

Capital Projects Advisory Review Board

Board Development Committee

Meeting Summary

March 14, 2022

1. **Co-chair Schacht called the meeting to order at 9:06 am. A quorum was established.**

2. **Welcome and introductions.** Co-chair Schacht welcomed the attendees and led roll call.

Committee members in attendance unless otherwise noted:

- Walter Schacht, Mithun CPARB Co-chair
- Irene Reyes, The Glove Lady CPARB
- Olivia Yang, Washington State University CPARB
- Robynne Thaxton, Thaxton Parkinson PLLC CPARB
- Janice Zahn, Port of Seattle CPARB
- Bill Dobyms, CBRE CPARB
- Santosh Kuruvilla, Exeltech CPARB
- Linneth Riley Hall, Sound Transit (absent) CPARB

Other attendees include:

- Talia Baker, DES
- Melissa Van Gorkom, SCS

3. **Review and approve agenda.** Co-chair Schacht reviewed the agenda and asked the group for any edits before proceeding. None were made.

- a. Approval of today's agenda: Motion (Olivia Yang), Second (Santosh Kuruvilla), passed to approve the meeting agenda.

4. **Review and approve last meeting's minutes.**

- a. **Changes:** Bill Dobyms asked for his company to be changed in the meeting minutes, as his old one was listed. Co-chair Schacht noted that Lisa Van Der Lugt should be taken off the roster. The group agreed to hold off on approving the minutes since nobody else had gotten a chance to read through them, with co-chair Schacht noting that the draft would go up on the website.

5. **Invitation to the public to participate.**

- a. Co-chair Schacht explained this committee meeting is open to participation from non-committee members.

6. **Committee Responsibilities.**

a. **CPARB open positions/recruitment Discussion JZ 9:15 pm**

- I. Walter: Erica Loynd is preparing an application. She has experience in GCCM, design-build, and job order contracting. I don't know her personally, but AIA in Washington has been reaching out again and again to find applicants to supplement the single application we have for the Architect position. She is the second applicant for the Architect position, so we should have a second application within a month. I reviewed her draft letter of application and sent her comments over the weekend, and she said she was moving forward. What other positions are open? The General Contractor position Andy vacated, right?
- II. Janice: Yes, and we still haven't heard anything on that one. I believe they have six applications in for that position. I got the first 4-5 but not the last 1-2 applications to review.
- III. Walter: you and Bill can review them on our behalf. It's up to you if you want all of us to weigh in. That's it, right, those are the only two open positions?
- IV. Irene: is there any chance you could email the list of the 5-6 candidates?
Janice: yes, I can do that. [AI]

b. **BD Committee members and co-chairs Action JZ, OY, LRH 9:30 am**

- I. Walter: let's discuss scheduling.
- II. Robynne: I was usually teaching or doing something I couldn't get out of for the meeting time proposed on Friday. But I have random issues happening all the time.
- III. Olivia: I suggest we have a standing meeting. Monday is not good for me, I had to reschedule a lot to make this meeting.

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- IV. Walter: right, and Friday I'd rather not do as well. What works for a recurring meeting? 90 minutes is what we really need.
- V. Irene: can I suggest Tuesday? Thursday is no good.
- VI. Walter: Talia, can you do a DoodlePoll since people need to look at their calendars? [AI]
- VII. Irene: are we supposed to meet once or twice per month?
Walter: it's up to us, but once per month.
- VIII. Irene: can we say second or third Tuesday every month?
- IX. Olivia: that's what the DoodlePoll is for, to find a standing time for us.
- X. Walter: I believe we were going to hear from Janice, Olivia, and Linneth on recommendations for adding positions, and recommendations for co-chair. I'm happy to continue on as co-chair but don't want to keep going as a co-chair/secretary of the board development committee. My focused goal is to put together an onboarding for new CPARB members, so I'd like for somebody else to take on keeping us organized and the secretarial duties of writing agendas, etc., so I can focus on onboarding. So, who is that lucky person?
- XI. Bill: probably someone not in this meeting.
- XII. Janice + Olivia: we did talk about this but didn't land on anyone who would make a good co-chair who has the time to commit to it.
- XIII. Walter: okay, well we're going to need to make this happen soon.
- XIV. Irene: I remember when this group was originally formed, it was supposed to be comprised of previous board chairs and vice-chairs. How are you going to form the future board without the input of the exes?
- XV. Walter: you're right, at least the immediate past chair is always part of the board development committee. At this point, Bill Frare stepped away to co-chair the small works committee. I know Rebecca Keith is not interested in doing this. I don't think Andy Thompson is, either. Counting further back, that brings us back to Bob Maruska. I'm guessing he won't be interested.
- XVI. Irene: yes, he's retired and enjoying life.
- XVII. Bill: what if there was a combination of a new person with you, Walter, to keep the context going while giving someone new a chance to learn and fill the role, while providing a new perspective?
- XVIII. Walter: I think it's fine.
- XIX. Robynne: I would volunteer but I'm currently the chair of the DBIA National Education Committee and their Progressive Design-Build Task Force. That's taking up all my spare headspace right now. I like the idea of combining a newer person and a more seasoned person to lead us. We don't have the population of folks who have been previous chairs/vice-chairs. And it's part of our role to reach out to new folks for the board, so I think having new folks on the committee would be great.
- XX. Irene: can we define "new board members"?
- XXI. Olivia: I might suggest that if the board development committee is supposed to onboard new members, that it is asking a lot of a "new" board member to be onboarding another new board member.
- XXII. Walter: I think the onboarding can be handled by the committee. So, I don't think it needs to be an issue for a "new" chair/vice-chair. Once we have the onboarding package, then any of our committee members who have been around for a long time can implement it. I think you can separate the administrative responsibilities of a co-chair from this onboarding function. Let me bring up the list of current board members. And I want to remind us that we don't require that we draw from the board for this position. Olivia wasn't a board member when we co-chaired design-build best practices.
- XXIII. Olivia: I appreciate the callout but want to caution us that doing that can go wrong just like it can go right. I have also suffered through non-board member elbowing their way in and derailing the conversation. We want to be careful to have CPARB-appointed members representing the stakeholders of CPARB and not just the public.
- XXIV. Walter: correct, and by rights, if I remain as a private sector co-chair, it's preferred (not required) that the other co-chair be public.
- XXV. Talia: has anyone considered prior members who are new? Those who left and came back? Like Mark Riker. They might have interest (as well as experience).
- XXVI. Walter: I think that's a sound idea, in general. It might be hard to get Mark Riker given how busy he is representing Construction Trades Labor.

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- XXVII. Olivia: I agree that returning members could bring valuable experience. And I appreciate what Walter said about separating the administrative duties from developing the onboarding package. Can we just appoint an interim administrator on the private side, so we can get this work done? I would nominate Irene for interim co-chair.
- XXVIII. Irene: I'm sorry but I cannot accept the nomination at this time. I sit on six or seven boards and have activated my nonprofit.
- XXIX. Janice: Can we figure out a way to provide more support from Talia or someone else? Would that make this possible? I hear what folks are saying about the time commitment—is that the barrier to acceptance of the role?
- XXX. Irene: what would a co-chair do? What does the position entail?
- XXXI. Walter: we need someone to put together the agenda each month, to sit down and review the notes, and to work with Talia, who has already stepped up. She wasn't attending these meetings previously, so we are getting more support from DES than before.
- XXXII. Robynne: I will do it on an interim basis, but I want to make sure we actively recruit for the position.
- XXXIII. Irene: I am considering doing it as well, provided I get a lot of help.
- XXXIV. Bill: We're looking at the CPARB list right now. Can we look at the PRC list? There are a lot of people there who are energetic and enthusiastic, who see PRC as a stepping-stone to CPARB. We can appoint someone from that list.
- XXXV. Walter: I appreciate your interest, Irene, but I think it's ideal that you only co-chair one committee at CPARB. I think co-chairing multiple committees is a lot to ask of anyone. Ideally, we're looking for a public owner, right?
- XXXVI. Robynne: What about Mark Nakagawara? He's now permanently representing Cities. He's a good guy—public owner. I worked with him at City of Seattle.
Walter: a name that pops out is Jeff Gonzalez.
- XXXVII. Bill: I had the same reaction.
- XXXVIII. Walter: He's one of the most capable people at DES right now. He's in Olympia but his client base is almost entirely East Side. So, there's geographic diversity there.
- XXXIX. Irene: if we put someone from PRC on as co-chair, where is the experience that we're looking for? There's a lot of craziness going on at PRC right now, that's why I'm a proponent of the onboarding process/code of conduct. I'm probably the only person without any vested interest in joining CPARB, so I really want to advocate for fixing those issues.
- XL. Walter: The challenge we're having, as I understand it, is amongst the private sector PRC members. I haven't heard any complaints about the public sector members, who have nothing to gain from someone getting or not getting a project. I think if we picked a public sector PRC member we would be in pretty good shape. There wouldn't be much risk of conflict. Also, Louise Ann Sweeney would be a great candidate. She is incredibly experienced, and WSU has a very strong commitment to our board.
- XLI. Irene: are we going for a combination of one private/one public for the co-chairs then?
Walter: yes, and one CPARB and one PRC wouldn't hurt. Also, Taine Wilton would be good. She came up through the UW graduate program a little after me. Jeannie Natta would also be good.
- XLII. Olivia: Alexis Blue is also very energetic.
- XLIII. Robynne: Yes, she is. I work with Alexis quite a bit.
- XLIV. Bill: let's ask all of them and see who steps up. If we get multiples, we can interview them.
- XLV. Walter: I'm going to ask Janice and Bill to take that on.
- XLVI. Olivia: what we're saying is the chair and vice-chair would send an invitation to all 5 people—Taine, Jeannie, Louise, Jeff, and Alexis, to serve on board development as co-chair. And Walter would stay on as the private sector co-chair with no administrative responsibilities. So do we need a motion that Bill as CPARB co-chair sends that invite?
Robynne: I think we can just ask them.
- XLVII. Bill: I'll do it. [AI]
- XLVIII. Walter: what I'm hearing is that in the interim, Robynne will take over administrative responsibilities to get us to the next month or maybe the month beyond, when we hopefully will have a new person take over.
- XLIX. Robynne: right, it's a limited gig, but I'm happy to do it until we find someone to take over.
- L. Bill: I'm on the subcontract bid listing committee which has a short life, so I'd be happy to take over your position, Walter, at some point.

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- LI. Walter: ok, but we still want a public sector person.
- LII. Robynne: I like the idea of having someone from PRC, since one of our jobs is onboarding the PRC.
- c. PRC member training Discussion OY 9:50 pm**
 - I. Walter: Olivia, are you going to report?
 - II. Olivia: I'm sorry, can we go back to the onboarding? Can we just spend a few minutes on what we think onboarding could be? What I'm proposing to everyone (and I've talked to Walter about it, and maybe one or two other people) is that onboarding of new CPARB members by this board development committee has two parts. One is immediate, the code of conduct, primarily covered by the shared commitment effort that Janice initiated. I would suggest that phase one would be augmented by conflict of interest (COI)/ethics training, which I think is done by the AG's office. Phase two is the bigger one that Walter has been working on. I've been looking at what you gathered, and I'm happy to sit with you, Walter, so we have more thought to give to the incoming co-chair. PRC kind of follows the same pattern in terms of there being "what you need right away" vs. the second phase. What we talked about last month was that we want to see what the May PRC elections bring about. I would suggest that it is CPARB's expectation of PRC that they address the issues that have been brought up. So, as a counterpoint to what I just said, we can't wait for that—I think Janice and Bill were going to talk to the current PRC chair/vice-chair.
 - III. Bill: we're in conversations with them. I've requested time for a business meeting at the March meeting, for Janice and me to address them. In fact, Jeff just pinged me while we were talking to go over what we wanted to talk to them about. So, it should be happening at the March meeting.
 - IV. Olivia: is this happening in public?
 - V. Janice: yes, we're requesting that they have a business meeting in March.
 - VI. Talia: It's on the current agenda.
 - VII. Janice: ok, so it's happening.
 - VIII. Olivia: my hope is this conversation will spur PRC to self-correct. I don't think it's appropriate for CPARB to step in and do that.
 - IX. Bill: we're hoping that the best practices onboarding process we're proposing will give PRC a mechanism to call out bad behavior and reel someone back in.
 - X. Olivia: if we imagine PRC as a kind of brain trust, appointed for their deep knowledge of RCW 39.10 and normal best practices, perhaps there is an above-board way for PRC to be a resource to public owners, without necessarily continuing the way it looks now.
 - XI. Bill: I don't think we should even consider offering that service.
 - XII. Walter: I agree, that's dangerous.
 - XIII. Bill: A lot of us are in the business of assisting owners, contractors and subcontractors through this process. I don't think we want to consider polluting that committee with offering that service. We all have our day jobs outside of this.
 - XIV. Robynne: I think PRC has been really responsive if public owners have a question. I know people who have had questions and asked the PRC chair, and that's worked well. CPARB has been a resource for public owners in that same circumstance. I've also had the PRC reach out to me to ask how things are done. I think that's done on a more informal basis. I think it would be weird and unnecessary for us to offer that. It should be more of an arm's length situation.
 - XV. Olivia: I think what I'm saying as a public owner should reach out to another public owner of their own kind, instead of automatically going to a consultant. So, I would go to another higher ed person if I had a question.
 - XVI. Walter: on the one hand I'd agree that public owners would be viewed as more neutral, because they're not competing for the work, but in some instances professionals in the private sector may have had the opportunity to work successfully in alternative project delivery. It's a mixed bag, wherever you go.
 - XVII. Robynne: if someone is wondering how to comply with RCW 39.10, they go to their lawyers. That's the lawyer's job.
 - XVIII. Olivia: I think this is where we could spend several days on this—I see your point but am not completely convinced, however I might have derailed the conversation, so let's go back to the agenda. I just wanted to say the public owner's interest is in self-policing, so we don't have another problem stuck in the RCW. One bad public owner causes five bottles of ink to be written into the RCW. We're not interested in that.

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- XIX. Walter: while I agree for the most part, as a private sector professional, I'm selective in which public sector owners I refer people to. I would say I look for public owners with their arms around best practices—not all of them do.
- XX. Bill: it's a fringe benefit of serving on these committees that we can ask people like Robynne questions like these. She's not out soliciting; we just know she's on the committee, involved in these issues, and knows the answer. We have to walk a fine line, but that's just where we are.
- XXI. Robynne: We also have resources like Dawn at the AG's office, who helped with the systemic issues and some of the other stuff. There are a number of very highly qualified attorneys doing alternative procurement work, both private and with the AG's office, and that is their job. I actually get asked all the time and refer people out. I think from the standpoint of onboarding, the training people bit, we are restrained by our task. Once we get to the point of restricting or limiting the ability of people to do things, like consult, that goes more towards a CPARB regulatory issue. We'd need to talk about it on that basis and potentially have statutory guidance on that. If we're placing limitations on CPARB or PRC members, we need to consider if we're going to include statutory limitation with that work. We have capacity to make our own internal rules, but there's a line to be cautious about. We already have stuff in the statute that addresses conflicts of interest on CPARB members. Were we to put further restrictions on that, if it's not clarifying but changing or supplementing the statute, it may need to be a statutory thing. We'd look to the AG's office for guidance if that was the case. There's a point where we go beyond the limits of administrative restrictions of people's behavior.
- XXII. Olivia: I appreciate that but will suggest that the statutory route is not one we want to take. What if we take the PRC recusal language, which I think is in the bylaws right now, not the statutes, and we say that if you are on PRC, the public owner cannot be your client at all, and just amp it up a bit. I appreciate the concern is then you wouldn't have anyone serving on the PRC. Every project panel needs 6, at the moment I see there are about 3 who serve on all the panels and 3 floating. I don't think there's a shortage of panel members. I think PRC has lost the civic duty aspects of appointment and is now a place to trade business cards. If it's just a rubber stamp it will lose its weight.
- XXIII. Janice: I'm sorry but I have to jump to another meeting.
- XXIV. Walter: we still have a quorum. Janice, have we heard from Tacoma Housing Authority?
- XXV. Janice: I have not. Let me follow up with you, I have to go.
- XXVI. Walter: ok. We still have a quorum, so let's continue.
- XXVII. Irene: I agree with Olivia; there's a lot going on at PRC that is beyond statutory limitations. I agree with the recusal language be revisited. Perhaps we say if you're intending to do business with a public owner, when it's time to make recommendations, you should just recuse yourself. Don't self-promote yourself in those situations, even on the chat. This is public knowledge now, so it's just really embarrassing. We need to stop the self-promoting. There's no threshold to cross when you're self-promoting. It needs to be corrected immediately.
- XXVIII. Talia: The PRC has 31 out of 32 members. SB 5032 now requires a DBE representative on every panel. Currently I am the one who assigns the panels, and I strive for 8 people, per panel. I'm willing to share the process I go through to assign the panels, because I run it by the chairs for their approval. Before panels are assigned, I send the committee a list of who the applicants are, and I ask for recusals. People are supposed to let me know if they have an interest, have worked or consulted with, or are currently working on any of those applications. Very rarely does anyone get assigned to a panel and then turn around and say, "I need to recuse myself." They should be recused before the review, so I can ensure people who are interested in serving on a panel have that opportunity and are not involved in the application. I have had one new member recuse himself because he learned someone else at his company was involved in pursuing the work.
- XXIX. Olivia: this is a very rigorous process you've put in place Talia, and I commend you for it. When I talk about amping up, I am talking about consultants not on the project panel but who are nonetheless influential to the process. I commend your work to keep the project panel is "clean." It's what happens outside of that that I'm concerned about.
- XXX. Talia: statute says that PRC members are not restricted from being involved, after the vote.
- XXXI. Olivia: We might want to think about that, and we might want to think about what if the PRC member is involved before the vote.
- XXXII. Bill: That's different. I think the statute is really well crafted, with really specific intention. It specifically says that being on a panel doesn't preclude you from being involved in the project in the future. Because until that panel approves it, it's not an alternative works project—it doesn't

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- exist. And if you're not under contract, there can be no conflict. If you are a consultant on that team, the statute addresses that.
- XXXIII. Robynne: We're going to run into some pretty significant issues of say, the 1st amendment, and also restriction of contract. I've purposely never served on the PRC because I would be conflicted out of any of the projects. It would be very difficult for me to be on a panel and not have a client on the other side for that reason. To get those private sector professionals serving on the PRC, it would be very difficult to go beyond what's currently in the statute, on restricting of their capacity to work or propose on those projects later on. I will tell you, from the perspective of someone facilitating those procurements, it's never been an issue to us, seeing who was selected be impacted by any of the issues going on in the PRC. It's never come up or been an issue. I think we need to instruct people not to do marketing in those meetings, because that's 100% inappropriate, but I think further restricting people's ability to bid would require changing the statute. We would get a lot of push-back from the architects, the engineers and the contractors on not being able to participate in a public procurement process after that project is approved. That would basically keep us from having anyone from the private sector serve on the PRC.
- XXXIV. Olivia: You are assuming that the PRC membership is fixed and therefore PRC membership cannot restrict you from going after a job. What I'm saying is that of course you can go after a job, you just cannot be on the PRC.
- XXXV. Robynne: We'd have to change the statute to do that. And that would basically say there isn't a single contractor, design-builder, or GCCM who would be willing to serve on PRC if they are going to be automatically restricted. That statute is in there so we can get people to serve on the PRC. First of all, I think there is an issue with some people self-promoting. I think we need to counsel them on that and get them to cut it out. Secondly, I don't think the other issue exists, which is that owners are selecting based on anyone's actions during the PRC. If anything, the public owner will be put off by that behavior. I've done this dozens of times and never heard anyone mention anything like that. If we are to put in place more stringent restrictions than the statute currently dictates, every single experienced contractor, design-builder, engineer, or architect would be stopped by their company from being on the PRC for a problem that doesn't exist, so I completely disagree with you. We've had a couple of meetings where we need to tell people to quit it, but I don't think the issue exists beyond that.
- XXXVI. Olivia: I think it's fine for us to disagree because we certainly do. I was there when the statute was originally written in 2007.
- XXXVII. Robynne: I was too.
- XXXVIII. Olivia: I would like to see what people actually do, if you cannot be on PRC and you are free to go after a job. I'm not scared by the idea of not having private sector people on the PRC.
- XXXIX. Robynne: I certainly am.
- XL. Bill: I 100% agree with Robynne—we have a living example of this, if you look at Seattle Public Schools. They have an oversight committee that's very much like CPARB, made of industry experts from every area. If you're on that committee, you cannot pursue a Seattle Public Schools project. There is only one general contractor, who doesn't do work related to public schools. There are a couple of architects who do work nowhere near in line with schools. You just don't get the participation you otherwise would with the knowledgeable people. As a general contractor, if what you're suggesting comes true, Olivia, my company and every other general contractor would say "you're not going to participate in that committee" because you're precluded from chasing those projects. We often don't know if we're going to chase a project until it hits the street. But if you've precluded yourself six months earlier, and you need that work then you're out of luck, and nobody is going to take that chance.
- XLI. Olivia: we have the same rule for the Architecture commission at UW. If you're on the commission, you can't pursue work. It's never stopped people from wanting to serve on the commission or wanting to pursue work. I'm sure there are people who are really happy to be on the Seattle Public Schools oversight board. The issue here is that people get caught up in the transactional interpretation of the RCW, and they lose sight of the value of being an owner. It is the owner readiness and the values around not gaming the law that is the issue here.
- XLII. Santosh: just before this meeting I was talking about this very same issue in a meeting with WSDOT, AGC, and ACC—and we were talking about this very same issue of organizational COI. And I think what we need to be mindful of is the perception of conflict. If a person or entity has two different interests that conflict with each other, we have a perception of COI. If we have a person on the PRC reviewing or approving applications, or even helping someone with their

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application, therein lies a perception of COI. So, we need to define what perception of COI means. I've gotten several calls on this—situations where a person was sitting on the PRC panel, and she actually reached across the table to help the owner with the application. That's unacceptable. It's happened not once but at least three times in the last couple of months. What we're dealing with here is the perception of conflict of interest.

- XLIII. Irene: first off, I'm a proponent of accountability, and for this code of conduct/ethics for CPARB and PRC. Secondly, there is a civic duty and responsibility to put ourselves second to our volunteer/civic work. That's where a lot of them crossed the fine line of ethics. When was the statute last amended with regard to PRC? What are the accountability measures in place when one PRC member violates or continues to violate the code of conduct?
- XLIV. Robynne: the statute was just revised in 2021. We did a full-scale 2-year revision of every portion of the statute. That happened when we reauthorized it. We did bring up this COI topic, we talked about whether it needed to be revised, and the decision was that we didn't need to revise it. It was discussed who would or wouldn't be willing to serve on PRC if they were later conflicted out of being able to propose on a project.
- XLV. Irene: My question is about the accountability, if someone who is self-promoting has received a verbal reminder, then they do it again, is there any consequence? I think there's time to say strike 2 or strike 3 and ask someone to resign.
- XLVI. Robynne: that's totally within our bounds, and it doesn't require statutory change for us to tell PRC to police their members. They are an independent body so they would have to establish that COI. Reminding them is our job and totally appropriate. What we'd have to change the statute for is if we altered the COI provision. I'm going to object to that, because I'd want people who are knowledgeable on the PRC. I go before the PRC on a pretty frequent basis, because I'm on the team for the owners. My job is to help owners work through the RCWs, and it's one of the reasons I'm on CPARB, because I'm extremely knowledgeable about all this stuff, and I don't find that to be a COI. If you said people like me can't serve on CPARB, that would be a huge issue for folks.
- XLVII. Bill: the one thing the other groups I mentioned all have in common is the knowledge of this RCW and the processes around it. It's a requirement. If you preclude people from being on this committee who work in this industry, who else is going to do it? If people volunteer who aren't knowledgeable about this RCW, we lose a lot of value. I also have to say I agree with Robynne that I've never actually heard of selection being swayed by this kind of self-promoting. I agree with Santosh that soliciting business during a PRC meeting is completely inappropriate and needs to be stopped, and I'll also say I agree with Robynne that that kind of behavior is not going to help whoever is doing it get selected. It's recognized as bad behavior and would backfire if it occurred in a PRC meeting.
- XLVIII. Robynne: We have a pretty strong recusal requirement already in the statute—it says, "anyone directly or indirectly affiliated with a submittal before the committee must recuse themselves from committee consideration." That is a very broad recusal process. It goes on, "any person who sits on the committee or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee." There is a public procurement requirement that ultimately becomes public record. We can't keep people from submitting; that would be in violation of public procurement laws, and if you're going to restrict that you'll preclude pretty much everyone including subcontractors from participating.
- XLIX. Walter: I think a lot of this boils down to PRC leadership. I'll say I think it's worth us thinking about having the board select the PRC co-chairs. It's been uneven, there have been different levels of leadership, and there hasn't always been recognition that this is an issue. I think the other thing we've seen in PRC leadership is a sense of advocacy for one alternative delivery method over another, which is also an issue. We're supposed to be neutral, and we're here to make sure public owners are as well prepared as they can be to execute whatever method they've chosen according to the statutory requirements. When you cross that line and you become a certified body, we step back a little and just check in regularly. Remember we're not an enforcement or regulatory body; we're just trying to herd the sheep in the right direction. So, I think the committee leadership is critical, and maybe we want to make that change. Robynne, is that a statutory change?
- L. Robynne: no, that's not in the statute. Selecting the chair and vice-chair is currently done by committee vote. That's in RCW 39.10.240-2b.

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- LI. Walter: ok, so that's a statutory change and maybe one to consider—I think it would be a fairly easy one, to say the board selects the chair and vice-chair. That would give us a different level of input. What I hear Olivia suggesting is that maybe PRC should be constituted of public owners and not have private sector representation, in order to ensure that... is that correct, Olivia?
- LII. Olivia: I think that is part of what I'm throwing out. There are levels of changes, for example, (a.) who CPARB selects to be on PRC, (b.) PRC members' picking chairs and co-chairs, (c.) the chair/co-chair being capable of self-policing, (d.) the accountability piece of checking other PRC members' behavior, and then (e.) the nuclear option. When this was brought up with CPARB, it wasn't my understanding that everyone on CPARB understands and accepts the importance of this issue.
- LIII. Walter: ok so we want to have a conversation with the PRC co-chairs, to bring them this feedback and these concerns. The second thing is we want to build this onboarding package, which I'd like to get to. Based on our last board meeting, I know there is a disconnect between what PRC perceives to be a problem and what we perceive to be a problem, so I don't know what we've done to bridge that gap. I don't know if an all-public-owner board makes sense, but I will say that when you're on a panel voting on a project, particularly if it's a certification/re-certification, you run the risk of alienating a public owner if you vote no. So those are the challenges. So, let me go back, what have we done, to date, to communicate to PRC leadership our concerns?
- LIV. Bill: Janice and I are in the process of starting that conversation with Mike and Jeff, the PRC chair and co-chair, and we'll address the full committee in their March meeting on the 24th. Our two topics are (1) putting an end to open solicitation of business during PRC meetings, and (2) creating a best practices onboarding structure that would help them police themselves better. We're going to make those recommendations, since we don't have authority over them in this regard.
- LV. Robynne: Do we have a list of exactly what happened and when? I really need more context. Can I be pointed to a particular meeting recording to back up all these concerns and complaints? I don't even need a name, I just need a meeting where it occurred, and I'll go back and listen to it. If I'm going to speak to the statutes, I need the context before making any recommendations. What are the concerns, the complaints, who was the problem, and when did it occur?
- LVI. Bill: I agree.
- LVII. Santosh: I've brought this up at a couple of CPARB meetings and I know this meeting is being recorded, but I'm going to throw a name out there. This happened the last three meetings—a newly elected PRC member, Sherry Harris, she was on a couple of the panels, and she actually offered her services to the applicant during the review. This happened not just once but at least twice. What has been happening in the past and hasn't happened this year, is there used to be an orientation on appropriate behavior, and there isn't anymore. New PRC members don't know what's unacceptable behavior.
- LVIII. Robynne: I completely agree but I don't think that requires the draconian move.
- LIX. Santosh: well, why aren't they being trained?
Bill: Because they weren't trained.
- LX. Robynne: That's what we are trying to address. There absolutely needs to be an onboarding process there needs to be a code of conduct training, CPARB leadership needs to talk to the PRC leadership to make sure they address the problem, and I agree that we have an oversight responsibility for that. But if we're going to go and say we can't trust any of the private sector PRC members, I have seen no evidence of that. I have never encountered this bad behavior in PRC meetings. It is definitely something the PRC Chair and Vice Chair need to address in a severe way. Removing private sector participants will get rid of minority representation too. I don't think the AGC will say this is ok. Balancing the CPARB membership and reflecting that membership in the PRC is a big issue for subcontractors and the AGC in their negotiations on reauthorization of the statute.
- LXI. Santosh: I will say that as private sector folks, we've lost trust because of the actions of a few folks. So, we want to regain that trust.
- LXII. Bill: Absolutely. That's why we are taking these steps.
- LXIII. Robynne: I don't disagree with that. We need to address this situation, but I don't think it requires a sledgehammer to kill a mosquito.
- LXIV. Santosh: I think the litmus test for perceived conflict of interest has to be made by a third party. We're all, in one way or another, beneficiaries from this, so I don't think we can stand in judgement on this.

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- LXV. Robynne: I appreciate that, but looking at the case law with respect to COI, perceived COI, and organizational COI, this is hotly contested on a state and federal level. Public owners have gotten in trouble for this for a long time. The appearance of impropriety is a big issue that we need to work on, but it's very difficult to regulate that behavior on a statutory basis. There needs to be clear lines as to what is and is not a COI in order to change the statute because it has the potential to be litigated.
- LXVI. Santosh: and that's what I'm suggesting, is that we have clear organizational COI guidance.
- LXVII. Robynne: Actually, what you are suggesting is not just the organizational COI but beyond that. We can have a code of conduct for our members, but ultimately having an organizational COI that precludes someone from bidding on a contract with a public agency—that's incredibly sticky. I would not be comfortable going there without full buy-off from the AG's office.
- LXVIII. Walter: I'm not hearing that proposed; what we're talking about is encouraging responsible behavior among PRC members. I hear what you're saying about a third party, Santosh, but I think at the end of the day, the board is the third party—we have a responsibility to oversee the statute here. I don't see there being a third party we can bring in. Let's see what we can arrive at from this discussion that is actionable. Short term, we do need to identify the incidents of concern, to Robynne's point earlier. Not to "take names" but to figure out what the percentage of the problem is compared to the overall. If it's happening in 3/100 applications, it's still a problem, but it's not the same problem as if it's 20-50/100. We need to get away from innuendo—Santosh identified specific instances, and we need to make a list of those. This will actually be helpful to Bill and Janice going to PRC leadership. They'll respond better to concrete information. The one I'm aware of is from years ago. Is there a methodology to go back and do this?
- LXIX. Talia: my understanding is that Jeff and Mike had not been notified of incidents that occurred. My information is from before the last board development meeting. I don't know if they've caught anything in the meetings, so part of this should be a training for them. I think co-chairs need to be notified of these issues as soon as possible, so they can address these issues timely. If the PRC inbox or I am copied on that, I can help making sure these issues are followed through. I would also need to coordinate any actions taken by writing the notification letters. Also, I communicate with the CPARB leadership on a regular basis, so it's important for admin to be involved to some degree in issues that would involve changing membership. It would be helpful if issues were sent to the PRC chair and vice chair so they can address these issues with the PRC members who are not behaving appropriately.
- LXX. Walter: what I'm asking for is how many incidents can we collectively identify where a PRC member, instead of sitting there as a neutral entity, stepped over the line and used their position of making sure a statute is followed, to solicit for business or otherwise indicate that a public owner should do something one way rather than another for their own personal gain. The incident I recall was when my college asked the public owner why they hadn't used a third-party value engineer for GC/CM procurement and that was not part of his PRC responsibility and inappropriate behavior. What other incidents aside from the 3 Santosh identified and the one I just stated can we identify concretely? Time, Date, Person?
- LXXI. Olivia: one incident is very sticky because it has to do with the interpretation of when you go to PRC. Even on CPARB there are people who are unclear as to when it's appropriate to go to the PRC. That happened at least twice. Another example is whether we encourage public owners to show up with letters of reference or people from PRC or CPARB saying "this is good, vote for this." These are not strictly COI but might lead people to question the integrity of the committee.
- LXXII. Walter: the first example is vague, and I don't completely understand. The second example, does it boil down to whether or not we allow PRC members or other public individuals to support public owners?
- LXXIII. Olivia: correct.
- LXXIV. Walter: ok, do people think that is an unfair advantage to a public owner applying?
- LXXV. Robynne: What happens when a Board member is on the applicant team? That's my business. It's also Jeff Jurgenson's business, it's Parametrix's business, it's CBRE's business, to help owners put together a program. I don't let people go to the PRC after they've gone through their procurement. I would have to resign from CPARB if you're saying I can't help people. Are you saying you're going to restrict people's 1st amendment rights to say, "I've worked with this owner, they're great" on the public comments portion? That's a 1st amendment issue.
- LXXVI. Bill: as general contractors, we often get solicitations from owners that say, "I'm going to PRC, if you are so inclined to speak during the public comment period in favor of my project?" Generally,

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- there are 4-5 contractors who do it every time—sometimes they're requested to by that team, and sometimes it's voluntary. But it's very common, and frankly, it's been part of my day job in the past.
- LXXXVII. Olivia: The question is we're not saying if you're asked, you're not allowed to speak. We're saying maybe public owners shouldn't ask. Secondly, if you're asked and you decline to speak, what's going to happen to you? Are you going to be put on a blacklist? That's the fear, isn't it?
- LXXXVIII. Robynne: I can't imagine anyone doing that. The third portion of that is that I'm paid to be there. Are you saying that I need to resign from CPARB?
- LXXXIX. Olivia: no, you being part of the presentation team is one thing. You acting as a reference is another thing.
- LXXX. Robynne: that's the only thing you could actually restrict, my being part of the presentation team, because we can't tell people not to speak at a public meeting.
- LXXXI. Olivia: we can ask public owners not to solicit.
- LXXXII. Bill: but you're asking these public agencies to demonstrate they have the knowledge and experience to run this project, using this delivery method, but then you're precluding people who know their work from saying that yes, they have the knowledge to do the project.
- LXXXIII. Irene: I will say I agree a little bit with Olivia. When I see your name, Robynne, as a reference but they also use you as a member of CPARB, that looks from the outside like a conflict. Remember, with ethics it's the perception we're thinking about. How does it look from a 3rd party.
- LXXXIV. Robynne: by that logic I can't serve on CPARB, because that is literally my job.
- LXXXV. Irene: I don't think it's that you can't serve, but where do you draw that line, so it doesn't look like a conflict? It's being put on the PRC application that you are a CPARB member which looks like CPARB is endorsing the application to give them an advantage. Ethical dilemma is always the perception of how it is used.
- Robynne: I'm one of the most knowledgeable people on public procurement in the state of WA.
- Irene: My bread and butter is bids and contracts. Ethics is always in the perception.
- LXXXVI. Bill: if someone uses Robynne as a reference, it's not an endorsement. She could do the opposite and say, "run the other way."
- Irene: Ethics is how it is used, keep that in mind.
- Robynne: Are you saying that because I represent public owners and public procurements and assist them on how to get approval from the PRC as part of my job, that I am unethical? Because that is what you just told me.
- Irene: I did not say that. If that is what I meant, I would have said that directly to you. I'm saying that from the outside that is the perception. Maybe they should reference you differently.
- LXXXVII. Walter: I think that, unless the structure of the PRC changes and it becomes an all-public body, we're not going to be able to decide what's right/wrong ethical/unethical based on nuance. I don't think we can tell people they can't give recommendations, but I do think not being agnostic about project delivery type is a problem. Telling an applicant that they need to procure a project in very specific ways that potentially gives them an advantage, is unethical. Panelists are supposed to be reviewing the application and verifying that it follows statute. And we definitely shouldn't have panelist saying "this isn't a good application, but call me after the meeting." We need to limit ourselves to the understanding of what is and is not appropriate.
- LXXXVIII. Irene: For the record, Robynne, I did not call you unethical. I speak straight forward. I suggest for an immediate fix, we state the code of conduct and COI policy before every PRC meeting. I also think this is the perfect time for PRC to mirror with CPARB on the code of conduct and conflict of interest policy. We need to focus on transparency, accountability and how to police accountability when it isn't being followed. If I think someone is a liar, I'll say it to their face. I want to bring up, that after a Board meeting, Robynne contacted the chair because she was unhappy with something I said. She should have just come to me. I'm a straight shooter and that was a code of conduct violation.
- LXXXIX. Santosh: I think it would be good if we can get, at least on this COI topic, some guidance or advice from the AG's office. I think sitting in a position of judgement on this defeats the purpose. We need a third party.
- XC. Walter: I think it's a good idea, and it is really only Janice who has the authority to reach out to the AG's office. Bill, if you and Janice want to talk about that and figure it out.
- XCI. Talia: CPARB uses DES's AG, so Nancy and I need to be included in those conversations.
- XCII. Walter: That's right. I also want to say that there's going to be a hard answer from the AG's office, and I think it's ok to have a soft answer too, where we recommend what environment is going to

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be most oriented towards the public good. Alright, we're going to have to adjourn here, so what are our topics for the next meeting?

- XCIII. Irene: do we agree on the immediate fix—that at the beginning of every PRC meeting, they state the code of conduct and what is a COI?
- XCIV. Walter: I think we need a clear idea of what constitutes a COI. Remember that we're advisory to PRC, we're not in charge, so what we want to do is to see if the AAG can attend one of our committee meetings to answer these questions. Regarding Janice and Bill's upcoming conversation with PRC leadership, if we think there is a set of recommendations that we want the PRC to entertain and incorporate into their procedures and bylaws, then we need to write them up and send them as a suggestion. We don't have the authority to dictate to them.
- XCV. Bill: we're suggesting two things, one, create a best practices/onboarding procedure, including language about openly soliciting business during a PRC meeting—discouraging or disallowing it, and secondly that this is to be reinforced constantly.
- XCVI. Walter: can you add that they need to be project delivery type agnostic? Committee leadership has promoted design-build when reporting to the board. That's totally contrary to everything that we as board members are supposed to be. We're here to help public owners do the best job possible with their procurements. And create public policies that benefit everyone who is doing publicly funded public works projects in WA state. We need to take a step back.

d. Bylaws update Discussion WS 10:45 am

- i. Left on the agenda to keep track of this issue but no discussion today.

7. Next steps.

- a. Bill will reach out to Taine Wilson, Jeff Gonzalez, Louise Sweeney, Alexis Blue, and Jeannie Natta, to see who is interested and available to join the board development committee as a co-chair. [AI]
- b. Janice will email the group the list of current applicants for the open General Contractor position. [AI]
- c. Talia will send out a DoodlePoll to obtain dates and times for a standing board development committee meeting time.

8. Adjourn. The meeting adjourned at 11:05am.