

**MINUTES OF THE MEETING OF THE COUNCIL OF THE
REAL PROPERTY LAW SECTION
OF THE STATE BAR OF MICHIGAN**

JANUARY 13, 2021 AT 12:00 PM

Zoom Meeting

<https://us02web.zoom.us/j/86229165243?pwd=TEVyM1lVU29tekJnNnU0K3NBWmtpdz09>

An on-line meeting of the members of the Council of the Real Property Law Section was called to order at approximately 12:00 PM. Chairperson King confirmed that a quorum of voting members was present.

Present:

<u>Council Members</u>		<u>Past Chairs</u>	
<u>In Person</u>	<u>Zoom</u>	<u>In Person</u>	<u>Zoom</u>
	Lorri B. King (Chair) Steve Estey Brian P. Foley John Gaber Gregory J. Gamalski Jessica Hallmark Thomas A. Kabel Leslee Lewis Jason C. Long (CLE) Michael A. Luberto Brandy Mathie Brian Page (Land Title) Dawn M. Patterson J. Scott Timmer		Brian Henry David Nykanen Ronn S. Nadis Jerome Pesick Nicholas Scavone
		<u>Section Administrator</u> Karen Schwartz	
		Other Attendees	
	Cathy LaMont (Immediate Past Chair)	William Freeman	

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Chairperson King welcomed Special Condominium Committee Co-Chair William Freeman.

Approval of Minutes:

Chairperson King proposed unanimous consent of the minutes from the December 9, 2020 Council meeting. Greg Gamalski moved to support the Motion and Tom Kabel seconded the Motion. No members raised an objection, so the Motion to approve the minutes without discussion passed unanimously.

Consent Agenda:

Chairperson King proposed unanimous approval of the Consent Agenda as to the following reports: Administrative, Committee on Committees, Membership Committee, Michigan Electronic Recording Commission, Pro Bono Committee, Publications Committee, Sponsorship Committee, and Technology Committee.

Chairperson King moved to approve and receive the Consent Agenda without discussion. Cathy LaMont moved to support the Motion and Dawn Patterson seconded the Motion. No objections were raised so the Motion to approve and receive the Consent Agenda without discussion passed unanimously.

Standing Committee Reports:

The following Standing Committee reports were discussed:

Budget and Finance Committee:

Dawn Patterson presented the Budget and Finance Committee Report. She noted that the October and November 2020 financials are attached to the agenda.

The Section dues revenue to date are \$104,610.00. We originally projected revenue of \$124,630.00. Our revenue is up over last year, due to the increase in dues from \$45 to \$55. However, membership is down 169 members.

Our revenue from the Real Estate Outlook 2020 was \$1,640.00, versus an original projection of \$750.00.

Karen Schwartz reported that all dues for 2020-21 are collected. Leslee Lewis advised that it is currently difficult to analyze membership trends, given the timing of receipt of information from the State Bar. The Section has members aging out, and not as many younger lawyers joining the Section.

Discussion ensued regarding the Business Law Section's membership trends, the need to analyze the net loss of members and the need to focus on the number of younger members.

Continuing Legal Education (CLE) Committee:

Jason Long presented the CLE Committee Report. He highlighted specific points in his report.

I. Homeward Bound (Jessica Hallmark)

The Homeward Bound program will be held remotely on Thursday, January 28, 2021. The topic is similar to last January's Homeward Bound, "Recent Legislation and Hot Topics on the Horizon".

Recent legislation will be presented by Tom Kabel, proposed legislation will be addressed by Tabitha Zimny. We have 30 registrants so far.

II. Homeward Bound (Brian Foley)

A second Homeward Bound program will be held remotely in March 2021. Alex Dieck of Bodman will present a case law update and Nick Scavone has agreed to present an updated on the status of the Marketable Record Title Act.

III. Summer Conference 2021 (Brandy Mathie and Cathy Riesterer)

Brandy and Cathy are putting together a panel discussion on Marijuana and Real Estate and have reached out to last year's intended Summer Conference panel participants. Tom Kabel, Nicole Brunskole from Comerica, Jessica Wood from Dickinson Wright and Benjamin Sobczak from Pleasantrees Cannabis Company have confirmed that they will participate.

Current plans are moving along on a dual track, including a possible hybrid of in-person and virtual. Discussions with Grand Traverse continue. We are in contact with the company that handled virtual programming for the Michigan Land Title Association. Dawn Patterson endorsed the company, having worked with them before. Discussion was held regarding the impact of a virtual or hybrid conference on the speakers. It was noted that many speakers were not interested in presenting in-person, and that a virtual presentation may require more preparation by the faculty.

IV. "Ask the Expert" Program

After our last meeting, we had our second "Ask the Expert" program. We had 39 attendees, including 26 younger attorneys. We will have another program next month, courtesy of the Construction Committee. The Section continues to look for someone to chair this program.

V. Real Property Law Academy I (Mike Luberto)

This is currently scheduled for May 5-6, 2021 in Troy and October 2021 in Grand Rapids. Mike reached out to law firms to see if they have a preference regarding a two-day virtual program or to space out the sessions during a longer time period. Responses were inconclusive. The Academy will be discussed in further detail at the next CLE Committee meeting.

VI. 2021/22 Groundbreaker/2022 Real Estate Outlook (Scott Lesser)

The "Groundbreaker 2022 Real Estate Outlook" program will be held on November 11, 2021 at the DAC.

Last year's program resulted in greater attendance and revenue. It's unclear if Scott Lesser is interested in continuing to plan this program. This too will be discussed at the next CLE Committee meeting.

The next CLE Committee meeting is scheduled for Wednesday, January 27, 2021

Legislation Committee: Tom Kabel presented the Legislation Committee Report for review and discussion.

I. Legislative Session. The 2019/2020 legislative session closed at the end of 2020. All bills pending in the House and/or Senate which were not enacted into law have lapsed and would need to be reintroduced when the legislature re-convenes. As such, there is not currently any pending legislation, bills of interest, or bills on which our Section had taken a position or was monitoring.

II. End of Year Developments:

A. Tax Foreclosure Amendments. Despite the Section's decision to oppose Senate Bill 1137 unless certain requested revisions were made, both SB 1137 and SB 676 were passed by the Senate and House and signed into law as Public Act Nos. 255 and 256 of 2020. Tabitha Zimney has spoken to a couple of committees willing to entertain our proposal.

B. Marketable Record Title Act. The simple extension of time to comply with the 2019 amendment (HB 5611) was signed into law as Public Act No. 294 of 2020. Our proposed bill did not make it through the session, so it will have to be re-introduced.

C. Electronic Transactions/Notary Package. Senate Bills 1186–1189 (which extend the sunset date for the various electronic transactions) were signed into law as Public Act Nos. 335, 336, 337 and 338 of 2020.

D. Short-Term Rental Bill. Senate Bill 1145 was not acted on and thus did not pass before the end of the year. It will also need to be re-introduced.

New Business

- *Amicus Brief Invitation - Township of Fraser v Haney.*

Jason Long addressed this invitation. On November 25, 2020, the Michigan Supreme Court granted leave to appeal in *Fraser Twp. v. Haney*. The Court's Order invited RPLS to submit an *amicus curiae* brief. At the December 2020 Council meeting, Council voted to authorize a brief. The discussion at Council focused on the issue whether a six or 12-year limitations period should apply to actions for nuisance; that was an issue that the Court of Appeals had considered in an opinion before an earlier remand from the Supreme Court. The motion approving the *amicus curiae* brief authorized a short argument that, whatever the Supreme Court decided between six or 12 years, it should apply a consistent standard to municipalities and private property owners.

The Court's Order granting leave, however, focuses on a different issue. In that Order, the Court directed the parties to address whether any limitations period applies when a municipality is attempting to enjoin a nuisance under the Zoning Enabling Act. That raises considerations concerning not only disparate treatment between municipalities and private owners, but also valid and invalid nonconforming uses, the enforceability of zoning ordinances, and possibly others.

Jason proposed to resubmit the authorization for an *amicus* brief to Council for further discussion.

The Court is seeking an answer to the question of whether any sol applies in actions by municipalities enforcing the zoning enabling act. Jason reported speaking with other attorneys, and there are many different views, making it difficult to file a brief saying yes or no. Chairperson King opined that we may need to amend our earlier position. Jason explained that municipalities feel that there is no statute of limitations for continued violations of a zoning ordinance. John Gaber opined that the Court of Appeals got it wrong, and the decision should be overturned. Jason Long concurred. He further opined that this is more of a policy decision and may not be appropriate for us to take a position. Cathy LaMont stated that we should not rule out our participation, since the Supreme Court asked us to file a brief. Nick Scavone questioned how it's in the interest of the administration of law if municipalities are precluded from enforcing their ordinances. John Gaber stated that municipalities wouldn't be precluded, just limited in time. Dave Nykanen suggested that we could submit a brief that simply states what the law is, and let the Court make its own decision. Tom Kabel agreed with Dave Nykanen. Brandy Mathie questioned if we were taking a policy position. Scott Timmer was unsure that we should be siding with municipalities and proposed that we simply prepare a treatise on the law. Nick Scavone agreed with Brandy and Scott. Tom Kabel suggested that it is our mission to point out when the court makes the wrong decision. Ultimately, Tom Kabel moved to file an *amicus* brief, setting forth the current law, and not

take a policy position. Cathy LaMont seconded the motion. The motion was approved with 15 in favor, zero opposed and zero abstentions out of 15 voting members in attendance of a total of 17 voting members.

- Summer Conference 2021

Chairperson King addressed our contract with Grand Traverse. Lorri included our Summer Conference 2021 contract, and a proposed amendment. They presented us with an amendment in December, reducing our obligation by 35%. The Executive Committee met, and the inclination is to sign an amendment. It states that within 90 days of the conference, if we can't hold the event because of COVID-19, we can cancel. A motion to proceed with signing the amendment, with Chairperson King's suggested modifications, and authorization of Karen Schwartz and Chairperson King to determine the level of vaccination was made by Greg Gamalski and seconded by Tom Kabel. The motion passed unanimously.

The next Council meeting is Wednesday, February 10, 2021 at noon.

The meeting was adjourned at 1:12 pm.

Respectfully submitted,

Michael A. Luberto, Secretary