the number of planting and planting and irrigation licenses continues to increase. The Board reviewed the CEH audit statistics from January 1, 2010 through the present. For 2015, 100% responded to the audit and 97% complied with the CEH requirement.

## 5. ENFORCEMENT

The Board reviewed a listing of final actions taken from November 1, 2015 through December 31, 2015. There were 47 cases closed during that time period. Of the 47 cases 24 were issued civil penalties. Of those 24 civil penalty cases 79% settled.

Ms. Gladwill Rowley stated that in 2010 the Agency had 673 cases and the numbers have leveled out since then, to around 420. In addition, collections for 2015 are down a little bit from last year. Some collections go through Department Of Revenue, most go through Cascade Collections.

### 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

Documentation of these investigations 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.  
Removed from the consent agenda:

Andrew Traweek, 15-11-368  
Southern Oregon Nursery Inc., 15-12-409

#### **Board Action**

Moved by Mr. Gawlista and seconded to approve the consent agenda as amended.

Vote: 4-0

#### **Andrew Traweek, 15-11-368**

Advertising without a License

The advertisement refers to the respondent as a "Landscape Professional", but does not list any landscaping construction activities.

#### **Board Action**

Moved by Mr. Radford and seconded to send a letter of warning to Mr. Traweek.

Vote: 4-0

**Southern Oregon Nursery Inc., 15-12-409**

**SUMMARY**

**Repair of water feature, planting, irrigation repair & pump replacement**

On November 8, 2014, Respondent contracted for, completed, and received payment in the amount of \$7,470 for the following landscape activities: Water Feature Repair, Planting, Irrigation Repair and other work including removal of low voltage lighting, bark mulch and a bird bath. At 2954 Stonebrook Drive in Medford, Oregon.

On September 22, 2014, Respondent performed a pump repair job by replacing two Clearguard 5500 Pressure Filters (pumps) with UV light, along with couplings and PVC flex line for an existing pond at 2727 Barnett Rd in Medford, Oregon.

**Advertising**

On November 24, 2015, respondent's website at [www.inthegarden.com](http://www.inthegarden.com) advertised for "Installation" work.

**Board Action**

Moved by Mr. Radford and seconded to assess a civil penalty against respondent for advertising and operating as a landscape contracting business without a valid license.

Vote: 4-0

**B. Enforcement Cases for Discussion**

**1. Advertising without a License**

**a. Craig De La Fe**

**SUMMARY**

Respondent advertised on their web site [www.groundupservies.net](http://www.groundupservies.net) for "Woodwork, Stone Work and Plantings" and a notice was issued (approved on consent agenda from September 18, 2015). A Violation Notice Response form requesting a hearing 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.

**Board Discussion**

Ms. Lozano stated that it appears staff was able to verify that tabs on the webpage did not go anywhere, but asked if staff verified that this webpage was for a class project as stated by the respondent. Ms. Boxall stated no verification had been completed. Council recommended that this be verified, and that staff may want to find out whose class this project was for and when the class occurred.

**Board Action**

Board directed staff to try to obtain proof regarding the website being part of a class assignment and provide it to the board for review.

**2. Operating without a License**

None

**3. Other**

**a. Jared Lee Green dba: One Source Home & Lawn Care INC.**

**Joseph P Zachary & obsidian Falls Landscaping LLC**

Mrs. McDowell Dunston recused herself from discussion, but not the vote.

ALLEGED VIOLATION

1. Jared Green: Operating as a landscape contracting business without a license;
2. Joseph Zachary & Obsidian Falls: Allowing an unlicensed person to use the landscape license to perform landscaping work.

SUMMARY

On October 22, 2015, LCB Investigator, Michael Hintz spoke with Mr. Green who stated he was working under license number 8265 for Joe Zachary of Obsidian Falls Landscaping, but not as an employee. He stated Mr. Zachary was doing him a favor and letting him use his license to do blowout work for Mr. Green's maintenance clients. Mr. Green bills the clients for the work. Mr. Green does taxidermy work and had agreed to do \$175 of taxidermy work for Mr. Zachary in exchange for the ability to use his license. LCB Investigator, Michael Hintz spoke with Mr. Zachary who admitted the same facts Mr. Green had stated.

Board Action

Moved by Mr. Gawlista and seconded to follow the staff recommendation to assess a civil penalty for operating as a landscape contracting business without a valid license for Jared Green.

Assess a civil penalty for allowing the use of the license (Conduct that is dishonest or fraudulent or injurious to the welfare of the public) for Joseph Zachary & Obsidian Falls Landscaping LLC.

Vote: 3-0, Mrs. McDowell Dunston abstained from voting.

**b. James Davies dba: Landscapes by Davies**

Ms. Boxall stated that she has had work performed by Mr. Davies at her residence and also knows his son from high school. For this reason, Ms. Boxall stated she was recusing herself and leaving the room to alleviate any appearance of impropriety or bias while the board discussed and made a decision.

Ms. Boxall left the room at 10:27am and returned at 10:58 am (after the board vote).

**ALLEGED VIOLATION**

1. Hiring employees while licensed as exempt; no employees (failure to register with the LCB as non-exempt and failure to obtain workers' compensation coverage)
2. Performing the installation of backflow devices with an All Phase; Backflow Not Allowed license (working outside the scope of the license & violation of a written agreement – 15 counts).
3. Conduct as a landscaping business and LCP that is dishonest (providing false information to the board).

**SUMMARY**

Respondent is licensed with the LCB as:

1. Exempt (no employees and no workers' compensation coverage); and
2. All Phase; No Backflow Allowed phase of license (respondent signed an agreement with the LCB on August 2, 1995 not to install backflow devices).

On August 24, 2015, LCB Investigator Michael Hintz observed three workers' performing landscape work at the above job sites. All three advised they worked for the respondent and provided respondent's business card. One of the workers stated the respondent is the one who installs the backflow devices.

LCB Investigator Michael Hintz spoke with respondent who stated these were his job sites, the workers were temporary employees through Labor Ready, and a plumber had installed the backflow devices.

LCB Investigator Michael Hintz spoke with a representative at Labor Ready who stated that the respondent does have an account with Labor Ready, but the last employee provided to the respondent was on May 13, 2015 and the representative did not recognize the names of any of the workers the investigator observed on the job sites.

The plumbing permit for the Keizer job site was obtained by Lefty's Plumbing Service LLC. LCB Investigator Michael Hintz spoke with Renee Estes and Mike Estes of Lefty's Plumbing Service LLC who stated they pull the plumbing permits for the respondent and charge him for the service, but do not install the backflow devices. They provided at least 15 invoices showing plumbing permits they had obtained for the respondent from May 2014 through August 10, 2015. Representatives for Lefty's told the investigator on at least two separate occasions that they do not install the backflow devices for the respondent.

LCB Investigator Michael Hintz again spoke with respondent who admitted he lied during their initial conversation and he intends to put the workers on his

payroll, obtain workers' compensation coverage, and that he is the one who installs the backflow devices and he remembers signing the LIBDI Exemption agreement with the Board that he is not to install backflow devices.

**1. Hiring employees while licensed as exempt (no employees; no workers' comp coverage)**

Effective August 28, 2015, respondent obtained workers' compensation coverage with SAIF. On August 24, 2015, respondent had three employees while registered as exempt and without workers' compensation coverage in violation of ORS 671.525 & OAR 808-003-0620. (Penalty: \$1,000 Civil Penalty and suspension until proof of coverage is received, which has been received).

**2. Performing the installation of backflow devices with an All Phase; Backflow Not Allowed license (working outside the scope of the license & violation of a written agreement).**

On or about August 2, 1995, respondent signed an Agreement: LIBDI Exemption agreeing NOT to perform or supervise LIBDI installation or repair work, not to tap into potable water supplies, and to subcontract all such work. The agreement included a \$1,000 penalty and suspension of the landscape contractor's license until such time as the landscaper qualifies by examination for LIBDI work. Respondent installed at least 15 backflow devices in violation the agreement and OAR 808-003-0040(2)(a) (Penalty: \$1,000 and suspension until the Backflow phase of license is obtained)

**3. Conduct as a landscaping business and LCP that is dishonest (providing false information to the board).**

On or about August 24, 2015, respondent provided false information to LCB Investigator Michael Hintz by stating the workers were temporary employees through Labor Ready and that the plumber installed the backflow devices. (ORS 671.610(1)(q), OAR 808-002-0330(10), and OAR 808-005-0020(16)(1)) (Penalty: \$1,000 civil penalty and 6 month suspension).

**STAFF RECOMMENDATION**

Assess a civil penalty and license suspension:

1. Hiring employees while licensed as exempt and no workers' compensation coverage (\$1,000 and suspension of business license until workers' compensation coverage received);
2. Performing work outside the scope of the license (15 counts of backflow installation) (\$15,000 and suspension until the backflow phase of license is obtained);
3. Conduct as a landscaping business and LCP that is dishonest (false information to the board) (\$1,000 and 6 month suspension); and
4. Refer to Oregon Employment Department and Department of Revenue and Building Codes Division.

Proposed 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 individual and business license until backflow phase of license is obtained (hiring an LCP with that phase or taking backflow test and obtaining himself) and \$15,000 reduced to \$1,000 if backflow phase of license is obtained within 60 days and \$1,000 paid within 30 days;
3. Dishonest Conduct/False Information Issue: Six month suspension and \$1,000 penalty reduced to suspension held in abatement for 60 days and \$1,000 penalty to be paid within 60 days (if not paid in 60 days the business license is suspended for six months).

Board Discussion

Legal Council stated that plumbers are not allowed to pull a permit and then sell it to someone else, so the Board could make a referral of the plumbing company that pulled the permit to the Building Codes Division. The Board was very concerned that the respondent has been installing the backflow assemblies for at least the last two years after he signed a statement that he would not do this. The board discussed staff's recommendation, but without the settlement option for the civil penalty and the suspension. This would leave the civil penalty at \$17,000 and the suspension at 6 months or until he obtains the backflow phase of license, whichever is greater.

Board Action

Moved by Mr. Gawlista and seconded to uphold the staff recommendation but without a settlement option. The suspension should be the greater of either 6 months or until the respondent obtains the Backflow phase of license. This should also be referred to Oregon Employment Department, Department of Revenue, Workers Compensation Division, and Building Codes Division.

Vote: 4-0

**c. Northwest Landscape Services of Oregon LLC**

SUMMARY

On October 20 & December 22, 2015, respondent's website did not include the 4 digit landscape contracting business license number.

Prior Enforcement Case #14-12-406

On January 28, 2015, respondent entered into a Stipulated Order with the LCB to reduce the penalty for failing to use the 4 digit business license number in advertisements. In that instance it was respondent's vehicle, logo, business card and website. It appears respondent did not amend the website. The Stipulated Order states that respondent agrees not to violate the LCB statute in the next 12 months or the suspended portion of the assessed civil penalty may become immediately due and payable upon the

Board's discretion. The violations occurred less than 12 months from January 28, 2015.

**Board Action**

Moved by Mr. Bumgardner and seconded to uphold staff's recommendation to assess a civil penalty for failing to use the 4 digit business license number in advertisements for a subsequent offense and assess the suspended portion of the civil penalty (\$250) in enforcement case #14-12-406.

Vote: 4-0

**6. Claims (Dispute Resolution)**

**A. Consent Agenda**

(none)

**B. Board Review of Claim Cases**

**1. 8774-103, Diane Elkins vs. Green Pro LLC**

**Investigator's Summary**

Claimant Statements from Claim Summary form:

**Item # 1** – Pond / Falls loses water – Last time measured lost 15 gal from 7:45 AM Sept 5 to 7:11 Am Sept 8.

**Claimant Statement** – Claimant Diane Elkins wrote that the water feature was completed on 9/16 to 9/17/2014. She explained that within a couple of weeks she noticed that the water level in the pond seemed to be going down and she believed there was some kind of leak. Ms. Elkins advised that she called Pavel Aspidov and he sent a worker out who checked the water feature and said there was no leak that he could determine. Ms. Elkins advised that she drained and covered the water feature a short time later in October of that year and did not use it again until the end of May. Ms. Elkins said she realized the water feature was losing water as before and she contacted Pavel Aspidov on June 1, 2015 advising that she believed there was some kind of leak and requesting his assistance. Ms. Elkins said that she had multiple contacts with Mr. Aspidov and he maintained through the summer that there was no leak but that the water was just evaporating from the system. Ms. Elkins said that the water feature lost about an inch and a half in the pond level in one day from the morning of 7/10 to the morning of 7/11/15 and that she knew that because she had marked it with chalk. Ms. Elkins said that when she didn't run the pump for the waterfall, the level in the pond stayed the same and so it became apparent that the leak was not in the pond, but in the waterfall part of the water feature. Ms. Elkins said that she told this to Mr. Aspidov who had continued to maintain that it was evaporation that was causing the loss of water from the water feature. Ms. Elkins said that the feature was losing water at an increasing rate and that Mr. Aspidov left for vacation and was gone for several weeks and that during that time she ran the water feature and it lowered down to the bottom and completely emptied out and she had to turn it off.

Ms. Elkins said that she did not get the response she felt was needed from Mr. Aspidov, and so filled the pond up and ran the pump for the water feature one more time in early September. She stated that she marked it with chalk and ran the pond from the morning of September 5, 2015 until the morning of September 8<sup>th</sup>, 2015. She said that water level dropped in the pond and she had to add 15 gallons of water to fill the pond back up. She said that the temperature ranged between 52 and 58 degrees during that time and she is positive the water loss could not be from evaporation. Ms. Elkins then filed a claim with the LCB and it was received on September 15<sup>th</sup>, 2015, just immediately prior to the one year limitation for filing claims after the completion of a job.

This claim was set for mediation on 10/23/15. Ms. Elkins did one more test on the water feature by filling it up on September 27<sup>th</sup>, 2015 at 4:35 PM, marking the top of the water level with chalk and running it for 9 days until October 6<sup>th</sup> at 6:30 PM. Ms. Elkins said that during that period of time it was obvious that the water level was dropping significantly in the pond. She said that after they turned it off on October 6<sup>th</sup>, it took 42 and ½ gallons to fill it back up.

This claim appeared to be successfully mediated on 10/23/15. The parties agreed that there was an issue with the water feature and that it was leaking (most likely in the area of the upper right side when facing the water feature). The Respondent agreed to do repair work as warranty work in order to resolve the leak and parties agreed the work would be completed by November 6<sup>th</sup>, 2015.

Ms. Elkins contacted the LCB on November 9<sup>th</sup> and formally notified the agency that she did not believe that Pavel Aspidov and Green Pro LLC fulfilled the term of the mediation agreement and that she wished to proceed with the claims process. Ms. Elkins advised that Mr. Aspidov had sent one of his employees out to her residence on November 5<sup>th</sup>, the day before the deadline of when things were to be completed according to the mediation agreement. She said the employee pulled up some rocks and added some concrete in places in the area of the perceived leak, however he did not put things back in a way that was esthetically pleasing in terms of the appearance of the water feature. When the employee was questioned about this, he said that Mr. Aspidov would take care of that on the 6<sup>th</sup>. Ms. Elkins said that Mr. Aspidov did not show on the 6<sup>th</sup>. Ms. Elkins said that Mr. Aspidov showed up on the 7<sup>th</sup>, but that she missed having contact with him and he apparently told her husband that he didn't think it was that bad of a leak. Ms. Elkins advised that the water feature is still losing water and that she has lost all confidence in Mr. Aspidov and his company's ability to adequately solve the problem, fix the leak and leave her with a nice looking, functional water feature. Ms. Elkins said that she didn't understand how the rocks could now be put back in the proper fashion after adding concrete, as was done by the employee who last worked on the water feature. Ms. Elkins said that it didn't appear that this employee cared at all about the appearance of things and in her opinion left it in worse shape than it had been before he came.

Ms. Elkins has received two bids to have the water feature repaired. She said that in both instances where they came out to view the water feature and give an estimate, the contractors told her that the wrong type of liner was used for the upper portion of the water feature where it appears to be leaking and losing water. Ms. Elkins reiterated that when the water feature is not running, it does not lose water out of the pond, but that the level only goes down when it is running, indicating that the leak is in the upper falls portion of the water feature and not in the pond.

**Respondent Statement** – Respondent stated during the meeting on the site that he agreed there was a leak in the upper falls portion of the water feature and agreed to fix it for the homeowner within a specified time period that he set the date for. After November 9, 2015 Mr. Aspidov said that he was still willing to try and fix the problem and said that he had been out to the site but Ms. Elkins had not been available. Mr. Aspidov said that he understood the work was to be completed by November 6th and didn't know what else to do at this point. He said he was willing to continue to try and fix the problem, but was told by Diane Elkins that she did not wish him back and that she was proceeding with the claim.

Mr. Aspidov told the LCB Investigator that when he took the job, it was to rebuild an existing pond that was leaking about 8 inches a day. He said that the job did not include a warranty as it was a low cost rebuild of an existing system and he only charged \$2450 for it. He said it was a "very basic price" and a "very basic pond". He said that what appeared to have happened is that the soil settled in the upper right hand side of the falls portion of the pond and as a result the liner dropped and it was leaking. He said that he had been willing to keep working on it and would have tried to continue to fix the problem, but that Ms. Elkins stopped him from doing that. Mr. Aspidov said that he would wait to receive something from the board and have his attorney deal with it if necessary.

**Investigator Observations / Comments** –Mr. Aspidov agreed that there appeared to be a problem with leakage from the water feature and pointed out an area in the upper part on the right side that he believed was the problem. He said that his company would repair it at no cost as warranty work and an agreement was made as to when that would be accomplished. Mr. Aspidov said two weeks would be plenty of time to make the repairs and set the date as to when the work would be completed by November 6<sup>th</sup>, 2015. Ms. Elkins then contacted the LCB on November 9<sup>th</sup> as explained above and advised that the repairs were not completed. The LCB Investigator returned to the job site on December 4<sup>th</sup>, 2015 and took some photos in addition to those that had been submitted by Ms. Elkins as documentation. Ms. Elkins pointed out the area where the employee of Green Pro LLC last did work on the water feature and I took photos.

The contract is lacking some of the elements required by the LCB. It does not have an "estimated time for completion or estimated completion date". It does not have a "description of guarantee; if no guarantee such a statement shall be included". It does not have a statement that the business is licensed by the State

Landscape Contractors Board and the current address and phone number of the board”.

Since the contract does not have a description of guarantee or statement of no guarantee, this does appear to have a specific relationship to this claim. If no guarantee was offered as was mentioned by Mr. Aspidov, there should have been something in the contract to advise the customer of this per LCB contract requirements. Mr. Aspidov’s willingness to try to fix the problem for his customer also appears to provide some sort of guarantee, and while nothing is specifically stated in the contract, the mediation agreement that Mr. Aspidov agreed to and signed on 10/23/15 provided a two month guarantee following the repair.

### **Board Discussion**

The Board discussed the water feature leaks and determined that because of the way it was reconstructed, it leaks. Respondent may not have compacted the area well, may have cut the liner too short or used the wrong type of liner, or may not have used enough backing to keep the liner from puncturing.

The claimant’s expectations were not met with a working water feature when she hired the respondent to reconstruct it because it was already leaking. In the end, she still has a leaking water feature. A prudent person would expect to replace one water feature that leaks with another water feature that did not leak. The Respondent did not make the water feature better than before the work started. The Board determined the work performed to reconstruct the water feature and the five steps was negligent or incompetent work.

### **Board Action**

Moved by Mr. Gawlista and seconded that the work was performed incompletely.  
Vote: 4-0

Moved by Mr. Gawlista and seconded Respondent should refund \$2,450.00 to the Claimant.  
Vote: 4-0

## **7. OLD BUSINESS**

### **A. Jurisdiction of Water Features - defer**

### **B. Review of OAR 808-002-0620/Landscape Maintenance**

#### **Board Discussion**

The Board discussed adding a statement 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 submitted this language:

Fall winterization of irrigation systems using compressed air may only be done by licensed landscape contractors with irrigation endorsement. Fall

winterization without the use of compressed air and spring irrigation turn-ons may be done by anyone.

Mrs. Gladwill-Rowley reviewed the Board's prior decisions regarding the proposed rule amendment for the definition of landscape maintenance. Proposed amendments to other rules, such as the definition of Casual, Minor, or Inconsequential and Irrigation Systems were also reviewed.

The Board directed staff to go through rule making.

## 8. Public Comment

At 1:41 pm, Mrs. McDowell Dunston, Chair, opened the public comment session of the meeting. There were no public members present.

## 9. NEW BUSINESS

### A. Revision of Claim Rules/OAR 808, Division 004

The Board reviewed proposed rule amendments to the claim rules to bring these rules in line with the statute. These rules have been drafted and reviewed by Ms. Gladwill-Rowley and legal counsel. The Board directed staff to go through the rulemaking process.

### B. Prioritization of Enforcement Case

Below are considerations the Board discussed to implement this change:

Seriousness of Violation

1. **Public health and safety** (e.g.; areas of irrigation and backflow)
2. **Less Serious Consumer Harm** (e.g.; subjected to deception, questionable business practices, recipient of substandard work, landscaping debt)
3. **Worker's Comp** issues **with** Employee Harm
4. **Deception on, or failure to cooperate with, the agency** and **Workers' comp** with **no** employee harm
5. **Unlicensed and under-licensed work where there was no consumer harm** (could issue letters of concern with information on how to become licensed for first time violators)
6. **Advertising/Title Violations** (could issue letters of concern with information on how to become licensed for first time violators)

Ms. Gladwill-Rowley reviewed the statistics regarding enforcement actions taken from July 1, 2013 to June 30, 2015 with recommendations on how to handle these types of enforcement issues in the future. The processing of emergency suspensions/refuse to renew and regular suspensions/revocation/refuse to renew or issue should not be changed. These are usually licensing requirements.

Staff recommend letters of concern be issued for first time offenses for advertising without a license and all first offenses against a license holder where a civil penalty would have been issued.

### **Board Discussion**

Legal Counsel stated the board needs to make sure they are consistent and one way to do this is to adopt a policy or draft a matrix for penalties and adopt it for staff to use. This would allow the Board to see how this works before adopting a rule.

The Board discussed issuing letters of concern for first time offenses to unlicensed that use the word “landscaping” in the business name, without showing the maintenance nature of the business, but not advertising to perform landscaping work.

The letter of concern for all similar cases makes it an even playing field for everyone. The second offense could then be a penalty because the Board would know that this is disregard of the law. The letter of concern helps to eliminate any questions about whether they know the law or not.

The letter is a courtesy warning. If the letter was not delivered, staff could not use that as evidence in the reasoning for the penalty. Staff is not under obligation to follow up on every letter of concern.

Legal counsel advised that if letters of concern are to be issued, LCB investigator and contracted investigators should not seek out advertising violations.

The Board discussed other possible options for issuing letters of concern, (e.g.; address change issues or failure to use 4-digit license number in advertisements), but decided to wait and see how the outcome of the letters of concern for unlicensed using the word “landscaping” in their business name without showing the nature of the business.

Katherine Lozano, AAG, left the meeting at 1:40 pm.

### **C. Election for Board Chair and Vice Chair Nomination for Chair**

#### **Board Action**

Moved by Mrs. McDowell Dunston and seconded to nominate Mr. Bumgardner for Chair.

Accept: Mr. Bumgardner accepted

Vote: 3-0, Mr. Bumgardner Bill abstained

#### **Nomination for Vice Chair**

#### **Board Action**

Moved by Mrs. McDowell Dunston and seconded to nominate Mr. Radford for Vice Chair.

Accept: Mr. Radford accepted

Vote: 3-0, Mr. Radford abstained

**10. ADJOURNMENT AND NEXT MEETING SCHEDULE**

The meeting was adjourned at 1:47 pm. The next meeting of the Landscape Contractors Board will be February 18, 2016 by conference call. The following meeting will be held on March 18, 2016 in Keizer, Oregon.

Respectfully Submitted,

Jerri Jones  
Licensing Specialist