

OREGON STATE LANDSCAPE ARCHITECT BOARD (OSLAB)

MEETING MINUTES

November 18, 2011

The Association Center, 707 13th St. SE, 2nd Floor, Conf. Room "A"

Members Present:

Ron Nichols, Public Member, Treasurer
David Olsen, Landscape Architect, Chair
John Pellitier, Landscape Architect
Timothy Van Wormer, Landscape Architect, Vice Chair
Susan Wright, Public Member

Members Absent:

Mel Stout, Landscape Architect
Public Member (vacant)

Staff Present:

Christine Valentine, Administrator
Kyle Martin, AAG, DOJ (for portion of Executive Session)

Candidate(s) for Initial Registration:

James McGrath
Becky Strickler

WORK SESSION

Convene Meeting/Agenda Review

Vice Chair Van Wormer opened the meeting at 9:12 AM as Chair Olsen was delayed due to weather conditions in the Santiam Pass. Chair Olsen arrived not long after the Board started discussion of the first agenda item and assumed his role as presiding officer.

The Board had no changes to make to the agenda.

Registration by Reciprocity/Related Rule Updates

Discussion of this agenda item was led by Vice Chair Van Wormer and Administrator Valentine. Administrator Valentine explained the contents of the meeting packet for this agenda item and also summarized the discussion held at the last board meeting about the rules. She reminded the Board that they did not go through the rules language at that time, but the intent for today is to have the Board go through the language and if possible approve. She explained that the Rules Committee was asked to review and provided comments and that copies of written comments from the Committee are included in the packet. She suggested that if the Board approves language, the next steps would be to: (1) seek AAG review if Board requests, (2) revisit the rule language if the AAG suggests substantial revisions, and (3) pursue changes through formal rulemaking.

Administrator Valentine reminded the Board that the rules are proposed to clarify reciprocity requirements and provide an alternative path for those with substantial experience as Registered Landscape Architects (RLA) in other jurisdictions. The need for changes was illustrated by several

applications considered by the Board this year as well as other cases in the past. Vice Chair Van Wormer asked for clarification about the Rules Committee review of the rules, and Rules Committee Chair Nichols explained that the committee was asked for comments. He stated that a few comments were received.

Vice Chair Van Wormer commented about the problem LAs who are seeking reciprocity in Oregon are having confirming work experience, such as challenges finding past supervisors and getting work experience gained a long time ago documented. The proposed rules being discussed would provide another path forward for an RLA to document experience with references from 3 registered Landscape Architects and a resume if he/she has at least 10 years of experience working as a Registered Landscape Architect. Vice Chair Van Wormer suggested that this would be an alternative path for those that cannot come up with the documentation for 3 years of supervised experience. The Board discussed briefly whether 10 years of experience is the appropriate amount of time to require for this alternative path to registration. Board Member Nichols asked whether 5 years of experience would be sufficient. Vice Chair Van Wormer stated that he believes 10 years is the right target for the rule. Other Board members agreed. Administrator Valentine mentioned that she thought a few of the recent applicants had over 10 years of experience with one even supervising RLAs for that period of time, but the individuals could not obtain the documentation of supervision from early in their careers.

Administrator Valentine pointed out to the Board the addition of language about verifying the information on the CLARB Council Record found on page 3 of 4 in OAR 804-022-0010. This has been proposed to clarify that the Board is responsible for verifying all information – even if on a CLARB Council Record. CLARB sometimes accepts things that may not meet OSLAB specific rule. Staff requested this change to address this situation. Administrator Valentine also noted that while CLARB Council Record is continually improving as a tool, CLARB does not yet have audit procedures for these. Vice Chair Van Wormer noted that OSLAB is responsible for enforcing the rules and laws of the state of Oregon regarding regulation of Landscape Architecture. The board cannot rely on the CLARB Council Record alone. The Board strongly agreed that it is responsible for verifying the applicant's qualifications, not CLARB.

At this juncture, the Board proceeded to discuss specific rule language, with particular focus on p. 3 of 4 and p. 4 of 4 of the draft rules document included in the meeting packet.

Vice Chair Van Wormer asked for discussion of OAR 804-022-0010(3)(A)(ii). The language says to fulfill the requirement of (A) above and could just say of (A) – don't need above. But it also says the Board may accept up to one year of "other" work experience, and he feels the rule is unclear about which year this language addresses. He suggested that the Board wants to continue requiring at least one year under a RLA. Administrator Valentine says her understanding of the status quo for registration is that a person needs minimum of 3 years under RLA, and up to two of the years may be supervised by engineer, architect, or credentialed planner. But in looking at (3)(A)(ii), it is unclear if this requires at least one year under a RLA. Vice Chair Van Wormer suggested that this language may allow something that the Board has not been doing and does not want to do. He suggested that this language come out. Later in the discussion, Administrator Valentine discovered that the language in question was in added to the reciprocity section because it was in the rules for initial registration at OAR 804-022-0005(2), and the goal was to ensure consistency in what is required for registrants. This is so that staff is not going back to the rule for initial registration when evaluating a reciprocity application. She asked if the language should come out of both rules. The Board decided that this should come out in the existing and proposed rule language. The Board is concerned that this language is unclear and possibly suggests that even the 1 year under RLA could be circumvented. Board practice has long been to require 1 year under a RLA.

Vice Chair Van Wormer next asked for discussion of OAR 804-022-0010(3)(b)(B) – the last section on the page. He suggested taking out all draft language after U.S. state or territory. Administrator Valentine was asked to check on what the statute says regarding the reciprocity requirements. She read from the statute for the Board, and they confirmed that the U.S. state and territory is needed language. The Board could just reference the statute, but if the rule can in a few words say what is required this makes it easier for the person reading the rule. The Board discussed where the language about working in responsible charge came from. Administrator Valentine addressed this, saying that her recollection is that the idea was making sure the RLA was the one taking responsible charge. The Board decided this was excess language and that the language about needing three professional references from registered Landscape Architects would be sufficient to ensure only those with appropriate work experience could be registered through the new path to reciprocity. The Board decided that having extra language could just result in confusion, going against the intent to clarify what is required.

Board Administrator Valentine pointed out that the statute requires registration or licensure from another state/territory and that the state/territory needs to have comparable requirements to Oregon. She asked does the Board think that clarifying language is needed in the reciprocity rule about the comparable requirements, or does the Board find the rules sufficient because they specify education, exam, and experience standards comparable to Oregon requirements for initial registration? The Board decided that this is addressed through the proposed language so no further changes were proposed.

Administrator Valentine and Vice Chair Van Wormer clarified what the Board requires now: (1) education, (2) exams, (3) experience. The Board discussed these standards and ran through several scenarios for discussion purposes. Administrator suggested that verifying (1) and (2) are relatively straightforward to verify. The problems almost always revolve around (3). Board Administrator stated that intent of rules is not to weaken Oregon standards, just to clarify Oregon standards.

Vice Chair Van Wormer noted a typo – “*minimu*” in the draft needs to be changed to minimum; this is in OAR 804-022-0010(3)(b)(B)(i). Also in the same section where it says duly licensed or registered, the Board wants to just say licensed or registered.

Returning to language at OAR 804-022-0005 and 804-022-0010, Vice Chair Van Wormer asked what the Board means by “credentialed planner” as used in the rules. He also asked whether this term should be removed from the rules altogether. The Board debated whether there is a way to put sidebars on this either in rule or policies. The Board noted that education for planners can be extremely varied. A question discussed was does the Board intend for this to only apply to certain types of planners such as land use, natural resource, etc.? Chair Olsen pointed out the statute has language regarding overlap work of engineers and architects but not about planners. Due to this, he thinks that the language about credentialed planners needs to come out of the rule. Vice Chair Van Wormer said that if we know what credentialed means, then he thinks it is OK if that is left in the rule. The Board discussed that there is no real credentialing for planners, except for voluntary AICP. Board Chair Wright suggested that some RLAs early in their career or with public agencies are involved with planners and may need to use supervision by planners. She noted, however, that planners can have a wide range of educational backgrounds. Chair Olsen said that it is difficult to narrow this down to appropriate types of planners. Board Member Van Wormer stated that some other organizations use the term “allied” fields, but this terminology was not agreed to by the Board. Administrator Valentine suggested another approach would be to allow but only with Board review and approval, but she cautioned that the Board would need to be very careful about being consistent over time. In the end, the Board determined that planner is a very broad term, and the consensus was to strike the allowance for supervision by a “credentialed” planner. After reviewing the associated language, the Board also asked that the rule be changed to allow engineers as supervisors instead of “civil engineers” and

further instructed that the words Architect and Engineer be capitalized. Administrator Valentine noted that in all cases the applicant still has to show that they were doing LA work.

In summary, the process will unfold as follows. Administrator Valentine will review notes and audio to make sure all changes approved by the Board are captured. She will then send that draft to Vice Chair Van Wormer and Rules Committee Chair Nichols for quick review. Then the language will be sent to the AAG for review to ensure the proposed rule changes are within Board's statutory authority and to see if there are any other legal issues with language. If AAG suggests substantive changes, then the draft rules will need to come back to the Board at the next meeting. If no major changes are recommended, then staff can pursue official rulemaking.

Chair Report on Outreach to ASLA OR Public Awareness Advocate

Chair Olsen commented that he has contacted this person. She is still learning what her role will be for ASLA. She has been very busy and hard to connect with and could not make the meeting today. Chair Olsen will continue to communicate with her as her role becomes clearer.

Oral Interviews (2)

Chair Olsen called for a short break, allowing for the oral interview candidates to join the Board session. At approximately 10:20 AM, Chair Olsen reconvened the meeting and welcomed the two candidates – James McGrath and Becky Strickler – to the meeting. After a round of introductions, Board Chair Olsen explained how the oral interviews work and that this is the last step in becoming a RLA. The Board members explained their backgrounds, roles on the Board, and asked questions about the rules and laws of the state of Oregon. The Board also took questions from the candidates. Topics covered with the candidates included: role of Board, continuing education requirements, statute/rules and code of professional conduct, practice overlap issues, Board's interest in having registrants weigh in with ideas/issues related to the evolution of the practice, digital stamping/signing, etc.

Vice Chair Van Wormer moved that the Board approve the candidates for initial registration as RLAs in Oregon. Board Members Ron Nichols and Susan Wright both seconded the motion. Hearing no discussion, Chair Olsen called for a vote. All approved. The candidates were given their certificates and letters and warmly welcomed to the profession. Members exchanged greetings and congratulations with the new RLAs.

Chair Olsen adjourned the work session at 11 AM.

QUARTERLY BOARD MEETING

Chair Olsen convened the Board at 11:15 AM for the quarterly meeting. The Board was joined at this time by its attorney, AAG Kyle Martin from DOJ, for the Compliance Report agenda item.

COMPLIANCE REPORT

Wright/Valentine

- a. Review/Action on outstanding and new compliance cases (**Executive Session**)

At the outset of the Executive Session to discuss the details of open compliance cases, the Administrator noted that the log of cases included in the meeting packet should have been inserted behind the sheet marking the beginning of materials protected from disclosure as addressing ongoing compliance cases. This is because the log contains names associated with open compliance cases.

At 11:17 AM, Chair Olsen announced the Board was entering Executive Session and read the script announcing the requirements of Executive Session. The Board discussed all open compliance cases while in Executive Session but made no final decisions. At approximately 1:20 PM, Chair Olsen

announced that the Board was ending Executive Session. Once in regular session, the Board made the following motions regarding open compliance cases:

LACC #09-11-005: The Board did not make a motion but determined that it would not take further action on this case until the New Year.

LACC #10-10-014: *Compliance Chair Wright motioned to send a letter of concern, indicating that the Board has insufficient information to determine if violation occurred but that should new information about this project or other work of company come to the Board's attention, the Board reserves the right to open another investigation. Administrator Valentine will ensure that the letter is reviewed by the Board's AAG prior to sending. A courtesy copy of the letter is to be sent to the complainant. Board Member Nichols seconded. Hearing no discussion, Chair Olsen called for a vote. All approved.*

LACC #11-04-017. *Compliance Chair Wright motioned to close the case with a letter of allegations unfounded. The letter is to be sent to the RLA named in the complaint with a copy to the complainant. Vice Chair Van Wormer seconded. Hearing no discussion, Chair Olsen called for a vote. All approved.*

LACC #11-06-019. *Compliance Chair Wright motioned to close the case with a letter of concern, with the letter clearly reminding the respondent of restrictions on advertising as a RLA without registration. This letter will address use of the title "historic landscape architect" in Oregon where practice/title act exists and when a person is no longer employed by the federal government. A copy of the letter will be sent to the respondent's place of employment, which is a registered business with OSLAB. Board Member Nichols seconded. Hearing no discussion, Chair Olsen called for a vote. All approved.*

LACC #11-08-001. The Board did not make a motion, instead determining that that the investigation must continue to gather additional information.

LACC #11-09-002. *Compliance Chair Wright motioned to send a letter informing the respondent business to cease/desist offering to practice or practice LA services. Chair Olsen seconded. Hearing no discussion, Chair Olsen called for a vote. All approved.*

LACC #11-11-003. The Board did not make a motion to close, instead determining that the investigation must continue to gather additional information. *Compliance Chair Wright did make a motion to direct staff to send a standard letter about advertising as an RLA without registration. Vice Chair Van Wormer seconded. Hearing no discussion, Chair Olsen called for a vote. All approved.*

- b. **Compliance Process** – Technical Reviews (RLA list, forms, PDH), Business Registration Letters, Investigators, Compliance Committee vs. Coordinator, Etc.

Administrator Valentine explained that Board input on several issues related to the compliance process would be of value to the Compliance Committee and staff. She summarized these issues, in coordination with Compliance Chair Wright and Chair Olsen.

Peer reviewers: The Board discussed the option of using peer reviewers and some possible best practices: require volunteer forms, use a technical reviewer form to gather peer reviewer input, be clear with reviewers that they could need to be brought in later in the case, etc. The Board discussed whether peer reviewers have any more liability exposure than Board members or less. It was noted that criminal behavior, professional malfeasance, and work done outside the scope of the Board request for a technical review are examples of times a person may be personally liable.

Continuing education credit for technical reviewers: The Board discussed whether credit for volunteer work as a technical reviewer can be given under the existing continuing education rule. After some discussion and review of the rule language, the Board concluded that credit could be given under the provision related to pro bono services, i.e. up to 4 PDH per year. Chair Olsen asked that something be included in the next newsletter encouraging RLAs to sign up as technical reviewers and specifically stating that the Board will grant continuing education credit as pro bono service.

Board Decision Letters: The Board discussed the protocol for release of decision letters. In all cases, the primary letter will be addressed to respondent in the case but with a copy to the complainant. The complainant can be listed on the letter as once a case is closed, case details are generally no longer protected from disclosure.

Business Registration Cases: The Administrator asked to confirm Board expectations for processing of business registration cases. The Board agreed to the following: (1) staff sends the standard letter about need for business registration, (2) if no response is received, staff sends a second letter informing that failure to respond will result in this becoming a compliance case, and (3) if no response is received to either letter, then staff opens as a compliance case sending a form letter for this type of case to the respondent. The case then is brought to the Board for review and discussion at the next quarterly meeting. This approach allows for these relatively standard cases to be processed in a timely manner.

Compliance Committee/Coordinator: Administrator Valentine suggested that the Board consider whether it wants to have a Compliance Coordinator or Compliance Committee? If the Board sticks with a Compliance Committee, then it needs to consider two issues: (1) should another board member be added to replace former Board Member Edwards, and (2) is the Committee subject to public meetings law as a governing body? Regarding (2), the Board can determine if the Compliance Committee is a governing body by considering the role it assigns to the Committee. Is it authorized to make decisions for or recommendations to the full Board? If so, it is a governing body per ORS 192.630(1), and any meetings (phone or in-person) are public meetings subject to notice, etc. If the Committee is just assigned to process cases, gather information, and present investigatory findings to the full Board, then it would not be a "governing body" per ORS 192.630(1). The Board determined that it would continue with a Compliance Committee and that the Committee is not authorized to make decisions for or recommendations to the full Board. The Committee's purpose is to gather and present information, which may include a range of options for the Board to consider on any given case.

Vice Chair Van Wormer noted that we should make note in the next newsletter about the important and hard work of the Compliance Committee. All agreed. Board Member Pellitier offered that he could assist with the Compliance Committee. Compliance Chair Wright offered that it could provide helpful to have a RLA on committee. Administrator Valentine was asked to double check with AAG on the appropriate way to structure the Committee, particularly with Pellitier assisting and then voting on motions related to compliance cases.

Investigator Budget Line Item: Administrator Valentine asked the Board for clarification on the investigation budget line item and whether there is anything that she is to be doing at this time regarding this line item. The Board explained that this line item is a contingency, included in the event that an outside investigator may be needed in the future such as for a particularly complicated or contentious case. The Board discussed that maybe this set aside could be used for research related to compliance issues associated with practice overlap but did not make any decisions in this regard.

The Administrator thanked the Board for the input, and this concluded the discussion about compliance procedures.

Before moving on to the next agenda item of Minutes, Chair Olsen then asked the Administrator if there were any other high priority items she needed to have the Board address today. Administrator Valentine asked if any Board members could help proctor exams on Dec. 5-6 in Salem, OR. Board Members Wright and Nichols indicated that they are probably available, and the Administrator agreed to follow-up with both after the Thanksgiving holiday. Administrator Valentine then asked the Board to review the proposed 2012 meeting dates included in the packet. The Board elected to keep a schedule similar to the last several years. Final meeting dates approved are: **2/17/12, 5/10/12, 8/10/12, and 11/9/12**. The Administrator will announce these meeting dates via the website and next newsletter.

Chair Olsen next noted that the Board is still looking for public member. Board members continue to look for possible candidates as does the Administrator and Governor's Office. Also noted by Vice Chair Van Wormer is the need for the Board to think about transition issues for RLA board members, with two members ending second terms in 2012. The Board decided it needed to discuss this in more depth at the February 2012 meeting, including when potential candidates might be brought in to see the Board.

MINUTES:

Chair Olsen stated that the Board needs to address the meeting minutes from the August 12, 2011 meeting and opened the floor for discussion. Hearing no calls for discussion, *Chair Olsen moved to approve the minutes from August 12, 2011 meeting without further changes. Vice Chair Van Wormer and Board Member Wright recused themselves as they were not present at the August meeting. Board Member Nichols seconded to approve.*

ADMINISTRATOR REPORT:

Administrator Valentine addressed the written report from the meeting packet, including updates on CLARB annual meeting, contracts, purchases, reports, office administration, training, SIBA, etc. Administrator Valentine went through some highlights of the report, including need for policies/procedures updates, electronic funds transfers and online banking, moving towards online credit card payments, the preparations for the financial review, the pending OSBGE budget decision related to personnel expenses, etc. She also referred the Board to her CLARB meeting report.

As a result of the discussion, the Administrator was given two assignments related to the policies/procedures update and electronic funds transfer discussion. She was asked to bring back specific proposals with more detail related to updating policies/procedures. Vice Chair Van Wormer agreed to serve as a sounding board and contact for review of draft policy/procedure documents. She was also asked to draft a new policy regarding paying for bills by electronic funds transfer that would include checks and balances and facilitate Board review of payments.

Administrator Valentine next asked if the Board had any questions on the financial reports. Hearing none, *Vice Chair Van Wormer motioned to approve check log #3622-3657 and #10106-10109, and Board Member Pellitier seconded. Chair Olsen called for a vote, and all approved.*

COMMITTEE REPORTS:

Licensure Review Committee: Committee Chair/Vice Chair Van Wormer noted that it seems like the bump in registration by reciprocity may be slowing. He also noted that it seems like registrations continue to be down just a bit. Board members were asked if they had any questions about the meeting materials, but no other issues were noted.

Continuing Education Committee (CEC): Administrator Valentine addressed the Committee report in the absence of Committee Chair Stout. She handed out the report, as it was not included in the mailed packet. She noted that there were no issues with the audits for this period. Vice Chair Van Wormer motioned to approve the report, and Chair Olsen seconded. Hearing no discussion, Chair Olsen called for a vote, and all approved. Staff is to implement the report findings via letters to the audited RLAs.

Administrator Valentine brought a few other issues related to continuing education to the Board's attention for discussion. The first was an e-mail from an RLA about how to document participation in webinars when the organizing body will not provide proof of completion. The Board felt that the organization providing the webinar should have some way for the registrant to show that they signed up and attended. The RLA should also have a way to document attendance, including a written summary. The second issue was to inform the Board that CEC Chair Stout had identified documentation from the most recent round of audit reviews as potential good examples of PDH documentation to post on the web. Permission from these RLAs would need to be requested to use the materials without editing, although names and other personally-identifying information could be blacked out. No decision was made as to if or when to pursue this.

Administrator Valentine asked for a volunteer to select the audit candidates for the next review. Board Member Ron Nichols pulled the RLAs for audit out of the envelopes for July-August and Sept. Administrator Valentine gathered the slips and did not reveal the names pulled as per standard practice.

Investment Committee

Committee Chair Nichols reported that there was nothing new to report this quarter.

Rules Committee:

Committee Chair Nichols shared recent correspondence received encouraging board to adopt rules for a mentoring program. The Board took a few minutes to review since this letter came in too late to be included in the mailed packet. The Board noted the thoughtful comments.

Committee Chair Nichols also shared e-mail correspondence with a member of the Rules Committee regarding concerns related to encroachment into LA from the landscape contractor profession. The Board discussed whether it is appropriate for the Board to work on these issues, asking whether it would be more appropriate for registrants and other organizations need to lead the charge on this. Board Member Pellitier agreed to contact this individual and report back to the Board on the outreach.

Report from Liaison to Architects: Chair Olsen shared that they also seem to be spending a fair amount of time on compliance cases. He did not have further news to report.

Report from Liaison to Landscape Contractors Board: Board Member Pellitier stated that they are again working on rule making and mentioned the meeting with their Administrator and staff to share information on roles/responsibilities of the two boards.

Legislative Day at the Capitol: Vice Chair Van Wormer indicated that he is plugged into this and that additional information is pending. He will report on developments at the February 2012 meeting.

CORRESPONDENCE:

Administrator Valentine asked the Board to review correspondence in the packet regarding a request for medical hardship exemption to the continuing education requirements. She stated that staff believes the exemption is warranted but the rule says the Board must approve, not staff. *Board Member Wright motioned to grant the medical hardship exemption. Vice Chair Van Wormer*

seconded. The Board briefly discussed that her request fully matches what is required by rule. Hearing no further discussion, Chair Olsen called for a vote. All approved.

Administrator Valentine next directed the Board’s attention to correspondence regarding use of emeritus as an honorary title. The Board directed staff to inform this person that he cannot advertise in any way, including that he cannot have LA on stationary or the business logo if no other RLA is working in the company.

OLD BUSINESS:

The Board reviewed the new format for the Action List and instructed staff to use whatever format works best. The Board did not discuss individual action items.

The Board briefly reviewed and discussed the ongoing effort to see some inclusion of information about landscape architecture in the Reference Manual for Building Officials Guide.

The Board discussed the current vacancy and executive appointments process earlier in the day and did not revisit this item.

Administrator Valentine noted that the format was changed and the “bylaws” renamed as operational policies. She noted that this document is a good beginning with more work to be done to build a complete policies-procedures manual, as was discussed during the Administrators Report. Vice Chair Van Wormer volunteered to serve as a point of contact for the Administrator as she works on updating various policies.

Chair Olsen and Administrator Valentine reported that the OSLAB newsletter is now being distributed to regional universities as shown on the handout in the meeting packet. Prior to this, only the University of Oregon was on the newsletter distribution list. This was a follow-up action from the last Board meeting.

The REACH Code/Construction Industry Energy Board update was not addressed.

The Board briefly discussed possible articles for the Winter Newsletter: request for technical reviewers, provision of continuing education credit for technical reviewers, and compliance – what we do and how. Administrator Valentine also had the Board look at several prototypes for an updated newsletter design, and feedback was provided in a manner that directed staff to focus on a particular style/format. Staff hopes to complete this work in time for the Winter Newsletter.

ADJOURNMENT:

At 3:30 PM, Chair Olsen determined that the Board had made it through the agenda and adjourned the meeting.

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Respectfully Submitted,

Christine Valentine, Administrator

<p>The minutes of the November 18, 2011 work session and quarterly meeting were approved as presented at the February 27, 2012 Board meeting.</p> <p>Christine Valentine, Administrator</p>
