



**MINUTES OF MEETING OF SECTION COUNCIL OF SECTION OF REAL
PROPERTY PLANNING AND ZONING
MARYLAND STATE BAR ASSOCIATION
WEDNESDAY, OCTOBER 20, 2004**

The first meeting of the Section Council for the 2004-2005 Bar Association Year was held on Wednesday, October 20, 2004 at Chiaparelli's in Baltimore, Maryland. The following Section Council Members were present: David Kochanski (Chair), Raymond G. Truitt (Immediate Past Chair), Thomas C. Barbuti (Vice Chair), William M. Hoffman, Jr., J. Paul Rieger, Jr., Michael Swanenburg, Jack Zemil, and Tracey E. Skinner (Secretary).

1. Call to Order – Mr. Kochanski called the meeting to order at approximately 6:45 p.m.
2. Prior Minutes – The minutes of the April 2004 and June 2004 Section Council meetings were approved and will be posted on the Section's website.
3. Chair's Reports – Mr. Kochanski introduced the new Section Council member Michelle DiDonato, and then reported on the following topics:
 - (a) MSBA Section Chairs Meeting - Mr. Kochanski reported that the MSBA continues to praise the Section's website, listserv and newsletter. He emphasized that the MSBA wants all Sections to contribute to the Bar Bulletin, the monthly newspaper circulated by the MSBA, and to "Bar Briefs," the monthly electronic communication from the MSBA
 - (b) Foreclosure Subsection – Twenty to thirty attorneys of the Section have proposed establishing a subsection to the Section specifically addressing foreclosure issues, and further propose that the Foreclosure Subsection be granted one seat on the Section Council. Mr. Kochanski and Mark Dopkin, via e-mail, expressed that opinion that establishing a foreclosure committee of the Section would be acceptable, but question adding a Section Council position of the committee. After thoughtful discussion, the consensus of the Section Council members was to create the committee, without a seat on the Section Council, but assign a Section Council member to be a liaison to the committee. Mr. Barbuti volunteered

to be the liaison, and to later report whether he thought the committee should have one of its members be a liaison to the Section Council.

(c) Joint Program with the Environmental Law Section – The Chair of the Environmental Law Section asked Mr. Kochanski whether the Section would be interested in doing a joint educational program. Mr. Zemil suggested first doing a luncheon program to determine the quality of and the interest in the combined presentation. Then, if the luncheon is a success, the Section can explore doing a MICPEL program with the Environmental Law Section.

Mr. Kochanski agreed and will talk with Nicole Lacoste about the possibility of a luncheon presentation and also ask Hilary O'Connor to act as liaison to explore a joint MICPEL program. Mr. Kochanski mentioned that for the luncheon that a review of the NEPA "All Appropriate Inquiry Standards" for environmental inspections might be appropriate.

(d) Legislative Matters – On behalf of Larry Conn, Mr. Kochanski reported that Scott Montgomery, the MSBA Director of Legislative Services, informed the Section that some legislatures are proposing legislation to abolish the unities of joint tenancy and asked if the Section had any comments. Mr. Truitt said that in the past the Section has provided assistance and advice regarding legislation and it is possible that this assistance helps build stronger relationships with the legislature.

(e) MSBA – Bar Briefs, Section Tips, Advance Tax Institute – As mentioned in 3(a) above, the MSBA asked on Sections to contribute articles, "law briefs", or practice tips to the Bar Bulletin and Bar Briefs.

Mr. Kochanski reminded the Section that The Advanced Tax Institute was being held on November 5, 2004. At the mention of Tax, Mr. Barbuti asked the Section Council Members if anyone knew whether their clients were completing **TICs (Tenant In Common Investment Pools)** for specific real estate purposes instead of tax purposes. A discussion ensued since a TIC is deemed to be a syndicated real estate interest is there securities implications for brokering such transactions and does a real estate broker have to be a securities broker to broker TIC transactions. TICs are being used by a wide range of people, so there was discussion about making TICs a topic for the Annual Meeting, with Tom Barbuti and David Kochanski as panelists.

(f) Midyear Meeting – The MSBA Midyear Meeting will be held in Los Cabos, Mexico. Pertinent information follows:

Mid Year Meeting 2005

Presidente InterContinental Los Cabos Resort
Los Cabos, Mexico

Saturday, February 26th - Saturday, March 5th
or
Sunday, February 27th - Sunday, March 6th

For more information:

Hotel/Air - Chip Wanek at Towson Travel - 410.823.7770

Meetings/Receptions - Wanda A. Claiborne - 410.685.7878, 800.492.1964 ext.
3022

4. Committee Reports

(a) Legislative Liaison/Code Revision – Mr. Conn was not at the meeting to report; however, Mr. Rieger received a letter from Bob Taylor, a former Code Revision Committee member, asking the Section to support legislation that gave bona fide lenders under the Real Property Code that bona fide purchasers are afforded.

(b) Commercial Real Estate Discussion Group – Nicole Lacoste was not at the meeting to report, but provided a written report. All monthly luncheons have a speaker, except for March. It was suggested that this might be the opening for the joint presentation with the Environmental Law Section. Mr. Barbuti is presenting a program in January on ADR (Alternative Dispute Resolution) and asked if anyone is interested in forming an ADR committee. Mediation and arbitration clauses are common in many real estate contracts ranging from title insurance policies to construction contracts to residential real estate contracts.

Jack Zemil volunteered to work with Tom Barbuti to explore forming a Committee to consider and/or advance ADR practices in connection with commercial real estate agreements.

(c) Newsletter – Guy Flynn will be asked to be editor of the Fall/Winter issue and Hilary O'Connor is the editor for the Spring/Summer Issue.

(d) Law School Mentoring – Mr. Kochanski reported that Michelle Curtis volunteered to chair this committee. She wants to have University of Maryland Law School participate this year, and Terri Shea will be a good resource to assist in the program. Last year the program did not occur in the law schools, since the committee was focusing on individual mentoring.

(e) Technology -

(i) Listserv – Mr. Kochanski reported that the Listserv is active. Ms. Skinner reported that the Forum has been launched and that it needs to be marketed to the Section members. The Forum's main appeal is that it can provide a string of discussion on a certain topic or, in essence, a history of the listserv discussion on a certain topic. The Forum is to be a members' only benefit.

(ii) Webpage – Jack Zemil is in charge of the webpage and will be updating it. Mr. Zemil confirmed that forms available on the webpage will be for members' only and that there will be a disclaimer regarding the content, accuracy and use of the forms. Mr. Rieger volunteered to review the forms that are to be posted to the site.

(f) Annual Meeting Program (6/18/04) – Ms. Skinner and Michelle DiDonato will co-chair this year's Annual Meeting Program committee. They will ask Ms. Curtis and Ms. Lacoste to assist with the program. Some of the topics for consideration are TICS (see discussion above in Section 3(e) above), Credit Enhancements for Leases, such as letter of credits and lease bonds, environmental issues, tax issues and bankruptcy matters.

(g) Pro Bono Projects – No report.

(h) MICPEL Liaison – See above reports for information.

(i) Land Survey Requirements (Land Records Oversight). – Mark Dopkin sent a copy of the draft legislation for land survey requirements to Mr. Conn and Mr. Kochanski, so that either the Code Revision Committee and/or the Section Council members could comment on the legislation. Also, a judicial archives memorandum has been sent. Mr. Kochanski said that Mr. Dopkin will provide more information at the next meeting.

(j) Clerks Practice – Bill Hoffman reported that there are only a couple of jurisdictions where there is no Bar liaison with the Clerks, and he is looking for additional volunteers.

(k) Distinguished Practitioner of the Year Award – Mr. Barbuti noted that there is nothing to report at this time. Basically, the same schedule will be followed from last year and the award will be presented at the Annual Meeting.

5. Other Reports/Updates:

(a) Maryland Bar Foundation – Ms. Skinner, as Secretary/Treasurer of the Maryland Bar Foundation, suggested that members of the Section Council all consider becoming members of the Maryland Bar Foundation.

(b) New Withholding Legislation – Mr. Rieger updated the Section Council members on the “Withholding Law”, found in Section 10-912 of the Tax-General Article of the Annotated Code of Maryland, and reported that (i) the “Total Payment Statement” is no longer required as part of, or as an attachment to, deeds, and (ii) there is now an exemption for \$0.00 transfers and further clarifications on foreclosure conveyances.

Mr. Kochanski noted that the Withholding Law presents issues for 1031 Exchanges and that there is an exemption form that should be filed in advance of the 1031 transaction.

(c) Real Estate Litigation Program – Mr. Truitt reported that the real estate litigation program presented at the Advanced Real Property Institute, held in September, was well attended and that it may be a topic to repeat at one of the Section’s luncheons, or the Annual Meeting Program, or, again at the Advanced Real Property Institute. Mr. Kochanski noted that this ties in with the interest in Conflict Resolution. Mr. Zemil and Mr. Barbuti noted that a litigator’s perspective is good to have in a real estate practice, especially when drafting documents.

(d) Baltimore City Recordation Tax – There is still confusion on how the City is addressing the new \$22,000.00 partial exemption of recordation tax on purchase money mortgages for residential transactions under Section 16-2 of Article 28 of the Baltimore City Code. Mr. Rieger shared with the Section Listserv an explanation of what the practice is at this time. Mr. Rieger noted that the Baltimore City Council was reviewing proposed legislation confirming that the purchaser is to be the sole beneficiary of the recordation tax exemption.

6. New Business

(a) Next Meeting - The next meeting will be held in January. More details will follow.

The meeting adjourned at 8:30 p.m.