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29 JUN 79 P 2: 09

THE STATE

June 28, 1979

NOTICE OF PUBLIC HEARING

Pursuant to Chapter 29A, Article 3, of the West Virginia Code of 1931, as amended, the West Virginia Board of Landscape Architects shall convene a public hearing at 10:00 a.m. on Thursday, August 2, 1979, in Conference Room 2001, at the Agriculture Science Center, West Virginia University, Morgantown, West Virginia for the purpose of taking evidence pertaining to the filing of Rules and Regulations Governing the Licensure of Landscape Architects in this State.

All persons desiring to present evidence on the proposed rules and regulations shall be present at the hearing. The issues to be discussed at the hearing shall be limited to actual information contained in the rules and regulations. All evidence offered for the Board's consideration with reference to these proposed rules and regulations shall be submitted in written form and delivered to the office of the West Virginia Board of Landscape Architects, P. O. Box 4231, Star City, West Virginia, 26505, on or before 4 p.m. July 31, 1979

Copies of the proposed rules and regulations may be obtained from the office of the West Virginia Board of Landscape Architects. Telephone (304) 293-2141

John P. Taylor
John P. Taylor, Treasurer
West Virginia Board of
Landscape Architects

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June 28, 1979

OFFICE OF STATE

West Virginia State Board of
Landscape Architects
P. O. Box 4231
Star City, West Virginia
26505

The Honorable A. James Manchin,
Secretary of State
State Capitol
Charleston, West Virginia
25305

Dear Mr. Manchin,

Pursuant to provisions contained in Chapter 29A, Article 2 of the West Virginia Code of 1931, as amended, The West Virginia Board of Landscape Architects is hereby submitting three copies of the draft of Proposed Rules and Regulations Governing the Licensure of Landscape Architects in this state. Three copies of a notice of public hearing on the proposed rules and regulations are also enclosed for your information.

Please do not hesitate to contact me if I can be of any further assistance or if further information is required by your office.

Very truly yours,

John P. Taylor

John P. Taylor, Treasurer
West Virginia State Board
of Landscape Architects

JPT/s,

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WEST VIRGINIA BOARD OF LANDSCAPE ARCHITECTS

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West Virginia Board of
Landscape Architects

WEST VIRGINIA STATE BOARD OF LANDSCAPE ARCHITECTS

RULES AND REGULATIONS 29 P 2: 09

Section 1. DUTIES OF THE BOARD

- 1.1 The Board will elect a Treasurer from its membership who will keep accurate and complete records of all transactions of the Board.
- 1.2 The Secretary of the Board shall forward a copy of the Rules and Regulations and a copy of the Act along with all applications to the applicants.

Section 2. ADMINISTRATION

- 2.1 A renewal notice shall be sent to all licensee holders not later than the last business day in April of each year. The application for renewal shall be due on or before June 30 of each year.
- 2.2 Renewal after June 30 shall require the late renewal fee as stipulated in the law.
- 2.3 Before issuing any license or renewal, the Board shall collect, from the person licensed, the full amount of all fees due for the preceding years.
- 2.4 The Board shall retain membership in the Council of Landscape Architectural Registration Boards (CLARB) and at least one member of the Board shall attend meetings of CLARB when approved, as required by the state procedures. Expenses at such meeting shall be borne by the Board in accordance with travel and per diem regulations of the state.
- 2.5 Regular meetings of the West Virginia State Board of Landscape Architects shall be held quarterly at a time and place to be determined by the Board and notice of these regular meetings shall be given to the Secretary of State at least 14 days in advance to be made available to the public and news media.

Notice of the time, place and purpose of all special meetings of the Board shall also be given to the Secretary of State at least 14 days in advance or as soon as practicable, to be made available to the public and news media.

Notice of all regular and special meetings will be provided directly to the Secretary of the West Virginia Chapter of the American Society of Landscape Architects for distribution to its membership.

As provided by statute, the notice provisions of this rule are not required in the event of an emergency requiring immediate official action.

This rule is adopted in accordance with West Virginia Code S6-9A-3.

Section 3. APPLICATIONS

- 3.1 Applications for registration as a landscape architect will be received at any time during regular business hours at the office of the Board. But applications for written examination shall be filed with the prescribed examination fee in such office at least ~~six-(6)~~ ten (10) weeks prior to the opening date of the examination.
- 3.2 ~~All fees payable by applicants shall accompany the applications.~~
All license fees will be due upon satisfactory completion of the examination or upon approval of reciprocity by the Board.
- 3.3 Where the CLARB certification file is transferred to the Board for reciprocity, such forms may be used in part or in whole in substitution for the normal forms used by the Board.
- ~~3.3~~
3.4 The Board reserves the right to request additional information ~~from each applicant together with any necessary documentary evidence in cases where questions concerning qualifications may arise.~~ and/or documentary evidence of qualifications. Personal appearance before the Board may be requested and shall be at a time and place designated by the Board.
- ~~3.4~~
3.5 The Board reserves the right to retain any and all documents submitted as evidence of qualifications for registration. Photostatic copies of original documents may be submitted if notarized as true copies.
- ~~3.5~~
3.6 Failure to comply with a written request from the Board for additional evidence or information or to appear before the Board, when deemed necessary, within sixty (60) days of such notice, may be sufficient and just cause for the disapproval of the application.

3-6

3.7 All applicants must be endorsed by four (4) other persons not related by blood or marriage to the applicant. Two of those endorsing must be landscape architects. No more than one of these landscape architects may be from the applicant's place of employment. The two non-landscape architects may be general character references. Members of the Board may not serve as references or endorsers for applicants. Persons unable to obtain endorsements by two landscape architects may meet with the Board at one of its regular or special meetings to explain the situation. Persons appearing under these conditions should bring or submit information and exhibits as may be requested by the Board.

3-7

3.8 The Board reserves the right to exercise the discretion provided in the Act by requiring the applicant to qualify by either

- a. passing the regular written or oral or written and oral examination; or,
- b. ~~having a satisfactory examination record from another state providing it is deemed equal to or stronger than the examination in West Virginia.~~
- c. ~~by meeting the qualifications as stated in Section 30-22-6 of the Act.~~

3.8 ~~--- All applicants who seek registration under Section 30-22-6 (b) (2) shall submit satisfactory proof of registration in good standing in any state or states of present registration and shall indicate whether registration was obtained under a Grandfather Clause or by examination or other means in the particular state in which registration was granted.~~

3.9 Those persons applying for registration under the reciprocity provisions per Section 30-22-6 (b) (2), will be accepted only: (a) if they have been licensed by examination under the Uniform National Examination or (b) hold CLARB certification and (c) if they personally demonstrate to the Board that they have adequate knowledge of the plant materials of the West Virginia region; and (d) if they submit satisfactory proof that they are registered in good standing in another state, based on (a) and (b) above. Applicants registered by other means in other states will not be accepted under reciprocity.

3-9

3.10 All applicants shall be considered individually by the Board and passed or rejected by a roll call vote. The action taken by the Board shall be recorded in the Minutes. Approval of an applicant will require a majority vote of the Board.

~~3-10~~

- 3.11 All applications for registration under Section 30-22-6 (c) as amended, must be received by the Board no later than July 1, 1974.

~~3-11~~

- 3.12 An outline of the action taken by the Board shall be placed with each application.

~~3-12~~

- 3.13 The Board reserves the right to establish or change the classification under which the applicant is claiming eligibility.

~~3-14--All persons engaged primarily in the sales and installations of products (landscape material--plants and construction) rather than the sale of services (landscape design plans and details) or in the education of students in the preparation of landscape design plans and details, shall not be licensed as landscape architects in the State of West Virginia unless they have passed the standard examination as provided in Section 30-22-5 (2) of the Act.--The sales and installation of products such as landscape materials (plants and construction) cannot be considered professional services.--Any plans or sketches drawn by the same person solely for the promotion and sale of his own products cannot be considered professional services--~~

~~3-13~~

- 3.14 Military experience shall be acceptable to the Board provided it *Persons applying under the examination provisions of the law, 30-22-6 (a)(4)&(5), may: (a) use military experience to fulfill the required experience provided such military experience has been spent in the practice of landscape architecture as defined in the Act; or (b) when the applicant has not been able to work under the direct supervision of a landscape architect or any other person having qualifications acceptable to the Board and similar to the qualifications of a landscape architect, such applicant may take the examination after a period of five (5) years experience and personal appearance before the Board to present and document his/her qualifications to the satisfaction of the Board.*

- 3.15 *An applicant may take the examination within six (6) months of fulfilling the experience requirement but may not receive a license until after completion of this requirement.*

~~3-16--Renewal will not be granted until a copy of the form reporting "Partnerships and Corporations" is completed and submitted to the Board--~~

- 3.16 Renewal will not be granted until a copy of each licensee's seal (rubber stamp and/or embossing) is submitted to and approved by the Board. (See also Section 6: Licensee's Seal).

- 3.17 Applicants and those already licensed, who form a partnership or corporation with persons who are not landscape architects, shall notify the Board, in writing, of such fact at the time of application or within thirty (30) days of formation of such partnership or corporation. Such person shall notify the Board within thirty (30) days of dissolution of any such partnership or corporation.
- 3-17
- 3.18 Those persons not filing for renewal within four (4) months of the renewal date, shall be required to return their license (Certificate) to the Board until such time as they apply for renewal and have their license re-instated by the Board.
- 3.19 If the license has not been renewed for more than three years, the applicant must submit proof of qualifications acceptable to the Board, and, if determined necessary, the Uniform National Examination shall be taken by the applicant.
- 3.20 Unless otherwise provided by law, any appeal from the actions of the Board shall be filed with the Board within twenty (20) days from the date the Board mails the notice containing a copy of such decision. Such correspondence shall be sent by certified or registered mail.

Section 4. FEES

- 4.1 ~~Renewal Fees = twenty-five dollars (\$25.00). A renewal fee shall not be required for fiscal year 1972-73. The Secretary shall notify all license holders of the renewal dates on or before May 1 of each year.~~
- 4.2 Late Renewal Fee = fifteen dollars (\$15.00) in addition to the renewal fee. Specified in Section 30-22-7 of the ACT.
- 4.3 Temporary Permit = fifteen dollars (\$15.00). Specified in Section 30-22-8 (b) of the Act.
- 4.4 Duplicate License = ten dollars (\$10.00). Specified in Section 30-22-7 of the Act.
- 4.5 License Fee = forty dollars (\$40.00). Specified in Section 30-22-6 (d) of the Act. (Also see Section 3.2)
- 4.6 Reinstatement of a lapsed license due to non-renewal for one full year under Section 30-22-6 (b) (1), shall require, in addition to the normal renewal fee, one previous years' renewal fee plus a late renewal fee. (See also Section 3.19).
- 4.7 No fee is refundable except for the License Fee as prescribed in Section 30-22-6 (d) of the Act.
- 4.8 Examination fees - All examination fees payable by applicants shall be due and payable upon determination of their eligibility and notification, by the Board, of the fee necessary. (Also see Section 8.6)

Section 5. PROFESSIONAL ETHICS

- 5.1 The landscape architect shall ~~at all times recognize his primary obligation~~ conduct his/her practice in order to protect the public health, safety and welfare of the public in the performance of his/her professional duties. If his/her landscape architectural judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he/she shall inform his/her employer, in writing, of the possible consequences and notify such other proper authority of the situation, as may be appropriate.
- 5.2 The landscape architect shall perform his/her services only in the areas of his competence.
- A. The landscape architect shall undertake to perform landscape architectural assignments only when qualified by education or experience in the specific technical field of professional landscape architecture involved.
 - B. The landscape architect may accept an assignment requiring education or experience outside his/her own field of competence, but only to the extent that his/her services are restricted to those phases of the project in which he/she is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
 - C. The landscape architect shall not affix his/her signature and/or seal to any landscape architectural plan or document dealing with subject matter to which he/she lacks competence by virtue of education or experience, nor to any such plan or document not prepared under his/her direct supervisory control.
 - D. In the event a question arises as to the competence of a landscape architect to perform a landscape architectural assignment in specific technical field of landscape architecture which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the landscape architect or by its own volition, may require him/her to submit to an appropriate examination as determined by the Board.
- 5.3 The landscape architect shall issue public statements only in an objective and truthful manner.
- A. The landscape architect shall be completely objective and truthful in all professional reports, statements, or testimony. He/she shall include all relevant and pertinent information in such reports, statements, or testimony.

- B. The landscape architect, when serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his/her testimony.
 - C. The landscape architect will issue no statements, criticisms, or arguments on landscape architectural matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he/she has prefaced his/her comment by explicitly identifying himself/herself, by disclosing the identities of the party or parties on whose behalf he/she is speaking, and by revealing the existence of any pecuniary interest he/she may have in the instant matters.
- 5.4 The landscape architect shall avoid conflict of interest.
- A. The landscape architect shall conscientiously avoid conflicts of interest with his/her employer or client, but when unavoidable, the landscape architect shall forthwith disclose the circumstances to his/her employer or client.
 - B. The landscape architect shall avoid all known conflicts of interest with his/her employer or client and shall promptly inform his/her employer or client of any business association interests, or circumstances which could influence his/her judgment or the quality of his/her services.
 - C. The landscape architect shall not accept compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.
 - D. The landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
 - E. The landscape architect shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his/her client or employer in connection with work for which he/she is responsible.

- F. When in public service as a member, advisor, or employee of a governmental body or department, the landscape architect shall not participate in considerations or actions with respect to services provided by him/her or his/her organization in private landscape architectural practices.
- G. The landscape architect shall not solicit or accept a landscape architectural contract from a governmental body on which a principal or officer of his/her organization serves as a member.

5.5 The landscape architect shall solicit or accept work only on the basis of his/her qualifications.

- A. The landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
- ~~B. The landscape architect shall seek professional employment on the basis of qualification and competence for proper accomplishment of the work. He shall not solicit or submit proposals for professional services on the basis of competitive bidding. Competitive bidding is defined as the formal or informal submission, or receipt, or verbal or written estimates of cost or proposals in terms of dollars, man-days of work required, percentage of construction cost, or any other measure of compensation whereby the prospective client may compare landscape architectural services on a price basis prior to the time that one landscape architectural organization has been selected for negotiations; provided however, the submission and discussion of data published by professional landscape architectural societies is not considered to constitute competitive bidding.~~

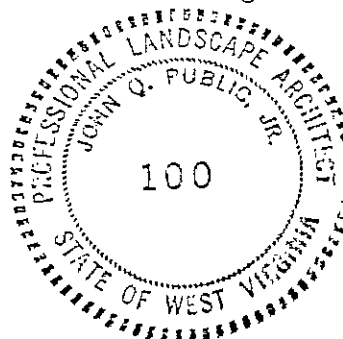
-6-

- B. The landscape architect shall not falsify or permit misrepresentation of his/her, or his/her associates', academic or professional qualifications. He/she shall not misrepresent or exaggerate his/her degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his/her or their past accomplishments with the intent and purpose of enhancing his/her qualifications and his/her work.

- 5.6 The landscape architect shall associate only with reputable persons or organizations.
- A. The landscape architect shall not knowingly associate with or permit the use of his/her name or firm in a business venture by any person or firm which he/she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.
 - B. If the landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the (name of state registration law), he/she shall present such information to the Board, in writing, and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board.
- 5.7 Conviction of a felony without restoration of civil rights, or the revocation or suspension of a professional landscape architect's license by another jurisdiction, if for a cause which the state of West Virginia would constitute a violation of the Code (30-22) or of these rules, shall be grounds for a charge of violation of these rules.
- 5.8 Anti-trust laws take into account the need for quality standards and professionalism, provided there is no unreasonable restraint of trade.
- Whenever two professionals (unless they are part of the same partnership or corporation) get together and agree on prices they will charge, where they will do business or with whom they will do business, they are functioning to restrain trade and, therefore, are in violation of the Law. Inasmuch as agreements on a minimum fee, group refusals to deal with any person(s) or group and agreements not to bid a price, have been determined illegal, therefore, competitive bidding is determined to be permissible by the Board.

Section 6. LICENSEE'S SEAL

- 6.1 Each licensee shall obtain a rubber stamp or embosser seal following the wording and format shown here, provided that minor modifications as to size and marginal lines may be approved by the Board as long as the seal is easily legible.



- 6.2 An impression of any seal (rubber stamp or embossing) must be filed with and approved by the Board before it may be used.
- 6.3 An impression of the seal shall be affixed over and on top of the licensee's signature on all documents prepared by him/her or under his/her immediate and responsible supervision for use in the state of West Virginia.
- 6.4 The use of one's seal on any plans, drawings, specifications, reports or other instruments of service which were not prepared by him/her or under his/her immediate and responsible supervision, or permitting one's name to be used for the purpose of assisting any person to evade the provisions of the Code, Chapter 30, Article 22, shall subject such person to suspension or revocation of license or temporary permit.

Section 7 HEARINGS

- 7.1 Hearings shall be granted by the Board in accordance with the code of West Virginia, Chapters 29A-5 and 30-22-12, as amended, upon written request and receipt of security for the costs of such hearing;

Provided that:

- a. such written request shall state the matters to be decided by such hearing, shall state whether the person requesting the hearing will represent himself/herself or will be represented by an attorney at law, and shall identify such attorney.
- b. the security for the costs of such hearing shall be in the form of a Bond or Cashiers Check made out to the West Virginia State Board of Landscape Architects in the amount of \$5,000.00
- c. if such person does not substantially prevail at such hearing, the security for the costs of such hearing shall be forfeited;
- d. the date, place and time of such hearing shall be established by the Board in accordance with the Code;
- e. all expenses of such hearing shall be paid by the person requesting the hearing, including the expense of recording, transcribing and publishing of the proceedings of such hearing as provided in the Code as well as the expenses of the Board.

Section 8. EXAMINATIONS

- 8.1 An applicant qualifying under 30-22-6(a) shall submit to and pass the Uniform National Examination plus a plant materials examination.
- 8.2 The examination will be given at the dates, time and place determined by the Board. The examination shall be conducted in accordance with the instructions issued by the Board and a copy of the instructions shall be furnished to each applicant.
- 8.3 The minimum passing grade for the examination shall be established for each section of the examination. All sections must be passed before the person is eligible for licensure.
- 8.4 Applicants who fail may retake those portions of the examination not passed at the next regularly scheduled examination period. Those portions failed must be retaken within a two year period. If not retaken during this two year period, the Board may require such person to retake the entire examination.
- 8.5 Applicants must complete, successfully, all sections of the examination within a five (5) year period. Applicants not so doing may be required to retake the entire examination.
- 8.6 Cost of the examination or reexamination shall be borne by the applicant over and above the license fee for registration. A new fee shall be required for each additional examination or portion thereof. The fee shall be forfeited in the event that the applicant fails to take the examination unless extenuating circumstances prevent the applicant from attending the examination and the Board is notified in advance.

The applicant shall be notified of the examination cost when notified of the dates, time and place of the examination.

The examination fee will be based on the sections of the examination to be taken or retaken.
- 8.7 The Board shall notify the examinee of the examination grade on a pass/fail basis only. All examination documents shall be retained by the Board. The examinee may inspect the graded examination in the presence of a Board member.