

# OREGON STATE LANDSCAPE ARCHITECT BOARD (OSLAB)

## \*\*\*MEETING MINUTES\*\*\* QUARTERLY MEETING

February 26, 2015  
Conference Room "B", 2<sup>nd</sup> Floor  
707 13<sup>th</sup> St. SE, Salem, OR 97301

<u>Board Members Present</u>	<u>Staff Present:</u>
Gregg Everhart, RLA	Christine Valentine, Board Administrator
Sydney Hatch, Public Member	
Lauri L'Amoreaux, RLA*	<u>Other Participants*</u>
Michael O'Brien, RLA, Vice Chair	Dale White, Investigator
Kathy Olsen, Public Member, Treasurer	Kyle Martin, AAG, DOJ
Steve Ray, RLA, Chair	Marina Wynton, Landscape Designer
Susan Smith, Public Member	Mike Fuji, Guest
	Linda Richardson, RLA
<u>Board Members Excused</u>	Dale Cook, Registration Candidate
None	Daniel Edwards, Registration Candidate
	Camilla Rice, Registration Candidate
	Sarah Whitney, Registration Candidate

\*Participation was as noted in minutes

### OPEN MEETING (9:00 AM)\*

Chair Ray opened the meeting at 9:03 AM. He called the roll for the record. Hatch was not yet present. Valentine stated that Hatch would be joining the Board later in the morning. Board members were pleased to be welcoming a new public member. There were no guests present at this time.

### AGENDA REVIEW

Chair Ray reviewed the agenda with the Board and asked about possible guests attending the meeting over the course of the day. Valentine informed the Board about anticipated guests, including a request from one guest to provide public comment to the Board as part of the Compliance Report. Chair Ray said this public comment request would be accommodated. There were no changes made to the agenda. It was noted that the Board had a very full agenda.

### MINUTES

Chair Ray presented the Board minutes from the November 13, 2014 meeting for review. He asked if there were any comments on the minutes. Hearing no requests for revisions or other comments, he asked for a motion to approve the minutes as presented.

*Treasurer Olsen moved to approve the November 13, 2014 meeting minutes as presented. Vice Chair O'Brien seconded the motion. Hearing no discussion on the motion, Chair Ray called the vote, and all approved.*

## **CONSENT AGENDA**

Chair Ray opened discussion on the consent agenda. Valentine noted that the continuing education committee report has been added as a third part of the consent agenda. It was noted that the consent agenda continued to include the payments log and the licensure review actions. Chair Ray provided a hand out related to ideas for the continuing education rules he prepared based on input from Everhart. This document was provided to Board members and staff for discussion later in the meeting under the Rules or Continuing Education report.

Chair Ray asked if there was a motion to approve the consent agenda listing examination and licensure review actions from 11/1/2014 to 1/29/2015, the continuing education report covering three audits for individuals randomly drawn at the last quarterly meeting and three audits for reinstatement purposes, and the payments log covering debits from 11/1/2014 through 1/31/2015 and checks 4092 to 4118.

*Vice Chair O'Brien moved to approve all three parts to the consent agenda. Everhart seconded the motion. Chair Ray asked if there was any discussion. Hearing none, he called the vote, and all approved.*

## **ADMINISTRATIVE MATTERS**

Valentine presented the Administrator's narrative report focusing on updates related to various administrative services and staff research. Key topics included pending work on the interagency agreement with the Oregon State Board of Geologist Examiners (OSBGE) regarding temporary staffing services, demographics of the registrant pool in relation to future revenues to support Board operations and implications for practice, status of the online payment/renewal project, Council of Landscape Architectural Registration Boards (CLARB) research update, legislative update, and input received from the Legislative Fiscal Office on the last biennial report.

Chair Ray also spoke to the January 15, 2015 informational meeting with representatives of the Landscape Contractors Board (LCB) that was addressed in the narrative report. He explained how the meeting produced an agreement on proposed changes in statutory language related to LCB registrants and irrigation design. Valentine updated the Board on communications occurring through the legislative process to work on amendments that would include language reflective of the agreement on irrigation design.

At 9:40 AM, Hatch arrived, and Chair Ray called for introductions all around. He asked Hatch to speak to her interest in serving on the Board. Hatch explained how she learned of the opening and the connections between the Board's mission and areas of interest to her.

Valentine next presented a proposed contract for the 2013-2015 financial review for Board consideration and requested Board approval to proceed with negotiating the final contract. She also explained that she and Treasurer Olsen anticipated drafting a Board policy regarding financial reviews and audits. The purpose of such a policy would be to inform future board members and staff about the differences between these two tools. Valentine said the policy would also address the Board's option to obtain periodic audits or at least provide guidance as to how the Board might approach future decisions about selecting a financial review vs. audit. Valentine addressed how the accountant was selected for the 2013-2015 financial review, and the Board determined that the hourly rate for services was competitive. Chair Ray asked for motion to authorize Valentine to complete negotiations for a contract with Pamela Strobel CPA.

*Vice Chair O'Brien moved to authorize Valentine to complete the negotiations and enter into a contract for the financial review. Treasurer Olsen seconded the motion. Hearing no further discussion on the motion, Chair Ray called the vote, and all approved.*

Other assignments made in relation to the Administrator's Report discussions were as follows:

- Valentine was asked to check with CLARB to see what aggregated data that organization might have about the candidates for examination, who are expected to largely be in the 20-35 age.
- Valentine was asked to check with CLARB to see if they have information about strategic planning work and specifically completed strategic plans from other states that might be available for review.

The Board next turned to the quarterly budget report. Valentine noted that there are no big surprises or unanticipated expenses. Revenues continue to trend flat. Expenses for many line items continue to trend below budgeted amounts. She pointed out that the balance sheet shows that total liability and equity has changed less than -3% since the same time last year.

The Board next reviewed the renewal histories for individual and business registrations. Valentine pointed out that staff added a line for new registrations issued each month to provide some additional context to the non-renewals. For individual registrations, the percent not renewed was nearly the same for the previous two fiscal years at 5 and 6% respectively. Valentine noted that this type of tracking for business registrations is new, and the data set will grow. For business registrations, the percent of non-renewal for last fiscal year was 11%. The Board discussed the rates of non-renewal.

This concluded the Administrator's Report, and Chair Ray called for a break at 10:25 AM. He reconvened the Board at 10:36 AM and opened discussion on Reports. Dale White joined the Board at this time, and Chair Ray introduced White to new member Hatch.

## **REPORTS**

### **➤ BUDGET & INVESTMENT**

Chair Ray asked Valentine to present her recommended budget for 2015-2017. Valentine briefly addressed the Budget Committee role in the budget development process and her appreciation to Chair Ray and Treasurer Olsen for the questions and feedback they provided on her draft budget. Valentine then reminded the Board that its budget is set through the rulemaking process. She said this is unique to semi-independent state agencies; other state agencies have their budgets set through the legislative process. She explained that the Board adopts the maximum expenditure amount in rule as the budget for the biennium. However, the budget detail is also essentially adopted by reference as part of the process and is made available for public review as part of the rulemaking notice process. She reviewed the proposed rulemaking schedule. She noted that the Board could take more time to review the budget so long as the Board completes the rulemaking process such that the amended budget rule is filed effective by July 1, 2015. Valentine also provided a copy of how the budget rule amendment would read if the Board moves forward with the recommended budget as presented.

Valentine reviewed the budget documents with the Board, explaining that she anticipates revenues will remain static and thus developed conservative revenue estimates for new revenues and balanced the budget using reserve funds. She said that projected expenses are based on continuation of status quo operations with some contingency built in for inflation and to provide some flexibility to adapt to changing conditions. The expenses are considered maximum expenses, and it is conceivable that savings will be realized when actual and budgeted expenses are compared. Treasurer Olsen noted that the budget had been thoughtfully prepared and that she only saw a few areas where the Board may want to have input on discretionary spending. She also reminded the Board about the budget development process for the current biennium, specifically how the Board was optimistic about taking on new work in addition to standard business and this lead to higher estimates of expenses in some areas than has been realized.

The Board discussed the reserve fund target of 6 months of expenses. Valentine and Treasurer Olsen said that the Board has sufficient reserve to not need to raise fees this biennium. However, they cautioned that the total funds picture will need to be monitored periodically during the 2015-2017 biennium and again as work begins on the next budget. They warned the Board that it is increasingly likely that the Board will need to look at fee increases or scaling back operations (although limited feasibility here with only 1 FTE already) in the 2017-2019 biennium. Valentine said staff is committed to working with the Board to look for savings throughout the biennium so that fee increases can be pushed off as long as feasible. Valentine noted that a challenge of being a semi-independent agency is that the Board must operate entirely on fee revenues. This means the registrant pool carries the burden of funding the regulation of the profession, which is a particular challenge for a smaller profession. Board members directed Valentine to look for ways to communicate with registrants about reserve tracking and the relation to registration revenues. The Board also discussed whether the revenue projections in the recommended budget were too high but ultimately did not request any changes. Chair Ray noted that the projections were already conservative and noted optimism that the industry is again strong after several tough years.

*Vice Chair O'Brien moved to approve the recommended budget for public review. Valentine noted that the Board needed to also authorize the start of the rulemaking process. Vice Chair O'Brien amended his motion to also authorize Valentine to issue rulemaking notice based on the 2015-2017 recommended budget presented to the Board. Everhart seconded the motion. Hearing no further discussion on the motion, Chair Ray called the vote, and all approved.*

### ➤ **ADMINISTRATIVE RULES**

Vice Chair O'Brien and Valentine summarized the documents provided for Board review. The Board first addressed five year rule reviews. Valentine reminded the Board that the primary purpose of these reviews is to make sure the Board looks at new rules after a period of time to ensure that these rules are having the intended effect. The Board reviewed draft review forms prepared for its consideration. Chair Ray and Smith each noted a few typographical errors in the forms, but otherwise the Board determined that the review forms were adequate. Valentine pointed out that some of the rules on the 5 year review list are identified as warranting additional review to consider possible revisions and referred the Board to the list of proposed rules projects for 2015. She said none of the rules were identified for repeal.

*Everhart moved to approve the 5 year review reports as presented in packet with minor typographical edits as provided to Valentine. L'Amoreaux seconded the motion. Hearing no further discussion, Chair Ray called the vote, and all approved.*

Vice Chair O'Brien and Valentine next walked the Board through the 2015 rules project list and encouraged feedback on whether the right projects are on the list and how projects should be prioritized. They briefly explained the projects and the proposed approach to scheduling this work. Procedural rules would be addressed first because example rule text is already available from other boards and agencies. The inactive/emeritus and reinstatement rules would be next in the work queue, as these are carryovers from the 2014 list and are also thought to be the next easiest to tackle. Vice Chair O'Brien noted that they would need to start drafting language soon after this meeting and engage the Rules Committee. The Board would be asked to spend time at the May 14, 2015 meeting discussing review of continuing education and business registration rules. Vice Chair O'Brien and Valentine said they anticipate those rule efforts will take longer to ensure adequate vetting with the Board, the Rules Committee, and registrants.

It was noted that Everhart's working list of issues encountered with the current continuing education rules provides a good start to review of the continuing education rules. Everhart spoke to a few examples. Vice Chair O'Brien said he would like to have Everhart participate in Rules Committee discussion of continuing education rules. There was brief discussion about how review of the continuing education rules might be easier than review of the business registration rules.

The Board spent a few minutes discussing two placeholder projects on the list - mentorship and scope of practice. No final decision was made about pursuing these rule projects but the Board kept these on the list as placeholders.

Everhart asked if one summary table could be prepared showing the status of all 2015 projects. She thought this might help Board members and others to quickly see where the Board was at with rules work. Valentine said she would work on this.

The Board decided not to review and discuss attorney-client advice related to business registration rules at this meeting. This will be revisited when the Board is ready to review those rules.

At the conclusion of the Rules Committee report at 12:05 PM, Chair Ray called for a lunch break. He reconvened the Board at 12:23 PM and noted that the Board needed to enter executive session to consider attorney-client confidential documents and related information. At 12:24 PM, Chair Ray announced that Board was entering executive session to discuss documents exempt from disclosure pursuant to ORS 192.660(2)(l) and (f) as well as ORS 671.338. He read the script regarding participation in the executive session.

At 12:57 PM, Chair Ray announced that the Board was returning to public session, and the Board's review of the Licensure Review report continued.

### ➤ **LICENSURE REVIEW**

He asked if there was a motion on a proposed settlement agreement for exam process violations.

*Vice Chair O'Brien moved to approve the settlement agreement and stipulated final order between the Board and Ian M. Holzworth. Everhart seconded the motion. Chair Ray, hearing no further discussion, called the vote. All voted to approve the settlement agreement and stipulated final order.*

Valentine said she would inform the individual of the Board's decision.

Chair Ray called for a break at 12:59 PM. He reconvened the Board at 1:03 PM to start the Compliance Report.

➤ **COMPLIANCE**

Chair Ray noted the Board had guests present to participate in the Compliance Report and asked the guests to introduce themselves. The guests present were Linda Richardson, RLA, Marina Wynton, Landscape Designer, and Mike Fuji, spouse of Wynton. Chair Ray welcomed them to the meeting.

Chair Ray spoke to Wynton saying he understood she made a request to make a statement to the Board about complaint case LACC#14-04-003. He noted that the Board had a full agenda but would provide her 15-20 minutes to make her statement and said the Board may have follow-up questions. Ms. Wynton thanked the Board for the opportunity to present her statement and asked for various clarifications about case records the Board members had received. Chair Ray explained that the Board members received the case materials to review, and everyone is aware of the situation that led to the complaint filing. Ms. Wynton asked if this included a follow-up letter from her to Dale White; it was confirmed that this letter was in the materials provided to Board members.

Wynton said there were a few items she would like to cover: (1) that she does not intimidate clients, (2) that she does not seek to provide products that do not meet a client's goals and needs or that would cause damages to property, and (3) that she strives to offer good, constructive guidance and plans that reflect decisions the client has made. Her drawings for the client that filed the complaint with OSLAB reflect the client's decisions. She sees her role as helping the client select from a variety of options. She did not coerce this client or intimidate her into a plan. Wynton said she felt the client started to become very abusive via phone and email as the project unfolded. She offered to stop work at one point, but the client demanded that the plans be finished. She wanted the Board to understand that the client who filed the complaint was very difficult to work with as evidenced in email and phone records. The client wanted her to make more decisions for her but then went off on her own to solicit bids from various contractors outside of the process that was laid out in their contract. The client had several months to review the contract and was not pressured to sign it.

Wynton said she has worked as a landscape designer since 1983, and the case before the Board involves her most challenging client to date. Wynton said she sees now that she should have stopped work and returned her fee instead of continuing and trying to please this difficult client. But she felt an obligation and continued to develop the plans. She said the product produced was the same as she would do for any client. She felt the plans provided are for a garden that would meet the client's stated goals and that she held up her end of the agreement with the client. The client took advice from individuals that had no knowledge of construction costs and based on that started questioning her work. She does not think the client bid the project out so questions whether the client really knows true construction costs. She would have helped her find landscape contractors. The client accepted advice on costs

from individuals not familiar with landscape construction costs and then used this to question the plans.

Wynton added that she never represented herself as a landscape contractor or landscape architect to the client. She further added that if her work went beyond the boundaries of landscape design and into landscape architecture practice, then she would like the opportunity to discuss this with the Board.

Wynton also offered some comments on the investigation process. She understands the Board's role in investigating complaints. But she said she believes the Board has latitude in how to carry out investigations and encouraged the Board to give more latitude in how its investigations are handled. She feels the investigation has blown issues out of proportion and that the process is not very cooperative. She further felt that there is an assumption of guilt and complained about information not being fully shared with her about the complaint and related matters. She has not been allowed to see the complaint or to really know what is going on in the investigation process. This makes it difficult to want to cooperate. She then provided a written comment, which was distributed to Board members and Valentine.

Chair Ray thanked Wynton for her statement and said the Board understands that the process is difficult. He noted that the issue for the Board is not about the contract per se or the fee dispute with the client. He said the Board looks at issues of title use and practice based on information obtained during the investigation and that the Board's review has no direct bearing on the contractual relationship with the client. He then invited Board members to present questions to Wynton.

Everhart asked Wynton about contract language addressing how to sever the relationship with a client. Wynton says she has addressed this and that her standard contract has been subjected to legal review and allows for either party to pull out. She acknowledged that perhaps enhanced language on this needs to be added.

Vice Chair O'Brien thanked her for the comments and her time in attending the Board's meeting.

Wynton asked about next steps in the case. Chair Ray explained that the Board would hear from the investigator and technical reviewer and then discuss the complaint. Wynton asked if she could listen to those reports. She objected when told that the information is confidential. Wynton asked the Board why case materials are confidential. Martin addressed this on behalf of the Board, explaining that OSLAB statute requires confidentiality of complaint investigations.

Wynton asked how or when the Board would communicate with her about its decision. Valentine briefly addressed the decision making process and how the Board would proceed to discuss the case and give direction. She addressed both non-disciplinary and disciplinary actions. She explained that the Board could take action today but said this was uncertain. O'Brien offered that the Board would not be addressing her relationship with the client. Wynton said she understands that.

Fuji asked if the Board could state what its objections are about landscape design and whether Wynton had infringed into landscape architecture. Chair Ray said the Board could not say at this juncture as the Board needs to hear the information and discuss. He explained that the purpose of Board discussion is to reach some agreement on such matters and

synthesize that into direction to the Board Administrator about notification to Wynton. Chair Ray again stated that the Board had not discussed the case yet. He said the Board wanted to have Wynton's statement first and thanked her for that. Chair Ray further explained that if the Board has concerns related to title or practice, this would be reflected in the Board's action and subsequent notification. Wynton asked when she might hear about outcomes from the meeting. Chair Ray said the timing of Board action could be today, or the Board could find that more information or discussion is needed. Fuji commented about how things are not all black and white when considering landscape design and landscape architecture as there is overlap. Chair Ray said the Board understands that there are areas of practice overlap and acknowledges an exemption for landscape design. He said the Board will consider all this as part of the review. The Board might find areas that go beyond landscape design and if so will identify those.

Wynton and Fuji left the meeting at 1:24 PM.

At 1:25 PM, Chair Ray announced that the Board was entering executive session to discuss confidential materials for complaint cases that were exempt from disclosure pursuant to ORS 192.660(2)(l) and (f) as well as ORS 671.338. He read the script regarding participation in the executive session. At 2:45 PM, Chair Ray announced that the Board was returning to public session.

*Smith moved to dismiss LACC#14-11-005 due to insufficient information. Everhart seconded the motion. Chair Ray asked if there was any discussion. Hearing none, he called the vote, and all approved.*

Chair Ray noted that direction has been provided to staff on the other cases discussed by the Board. This concluded the Compliance Report.

#### ➤ **CONTINUING EDUCATION**

Valentine had Smith randomly draw names for audits for registrations renewed in October through December 2014. The names were not disclosed.

Valentine reminded the Board of a continuing education audit discussed at the November 13, 2014 meeting where the registrant indicated that he had not completed the required continuing education and wished to no longer be registered. The Board directed staff to prepare a letter to the registrant providing two options; Valentine referred the Board to the November 26, 2014 letter in the packet. She also noted the registrant's written response dated December 8, 2014 where he selected option 1, which is to surrender registration. To close out this continuing education audit, the Board was asked to consider this request to surrender registration and to vote on whether to accept it.

*Vice Chair O'Brien moved to accept the surrender of registration for Konrad W. Hyle, LA394 per his written request dated December 8, 2014. L'Amoreaux seconded the motion. Chair Ray, hearing no discussion, called the vote, and all approved.*

Valentine said staff will prepare a letter to Hyle indicating that he is no longer registered and cannot practice landscape architecture or use the landscape architect title in Oregon. Everhart requested that staff add this surrendered registration to the registration update put in the quarterly newsletter.

The Board next reviewed a response received to a continuing education letter sent to the University of Oregon. Valentine said the response was received several days after the Board's last meeting and was discussed with Everhart in the interim. Everhart noted that the Board is going to take up a comprehensive review of continuing education rules and can respond as such with indication that the Board understands the concern but maintains its position relative to the existing rules. Several Board members were concerned that no one from the University of Oregon responded and that instead the response came from a person representing ASLA. Valentine was asked to contact the LA Department Chair by email and to also copy the individual with ASLA that sent the response to the Board's letter. The Board asked Valentine to say its current findings stand but that the Board is open to discussion as part of the continuing education rule review and invites all to participate in the administrative rulemaking process.

Chair Ray called for a break at 3:03 PM. He reconvened the Board at 3:09 PM for oral exam.

### **ORAL EXAM**

The Board was joined by four candidates for initial registration. Chair Ray started a round of introductions and welcomed the candidates: Dale Cook, Daniel Edwards, Camilla Rice, and Sarah Whitney. Chair Ray provided the candidates with background on the oral exam process and stressed the importance of registrants understanding the statutes and rules that govern landscape architecture title use and practice. Board members proceeded to ask a variety of questions on topics such as title vs. practice regulation, maintaining registration, continuing education, stamping and signing and examination. The Board then invited questions from the candidates. They had questions about continuing education, practice limitations, business registration, CLARB council records, inactive status, etc. Chair Ray also explained that the Board is interested in hearing from candidates about their experiences with the LARE but noted that this group of candidates had largely taken previous versions of the exam. Board members also briefly discussed with the new registrants some of the challenges candidates face in finding local training for the LARE.

*Everhart moved to approve the initial registrations of Dale Cook, Daniel Edwards, Camilla Rice, and Sarah Whitney to practice as Registered Landscape Architects in Oregon. Hatch seconded the motion. Hearing no further discussion, Chair Ray called the vote, and all approved.*

The candidates were provided with their registration cards and wall certificates and warmly welcomed to the profession by the Board.

### **➤ OTHER REPORTS**

Chair Ray returned the Board to the Liaison Reports as there was not time for these prior to the arrival of the oral exam candidates.

Liaison report - Oregon Board of Architect Examiners: L'Amoreaux did not have a report. Valentine offered that she has been getting to know the new administrator and is enjoying working with her. She mentioned discussions about the 2015-2017 agreement for investigator services and how they are ready to get that signed.

Liaison report - Oregon Landscape Contractors Board: Valentine noted that the Board covered this update as part of the Administrator's Report earlier in the day. Chair Ray concurred that there was nothing further to report.

Liaison report - American Society of Landscape Architects: Chair Ray mentioned that he attended a recent executive committee meeting to share information about ongoing conversations with the Landscape Contractors Board on irrigation design services. Everhart mentioned that she met with the new ASLA executive committee member assigned to continuing education and had a good informational exchange about continuing education requirements. Vice Chair O'Brien said he continues to participate as an ASLA representative on a Metro advisory committee but that this is not tied to Board business.

**CORRESPONDENCE**

Valentine shared with the Board a request from a registrant for waiver of a late fee. Staff informed the RLA that no discretion is provided under Board rules for staff to waive fees. The RLA paid the fee and her registration has been renewed. Nonetheless, she asked that the waiver request be brought before the Board. The Board discussed that rules currently contain no provisions re: fee reductions or waivers for good cause. The Board would have to amend rules to waive a late fee. Staff was directed to notify the registrant that the late fee is not waived.

**GOALS/STRATEGIES CHECK-IN**

Chair Ray spoke to work the Board has done to focus on key values and goals and Board members briefly reviewed the one page summary that reflects that work. Discussion focused on whether the right goals have been identified and what work has been done or should be done to further the goals. Valentine was asked to review the minutes from the Board's past work sessions to see if possible next steps can be articulated and brought back to the next meeting for Board discussion. Chair Ray mentioned that the Board might want to look at its mission statement again. There was also discussion about how some of the anticipated work on Board rules would likely tie back to key goals.

**PUBLIC COMMENT**

Chair Ray noted for the record that no one was present to provide public comment. Public comment on a complaint case had been taken earlier in the day.

**NEW BUSINESS/ANNOUNCEMENTS**

There were no announcements. Everhart did raise a new business item, specifically asking Valentine to gather information on past civil penalties imposed by the Board. She thought this information would provide good context for future Board work. Other Board members agreed it would help them have a longer-term perspective of Board actions.

**ADJOURNMENT**

Chair Ray adjourned the Board meeting at 4:38 PM.

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The minutes of the February 26, 2015 meeting were approved with revision as incorporated herein at the May 14, 2015 Board meeting.

Respectfully submitted,

Christine Valentine, Administrator