

OREGON STATE LANDSCAPE ARCHITECT BOARD (OSLAB)

MEETING MINUTES QUARTERLY MEETING

February 11, 2016
Conference Room "A", 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	Kyle Martin, AAG, DOJ
Kathy Olsen, Public Member, Treasurer	Dale White, Investigator
Steve Ray, RLA, Chair	Amy Whitworth, APLD
	Catherine Trzybinski, APLD
<u>Board Members Excused</u>	Westley Shoger, Registration Candidate
Susan Smith, Public Member (illness)	

*Participation was as noted in minutes.

OPEN MEETING

Chair Ray called the meeting to order at 9:09 AM as a quorum of the Board was present. Smith was excused due to illness. Everhart and O'Brien were expected but not yet present. No guests were present.

AGENDA REVIEW

Chair Ray reviewed the agenda with the Board. Valentine mentioned that there was an additional email from Everhart to consider under New Business. She also distributed handouts that were not included in the mailed meeting packets for the Consent Agenda and the Compliance Report.

MINUTES

Chair Ray opened review of the meeting minutes from the Nov. 12, 2015 meeting. He asked if there were any comments or revisions for the public session minutes. Hearing none, he then asked about comments or revisions for the executive session minutes. None were offered.

Treasurer Olsen moved to approve the Nov. 12, 2015 public session and executive session minutes as presented. Hatch seconded the motion. Chair Ray called the vote, and all Board members present approved.

CONSENT AGENDA

Chair Ray opened review of the consent agenda which consisted of three components: licensure review actions, continuing education audit report, and quarterly check/payment log.

He asked if there were any comments or questions about the consent agenda components. Hearing none, he asked for a motion.

Treasurer Olsen moved to approve the three components of the consent agenda. L'Amoreaux seconded the motion. Chair Ray called the vote, and all Board members present approved.

Vice Chair O'Brien and Everhart arrived at 9:17 AM.

ADMINISTRATIVE MATTERS

➤ Administrator's Narrative Report: Valentine presented the report, highlighting the following items: reminders about W-2s for stipends & expense claims for 2015, upcoming public member vacancy and pending reappointments, update on online renewal project, new information about mandatory training for new board and commission members/executives, and update on 2016 legislative session.

Valentine informed the Board of new information not covered in the narrative report regarding a legislative proposal to repeal landscape architect licensure in Arizona. She asked if the Board supported sending a letter of concern to the Arizona board. The Board was supportive, and Chair Ray volunteered to work with Valentine on this letter.

Hatch mentioned seeing a Koch Bros. Industries editorial in the local paper that was anti-licensing. There was brief discussion about how licensure is being discussed in various forums around the country with the relative values of deregulation vs. regulation for public health, safety and welfare being debated.

➤ Quarterly Budget Update: Valentine gave a snapshot of the budget. Within the budget period, expenses had so far exceeded revenues, but this was anticipated and addressed by including reserve fund use in the budget. Reserve funds have been used a bit faster than in the previous biennium, but again this was also anticipated. She reviewed various line items to provide additional details on various revenue streams and expenses.

➤ Quarterly Renewal History Update: The Board discussed the report. Vice Chair O'Brien asked if staff could add information on the net gain or loss per month. He thought this would be helpful for the Board and an easy calculation since new registrations and non-renewals are already tracked. Valentine said staff would work on this for the next quarterly report.

➤ Registrant Demographics: Valentine provided information originally shared at the November 2014 quarterly meeting looking at registrant demographics. She noted that this topic came up again at the last quarterly meeting. Board members discussed concerns related to the paucity of registrants under age 40 and what this could mean for the future availability of qualified professionals in Oregon. Vice Chair O'Brien noted that the Oregon registration trends seemed at odds with a profession that is growing worldwide. Board members discussed that there may be a need to engaged landscape architectural firms in discussion about registration trends and whether firms support employee pursuit of registration. Board members were not clear on if or how firms engage with employees on the topic of registration. Hatch suggested a newsletter article about succession planning and also suggested further review of whether universities with landscape architecture programs might have statistics on where graduates are going.

Everhart suggested the Board focus on developing a better understanding of demographic trends and the pipeline to licensure as part of its strategic priorities. Board members discussed how declining registrations would most likely require fee increases. Valentine was asked to check with CLARB to see what they have in the way of outreach materials discussing the path to registration and registration value. There was discussion of possibly coordinating with the Oregon ASLA chapter on future outreach to the audiences of licensed and unlicensed professionals.

Chair Ray called for a break at 10:26 AM. He reconvened the Board at 10:34 AM.

➤ Review of Legal Advice for Administrative Issues and Goals/Strategies Agenda Items: At 10:36 AM, Chair Ray announced that the Board was entering executive session for the purpose of reviewing documents exempt by law from public inspection under ORS 192.660(2)(f). He then read the script about participation in the session.

At 11:49 AM, Chair Ray announced the Board was returning to public session. There was no further Board discussion of the legal advice on administrative issues or of the Goals/Strategies agenda item.

CORRESPONDENCE

Valentine referred the Board to an email dated February 1, 2016 from Lauren Hall-Behrens. She asked “*is it within or outside the boundaries of Landscape Design for a designer to dimension plans?*” Chair Ray opened discussion on this question. Board members were in consensus that a response be provided. Martin asked the Board to consider if the meaning of plan dimensioning was clear enough as stated in the question to prepare a response. This was discussed, and the Board determined that its response would clarify what the Board views as dimensioning. Chair Ray volunteered to assist staff with the response.

At 11:53 AM, Chair Ray called for a lunch break. During the lunch, the Board was joined by guests Amy Whitworth and Catherine Trzybinski, both with the Association of Professional Landscape Designers (APLD).

Chair Ray reconvened the Board at 12:20 PM and recapped the Board’s pre-lunch discussion of correspondence for the benefit of guests. He said the Board’s viewpoint was that a site plan describing the siting of plants, hardscape elements, and so forth that shows scale and location of elements on a site is allowed. The Board response will clarify that the Board considers dimensioning to not include construction specifications and details.

Chair Ray explained that the Board would next be discussing possible rules projects for 2016 and that the Board was considering a project to develop definitions regarding construction details and specifications. Vice Chair O’Brien said the Board would need to look at this idea of definitions further to determine if it seems like a feasible endeavor in terms of coming up with definitions that are clear and precise. He mentioned that the Board is considering the establishment of a stakeholder working group to help the Board with this task if this proposal moves forward. The Board would want several representatives of the landscape designer community to participate in any such working group. The goal would be to reach an end result where new definitions are understood and accepted by stakeholders.

PUBLIC COMMENT

Chair Ray invited the Board's guests to share information with and ask questions of the Board. Whitworth advised of a couple of developments related to past discussions with the Board. The Board encouraged landscape designers to connect with the ASLA OR Chapter about practice overlap issues, and such a meeting occurred a week prior. The participants got to meet each other and talk about the violations in a recent complaint case involving a landscape designer. This meeting opened up the possibility of future dialogue and possible sharing of continuing education programs. Both organizations have expectations for members to pursue continuing education. Next Whitworth wanted the Board to know that APLD recently changed membership requirements at the national level. From now on, APLD will be requesting educational transcripts to better show levels of education. APLD will also require continuing education for all professional and certified members. APLD certified members will be required to complete 16 hours of continuing education over 3 years and professional members 8 hours over 3 years. In response to a question from Chair Ray, Whitworth said these were all new requirements at national level.

In thinking about practice overlap, Whitworth said as a designer one generally knows when getting close to crossing the line from landscape design to landscape architecture. But it is hard to put into words what you intuitively know as a practitioner. Discussion within the designer community is ongoing about practice boundaries, and various questions keep coming up. One area designers are asking a lot about is grading and drainage as related to design. For example, a designer needs to consider grading and drainage in the design of planting beds. Also, any kind of hardscape or digging a hole in ground can impact drainage of site. Questions have also come up about how concrete and building contractors address these questions in relation to their work. Another example is regarding berms and to what extent a designer can describe recommended changes in site contours for drainage purposes or to contain water on site. Management of stormwater on sites is increasingly an environmental goal which raises the question of is it conceptual to show where the water needs to go. In other words, how does a designer deal with drainage conceptually and show this on site plans.

Whitworth mentioned that architecture laws include an exception for buildings under a certain size. She thought it seemed odd that this was of less concern to the state than small garden structures. Vice Chair O'Brien suggested that for an exempt structure, there still needs to be a building permit and thus there are checks and balances to address health, safety and welfare. He thought that generally those permits might require an engineer stamp and mentioned that exempt structures also must be inspected. Whitworth suggested that maybe the Board could consider whether a need for a project permit is a way to define what is or is not a health, safety and welfare concern with respect to landscape design work.

Vice Chair O'Brien mentioned that when a landscape designer provides a site plan but then a landscape contractor prepares construction plans and installs the project, the designer is protected from liability on drainage and grading issues. It was mentioned that there is always the possibility of a homeowner deciding to do the installation. Vice Chair O'Brien said the best the Board could offer was to try to make rules more clear to address some key issues. The Board will not be able to answer all questions but is interested in trying to improve mutual understanding.

Whitworth lastly mentioned the EcoBiz certification in Portland area. They have a landscape component to this program, and designers might have opportunity to work with them on a future certification for stormwater. She noted that the City of Portland has put on various trainings on stormwater and related issues. Finally, she suggested that soil and water

conservation districts may be another stakeholder in any discussion that ties to ability to design site drainage.

Trzybinkski stated that she was new to APLD and is serving on the organization's national committee for sustainability. She was concerned that APLD's increased commitment nationally to sustainability and the environment appeared to be creating some practice conflicts here in Oregon. For example, there is an increased push for landscape designers to integrate more grading and drainage details into their work.

Trzybinkski also asked for clarification about the timing and process for engagement of stakeholders in Board rulemaking. Vice Chair O'Brien talked about the Board's existing Administrative Rules Committee and how one idea is to expand this group to bring other stakeholders to the table. The Board needs to make some decisions about the best way to proceed and consider the timing in relation to other rules efforts.

COORDINATOR/COMMITTEE REPORTS

➤ **ADMINISTRATIVE RULES:** Vice Chair O'Brien and Valentine presented the committee report. The Board reviewed the proposed 2016 list and related project details. Valentine explained how incomplete projects on continuing education (CE) and business registration rules from the 2015 list were carried over. Valentine mentioned that a placeholder project from 2015 for mentoring of aspiring landscape architects was removed due to Board decisions made in 2015 as this idea was explored. She also pointed to how a new project related to definitions may be in order to replace the 2015 placeholder project titled scope of practice.

The Board briefly discussed how project status is tracked and the various steps involved in a project, including how this can differ depending on the complexity of the project. Key Board decision points were clarified. Everhart mentioned the importance of counsel advice throughout the rulemaking process and asked how this is factored into the process. O'Brien and Valentine explained that it depends on the project complexity, potential for stakeholder concern, and nature of input received. They said that counsel review occurs at least once for each project and more frequently for complicated rule revisions.

Valentine distributed a memo summarizing committee input on the draft CE rules and a draft #4 of possible CE rule revisions. She noted that revisions made between drafts #3 (meeting packet version) and #4 (handout) were highlighted. Valentine said the Board needed to determine if the rules were ready for public review. Board members took a few minutes to read the memo and the changes highlighted in draft #4.

Overall, the committee was appreciative of the work on the rules, understood the drivers behind the revisions, and generally thought the draft revisions looked good. The Board considered the input from the committee and other ideas and questions from Board members. Specific decisions about draft rule language were also made.

Chair Ray referred to OAR 804-25-0010(1)(a)-(c) on p. 2 of draft #4 and asked what was meant by a specified timeframe for an exemption. Everhart referred to the requirement in rule to provide supporting documenting and make a case for the timeframe of an exemption. Vice Chair O'Brien said these decisions could be delegated to the administrator. It was pointed out that (4) was new to clarify that exemptions are not approved retroactively. A definition for renewal period was also added. Each exemption type was briefly reviewed. Everhart noted that the Board would need to keep reiterating to registrants the availability of exemptions. Vice

Chair O'Brien said the committee supported the idea of outreach on availability of exemptions and inactive status. Ultimately no changes were made to the draft #4 language.

Board members discussed the language about CE hours under 804-025-0020(2)(a) at p 7 of draft #4. There was consensus to amend the language to improve readability. This was achieved by breaking the draft language into two sentences. The first sentence addressed the standard requirement, and the second sentence the requirement for those with 25 consecutive years of registration.

Board members moved into discussion of 804-025-0020(3)(b) which sets PDH values for specific types of self-directed activities. Everhart noted that most of the calculations set value at 1 PDH for 4 hours of effort.

Vice Chair O'Brien referred to 804-025-0020(3)(b)(E) on p. 8 of draft #4 and noted that the committee wanted to keep professional exam writing in the rule. The provision was added back in with changes compared to the status quo rule. Valentine noted that biennium needs to be changed to annual renewal period which then changed the maximum hours to 4 per renewal period. Everhart said it was not clear if any RLAs are doing exam writing, but there may be some engaged in the national exam process. She also said there was some question as to hour value as compared to other self-directed activities but noted that the Board had limited experience with submittals claiming this activity type and needs to better understand how much time a registrant might put into exam writing. Vice Chair O'Brien suggested switching to 1 hour credit for 4 hr. effort to be more consistent and keep a maximum of 4 hours per renewal period. There was agreement to make that change for the draft rules.

L'Amoreaux referred to 804-025-0020(3)(b)(D) also on p. 8 of draft #4. She wondered if an individual could sit on two different boards or organizations and get credit for each. Everhart said yes but pointed out that the proposed revisions narrowed this down to those individuals that are appointed in some manner such as a board member or a committee member.

Everhart asked for discussion of 804-025-0020(3)(b)(J) also on p. 8 of draft #4. She wanted to ensure the language was revised to cover any university and not just universities in Oregon. There was consensus on this point. The Board then discussed whether this provision should be limited to accredited landscape architecture degree programs. Martin suggested that the Board keep it tied to accredited programs as otherwise the Board would need to evaluate individual mentoring programs. There was consensus to keep accredited as the Board could then rely on the LAAB accreditation program. The Board also discussed PDH value for this activity.

Board discussion moved into 804-025-0020 (3)(b)(L) on p. 9 of draft #4 addressing design critiques. Everhart stated her view that PDH value should be less for time spent on a student critique or jury compared to a professional critique or jury based on anticipated effort by the registrant. She was concerned that participation on a student jury was not necessarily as educational for a registrant compared to work on a professional jury. This led her to think that the PDH value could not be identical. Chair Ray agreed with this assessment based on his experience on student juries and the limited amount of advance work required. Vice Chair O'Brien suggested the student component be set at 1 PDH per 4 hour and up to 4 PDH per renewal period. The Board agreed with this, which brought them back to the draft #3 language for this subsection. Valentine said the Board may want to revisit this discussion if it receives public comment that provides more information about the educational value of student vs. professional juries. The Board requested that the provision be separated into two, one for student design critiques and juries and the other for professional design critiques and juries.

Valentine directed the Board's attention to 804-025-0020(3)(b)(K) on p. 9 of draft #4 and said that a decision was needed about whether to add a general mentoring provision. She described the draft language as a placeholder, with this first attempt linking to existing definitions for direct supervision. Vice Chair O'Brien suggested that the Board not go down this path due to complications encountered previously about how to make mentoring work for purposes of qualifying work experience. Everhart suggested that the language might be workable if it covers time a registrant is not mentoring an employee in his or her own office and suggested a possible value of 1 PDH for 8 hr. of mentor time with a limit of 6 PDH per renewal period. Vice Chair O'Brien cautioned against awarding PDH value to an activity for which the registrant gets paid. Martin suggested that the Board put the words direct supervision as described in the OAR definition rule directly in this subsection. He then said that he had concerns about the language referring to contractual relationships. Valentine said this was an attempt to capture a non-traditional work arrangement where the candidate is not a part- or full-time employee but there likely was some kind of agreement or contract between the registrant and the candidate about the supervision relationship. Everhart on further thought suggested that PDH is not going to convince a registrant to be a mentor and thought the Board might be on a slippery slope if this subsection was added to the CE rules. The Board decided to table the idea and noted that it could address in a future rule making effort if the appropriate sideboards could be determined.

Martin recommended a change to 804-025-0035 (7) on p. 12 of draft #4 which was to revise the second sentence to read "Alternatively or in addition to ..." He pointed out that the Board has both options. The Board could not renew and take other action or could renew but pursue disciplinary action, civil penalties, or both. This was briefly discussed and accepted as a revision.

Martin was asked to address the Board's options for moving forward into formal rulemaking based on draft #4 with revisions noted. Martin said the Board could authorize issuance of rulemaking notice based on direction given to staff at this meeting about revisions since the Board was not making a final decision to adopt rules. If staff does not capture all revisions correctly for some reason in the version presented for public review, the Board can adjust at the point of rule adoption. The Board discussed that if it waited to have a draft #5 to review, the rulemaking process would be delayed by another three months considering the meeting schedule. There was consensus that it was important to keep the process moving due to need to get rule changes in place.

Valentine asked if there were any final comments or revisions that should be discussed. Vice Chair O'Brien asked for a minor clarification about the revised language Martin suggested about options to address non-compliance. Martin said the suggestion was intended to maintain maximum Board flexibility under revised rules.

Chair Ray asked for a motion to accept the draft #4 with revisions for purposes of initiating rulemaking notice.

Vice Chair O'Brien moved to accept draft #4 with modifications noted and to authorize issuance of rulemaking notice. Everhart seconded the motion. Chair Ray asked if there was any discussion. Hearing none, he called the vote and all approved.

➤ **COMPLIANCE:** Chair Ray said that the Compliance report was next and that guests would need to leave the room for this portion of the agenda. At 1:53 PM, he announced that the

Board would be entering executive session for the purpose of reviewing documents exempt by law from public inspection under ORS 192.660(2)(l) and (f) and ORS 671.338. He then read the script about participation in the session, and the Board's guests departed at this time.

Chair Ray returned the Board to public session at 3:10 PM. He confirmed that the Board was not ready to take formal action on LACC#15-11-001. He then asked if there was a motion for Board action on LACC#15-11-002.

Board and counsel discussed possible content for a motion to revoke registration, address exam retake for any reapplication, and assess civil penalties. Valentine inquired with counsel about whether an offer to surrender registration could be considered if this was proposed by the registrant. Martin said a request to surrender would need to come back to the Board for acceptance, and an acceptance of registration surrender does not necessarily mean the Board waives civil penalties. Valentine then summarized her understanding of the potential motion as follows: For LACC#15-11-002, the Board proposed issuance of a notice of intent (NOI) for revocation of registration, issuance of civil penalties of \$1,000 per violation for two failures to respond timely to the Board and one violation for not complying with a continuing education audit, and in the event of reapplication for registration requiring that the individual must pass the current version of the national examination (all sections).

Hatch moved to approve issuance of a notice of intent as read to the Board by Valentine. Vice Chair O'Brien seconded the motion. Chair Ray asked if there was any discussion. Hearing none, he called the vote, and all approved.

Martin said he would work with staff to review the draft NOI and related statutes regarding revoked vs. lapsed status.

This concluded the compliance report.

➤ **CONTINUING EDUCATION:** Everhart said there were no audits requiring Board review. All audits for the quarter went well and were approved as part of the Consent Agenda. The random drawing for the next audits was completed.

➤ **BUDGET/INVESTMENT:** Valentine presented the biennial report for the 2013-2015 biennium. She pointed out that the biennial report includes the final financial review report, all the additional information required by statute, and some extra information requested by the Legislative Fiscal Office. She explained that the report must be submitted by or before April 1, 2016. She welcomed comments but said comments would be needed by the close of business Friday March 4, 2016.

Treasurer Olsen presented a report on financial planning addressing reserve funds and fee tracking. She explained that the purpose of the report was to take financial information previously shared with the Board and describe it in a narrative form. Her goal was to help the Board strategize about how to determine need for future fee increases. The Board briefly discussed the process for fee adjustments through the formal rulemaking process and how it would make sense to tie fee increases to budget adoption. The Board was appreciative of the report and decided that this topic should be discussed further over the course of the year. Chair Ray suspended discussion at 3:00 PM for the Oral Exam.

ORAL EXAM

The Board was joined by registration candidate Westley Shoger. Chair Ray welcomed him and led a round of introductions. Chair Ray next led a review of landscape architecture statutes and rules and the role of the Board via a series of questions Board members asked of the candidate. Chair Ray then asked the candidate for feedback on the exam process and his motivation to seek registration. He mentioned that exam difficulty varied by section. He said that he sought registration for professional development purposes, not because he needed to stamp and sign documents at work and not because registration was stressed as important either in his university studies or at work. The Board then entertained questions from the candidate.

Hatch moved to accept Westley Shoger as a Registered Landscape Architect in the State of Oregon. L'Amoreaux seconded the motion. Chair Ray asked if there were any comments. Hearing none, he called the vote, and all approved. Shoger was warmly welcomed to the profession.

Shoger departed the meeting at this time.

➤ **BUDGET/INVESTMENT** (cont.): Chair Ray returned the Board to discussion of the Treasurer's Report. Treasurer Olsen volunteered to work with staff to prepare a monthly profit and loss report for the next quarterly meeting. The Board agreed that the process of examining revenues and fees more closely has to be an ongoing part of the financial oversight the Board provides. In addition to reviewing the report mentioned by Treasurer Olsen, the Board committed to review of the existing schedule of fees at the next meeting. Valentine said she would prepare background information on the history of major fee changes.

The Board then shifted briefly into discussion of whether universities are teaching about the value of registration especially considering concerns about the pipeline of registrants. It was not clear how the Board might address this concern.

Valentine mentioned that a transition of Treasurer duties was pending, with L'Amoreaux having volunteered to be trained in this capacity. The Board discussed whether having one board member take on licensure review and treasurer duties was wise. The Board tentatively discussed taking the licensure review coordinator duties off L'Amoreaux's plate. No final decision was made. The Board wanted to discuss further at the next quarterly meeting, which was anticipated to be Treasurer Olsen's last meeting as board member.

➤ **LIAISONS**

Oregon State Board of Architect Examiners (OSBAE): L'Amoreaux mentioned that this board has started discussions with Portland State University representatives on the idea of licensure shortly after graduation. From reading meeting minutes, she was not clear on what was driving this discussion but noted that their Board members seemed split of the efficacy of the idea.

Oregon Landscape Contractors Board (OLCB): Board members reviewed materials addressing rulemaking related to SB 580 from the 2015 legislative session. This included OSLAB's written comments on the SB 580 draft rules and how those were addressed. Board members noted that no changes were made in response to these comments. Several board members were concerned that some aspects of these comments were overlooked, such as regarding liability issues. The Board directed Valentine to request a meeting with representatives of OLCB involving at least the Chair Ray and Vice Chair O'Brien.

Liaison report: American Society of Landscape Architects: Chair Ray said there was no report for the quarter.

NEW BUSINESS/ANNOUNCEMENTS

➤ University of Oregon Drawing Studio: The Board reviewed an invitation to participate in a construction drawing studio for students enrolled at the University of Oregon. Chair Ray said he was considering attending as an observer depending on some scheduling considerations.

➤ ASLA Colorado Public Welfare Research Study: The Board briefly discussed this report which was provided as an informational item only.

➤ Next Meeting Date: Everhart inquired as to feasibility of changing the next quarterly meeting as she has an unavoidable work conflict on May 12, 2016. Board members settled on May 19, 2016 as the rescheduled date, provided a conference room was available. Valentine agreed to check on conference room availability and then confirm if the May 19 date was feasible.

ADJOURNMENT

Chair Ray adjourned the meeting at 4:58 PM.

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The minutes of the February 11, 2016 meeting were approved with revisions incorporated herein at the May 19, 2016 Board meeting.

Respectfully submitted,

Christine Valentine, Administrator