

BEFORE THE NORTH CAROLINA LANDSCAPE CONTRACTORS' LICENSING BOARD

Complaint File No. 19.99.S

In the Matter Of:)
)
WM. R. CURTIS, INC.) **CONSENT ORDER**
(License No. CL 1493), and)
MICHAEL ANDREW KELL)
(License No. 2162))

THIS MATTER is before the North Carolina Landscape Contractors' Licensing Board (Board), pursuant to G.S. § 89D-22 and with the consent of WM. R. CURTIS, INC. and MICHAEL ANDREW KELL (Respondent Licensees), for consideration of an entry of a Consent Order in lieu of an administrative hearing.

With Respondent Licensees' consent, the Board makes the following:

FINDINGS OF FACT

1. On May 30, 2018 WM. R. CURTIS, INC. (Respondent Licensee Curtis) was issued a corporate landscape contractor's license by the Board, License No. CL1493. The license was last renewed on August 1, 2020 and is currently active.
2. WM. R. CURTIS, INC. is a corporation organized under North Carolina law. Eric Curtis is the President and Registered Agent.
3. On August 1, 2015 MICHAEL ANDREW KELL (Respondent Licensee Kell) was issued a landscape contractor's license by the Board, License No. 2162. The license was last renewed on August 1, 2020 and is currently active.
4. On September 11, 2019, Marsha Wyly filed a complaint against Respondent Licensee Curtis stating that Respondent Licensee Curtis did not provide proper grading and soil preparation throughout the development known as Del Webb@Traditions located in

Wake Forest, Wake County, North Carolina. The Board subsequently commenced an investigation.

5. On or about November 20, 2019, the Board's investigator performed a site visit and confirmed that Respondent Licensees performed final grading and planting at several home sites. The investigator identified the following violations of Title 21, Subchapter 28B of the N.C. Administrative Code:

- a. .0502 PLANTING

- (12) in that when planting, Respondent Licensees did not "Set the plant so that the top of root ball is at or slightly above surrounding soil and does not exceed four inches above the surrounding soil;"

- (19) in that when mulching, Respondent Licensees did not maintain a mulch depth that is beneficial to the health of the plants; and

- (20) in that when establishing turf, the Respondent Licensees did not apply mulch so that it does not touch a tree trunk or root flare; and

- b. .0503 TURF

- (2) in that prior to law installation, Respondent Licensees did not loosen soil to a minimum depth of three inches; and

- (8) in that Respondent Licensees did not lay sod strips in a staggered pattern, horizontal to slopes and with tight seams.

6. Licensee denies the violations and contends that portions of the subdivision inspected by the investigator were not completed but were part of an ongoing construction site. Licensee has agreed to enter into this Consent

Order only to buy his peace and avoid the expense and time of trying this matter.

CONCLUSIONS OF LAW

The actions of Respondent Licensees as described above in paragraph 5, constitute a violation of G.S. §§ 89D-16 and 89D-22.

Based on the foregoing, and with Respondent Licensees' consent, IT IS, THEREFORE, ORDERED as follows:

1. Corporate License No. CL1493 issued to Respondent Licensee Curtis is hereby REPRIMANDED.
2. License No. 2162 issued to Respondent Licensee Kell is hereby REPRIMANDED.
3. Within thirty (30) days after the date that the Board approves the Consent Order and pursuant to G.S. § 89D-22(b), Respondent Licensees shall pay costs jointly in the amount of \$2,000.00. Cost recovery shall be remitted directly to the Board as follows:

NC Landscape Contractor's Licensing Board
Attn.: Calvin Kirven
3901 Barrett Drive, Suite 202
Raleigh, NC 27609

4. Respondent Licensees shall comply with Chapter 89D of the N.C. General Statutes and the Board's rules and regulations found in Title 21, Subchapter 28B of the N.C. Administrative Code.
5. **Noncompliance:** If Respondent Licensees fail to comply with any provision of this Consent Order or breaches any term or condition thereof, either in substance or timing, upon written demand, Respondent Licensees' licenses shall be suspended for six months. If Respondent Licensees dispute that such a violation of the conditions has occurred, then a written objection must be filed with the Board WITHIN TEN (10) BUSINESS DAYS

of the date of the notice of the violations to request a show cause hearing. The notice to the Board shall contain with specificity the violations disputed. Upon receipt of this notice of objection, Board staff shall schedule a show cause hearing before the Board at the next scheduled meeting date for which appropriate notice can be provided or scheduled by consent of the parties.

- 6. **Waiver:** Failure to file a written objection with the Board within the designated time period will be construed to mean the Respondent Licensees are not contesting the matter and all further proceedings to which Respondent Licensees are otherwise entitled by law are hereby waived.
- 7. **Modification:** Any request for modification of this Consent Order must be submitted in writing to the Board and approved prior to the modification occurring.
- 8. **Effective Date:** The effective date of this Consent Order shall begin on the date that it is approved by the Board; provided that the Board will not consider the Consent Order unless an original, signed by Respondent Licensees, is received prior to the Board meeting at which the Consent Order is being considered.

Approved by the Board this the _____ day of _____ 2021.

NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD

By: _____
Chris Mitchell
Chairman


STATEMENT OF CONSENT

The undersigned does hereby certify that he has read the foregoing Consent Order in its entirety and that he freely and voluntarily admits that there is a factual basis for the Findings of Fact set forth therein, that the Findings of Fact support the Conclusions of Law, that Respondent Licensee will not contest the Findings of Fact should further disciplinary action be warranted in this matter, and that Respondent Licensee assent to the terms and conditions set forth therein.

The undersigned agrees to accept service of the fully executed Consent Order via first-class mail addressed as follows:

Michael Andrew Kell
240 Natalie Drive
Raleigh, NC 27603

This the 1 day of March 2021.


MICHAEL ANDREW KELL
License # 2162

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Sworn to and subscribed before me this
the 1 day of March 2021.

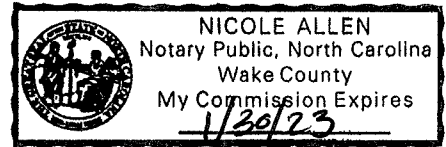


Notary Public

Nicole Allen

Typed or Printed Notary Name

My Commission Expires: 1/30/23



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NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD

By: _____
Chris Mitchell
Chairman

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The undersigned does hereby certify that he has read the foregoing Consent Order in its entirety and that he freely and voluntarily admits that there is a factual basis for the Findings of Fact set forth therein, that the Findings of Fact support the Conclusions of Law, that Respondent Licensee will not contest the Findings of Fact should further disciplinary action be warranted in this matter, and that Respondent Licensee assent to the terms and conditions set forth therein.

The undersigned agrees to accept service of the fully executed Consent Order via first-class mail addressed as follows:

William R. Curtis, Inc.
c/o Eric R. Curtis, President & Registered Agent
3040 Carpenter Upchurch Rd.
Cary, NC 27519

This the 19 day of February 2021.

WM. R. CURTIS, INC.
License # CL 1493

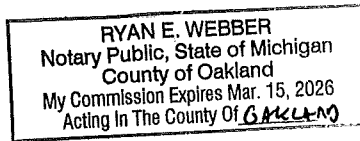
By [Signature]
Eric M Curtis President
Print Name and Title:

Michigan
~~STATE OF NORTH CAROLINA~~
COUNTY OF OAKLAND

Sworn to and subscribed before me this
the 19 day of FEB 2021.

[Signature]
Notary Public

RYAN E WEBBER
Typed or Printed Notary Name



My Commission Expires: MAR 15, 2026