

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

DECEMBER 18, 2019 AT 3:30 PM

**MEX
BLOOMFIELD HILLS**

A meeting of the members of the Council of the Real Property Law Section was called to order at approximately 3:46 PM. Chairperson LaMont confirmed that a quorum of voting members was present.

Present:

<u>Council Members</u>		<u>Past Chairs</u>	
<u>In Person</u>	<u>Conference Call N/A</u>	<u>In Person</u>	<u>Conference Call N/A</u>
Catharine B. LaMont (Chair) Brian P. Foley John D. Gaber Gregory J. Gamalski Thomas A. Kabel Dawn M. Patterson Roxana Gale Zaha <			

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Approval of Minutes:

Chairperson LaMont proposed unanimous consent of the minutes from the November 20, 2019 Council meeting. Mr. Scavone made the motion for approval and the motion was seconded by Mr. Gaber. No members raised an objection, so the Motion passed unanimously.

Consent Agenda:

Chairperson LaMont proposed unanimous approval of the Consent Agenda as to the following reports: Administrative, Committee on Committees, Membership Committee, Pro Bono Committee, Sponsorship and Technology Committee.

Chairperson LaMont moved to approve and receive the Consent Agenda without discussion. Nobody raised objections 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 Report:

Mr. Kabel presented the Final 2018-2019 Budget with final figures, and the October & November Financials. Mr. Kabel wanted to note that Section dues are up by 9 members as of the same time last year. We were down over 80 members at this same time last year.

Continuing Legal Education (CLE) Committee:

Mr. Long was unable to attend. He submitted the CLE Committee Report for review and discussion by the members. Chairperson LaMont led the discussion. The report specifically mentioned the following items:

- “Groundbreaker - 2020 Real Estate Outlook” (Chair is Scott Lesser): Due to the success of the program, the CLE Committee is recommending that the program be continued next year at the DAC. It is recommended that the program be held following the elections. Karen checked with the DAC about reserving November 12th, but it was not available. She is requesting a contract for **Tuesday, November 17th, 2020.**
- 2019-2020 Homeward Bound (Chair is Jessica Hallmark). The January 16, 2020 Homeward Bound program at MSU – MEC will be called “Recent Legislation and Hot Topics on the Horizon”. 19 people have registered to date (projected 20 attendees).
- Winter Conference 2020 (Chair is Erica Payne). This conference will be held at the Hotel del Coronado and is set for March 12-14, 2020. To date, we have 20 registered (including speakers) and 70 room nights reserved out of the 90 room nights blocked - similar to last year at this time.
 - WC Misc.- As in the past, Rob Schwartz will be assisting at the Winter Conference.

His duties include the following:

- (a) transporting necessary audio visual equipment, conference signage and registration materials to and from the conference;
 - (b) assisting with guest registration; and
 - (c) setting up signage and helping with distribution of materials both days of the conference
- Summer Conference 2020 (Chairs are Roxana Zaha and Brandy Mathie.) This conference is scheduled for July 15-18, 2020 at Mission Point. A preliminary outline was attached to the agenda.

- Technology Update. Summer Conference and Homeward Bound webcasts are available to purchase on our website. It was suggested that a link to the webcast registration be available on the monthly eNewsletters.
Video-taping the Winter Conference was discussed. The projected cost of \$1,500 is included in the projected budget. The CLE Committee agreed to recommend to the Council that the Winter Conference should be video-taped. This was approved in the budget.
- Real Property Law Academy I (Chair is Michael Luberto). Academy I will be held at the J.W. Marriott in Grand Rapids on October 20-21 of 2020. A discussion took place regarding the cost of registration. The CLE Committee agreed to recommend to the Council to increase the registration price for law firms from \$1,000 to \$1,200.

Legislation Committee:

Mr. Gamalski submitted the Legislation Committee Report dated December 12, 2019 for review and discussion by the members. In particular, Mr. Gamalski noted the following:

- 1) Marketable Title Act Amendment; HB 5260. A focused bill to address perceived issues related to the Marketable Title Act and condominium master deeds and amendments has been introduced. <http://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2019-HIB-5260.pdf>. The committee discussed it some detail. The collective conclusion was while it addresses the specific problem it did not necessarily remediate other perceived shortcomings resulting from the Public Act 572 of 2018, effective March 29, 2019 <http://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0572.pdf>. Council should probably consider taking a position perhaps based on the notion that the specific correction while useful does not address all prior concerns. However, since a detailed article will be published on Marketable Title Act issues in the next Michigan Real Property Review, which is set for release in early January, the Committee suggests that perhaps review of that article might suggest appropriate positions and/or actions. The Committee has a sense from discussions with our lobbyist that there is not an appetite for further substantial revisions at this time however. Members discussed that this is not legislation that we would oppose. A vote was not taken. We will re-visit this in January 2020.
- 2) Homeowner Associations. Some members of the Condominium, Cooperative and Planned Unit Development Committee have put the finishing touches on a proposed bill related to homeowner associations in traditional subdivisions, as opposed to condominium associations. A sponsor is being sought. The Section is not a formal proponent, nor has it taken a position related to this effort but the Legislative Committee is monitoring it. It appears that the Community Association Institute is one of the parties interested in such legislation. It is not been formally introduced.
- 3) Pending Legislation; Positions. Bills on which we recently took positions remain in committee and have not advanced.
 - a. HB 4123 and 4699. These bills essentially authorize a lien against all real estate throughout the state owned by an owner of even a single blighted property subject to blight citations.
 - b. HB 4676 and HB 4677. The bills essentially attempt to bar certain noisome restrictions related to race, religion and sexual orientation, etc. which is a laudable goal.
- 4) Emotional Support Animals. SB609 and SB 610 about emotional support animals and residential landlord tenant issues with the apparent object being a perception that the right to an emotional support animal may be used in bad faith by some tenants have not advanced. The Legislative Analysis is available. <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/Senate/pdf/2019-SFA-0608-G.pdf>. Due to competing interests, landlords and tenants, the committee has suggested a position not be taken.

- 5) Tree Liability; HB4915. While the Committee suggests a position could be taken on HB 4915, the tree liability bill in its current form has not advanced so we think no active position should be taken. The Committee will discuss this further with our lobbyist to see what its prospects are and report back.
- 6) Assignment of Rents Statutes. The bills related to a new assignment and rents statute, HB 5086 and HB 5092 remain in the Judiciary Committee.
- 7) *Rafaeli L.L.C. v. Oakland County*, Supreme Court Case No. 156849 was heard on November 7, 2019. The Legislature is considering a bill, HB 4219, to address this issue and the Senate has also introduced a bill recently SB 0676. <http://www.legislature.mi.gov/documents/2019-2020/billintroduced/Senate/pdf/2019-SIB-0676.pdf>
This addresses the equity in homes that have been foreclosed for taxes.

Publication Committee:

Chairperson LaMont presented Ms. King's report and mentioned the following issues:

- 1) The Fall/Winter Edition has been submitted to the publisher with anticipated publication in early January 2020.
- 2) The Publications Report dated December 12, 2019 sets forth for Authors and Articles anticipated for the Spring/Summer 2020 Edition. Chairperson LaMont mentioned that many authors have come forward without being solicited. Chairperson LaMont mentioned that it is a benefit of membership to authors to be able to showcase their articles.
- 3) Chairperson LaMont indicated that the Committee on Committees has provided great assistance in securing e-Newsletter articles.

Old Business:

None

New Business:

- 1) Amicus Brief Committee: Chair: Scott Timmer
Chairperson LaMont presented this segment. The case deals with short term rentals and a zoning ordinance in Spring Lake Township.

Mr. Foley indicated that the request is as to whether the Supreme Court should grant leave to appeal. The Michigan Supreme Court is scheduling oral arguments on whether to grant an application for leave to appeal a published opinion of the Court of Appeals.

Mr. Scavone indicated that if this centers around ordinance interpretation, which will be very specific to each municipality and not have a wider impact on the law, then he suggests that the ruling should be made as narrowly as possible if the case is taken by the Supreme Court. Mr. Nykanen opined that this may be a "regulating the user" of the property rather than the use of the property and, if so, it was result oriented decision. The case focuses on the term regarding "single family use". The case focuses on lack of clarity within the ordinance. Mr. Krysinski also concurred that the eventual ruling should be interpreted as narrowly as possible and that the case turns on the rules of statutory construction. Mr. Scavone stated that the case is so specific to these facts that it should not be interpreted widely so as to set precedent. Mr. Nykanen inquired as to whether the use prior to the ordinance was legal. Mr. Nykanen also agrees that this is a statutory construction issue and that the Council could consider including information as to how zoning ordinances are interpreted and the statutory construction aspects of a zoning ordinance.

Regarding the case of [Susan Reaume v. Township of Spring Lake](#):

A Motion was made by Mr. Scavone, and duly seconded by Mr. Foley to file a response with the following positions:

- a) Recommend against granting the leave to appeal because a final judgment could have unintended broader implications since the foundation of the issue is the specific interpretation of the Spring Lake Township ordinance and require the principals of statutory construction. If the Supreme Court decides to grant leave, we assert that the holding should be narrow and narrowly construed so as to not set precedent.
- b) If leave is granted by the Supreme Court, the decision of the Court of Appeals is supported as to the issue of whether a municipal employee can bind a township.

The Motion was approved with 8 in favor, 0 against with 0 abstention out of 8 voting members in attendance at the time of the vote of a total of 17 voting members.

Mr. Scavone will coordinate volunteers for this filing with Mr. Timmer.

Chairperson LaMont reminded everyone that the next Council meeting would take place on Wednesday, January 15, 2020, at Noon at Butzel Long in Bloomfield Hills, Michigan.

Chairperson LaMont adjourned the meeting at 4:35 p.m.

Respectfully submitted,

Dawn M. Patterson, Secretary