

EXTRAS

A Quarterly Publication from the Western Michigan Chapter
of the Construction Financial Management Association

Winter 2008

2007 – 2008 CFMA Western Michigan Chapter Board of Directors

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CFMA



The CFMA Promotion Committee is pleased to announce our annual drawing for four (yes, four!) scholarships available to our members. The scholarships include:

Two \$800 National Convention Scholarships

- Scholarships to be used towards the winner's registration fees at the May 17 to 21, 2008 national convention in Orlando.
- Scholarships available to general or associate members in good standing

Two \$400 ICCIFP Exam Scholarships

- Scholarships available to general or associate member in good standing
- Winners will have one year to use the scholarship toward the cost of the exam

You ask - "How do I participate in these great drawings?" There are two opportunities to enter...

1. Email Theresa Sickles (tsickles@beenegarter.com) or any other member of the promotions committee as to which drawing (or both) you are interested in entering

OR
2. Attend the general membership meeting on March 27, 2008 and enter the drawing(s) in person
We are proud to offer such a great benefit to our members and we hope you take advantage of this opportunity! The drawings will occur during the March 27th general meeting.

Hope to see you there!

Acknowledgements...

Editor Randy Brink
Kent Companies

**Newsletter
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.....

MAY

17th

**CFMA's 2008 Annual
Conference & Exhibition**

thru

21st



SQUEEZE – BIGGER PROFITS

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LEARN & EARN UP TO 36 CPEs

- Five CPE-packed days focused on Construction Financial Topics
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To register, visit www.cfmaonline.net/cfmassa/ssaauthmain.login_page

For more information, visit www.cfma.org/conf/conf.asp

To view a copy of the brochure, visit www.cfma.org/conf/docs/CFMA_2008_ConfBrochure.pdf

or to view the session descriptions, visit www.cfma.org/conf/2008Sessions.asp

SAVE 10%

Early Bird Registration ends 4/18/08!

Members: \$995

Non-Members: \$1,195

Why Should You Consider Taking the CCIFP exam?

Certified construction financial managers enhance their professional credibility, verify their knowledge, increase their understanding of construction finance, and enjoy the satisfaction of obtaining a goal. The construction industry benefits from established standards and industry benchmarks, improved

human-resource decision making, enhanced professional/industry credibility and standing, and increased continuing education opportunities. Currently our chapter has four members who get to put these prestigious letters on their business

cards – Steve Huisjen of Dan Vos Construction, Rhonda Huismann of Crowe Chizek, Jon Lunderberg of Hub International, and Ellen Zierleyn of Owen Ames Kimball. Contact any one of these pinnacles in our profession if you would like to learn more about CCIFP.



LaForest Krantz Member Achievement Award Recipient **Jack VandeGutche**

Jack has been an ambassador for CFMA from the start of his membership. Seeking out new faces at our general membership meetings to make sure they feel welcomed and constantly talking to others about how CFMA is a great avenue for education and networking with peers.

A CFMA member since 1994, Jack over the years has served on the membership committee the program committee and is currently serving on the promotions committee.

He has also served on the Board of Directors for 4 years. In a very unique situation, he is the only CFMA president who has held more than a year in this office as he had to quickly and quite effectively step in for Bruce Wier, the current president, who took a position out of state. Many of our past presidents, including this individual, have expressed concern that this award not be a “past president” award. But with all the other factors, the obvious support of our membership who gave numerous nominations for this



individual, the many years of service in all areas, and in all the other ways he embodies the values of CFMA, the awards committee decided that being a past president should not rule this individual out.

Congratulations, Jack!

FOCUS N

Pinnacle Insurance Partners

Pinnacle Insurance Partners, LLC and its predecessor companies have been serving area businesses since 1982. We have nine principals with two of us concentrating in the construction industry – **Brad and Mike Poggi**. Our partners’ longevity in their practice areas is a key to our success, averaging 25 years of industry experience and specializing in Property & Casualty Insurance, Surety, Employee Benefits and Financial Planning. Key industry niches include construction, condominiums/real estate, manufacturing, tool and die, medical professional, biotechnology and governmental. We are an exclusively endorsed insurance agency for the Grand Rapids Area Chamber of Commerce Property & Liability Insurance Program.

We are members of CFMA, ABC, ASA, MITA and the Builders Exchange. We are a founding member of the West Michigan Chapter of CFMA. I remember well

Dave Gibbs’ call to our office to both join and sponsor the new chapter. Our new brochure highlights our core values of Strength, Focus, Involvement and Trust. Picture a Sherpa guide on Mt. Everest making sure that your climb is secure and keeps you from falling. The guide manages the risk of your climb in the same way we assist you in managing the risks you take on as a business owner.

Strength: You need the right business partners to help you reach the top-ones with strength and know how to support you in their areas of expertise so you can focus on yours.

Focus: Pinnacle Insurance Partners concentrates on just one thing- looking after our customers’ well-being. Our service standards and management are aligned with your expectations, not public stockholders’. As a privately owned, independent agency, we’re free to recommend the insurance

products that work best for you- without influence from the “corporate home office.” And as a Michigan company, we know the local insurance market like no outsider can.

Involvement: We don’t just hand you a rope. We harness right into your team, taking the long view of your business goals and working side-by-side with you to reach them. We help you evaluate different plans, implement and administer programs, expedite claims and adjust your insurance as needs change.

Trust: You’ll know for certain that we’re looking out for your best interest every step of the way- anticipating risks and helping you safely back up when problems do arise.

Our core values guide the service that we provide and enable us to develop insurance solutions that are uniquely suited to each customer’s challenges, goals and objectives.

Your Personal Sherpa,
Mike Poggi



A Better View.™

Sold Out!



FEBRUARY
22nd
8:00 p.m.

We had such a tremendous response to our winter social event that we sold out. We have 74 reservations for Grease on February 22, 2008!

Many of us are starting out with dinner at the Sundance Grill, followed by the show at the Grand Rapids Civic Theatre. For those not joining us for dinner, the show starts at 8:00 p.m.

I am willing to start a waiting list. If you would like to be on that list in case someone has to cancel, please email me at hperdue@owen-ames-kimball.com. Likewise, if you have made reservations and find out that you cannot attend, please let me know. We will try to find someone to take your place.

Thank you very much to our event underwriters

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Construction Resource, Inc.
Crowe Chizek & Company LLC

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I Lost My Thrill on Blue Hill

“Non-recourse” not guaranteed if loan agreements breached. For borrowers, the preferred method of financing large construction or development projects is “non-recourse” financing, where, in the event of non-payment under the loan, the lender agrees to limit its recovery to the collateral, and not to pursue the borrowers for any deficiency.

Even non-recourse loans generally contain exceptions for default that convert the “non-recourse loan” to a “recourse loan” where the lender may pursue the borrower for a deficiency. These exceptions are sometimes known as a “bad boy clause” and lenders and borrowers must be aware of them.

There have been very few court decisions interpreting such clauses. However, a recent Massachusetts case – Blue Hills Office Park LLC v J.P. Morgan Chase Bank – provides guidance for borrowers and lenders in non-recourse loans. In this case, the court converted the non-recourse loan into a recourse loan due to breaches of the mortgage and guaranty agreements. The court imposed recourse liability against both the LLC/ borrower, as well as its members, who guaranteed the non-recourse loan.

Two investors created Blue Hills Office Park LLC. The LLC obtained non-recourse financing for its operations at the commercial property. The financing was secured by the

commercial property. The loan agreement required that the LLC be established as a single purpose entity; its sole purpose being to acquire, own and manage the subject commercial property.

While the owner of the commercial property, the LLC pursued a cause of action related to a zoning dispute with the neighboring property and the municipal government. That litigation ultimately resulted in a \$2 million settlement, which was subsequently distributed to the LLC members without passing through the LLC. After the loss of the commercial property’s primary tenant, the LLC was unable to pay its property taxes, and defaulted under the mortgage agreement.

In the ensuing litigation, the lender asserted that its note should be converted to a recourse loan from a non-recourse loan because of the LLC’s breaches of the mortgage agreement. The court held that the settlement proceeds from the zoning claim were part of the “mortgaged property” because the agreement defined “mortgaged property” to include causes of action relating to the subject property. The non-recourse loan contained provisions, common in such loans, providing that the loan would convert from non-recourse to recourse upon certain conditions of default. These conditions included an unauthorized assignment, transfer or conveyance of the mortgaged property. The court determined that the LLC members’ receipt of the settlement

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LEGAL UPDATES

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funds constituted an unauthorized transfer of mortgaged property, thus converting the loan to a recourse loan.

The court also held that the LLC violated the agreement by selling approximately \$100,000 worth of office equipment. Under the agreement, the court held that the office equipment, as fixtures, were part of the “mortgaged property.” The bank also pursued other theories of breaches of the mortgage agreement. The court held that the LLC violated the agreement’s requirement that it act as a single purpose entity by commingling funds and assets. The court also held that the LLC violated the agreement’s requirement that it maintain an independent director. The “independent director” for the LLC was a paralegal in their attorney’s office, who exercised no oversight or control of the company.

In an economic climate with increasing business failures and stagnant growth in real estate values, it is anticipated that more and more lenders and borrowers may face default situations involving non-recourse loans. The Blue Hills Office Park LLC decision is an important

warning to borrowers regarding the need to comply with all of the terms of lending agreements. The favorable result for the lender in the Blue Hills Office Park LLC case will likely embolden other lenders to assume aggressive litigation postures aimed at converting non-recourse loans to recourse loans.

Lenders should also review the facts and application of the Blue Hills Office Park LLC case. While the case allows the lender to pursue collection against the individual guarantors, it is likely that the mortgage is only a perfected security interest as to the real property. It is less clear whether the recorded mortgage would be determined to be a perfected security interest in assets such as settlement proceeds, office equipment or other property secured by the agreement. As such, lenders who attempt to secure personal property associated with real property should consider whether they are required to file UCC Financing Statement or otherwise perfect their security interest in said property.

By Jason R. Thompson
Jason is an attorney with Smith Haughey Rice & Roegge.

MEMBERSHIP

Membership Update

by Ann Plummer

Welcome to our newest members since our last issue of Extras!

Ronald Kennert

Grand River Interiors/Echo Etching

Doug Holtrop

Mercantile Bank

Referred by: Todd Miller

William B. Smith, MST, CFS

Tartan Development Group, Inc.

A.C. Vanderkolk

(replacing Mathias Metzger)

Turn-Key Network Solutions

Laura Cunningham

(replacing Bob Hansen)

S.A. Morman

Welcome to all of you!

Aileen Leippandt

(replacing T.J. Ackert)

Sith Haughey Rice & Roegge

Todd Hanson

Connect Resources

Steven Bosscher

(replacing Mike Bishop)

National City

Membership Statistics as of February 2008:

Chapter Membership Composite

General Members	70	60%
Associate Members	47	40%
Total	117	100%

Congratulations to Doug Holtrop & Todd Miller

Doug & Todd were winners of the Fall Membership Awareness Incentive. Both received complimentary passes to golf at our annual CFMA/ASPE Chapter Golf Outing in June 2008.

If you have any questions about membership, please contact any Membership Committee member listed below:

- **Ken Bos**
Hyland Group
ken.bos@hyland.com
- **Ann M. Plummer**
Beene Garter LLP
aplummer@beenegarter.com
- **Suzanne Strauss**
Great Lake Systems, Inc.
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- **Mircea Dobre**
R.W. Baird
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- **Michael Poggi**
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- **Todd Hanson**
Financial Edge
hanson@fin-edge.com
- **Sheri Wert**
Accounting Etc.
sheriwert@msn.com

General Membership Meetings

All meetings will be held at the University Club on the tenth floor of the Fifth Third Bank building located at the intersection of Ottawa and Lyon in downtown Grand Rapids.

Parking will be at the attendee's expense.

Registration begins at 11:30 a.m., with lunch served at 12:00 p.m.

Date	Speaker	Host
February 28, 2008	<i>Organizational: Generational Diversity</i> Ron Scott, Director Employee Assistance	Anita Rathbun
March 27, 2008	<i>Tentative</i> Jonathan Bradford, Director Inner City Christian Federation	Anita Rathbun
April 24, 2008	<i>Recruiting & Retaining Key Employees</i> Jeff Robinson PAS, Inc.	Steve Huisjen
May 15, 2008	<i>Human Resources: Safety Pays</i> Panel Discussion with Nathan Steffen Univeral/Wells Fargo	Todd Miller



CFMA

Western Michigan Chapter Mission Statement

As the source and resource of construction financial management in West Michigan, our Association unites individuals having financial responsibilities in the construction industry. We provide a forum through which the Association's members can meet to network and exchange ideas. We promote and encourage leadership within the construction industry, as well as our Association. We develop and coordinate educational programs dedicated to the purpose of improving the professional standards of the industry and enhancing the value of construction financial managers to their respective companies.