

OREGON STATE LANDSCAPE ARCHITECT BOARD (OSLAB)

MEETING MINUTES QUARTERLY MEETING

August 13, 2015
Conference Room "B", 2nd Floor,
Association Center, 707 13th 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	Kate Hibschman, Registration Candidate
Susan Smith, Public Member	Tamra Lehuta, Registration Candidate
	Amy Whitworth, APLD-Oregon Chapter
<u>Board Members Excused</u>	Barbara Simon, APLD-Oregon Chapter
None	

*Participation was as noted in minutes

OPEN MEETING

Chair Ray convened the meeting at 9:03 AM and called the roll. All Board members except Vice Chair O'Brien were present. No visitors were present at this time.

AGENDA REVIEW

The Board reviewed the agenda, and no changes were made. Valentine informed the Board that Amy Whitworth with the Assoc. of Professional Landscape Designers (APLD) was expected to join the Board sometime after 11 AM and may be interested in presenting public comment. She also referred the Board to the correspondence agenda item for a letter from APLD. Valentine said that Dale White, investigator, and Kyle Martin, counsel, were expected to join the Board later in the morning.

MINUTES

Chair Ray opened the review of the meeting minutes from May 14, 2015 and June 2, 2015. Everhart noted one edit needed on page 7 of the public session minutes from May 14, 2015, which was to change the phrase landscape design to irrigation design.

Hatch moved to approve the May 14, 2015 public session minutes with the one modification as noted for the record. Treasurer Olsen seconded the motion. Chair Ray called the vote, and all approved.

Chair Ray asked for comments on the public session minutes from June 2, 2015. There were no comments.

Everhart moved to approve the June 2, 2015 minutes as presented. Smith seconded the motion. Chair Ray called the vote, and all approved.

Chair Ray asked if there was a need to enter executive session to discuss edits to the executive session minutes for the May 14, 2015 or if the minutes were complete as presented. No one requested discussion.

Hatch moved to approve the May 14, 2015 executive session minutes as presented. L'Amoreaux seconded the motion. Chair Ray called the vote, and all approved.

Vice Chair O'Brien joined the meeting at 9:16 AM.

CONSENT AGENDA

Chair Ray opened review of the consent agenda. Valentine distributed the continuing education portion of the consent agenda. Valentine reminded the Board that if any item on the consent agenda required detailed discussion, then it should be pulled off the consent agenda and handled separately. No one requested modification of the consent agenda. Chair Ray asked if there were any questions or comments. L'Amoreaux inquired about an application for registration by reciprocity that she recalled reviewing but did not see on the consent agenda. Valentine stated that an issue was encountered with the exam status for this applicant, specifically that neither CLARB nor the state of initial licensure had record of completion of all exam sections.

Treasurer Olsen moved to approve the three sections of the consent agenda: (1) payments log covering debits May 1 – July 31, 2015 and checks #4162-4197, (2) exam and registration approvals since the May 14, 2015 meeting, and (3) continuing education report. Everhart seconded the motion. Hearing no discussion, Chair Ray called the vote, and all approved.

ADMINISTRATIVE MATTERS

➤ Narrative Report: Valentine referred Board members to the written narrative report. She highlighted the following items:

◆ *Shared Administrative Services Analysis*: Valentine addressed plans for this analysis and welcomed Board input. Vice Chair O'Brien asked Valentine whether the two boards have similar positions about the shared services model. She said that to her knowledge both seem satisfied with the model and see clear financial benefits but want to retain independence and ability to disconnect in the future if that becomes the best option. Vice Chair O'Brien noted that the financial situation of these boards is not likely to change any time soon. Hatch asked if the shared services model increases the difficulty of recruitment for an administrator. Valentine said she is the first administrator recruited since the model was implemented, and it was of some concern for her in the recruitment process. She guessed that it would be an area that future applicants would likely have questions about and want some reassurance from the Boards. She also suggested that how much any particular applicant is concerned with the model may depend on the perspective, past experiences, and personality of that applicant.

Treasurer Olsen asked Valentine if there was any ongoing tension between the Boards and related push and pull in the demands facing staff. Valentine said that the working relationship between the Boards has been good over the last several years with no real points of major tension

emerging. She noted that recruitments may prove to be the most difficult situations for the Boards to work through together considering the stresses related to such efforts.

Chair Ray noted that it is good to not have Boards with practice overlap trying to work under this model. In such a case, the Boards may encounter more conflicts due to practice overlap issues. Vice Chair O'Brien agreed that it is good that the Boards have similarities but not practice conflicts.

◆ *Updated Policy on Insurance Coverage:* Valentine referred the Board to an updated policy addressing State of Oregon insurance coverage for individual Board members and employees. Board members were encouraged to review for a refresher on state liability coverage for board-related business.

◆ *Status of Online Services Project:* Valentine reported that the project is moving forward again after unanticipated delay related to negotiating new contract language for semi-independent agency banking outside of the State Treasury. OSLAB is the first semi-independent agency to go through this process with the Dept. of Administrative Services and the State's IT provider NIC USA. Contract language needed to be amended to reflect a different process and responsibilities compared to agencies that use the State Treasury.

◆ *SB 966 Update:* This passed in the recent legislative session and was signed by Governor Brown. It mandates a training program for new board/commission members & directors. Staff will monitor the development of this training.

◆ *CLARB Annual Meeting:* Everhart and Valentine are attending for OSLAB. Valentine thanked Everhart for fitting this into her busy September schedule.

Valentine asked if Board members had any particular questions about other updates covered in the narrative report. Hearing none, Chair Ray moved the Board to review of the renewal histories.

➤ Renewal history update: Over the biennium, the registrant count was flat as was the 5-6% annual non-renewal rate for individual registrations. Valentine said she would address renewal revenues further in the Budget Committee report. She also noted that business registration renewals were down and said it is hard to monitor and predict business registration trends. Staff is not always notified as to why a business registration is not being renewed. Board members briefly discussed various scenarios that can lead to non-renewal of business registration.

GOALS/STRATEGIES CHECK-IN

➤ Updates: Chair Ray opened discussion on the Board's continuing work on strategic planning. Valentine thanked Board members for their individual inputs on prioritizing key goals and tasks. She reported that the majority of members suggested practice clarification, modernizing path to licensure, and partnerships/communications as the highest to lowest of the priority goals, respectively. However, Valentine noted that Everhart suggested that the Board has already made good progress on modernizing the path to licensure and recommended that as the lowest priority of the Board's strategic goals. The Board discussed this idea. Vice Chair O'Brien agreed with Everhart's logic since the Board has already started work on modernizing the path to licensure and could shift to other priorities for the biennium.

The Board determined that there was plenty of work to do in the biennium on clarifying what is meant by landscape architecture practice, including a review of areas of practice overlap and exempt work. The Board decided to focus on this work for the biennium but will keep the other two goals in its strategic plan. Board members discussed how work on practice definition would likely support progress on its other strategic goals.

Valentine referred back to individual inputs from Board members and noted that there seemed to be agreement on highest priority tasks under the modernizing path to registration and landscape architecture practice goals. For the partnerships/communications goal, Valentine saw a little more spread on the tasks selected by individual members as priorities but with several tasks that seemed to garner most interest. The Board reviewed the tasks that were most selected and briefly discussed.

Vice Chair O'Brien asked the Board to consider whether inviting the American Society of Landscape Architects, Oregon Chapter (ASLA-OR) to participate in meetings might be a useful exercise to further the partnerships/communications goal. Chair Ray said he would look for an opportunity to discuss this idea with the ASLA-OR executive committee. He thought it might be too difficult to get the full committee to attend OSLAB meetings but perhaps a liaison could be identified. Everhart noted that a potential challenge for the Board is that the ASLA-OR meeting schedule is already full such that individuals on the Executive Committee may not have extra time to attend Board meetings. She suggested that the ASLA OR trustee might be a good choice for the liaison to the Board given the role of the trustee and since this is a 3 year term while other executive committee positions are 1 year terms. The Board discussed that it would like to create an avenue for ASLA-OR to identify and easily bring questions of its members to the Board. While acknowledging that ASLA-OR and OSLAB have very distinct purposes, the Board would like to see regular communications between the organizations since both provide services to registered Landscape Architects.

The Board discussed tasks to address practice overlap and exemptions. Everhart wanted the Board to determine how it would gather and analyze information whether from statutory reviews or other means. Treasurer Olsen agreed that demands for the Board to address practice issues were likely to not dissipate and could increase. Hatch suggested the Board think about what kind of guidance could be provided regarding exempt work such as for landscape designers. For example, she asked if the Board could somehow address areas of most concern from a public health, safety, and welfare perspective and illustrate such guidance through examples.

Dale White joined the Board at 10:05 AM.

Valentine mentioned that counsel previously suggested that the Board could define via rulemaking various terms used in statutory exemptions such as conceptual plans. She explained that the conversation last arose in the context of discussion a practice overlap case involving a registrant of the Oregon Landscape Contractors Board (LCB). She thought the same approach could be a way to provide enhanced guidance to landscape designers and others. Treasurer Olsen encouraged the Board to look for a way to show examples of landscape architecture work to help illustrate the level of detail that would cross the line from design to practice. She also posed the question of whether other design professionals understand the work products provided by RLAs and specifically how this compares to conceptual plans. Everhart suggested that the Board could consider asking for anonymous examples of landscape design plans to facilitate review and discussion about conceptual vs. construction level details. Board members were

interested in this idea and wanted to consider it further. It was noted that there is a real consumer need for the services provided by landscape designers and that the Board focus with respect to unregulated professions is limited to work that could cause health, safety and welfare impacts.

Vice Chair O'Brien offered to research possible definitions for conceptual plan. He will report back at the next quarterly Board meeting. Everhart suggested that use of pictures as examples is a good way to show conceptual. Treasurer Olsen agreed that the Board should consider defining conceptual plan and looped back to the idea of looking at example landscape designs to illustrate areas of concern. Chair Ray said that the Board needs to explain that it is not proactively seeking complaints or going after landscape designers. The Board is generally reactive to complaints filed by citizens.

The Board discussed that it would need to also think about how a definition of conceptual plan might apply to those working under registrants. This generated a brief discussion about whether signing and stamping is a necessary component of practice and when individuals might be practicing landscape architecture even if not signing and stamping final plans. It was noted that the Board might need to provide guidance about supervisory controls and responsible charge of work.

The Board was interested in moving forward with some level of statutory review and decided to address this later in the meeting to afford the opportunity to include counsel in the discussion.

Chair Ray asked for discussion about the idea of surveying registrants on practice issues. Board members discussed how and when questions might be developed and various options for implementing a survey. Treasurer Olsen recommended that the Board bring in a facilitator to help the Board hone in on specific questions. L'Amoreaux said the Board needed to decide if such a survey should occur first as part of identifying issues or if the Board should do some review of statutes and rules first to inform its efforts to craft a survey. The Board decided that it should start with the internal review of statutes and rules to help focus any questions asked in a registrant survey. Treasurer Olsen mentioned that an internal review could also help define key issues to research about how other states address practice issues.

Everhart noted that the work on practice definition being discussed should also benefit registrants considering inactive status. Those individuals need to understand what is and is not practice since they are agreeing to not practice landscape architecture while on inactive status. Everhart also suggested presenting some examples from past continuing education audits of various types of hours claimed to encourage registrant engagement in discussion about what should be allowed and where more detail is needed in rule to address how credits are awarded.

Chair Ray called for a break at 10:45 AM. At 11:00 AM, he reconvened the Board and opened discussion on the Correspondence agenda item.

CORRESPONDENCE

Chair Ray noted that the Board had one letter to review, which was an August 3, 2015 from APLD. The letter raised various concerns about practice overlap between landscape design and landscape architecture. Board members reviewed and reflected back on their earlier discussion about prioritizing work on clarifying what is meant by landscape architecture practice. The Board felt this work would ultimately help to address the concerns noted in the APLD letter.

Board members inquired of Valentine about past interactions between the Board and APLD. Valentine said she recalled APLD representatives attending several meetings over the course of her tenure with the Board and noted that meeting packets are provided to an APLD representative per request.

Treasurer Olsen noted the APLD interest in a recent complaint case and how the Board could not discuss the case while the investigation was ongoing. She asked Valentine to explain what is public record and available now for review. Valentine explained how case confidentiality works and the impact of closing a case with a final Board decision. She mentioned that there is a process for requesting public records.

PUBLIC COMMENT

At 11:10 AM, the Board was joined by two public participants. Chair Ray welcomed the guests and called for a round of introductions. The guests were Barbara Simon, Co-President of the APLD OR Chapter and Amy Whitworth, the Legislative Liaison for the APLD OR Chapter. Chair Ray welcomed the guests to provide public comment.

Whitworth asked if the Board received the August 3, 2015 letter from APLD. Chair Ray confirmed this and that the Board reviewed the letter. Whitworth asked what the Board could now discuss about a recently concluded case involving a landscape design. (For the record, the case in question was LACC# 14-04-003.) Valentine discussed what is publicly available now that the Board issued a final decision in the case and briefly addressed how to submit a public records request. She suggested that APLD might want to request a copy of the settlement agreement in this case and noted that she did not have the case file at the meeting since it was not on the agenda for discussion. Whitworth indicated that APLD already had a copy of the settlement agreement.

Whitworth informed the Board that APLD has engaged in discussion with ALSA OR. The ALSA OR Communications Chair has been the point of contact. This person was not aware of the recent case so this has required time to share information. She noted that APLD would continue with this communication effort but was uncertain as to where it would lead.

Chair Ray addressed the Board's role as a regulatory body and noted that the Board is generally reactive to complaints received. When a signed written complaint comes to the Board, it has an obligation to review the complaint. The first step is to assess whether the complaint raises any issues that are potentially within the Board's jurisdiction. He noted that the Board is not proactively going out to look for practice violations or to focus on landscape design as an area of concern. But the Board is obligated by statute to address possible unlicensed practice. White and Valentine offered additional details about the complaint filed in the case of concern to APLD. The complainant raised numerous issues, including that the designer offered to practice in areas not qualified that went beyond landscape design. The complainant also raised issues related to a fee dispute, but these issues were determined to be outside the jurisdiction of the Board and were not addressed in the investigation.

Whitworth questioned why the Board raised concerns about a rain garden and why notes about how to build a rain garden would be problematic. She also wondered if a landscape designer would cross any practice lines by referring a client to the Oregon Rain Garden Guide, which is a publicly available resource for homeowners. Chair Ray said he did not think referencing a publicly available guide was a problem. He compared this to providing visual images as

representative examples of design. He anticipated that designers would provide images and ideas but not detailed construction specifications of how to build and exact materials to use. He mentioned that the Board looks at level of detail and site-specific design vs. conceptual plans. The Board continues to view presenting ideas and gathering feedback as conceptual level work.

White was asked to address how plans are reviewed to determine when a line is crossed from conceptual to construction detail. White said this is a case-by-case determination because the Board must consider the plans in the context of the totality of the case. For example, there can be pertinent facts beyond just the plans.

Whitworth noted that the Oregon Rain Garden Guide includes cross-sections with details. She wondered if providing one of these cross-sections to a client would be providing construction detail in the Board's view. Chair Ray thought that a designer could locate the proposed placement of a rain garden and then point to the guide as how the construction professional could build such a garden. Ultimately, he anticipated that a landscape architect or landscape contractor would prepare the construction plans and specifications for client's site based on the conceptual information provided by the landscape designer. Everhart emphasized that the landscape designer is likely best served by referencing materials and leaving the construction details in the realm of landscape contractor or landscape architect to interpret. This means that the licensed professional has liability if there are health, safety and welfare problems with the construction.

Vice Chair O'Brien mentioned that the Board had concerns about grading and drainage details in the recent case. These details raised questions for the Board about possible health, safety and welfare impacts. He suggested that grading and drainage would always be an area of Board focus with respect to its mission.

Whitworth mentioned that local jurisdictions in the Portland Metro area are encouraging disconnection of downspouts and building of rain gardens. The local governments are not seeing this as a health, safety and welfare issue and are not regulating these homeowner activities. She noted an increasing trend to daylight water and encourage slow infiltration. She questioned why this would be a health, safety and welfare issue for OSLAB if it is not for local jurisdictions. Everhart noted that a homeowner that takes on a "do it yourself" project is responsible for the results, including any unintended impacts on neighbors from drainage changes. But if a professional designs the project, then that professional incurs some liability for project failure. OSLAB's viewpoint is different because it is focused on practice by individual professionals vs. homeowners.

Whitworth said a challenge for landscape designers is that not many landscape contractors are yet familiar with rain garden design. In her experience, contractors will not necessarily read up and know how to properly design a rain garden without the designer providing some expertise. The client may end up with a dry well instead of a rain garden. She views the services offered by landscape designers on rain gardens to be service to public vs. hazard to public.

Chair Ray summarized that the Board is focused on aspects relating to health, safety and welfare. He emphasized the importance of being careful about impacts to drainage especially to neighboring properties. He noted that liability issues should be concern to any practitioner. And he again noted that the Board is not trying to regulate landscape design practice. He encouraged designers to suggest landscape contractors or other sources of construction information to clients.

Whitworth mentioned that she occasionally teaches classes on rain gardens and has learned that most homeowners do not have enough confidence or information to build their own rain gardens. These homeowners are asking landscape designers for assistance. She wondered if designers should always recommend that clients work with landscape architects on rain gardens. Chair Ray suggested that it likely depends on site, conditions, complexity, and the potential for problems based on such factors. He thought the type of professional needed was dependent on the circumstances of the site and project in totality. He said he hoped that publicly available manuals have disclaimers in the beginning about specific items that a homeowner might want to have assessed by a professional. For example, a homeowner with a steeply sloped site might want to consult with a geotechnical engineer.

Whitworth asked if the Board could offer guidance on how landscape designers could share ideas in instances where they cannot find an example photo or other illustrative resource. She wondered if a designer can provide a description of what he or she is after, for example dimensions of a wall for aesthetic purposes to achieve a certain look but not as a construction plan. The Board's suggestion was that the designer asks a licensed contractor to prepare shop drawings of how it would be built based on a general description. Chair Ray and Everhart both noted that landscape architects will request shop drawings from contractors in some instances instead of providing those construction details. L'Amoreaux again mentioned the need to consider a site in totality and how a designer could emphasize that the contractor would need to provide adequate design or drainage. The Board's view was that everyone involved has more protection this way.

Chair Ray invited the guests to join the Board for lunch. They declined the invitation due to other commitments.

Vice Chair O'Brien said he hoped the guests understood that the Board was challenged to speak freely at the last meeting due to confidentiality required for open complaint cases. The Board was not intending to be condescending but was limited in what it could discuss. Whitworth acknowledged that she and the other guests present at the last meeting left upset but that she was happy to hear that they had misinterpreted the Board's intentions.

Chair Ray reminded the guests that Board meetings are public meetings and invited them to attend future meetings. Whitworth mentioned that she thought some instructors at Portland Community College might be interested in speaking with Board about various topics they teach to aspiring landscape designers. Chair Ray said these instructors may not understand the regulatory details and left open the possibility of future discussion at a Board meeting.

Chair Ray called for a lunch break at 12:09 PM. He reconvened the Board at 12:30 PM and moved to Board reports.

REPORTS

➤ Administrative Rules

◆ *Update on Active Rule Projects:* Valentine reported that the public notice process had been completed for five rules:

- 804-001-0020, Public Records Requests
- 804-022-0030, Required Application Information (re: Social Security Numbers)

- 804-022-0025, Inactive and Inactive Emeritus Status
- 804-040-0000, Fees (tied to 804-022-0025)
- 804-022-0020, Late Renewal and Reinstatement of Delinquent Registration

Valentine referred the Board to the public comments received, and options for addressing these comments were discussed. The Board decided to make one change in 804-022-0025 in response to public comments. The change was to remove the requirement for 10 years of registration with OSLAB as part of the qualifications for Inactive Emeritus status. The Board will retain criteria of 25 years registration as a landscape architect and being in good standing with OSLAB at the time Inactive Emeritus status is requested. Martin verified that the Board could make this revision without further notice as it reduces requirements vs. adds new standards.

804-022-0025 The Board discussed the problems associated with Inactive Emeritus status as a form of Inactive status. The Board understood that a statutory change would be needed to obtain authorization for a true retirement status. The Board has interest in such a statutory change but was unsure of the right time to pursue such a legislative fix or whether the Board or some other entity should pursue such a change. The Board anticipated that demand for a retirement status would increase in coming years as baby boomers retire.

Vice Chair O'Brien moved to adopt the 804-022-0025 amendments with revision made to remove the requirement of 10 years registration with OSLAB as one of the qualifying criteria for Inactive Emeritus status. Hatch seconded the motion. Hearing no discussion, Chair Ray summarized and called the vote. All approved the motion.

804-001-0020 Chair Ray said he had some concern about the adequacy of the \$25 hr. labor rate related to processing of public records requests. Valentine addressed how staff developed the rate. Martin advised that the Board must be able to justify the rate included in the rule. Chair Ray asked if there were any other comments on this rule. Hearing none, he asked for a motion.

Vice Chair O'Brien moved to adopt amendments to 804-001-0020 as presented. Smith seconded the motion. Hearing no discussion, Chair Ray summarized and called the vote. All approved the motion.

804-022-0020 Chair Ray asked for comments on the proposed amendments. Everhart pointed out a typographical correction in (3)(a). No other comments were offered. Chair Ray asked for a motion.

Everhart moved to adopt amendments to 804-022-0020 as presented with the identified typographical correction made. Smith and L'Amoreaux both seconded the motion. Hearing no discussion, Chair Ray summarized and called the vote. All approved the motion.

804-040-0000 Chair Ray noted that the rule amendment would set an equal fee for Inactive and Inactive Emeritus status. He asked if there were any comments. Hearing none, he asked for a motion.

Hatch moved to adopt amendments to 804-040-000 as presented. Treasurer Olsen seconded the motion. Hearing no discussion, Chair Ray called the vote, and all approved.

804-022-0030 Chair Ray noted that this was a new rule. He asked Valentine to remind the Board of the purpose of the rule. Valentine said the rule memorializes federal and state requirements and restrictions related to collection of social security numbers for registrants. The rule explains the limited uses of this information. Everhart noted a typographical correction in (2). Hearing no further comments, Chair Ray asked for a motion.

Hatch moved to adopt new rule 804-022-0030 as presented with the identified typographical correction made. Everhart seconded the motion. Hearing no discussion, Chair Ray called the vote, and all approved.

Valentine addressed a needed minor rule amendment that recently came to her attention. She addressed ORS 183.335(7) limitations on minor rule amendments without public notice. She explained also that the Board could delegate authority to have staff handle all minor rule amendments or could approve these on a case-by-case basis. She noted that this rulemaking issue was covered in a revised delegation of authority document that was to be discussed under New Business. Chair Ray asked if the Board could approve the specific amendment and then consider a global delegation after reviewing the delegation of authority document. Valentine answered affirmatively. Hatch motioned to approve global delegation of authority for minor rule amendments. However, this motion was not seconded. Chair Ray then asked for a motion specific to amendment of 804-030-0000.

Vice Chair O'Brien moved to approve the minor numbering changes to 804-030-000 per ORS 183.335(7). Hatch seconded the motion. Hearing no discussion, Chair Ray called the vote. All approved the motion.

◆ *Update on Pending Rule Projects:* At Hatch's suggestion, Chair Ray held discussion about pending rule projects for continuing education and business registration and moved to the Compliance agenda item.

COMPLIANCE

➤ Complaint Cases: Chair Ray noted that the Board had two open cases to discuss in executive session and other compliance-related issues to discuss in public session. The cases were LACC#15-03-007 and LACC#15-06-008. Everhart announced that she was recusing herself from discussion of LACC #15-03-007 and left the meeting room. At 1:12 PM, Chair Ray announced that the Board was entering Executive Session for purposes of reviewing materials exempt under ORS 671.338 and ORS 192.660(2)(l) and (f) and read the script.

At 1:26 PM, Chair Ray returned the Board to public session. Everhart was located and returned to the meeting room. Chair Ray noted that the Board had one more open case to discuss. At 1:31 PM, Chair Ray announced that the Board was returning to Executive Session for purposes of reviewing materials exempt under ORS 671.338 and ORS 192.660(2)(l) and (f) and read the script. At 1:52 PM, Chair Ray returned the Board to public session.

Motions on Complaint Cases:

Hatch moved to close case LACC#15-03-007 with a letter of concern to the respondent that would cite the factors considered by the Board and provide information about application for reciprocity. Vice Chair O'Brien seconded the motion. Chair Ray invited

comment. Hearing none, he called the vote. Everhart abstained from the vote, and all other Board members voted to approve the motion.

Hatch moved to close case LACC#15-06-008 with no further action. L'Amoreaux seconded. Chair Ray asked if there were any comments. Hearing none, he called the vote, and all approved.

➤ Other Compliance Updates: The following items were discussed.

At its May 14, 2015 meeting, the Board directed staff to send an outreach letter regarding use of title. The Board was referred to the response received to this outreach letter. Valentine asked if the Board anticipated further action. She noted that the individual provided documentation of her efforts to get the flagged instances of title use corrected. Smith pointed out that it looks like for at least one instance of title use the individual tried to get a correction in the past. The Board concluded that this matter had been satisfactorily addressed.

White spoke to research into the ASLA Firm Finder, specifically how ASLA populates that database and whether individuals have control and knowledge about how their information is posted. His attempts to speak to someone in the national ASLA office with knowledge about the Firm Finder had been unsuccessful. He wanted to find out what it takes to be listed and how much control an individual has over the listing. Everhart suggested that staff talk to Julia Lent in the national ASLA office. She also pointed out that since ASLA does not require members to be RLAs, there will be non-registrants in the Firm Finder list. She said ASLA has a variety of membership categories and suggested that this is why ASLA has a general disclaimer on the Firm Finder website. Vice Chair O'Brien suggested kicking the issue to CLARB to address on a national level with ASLA instead of OSLAB trying to tackle this on its own. He also thought one option might be for ASLA to collect additional information from members to include licensure information on the Firm Finder listings. Valentine said there might be an opportunity to discuss with ASLA and CLARB representatives at the annual meeting.

Valentine presented a civil penalty history based on data from 2005 to present. The Board also discussed possible interest in moving towards a penalty matrix, and Valentine shared a list of potential violations that could be subject to civil penalty. She noted that there were many different types of potential violations which somewhat complicates a matrix approach. She provided an example of the matrix adopted and in use by the LCB. She reported that the Construction Contractors Board also has an informal matrix that guides staff recommendations to that board. She also mentioned that the California Landscape Architectural Technical Committee uses a disciplinary guidance document that is adopted by rule.

Vice Chair O'Brien did not see enough reason to develop a penalty matrix. Everhart did not disagree but wanted to see ongoing tracking of violations and penalties imposed. L'Amoreaux agreed, adding that it would be helpful to the Board if staff kept track of the type of violations that result in civil penalties. Vice Chair O'Brien and L'Amoreaux also would like to see notes kept about why specific penalty amounts were determined. Martin suggested that the Board could refer to the statutory factors that apply and how those were assessed in individual cases.

Valentine next provided background information on the Supreme Court decision No. 13-534, argued October 14, 2014 and decided February 25, 2015 involving the North Carolina Board of Dentistry. She said this was an informational item only. Martin briefly spoke to how the Oregon

DOJ was evaluating the case and said he would work through Valentine to inform the Board of any new legal guidance from his agency. No Board action was required.

Chair Ray asked Martin for input on how the Board might approach statutory review related to its strategic goals. Martin recommended a targeted statutory review where the Board defines key issues, engages stakeholders, and obtains counsel input as part of the evaluation of need for a legislative concept. Alternatively, he said some agencies appoint a committee to comprehensively review statutes and provide recommendations for the top five or so changes to improve statutes as related to mission and business operations. In his experience, the comprehensive review takes longer. Once the Board decides on an approach, the process is essentially the same with respect to gathering input and moving towards a legislative concept.

Martin thought the Board might want to start by looking at the existing definitions and exemptions. If key terms are not defined, the Board may want to look at rulemaking to define those terms. Martin said he could help with making sure any new rule definitions or related rule changes are reasonably within the Board's authority as defined in statute. One example discussed was the idea of trying to define what is meant by conceptual design and construction detail. Vice Chair O'Brien asked if there would be value in understanding what certain terms would mean based on the status quo statutes and rules as a way to identify rulemaking priorities. Martin said he likely could not respond with sufficient specificity to provide the Board with useful assistance compared to providing assistance on crafting definitions of key terms. There was brief discussion about past Board consideration of defining construction details and specifications in relation to exemptions.

Vice Chair O'Brien encouraged all Board members to look over the Board's statutes and rules to highlight language that seems unclear or confusing. Smith thought that the Board should also look at other states and other professions to inform internal statutory review. This was discussed as a step to occur after the Board decides on areas it wants to address. There was also discussion of the value of having the public members review the Board's statutes and rules due to having a different paradigm than the RLA members. Chair Ray made an assignment for all Board members to review the Board's statutes and rules and be prepared to share input at the next quarterly meeting. Treasurer Olsen asked for Valentine to identify and share any past advice from counsel that might be applicable to this effort. Valentine will also distribute a link to the statutes and an updated version of the rules. There was brief discussion about how this work could help to resolve various practice questions.

Chair Ray called for a break at 2:47 PM. He reconvened the Board at 2:58 PM. He announced that the Board was moving to the oral exam agenda item.

ORAL EXAM

At 3 PM, the Board was joined by two candidates for initial registration. Chair Ray welcomed Kate Hibschman and Tamra Lehuta to the meeting and addressed the purpose of the oral exam. He stated that the Board needs some assurance that candidates have familiarity with the landscape architecture statutes and rules as well as the role of the Board. Board members and staff proceeded to ask a variety of questions on topics such as title vs. practice regulation, maintaining registration, continuing education, and stamping and signing. Board members then exchanged information with the candidates in a question and answer session. Chair Ray next asked the candidates about their experiences with the Landscape Architect Registration Exam

(LARE). Candidate comments about the LARE focused on the challenge of finding study materials and guidance, especially for the grading and drainage section of the exam.

Vice Chair O'Brien moved to grant registrations to Kate Hibsichman and Tamra Lehuta. Everhart seconded the motion. Hearing no comment on the motion, Chair Ray called the vote, and all approved.

The Board warmly welcomed Hibsichman and Lehuta to the profession. They departed the meeting at 3:40 PM.

Chair Ray returned the Board to Reports, starting with Continuing Education.

CONTINUING EDUCATION

➤ Audit Selection: Smith randomly drew names for the next audit period of April – June 2015. The names were not revealed to Board members.

➤ Pending Rule Updates: Everhart shared some recent issues that the Board might want to address in updates to the continuing education rules.

◆ *Authorship*: The Board received input from a registrant during a recent audit about how the Board might want to clarify how credits are applied to authorship activities. Everhart noted repeated challenges with this activity type and thinks the Board needs to clarify expectations regarding research and writing by individuals. The Board may also need to address marketing efforts vs. authorship that contributes to a registrant's education. She mentioned the possibility of the Board setting various levels of PDH credit depending on the type and complexity of material authored. Hatch wondered if the Board has been too lenient in its past acceptance of authoring credits.

◆ *Board/Commission Service*: The Board was encouraged to consider clarifications to the rule provision that addresses PDH for service as an appointed member of a professional board or commission. This rule may need to be clarified to address participation on committees of professional boards and commissions, such as OSLAB's Administrative Rules Committee. The Board may also want to be more specific about the types of boards and commissions that fall under this provision.

◆ *Pro Bono Services*: The Board may want to include more guidance on the types of pro bono services that qualify for PDH. Everhart gave an example from an audit of a RLA claiming pro bono service credit for work done for a client because the client was not ultimately charged for all the services provided. It is not clear that the Board intended such client services to be considered pro bono services. Board members agreed that the registrant must be learning while providing pro bono services. Services to a non-profit or community were mentioned as better examples of pro bono services.

◆ *Summaries vs. Third Party Documentation*: While the Board rules seem clear about summaries being acceptable only when third party documentation is not available, RLAs continue to be confused and sometimes rely too heavily on summaries. Also, the Board has implemented the program in a manner that liberally accepts self-study credits vs. traditional structured educational activities. This flexibility makes administration more complicated and invites registrants to sometimes be rather creative in what they claim as hours.

Vice Chair O'Brien asked about next steps in translating Everhart's running list into rule amendments. Possible process steps were discussed, including when to engage the Administrative Rules Committee. Chair Ray, Everhart, and Valentine agreed to highlight areas in current rules thought to be problematic, match these up with examples from past audits, look at research staff has done on other state programs, and develop a draft proposal for discussion at a future meeting. The Board ultimately wants to plan some outreach events in Eugene and Portland to gather input on possible updates.

BUDGET

Valentine presented a report on the 2013-2015 biennium budget vs. actuals. The budget over projected on renewal revenues. For individual renewals, the budget used a snapshot number of registrants instead of a 5 year average and then projected a small % of growth for each fiscal year. The individual renewal notices released and the number returned were flat for the two years. For the 2015-2017 budget, the Board changed how individual renewal revenue is projected and used a more conservative estimate. For business renewals, the budget also over projected by about twenty firms per year. It continues to be difficult to predict firm renewals. The non-renewal rate for firms was at about twice the non-renewal rate for individual registrations.

Valentine moved to expenses and noted that these were well under projections. This meant that, despite actual renewal revenues being less than projected, the Board did not need to tap its reserve funds as much as projected in the 2013-2015 budget. Expenses were above projections for out of state travel and conference registrations due to sending two staff to the 2014 CLARB annual meeting. Expenses for office supplies were also higher than projected due to replacement of filing cabinets which had not been anticipated in the budget.

Chair Ray asked Treasurer Olsen if she had any particular concerns or other areas to highlight regarding the budget to actuals review. She noted that some of the expenses were inflated because the Board was talking about a number of new initiatives during the budget development process. The Board then did not proceed with these initiatives at the pace anticipated resulting in lower spending. She also said the Board needs to continue periodic analysis of reserves and the relationship to fees. The Board discussed existing fees and a need to look at how to project out when the Board will reach its target reserve amount.

Valentine addressed a few last questions about individual line items, and then Chair Ray moved the Board to the next agenda item.

LIAISONS

➤ Oregon Board of Architect Examiners (ORBAE): L'Amoreaux reported that ORBAE is still working on getting together with the engineering board and busy with compliant cases.

➤ Oregon Landscape Contractors Board (LCB): Valentine updated the Board on SB 580 and HB 3304 and engagement in LCB work on rules for SB 580 implementation. The Board discussed the importance of providing input related to SB 580 and irrigation design. The Board noted the challenging work facing LCB in designing a skills-based test for landscape construction professionals.

The Board briefly discussed whether it should consider future outreach to university and community colleges in relation to comments provided by APLD representatives earlier in the meeting. No decision was made.

➤ American Society of Landscape Architects: Chair Ray reported that he attended a meeting of the ASLA-OR Executive Committee and discussed with them issues such as the distribution of registrants in the state, irrigation design and dialogue with LCB, and offered to speak to the emerging professionals group. Everhart noted that she and Valentine had been contacted by the new continuing education liaison for the chapter.

NEW BUSINESS/ANNOUNCEMENTS

➤ Delegation of Authority Update: Valentine completed an annual review of the document and presented recommended updates to the Board. Major changes related to the registration application process and recent rule amendments. Chair Ray asked Board members if they had concerns about the recommended updates, in which case this item would need to be tabled until the next quarterly meeting due to time constraints. No concerns were raised, and Board members thought the updates could be approved.

Treasurer Olsen moved to accept the recommended updates to the OSLAB Delegation of Authority document. Hatch seconded the motion. Hearing no further discussion, Chair Ray called the vote, and all approved.

➤ Officer Elections: Valentine noted that the Chair, Vice Chair, and Treasurer serve 1 year terms. Those elected would start serving at the close of meeting. All current officers expressed willingness to serve another 1 year term. No others expressed interest in the officer positions.

At this time, Treasurer Olsen informed the Board that she will not apply for a second term. She would like to work on dues projection and a Board policy regarding audit/financial review during her remaining time on the Board. She would be happy to be work on these issues without being Treasurer. The Board discussed how to transition the Treasurer duties and knowledge while Olsen remains on the Board. Treasurer Olsen noted that there are monthly duties that must be attended to by the Treasurer in a timely manner. L'Amoreaux volunteered to be trained in the Treasurer duties, and this was supported by other Board members.

Everhart nominated the current incumbents for another 1 year term as Board officers. Hatch seconded the motion. Chair Ray asked if there was any comment. Hearing none, he called the vote, and all approved.

Vice Chair O'Brien and Smith left at 4:30 PM due to other commitments.

➤ CLARB Bylaw Changes: The Board determined that the Chair and meeting delegate would work to ensure OSLAB casts its votes for CLARB Board of Directors and bylaw changes. The Board will vote in support of bylaw changes. Chair Ray, Everhart, and Valentine were asked to attend to the Board of Directors vote without specific recommendations from other Board members. Everhart and Valentine were to ensure OSLAB votes are submitted at the annual meeting. There was a brief discussion about expectations for the annual meeting.

ADJOURNMENT

Chair Ray adjourned the Board at 4:44 PM.

+++++

The minutes of the August 13, 2015 meeting were approved as presented at the November 12, 2015 Board meeting.

Respectfully submitted,

Christine Valentine, Administrator