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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

**STATE BOARD OF LANDSCAPE ARCHITECTS
VIA TELECONFERENCE**

TIME: 10:31 A.M.

November 23, 2020

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State Board of Landscape Architects
November 23, 2020

BOARD MEMBERS:

- David B. Morgan, RLA, Chairman, Professional Member
- K. Kalonji Johnson, Commissioner, Bureau of Professional and Occupational Affairs
- Dina Klavon, RLA, Secretary, Professional Member
- Patrick A. West, Professional Member
- Edward J. Rak, Public Member
- Richard P. Rauso, RLA, Professional Member
- Brett W. Mauser, Office of Attorney General, Bureau of Consumer Protection

BUREAU PERSONNEL:

- C. William Fritz II, Esquire, Board Counsel
- Tiffany A. Raker, Esquire, Board Prosecution Liaison
- Ray Michalowski, Esquire, Senior Prosecution Liaison
- Terrie Kocher, Board Administrator
- Cynthia K. Montgomery, Esquire, Deputy Chief Counsel/Regulatory Counsel, Department of State
- Theodore Stauffer, Executive Assistant, Bureau of Professional and Occupational Affairs

ALSO PRESENT:

- Ted Mowatt, CAE, Vice President, Wanner Associates

1 ***

2 State Board of Landscape Architects

3 November 23, 2020

4 ***

5 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
6 9:00 a.m. the Board entered into Executive Session
7 with C. William Fritz II, Esquire, Board Counsel, for
8 the purpose of conducting quasi-judicial deliberations
9 on matters pending before the Board and to receive the
10 advice of Counsel. The Board returned to open session
11 at 10:30 a.m.]

12 ***

13 The regularly scheduled meeting of the State
14 Board of Landscape Architects was held on Monday,
15 November 23, 2020. David B. Morgan, RLA, Chairman,
16 Professional Member, called the meeting to order at
17 10:31 a.m. Roll call was taken.

18 ***

19 [Theodore Stauffer, Executive Secretary, Bureau of
20 Professional and Occupational Affairs, reminded
21 everyone that the meeting was being recorded, and
22 those who remained on the line were giving their
23 consent to being recorded.]

24 ***

25 Approval of minutes of the August 13, 2020 meeting

1 CHAIRMAN MORGAN:

2 The next item on the agenda is approval
3 of minutes from the August 13, 2020
4 virtual meeting.

5 Do we have a motion to approve the
6 minutes and a second?

7 MR. WEST:

8 I make a motion to accept the minutes.

9 MR. RAUSO:

10 Second.

11 CHAIRMAN MORGAN:

12 Pat West made a motion. Rich seconded.

13 The minutes are approved.

14 [The motion carried unanimously.]

15 ***

16 Report of Commissioner - No Report

17 ***

18 Appointment - Act 53 of 2020 Presentation

19 [K. Kalonji Johnson, Commissioner, Bureau of
20 Professional and Occupational Affairs, addressed Act
21 53 offenses for the Board's consideration. He stated
22 Governor Wolf signed Act 53 in July 2020 to govern how
23 criminal history may affect decisions by licensing
24 boards and commissions pertaining to licensure and
25 applicants.]

1 Commissioner Johnson stated Act 53 updates the
2 Criminal History Records Information Act (CHRIA),
3 which allowed boards to look at criminal history and
4 make a decision pertaining to an individual's ability
5 to practice a profession or occupation. He noted Act
6 53 provides clarification regarding criminal history
7 that is directly related to the profession.

8 Commissioner Johnson noted his obligation to
9 publish a list of offenses that are directly related
10 to the profession after consulting with boards and
11 commissions and to provide a public forum for members
12 of the business communities affiliated with the
13 regulated communities.

14 Commissioner Johnson emphasized that the lists
15 are not terminal and can be amended at a later time
16 through the formal regulatory process. He requested
17 Board approval of the list for it to be published
18 before December 27, 2020, to start the formal
19 regulatory process and promulgate the regulations that
20 are part of Act 53.

21 Cynthia K. Montgomery, Esquire, Deputy Chief
22 Counsel/Regulatory Counsel, Department of State,
23 informed the Board that she was assisting Commissioner
24 Johnson in meeting his statutory responsibilities
25 under Act 53. She noted that the lists would be

1 posted on each Board's website after completion of the
2 lists.

3 Ms. Montgomery stated the lists become part of a
4 best practices guide, which summarizes Act 53 and
5 gives potential applicants or licensees information on
6 how boards evaluate criminal history record
7 information when making decisions to grant or
8 discipline a license.

9 Ms. Montgomery addressed preliminary
10 determinations, where an individual considering an
11 occupation or profession could apply in advance and
12 have their criminal history reviewed as to whether
13 their criminal history may be an impediment to
14 licensure. She stated the list under the statute is
15 supposed to be a schedule of criminal convictions that
16 may constitute grounds to refuse to issue; suspend; or
17 revoke a license, certificate, registration, or
18 permit.

19 Ms. Montgomery referred to the Board's list of
20 crimes, stating that crimes were identified by Board
21 Counsel working with the prosecution division as
22 directly related to the profession after review of the
23 practice act, Act 53, and prior cases before the
24 Board.

25 Ms. Montgomery referred to § 3113(e) regarding

1 acts of violence, where an individual may receive a
2 license if 3 years has elapsed from incarceration or 3
3 years from imposition of the sentence, the individual
4 has remained conviction-free, and demonstrates
5 significant rehabilitation. She also noted the Board
6 must be satisfied that the licensure of the individual
7 would not pose a substantial risk to the health and
8 safety of the individual's clients or the public or a
9 substantial risk of further criminal convictions.

10 Ms. Montgomery commented that all of the crimes
11 other than violent crimes were determined by Board
12 counsel and prosecution to be "directly related" and
13 provided a definition.

14 Ms. Montgomery addressed rebuttable presumption,
15 where individuals convicted of crimes on the list of
16 offenses directly related to the profession would pose
17 a substantial risk to the health and safety of their
18 clients or the public or a substantial risk of further
19 criminal convictions.

20 Ms. Montgomery stated the applicant or licensee
21 would have to demonstrate that the applicant or
22 licensee would not pose such a risk with criteria
23 under the statute. She referred to criteria in §
24 3113(c) that the Board is to look at in determining
25 whether or not an individual convicted of a crime

1 poses such a risk.

2 Ms. Montgomery gave details for the purpose of
3 Act 53, which is to makes it clear to everyone that
4 those are the types of crimes the Board considers to
5 be related to the profession.

6 Ms. Montgomery offered to answer questions
7 concerning Act 53 but deferred questions regarding a
8 specific crime on the list to Mr. Fritz.

9 Ms. Montgomery informed the Board that no written
10 comments were received after the list was sent to
11 interested parties and stakeholders.

12 Chairman Morgan commented for the record that
13 Board counsel reviewed Act 53 with Board members in
14 Executive Session prior to public session.

15 Mr. Fritz clarified a general review of Act 53
16 but not an in-depth discussion.

17 Commissioner Johnson thanked Deputy Chief Counsel
18 Montgomery, Mr. Fritz, and Ms. Raker for their help
19 curating the material. He emphasized that criminal
20 history still comes to Board counsel for a very
21 comprehensive review and questions are ultimately put
22 in front of the Board. He noted the material will be
23 integrated into the Pennsylvania Licensing System
24 (PALS). He commented that the information provided to
25 members of the public in the best practices guide is

1 unprecedented.

2 Commissioner Johnson addressed the intent of Act
3 53 to produce equitable outcomes and still protect the
4 public by being more transparent and intuitive and
5 helping licensees and applicants navigate the system.

6 Ted Mowatt, CAE, Vice President, Wanner
7 Associates, is not aware of any issues the American
8 Society of Landscape Architects (ASLA) have concerning
9 the proposed list.

10 Commissioner Johnson thanked the stakeholder
11 organizations for being a part of this discussion and
12 taking the time to review the list.

13 Chairman Morgan thanked Commissioner Johnson and
14 Ms. Montgomery for their presentation. He stated the
15 Board, in general, agrees with the underlying
16 requirements and opportunities for fairness and second
17 chances associated with Act 53.]

18 ***

19 CHAIRMAN MORGAN:

20 I would call for a motion from the Board
21 and a second.

22 MR. FRITZ:

23 We are voting to approve the list of Act
24 53 crimes as outlined on this agenda.

25 MR. WEST:

1 So moved.

2 CHAIRMAN MORGAN:

3 Pat West made a motion. Is there a
4 second?

5 MS. KLAVON:

6 I second.

7 CHAIRMAN MORGAN:

8 Dina Klavon seconded. All in favor? Any
9 opposed? Hearing none. The motion
10 passes.

11 [The motion carried unanimously.]

12 ***

13 [Chairman Morgan thanked Commissioner Johnson, Ms.
14 Montgomery, Ms. Kocher, Mr. Fritz, and Ms. Raker for
15 their involvement regarding Act 53.]

16 ***

17 Report of Board Counsel

18 MR. FRITZ:

19 Looking at the applications Board members
20 looked over prior to the meeting today
21 and based on discussions during Executive
22 Session, the Board would entertain a
23 motion to provisionally deny the
24 Landscape Architect Examination
25 Applications for the following people:

1 Rong Cong, Sara Zewde, and Boqian Xu.

2 CHAIRMAN MORGAN:

3 Do we have a motion as stated by Board
4 counsel?

5 MS. KLAVON:

6 I make a motion to agree with Board
7 counsel, Bill Fritz, that the applicants
8 be provisionally denied.

9 CHAIRMAN MORGAN:

10 Do we have a second to that motion?

11 MR. WEST:

12 Second.

13 CHAIRMAN MORGAN:

14 Pat West seconded. All in favor, signify
15 by saying aye. Any opposed? Hearing
16 none. The motion passes.

17 [The motion carried unanimously.]

18 ***

19 [C. William Fritz II, Esquire, Board Counsel, referred
20 to 16A-6112 regarding the proposed annex for the
21 digital signature and seal regulation. He noted the
22 Independent Regulatory Review Commission (IRRC) had
23 questions. He mentioned that the State Board of
24 Professional Engineers, Land Surveyors, and Geologists
25 and the State Architects Licensure Board requested

1 more time to review the regulation in relation to the
2 comments made by IRRC and will get back to him by
3 email with their responses.

4 Mr. Fritz encouraged members to review the
5 questions and email him with suggestions by Christmas
6 to help IRRC understand the regulation.

7 Mr. Fritz noted the Pennsylvania-Delaware Chapter
8 of the American Society of Landscape Architects (PA-DE
9 ASLA) also had a comment recommending the criteria for
10 signatures and seals require software be included in
11 the final regulation. He stated the boards do not
12 want get into the business of recommending certain
13 products or certain companies over another, and it
14 would be a conflict of interest for the Board. He
15 noted it to be the individual licensee's
16 responsibility to ensure the software being utilizing
17 meets the required standards. He also noted the
18 regulation still permits wet seal signatures.

19 Mr. Fritz addressed the immediate temporary
20 suspension (ITS) blanket delegation order. He
21 mentioned that the Board already has a blanket
22 delegation order for certain matters. He stated many
23 matters are delegated to the hearing examiner's
24 office, because the Board does not meet very often and
25 hearing examiners schedule meetings all of the time.

1 Mr. Fritz explained that immediate temporary
2 suspensions are being added to what the Board orders
3 the hearing examiners to hear. He provided a summary
4 of the immediate temporary suspension process. He
5 noted those who are suspended have a right to have a
6 hearing before a hearing examiner within 30-45 days.
7 He stated the hearing examiner would determine if
8 probable cause existed to immediately temporarily
9 suspend them. He noted the hearing examiner will deny
10 the request and reinstate the license if the hearing
11 examiner determines the prosecutor has not met the
12 burden, but if the hearing examiner agrees, the
13 license stays suspended for 180 days at the most.

14 Mr. Fritz explained that the Board is not giving
15 up any of its adjudicatory powers over its licensees,
16 and the final decision would hopefully come before the
17 Board as long as all of the burdens have been met. He
18 noted a consent agreement is eventually done in
19 relation to the matter, which would come before the
20 Board. He also noted there would be a hearing and the
21 Board would decide if there is an order to show cause
22 (OSC) filed and an answer.

23 Mr. Fritz requested Board approval to amend the
24 order. He noted the addition of a second paragraph.
25 He also noted the order was originally called "order

1 of delegation for a formal hearing and proposed
2 report," but in the cases of an immediate temporary
3 suspension matter, a hearing is done in a final order
4 and will fix that.

5 Mr. Michalowski addressed immediate temporary
6 suspensions and suggested the Board have one person on
7 the Probable Cause Screening Committee with an
8 alternate so recusal does not become an issue and the
9 Board could hear the order to show cause or consent
10 agreement. He felt it to be unlikely the Board would
11 see many cases because the law has been in place for
12 several years but have never brought any to the three
13 design boards.

14 Mr. Michalowski mentioned some boards have the
15 chair as the probable cause member and some have
16 delegated it to the attorney general member so all of
17 the industry members could deal with the more
18 industry-related issues that would come up in an order
19 to show cause.

20 Ms. Klavon agreed to be the alternate member and
21 Chairman Morgan as the primary, where the primary
22 would hear a case first and would recuse themselves
23 and then the alternate would be available if it was to
24 go further. The Board agreed to a two-member Probable
25 Cause Screening Committee.]

1 ***

2 MR. FRITZ:

3 The Board would entertain a motion
4 approving the delegation order and
5 amending the current delegation order to
6 include delegation of immediate temporary
7 suspension matters to the hearing
8 examiner's office.

9 MS. KLAVON:

10 I make a motion to approve the blanket
11 delegation order as presented by Counsel
12 Fritz.

13 CHAIRMAN MORGAN:

14 Dina Klavon makes the motion. Do we have
15 a second?

16 MR. WEST:

17 Second.

18 CHAIRMAN MORGAN:

19 Pat West seconded the motion. All in
20 favor? Any opposed. Hearing none. The
21 motion passes.

22 [The motion carried unanimously.]

23 ***

24 Report of Board Chairman

25 [David B. Morgan, RLA, Chairman, Professional Member,

1 addressed the Pennsylvania-Delaware Chapter of the
2 American Society of Landscape Architects Meeting. He
3 thanked Board member, Rich Rauso, who is also the
4 president of the Pennsylvania-Delaware Chapter, and
5 others on the Board for a very good presentation and a
6 job well done.

7 Mr. Rauso will pass the congratulations along to
8 the Pennsylvania-Delaware Chapter.

9 Chairman Morgan addressed an email received from
10 the Council of Landscape Architectural Registration
11 Boards (CLARB) regarding BillTrack50. He informed
12 everyone of a training session regarding BillTrack50
13 on Tuesday, December 8 at 1 p.m. He defined
14 BillTrack50 as a platform that provides information to
15 Board members regarding legislation and regulation
16 tracking, interactive maps, and so forth.

17 Chairman Morgan will be attending the virtual
18 training session to learn more and wanted to bring it
19 to the Board's attention for those who may be
20 interested. Ms. Kocher will disseminate the email to
21 Board members.]

22

23 Report of Board Administrator

24 [Terrie Kocher, Board Administrator, provided an
25 update regarding the Council of Landscape

1 Architectural Registration Boards 2021 Annual Meeting.
2 She informed the Board of the active search for a new
3 venue for an in-person meeting, because the Roosevelt
4 Hotel in New York City has closed their doors.

5 Ms. Kocher mentioned the need for the election of
6 officers in 2021 for chairman and secretary.

7 Ms. Kocher noted proposed 2022 meeting dates for
8 the Board's review and approval.]

9

10 CHAIRMAN MORGAN:

11 Our administrator, Kocher, mentioned the
12 2021 election of officers, chairman and
13 secretary. Currently, I am the chairman.
14 Dina Klavon is our Board secretary.

15 Any discussion or nominations from
16 Board members to make changes?

17 MS. KLAVON:

18 I make a motion to approve the blanket
19 delegation order as presented by Counsel
20 Fritz.

21 CHAIRMAN MORGAN:

22 Dina Klavon makes the motion. Do we have
23 a second?

24 MR. WEST:

25 I would make a motion to keep David

1 Morgan as chair and Dina Klavon as
2 secretary.

3 MR. RAK:

4 Second.

5 CHAIRMAN MORGAN:

6 Pat West made the motion to maintain me,
7 David Morgan, as chairman and member Dina
8 Klavon as secretary. It was seconded by
9 member Rak. All in favor, please signify
10 by saying aye. Opposed. Hearing no
11 opposition. It looks like we will
12 maintain chair and secretary status for
13 2021.

14 [The motion carried unanimously.]

15 ***

16 CHAIRMAN MORGAN:

17 We will look at the meeting dates. They
18 look fine to me. I don't have any reason
19 to make any revisions at this time. Any
20 discussion by members?

21 [The Board discussed the motion regarding 2022 meeting
22 dates.]

23 MR. RAK:

24 I make the motion to keep the 2022
25 meeting dates as proposed.

1 CHAIRMAN MORGAN:

2 Ed Rak made a motion. Do we have a
3 second for the meeting dates for 2022?

4 MS. KLAVON:

5 I second.

6 CHAIRMAN MORGAN:

7 Dina Klavon seconded. All in favor,
8 please signify by saying aye. Any
9 opposed. Hearing none. Motion passes
10 for meeting dates for 2022.

11 [The motion carried unanimously.]

12 ***

13 Miscellaneous

14 [David B. Morgan, RLA, Chairman, Professional Member,
15 noted 2021 meeting dates are scheduled for March 18,
16 June 17, August 19, and November 18.]

17 ***

18 Adjournment

19 CHAIRMAN MORGAN:

20 Does anyone have any additional
21 information to discuss or bring to our
22 attention? Hearing none.

23 Would someone like to make a motion
24 to adjourn?

25 MR. RAK:

1 I make a motion.

2 CHAIRMAN MORGAN:

3 Do we have a second?

4 MR. WEST:

5 Second.

6 CHAIRMAN MORGAN:

7 Ed Rak made the motion to adjourn. Pat
8 West seconded the motion. All in favor,
9 signify by saying aye. Meeting
10 adjourned.

11 [The motion carried unanimously.]

12 ***

13 [There being no further business, the State Board of
14 Landscape Architects Meeting adjourned at 11:40 a.m.]

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CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Landscape Architects meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Landscape Architects meeting.



Evan Bingaman,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF LANDSCAPE ARCHITECTS
REFERENCE INDEX

November 23, 2020

TIME	AGENDA
9:00	Executive Session
10:30	Return to Open Session
10:31	Official Call to Order
10:32	Roll Call
10:34	Approval of Minutes
10:35	Appointment - Act 53 of 2020 Presentation
11:01	Report of Board Counsel
11:27	Report of Board Chairman
11:32	Report of Board Administrator
11:38	Miscellaneous
11:40	Adjournment

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