

FINAL

Environmental Law Section Council

Minutes

February 23, 2008

Present At Cooley Law School In Auburn Hills: Susan Topp, Christopher Dunsky, Anna Maiuri, Robert Schroder, Michael Caldwell, Ken Gold, Kurt Kissling, John Tatum, Kurt Brauer, Jeff Haynes, Charles Toy, Jim O'Brien, Tim Lozen and Grant Trigger.

Present In Grand Rapids: John Byl, Matt Eugster and Dennis Donohue.

Present In Lansing: Chuck Barbieri

Present By Phone: Craig Hupp, Scott Hubbard.

Susan Topp called the meeting to order at 10:15 a.m.

1. **MINUTES:**

Jeffrey Haynes moved, with support by John Tatum, to approve the minutes of the November 10, 2007 meeting. The motion passed unanimously.

2. **SECRETARY-TREASURER'S REPORT:**

Christopher Dunsky presented the Secretary-Treasurer's Report and advised that the Section's account had a balance of \$63,796.35 as of January 31, 2008 according to the State Bar. The Secretary-Treasurer's Report was accepted unanimously.

There was substantial discussion concerning the January 17, 2008 draft budget for fiscal year 2008. Bob Schroder requested a budget of \$8,000 for the Environmental Law Journal plus \$3,500 for its law school essay contest. The \$8,000 request assumes four issues will be published and includes \$300 per issue for hardcopy printing, \$100 per issue for postage and print cartridges, \$100 per issue for case notes, \$1,000 per issue for the editor, and \$500 per issue for the assistant editor. Jeff Haynes requested that a substantial portion of the Section's cash balance be made available for work on the Environmental Deskbook, which is slated for publication in 2008. He proposed a budget of \$5,000 to be used to develop the Section's ability to publish the Deskbook in electronic form. Publishing the Deskbook in electronic form would make it available to all Section members without charge. He also requested approximately \$10,000 to hire a law student to perform cite checking and to proofread chapters for the Deskbook, and propose to pay an honorarium of \$1,000 to each author and editor for a total of \$11,000. Editors are Jeff

Haynes, Gene Smary, and John Tatum. The total budget request for the Deskbook for 2007-2008 is \$31,000. Tim Lozen moved to approve a budget amount of \$31,000 for the Environmental Deskbook. Chuck Barbieri moved to amend the motion to include approval of an \$8,000 budget for the Environmental Law Journal, and Lozen accepted the amendment. Anna Maiuri and Scott Hubbard seconded the motion as amended, and it passed without opposition.

3. STANDING COMMITTEE REPORTS:

A. Membership Committee.

There was no report from the Membership Committee. After the meeting Dustin Ordway reported in an e-mail addressed to Topp, Barbieri and Dunsky that the Council should consider how to resolve a conflict in the Section's By-laws and the State Bar's By-law regarding dues for law school student members of the Section. He also noted that a directory of Section Members is being prepared for distribution in PDF format; and that he has received numerous comments regarding the proposed creation of a list of certified mediators on the Section website and plans to report to the Council on this issue for discussion at the June meeting.

B. Program Committee.

Kurt Brauer reported that the Section co-sponsored a successful joint program with the Air and Waste Management Association ("AWMA") concerning climate change. More than 100 people attended the program. Susan Topp noted that the Section paid for three students to attend the AWMA program on climate change, and that 17 individuals from the Section registered for the program but neither paid the registration fee nor cancelled. Kurt Brauer will contact those individuals and urge them to pay the registration fee.

The Program Committee intends to meet in March to plan a possible program to be held in the month of May, possibly using video conferencing. The Program Committee also intends to conduct a program for the Council Meeting at Higgins Lake, which will be on June 13 and 14, 2008. Anna Maiuri suggested that we advertise that meeting to students and others soon so that they can put it on their schedules. Brauer noted that the Program Committee did not have a program in February, but suggested that it should consider doing so every other year.

C. Environmental Law Journal.

Susan Topp reported that Bob Schroder has agreed to assume responsibility for the Michigan Environmental Law Journal from Lee Johnson. Schroder received several articles from Johnson and expects to publish an issue of the journal in March 2008. He will soon need more publishable articles and plans to use the winning essays from last year's essay contest. Schroder noted that there are approximately 60 to 90 hardcopy subscribers to the Journal, and that many of them want to receive the annual September State Of The Law issue. He

recommended that we discuss no later than June whether the Section can continue publishing that issue. Schroder asked whether the Journal should continue to sponsor the law school essay contest, and the Council was supportive of doing so. To avoid future delays in issuing award checks to winners of the essay contest, it was suggested that a W-9 form be sent to each recipient with notice of the award.

D. Technology Committee.

John Tatum reported that the Section's Listserve is now operating, and there are 123 members who were not members last year, thus indicating that new members are joining the Section.

E. Deskbook Committee.

Jeff Haynes circulated a list showing the anticipated authors, chapters, and status of each chapter of the Deskbook. He will ask for first drafts by the end of May and hopes to be ready to publish by September 2008. Susan Topp stated this was a hard deadline and suggested that any author who fails to meet the deadline forfeits their remuneration. He invited Council members to comment on the style, form, and usability of draft chapters. Other information concerning the Deskbook is discussed under the Treasurer's Report, above.

4. SUBJECT MATTER COMMITTEE REPORTS

A. Air Committee.

Kurt Kissling reported that the Air Committee intends to meet in March and hopes to work with the Program Committee to develop a program on Air issues.

B. Environmental Litigation Administrative Practice Committee.

No report was made during the meeting. After the meeting, Steve Huff reported by e-mail that the Committee held a "mini-seminar" on vapor intrusion in Grand Rapids, Michigan on November 16, 2008 and in Clinton Twp., Michigan on November 21, 2008. The Committee is planning similar mini-seminars this spring and is working on a possible article for the Environmental Law Journal regarding the admissibility of expert opinion testimony.

C. Hazardous Substances and Brownfield Committee.

Matt Eugster reported that the Committee will meet Saturday, March 9 to discuss Part 201 and brownfield updates, and hear from Jeff Haynes about his recent Supreme Court argument.

D. Natural Resources Committee.

Susan Topp stated that she was not aware of any recent activity by the Natural Resources Committee, and sought comments on what the Council should do about this. Jeff Haynes noted that Joe Quandt, the Chairman of this Committee, is now on vacation. Dennis Donohue noted that the Natural Resources Committee

sponsored a program a year ago. Discussion on this topic will be deferred to the June meeting.

E. Water Committee.

Dennis Donohue reported that the Committee hopes to sponsor a program in March or April regarding new water legislation.

5. LIAISON REPORTS

A. Real Estate Section.

Pat Paruch circulated the attached e-mail to Council Members. It reported among other things that the Real Property Section is sponsoring an essay and will hold its Winter conference in Chicago, with a June 2008 meeting in Traverse City.

B. Bar Liaison.

Charles Toy reported that he is now a member of the National Association of Bar Presidents and can use that position to help the Section with any issues of national importance. John Tatum indicated that he would like to know what other State Bar Associations are publishing and hope that Mr. Toy can use his position to help answer that question. Mr. Toy also reported that the October 2009 Michigan Bar Journal will have an environmental theme and that Section Members should be prepared to supply articles.

6. CHAIRPERSON'S REPORT

Susan Topp reported that the American Bar Association wants to conduct a joint program with a focus on Region 5 EPA issues and that newsletter articles are needed to support this. Grant Trigger suggested that EPA's administration of RCRA and its effect on brownfield development would be an appropriate subject for such an article. Other suggestions were air and water issues, green energy, groundwater withdrawals and environmental justice. Topp appointed Grant to work with the ABA SREC on this. Topp also reported on the requests for assistance from the law schools student sections and section members as mediators.

7. NEW BUSINESS

Craig Hupp noted that a "mixer" will be held at Bodman's office with Section support to introduce students at Detroit area law schools to Michigan environmental lawyers. He encouraged attorneys from various firms to attend. It was suggested that different law firms offer to host this event from time to time.

8. OLD BUSINESS

John Tatum reported that there was a spirited discussion on the Listserve concerning whether the Pigeon River case or the Ray Township case should be selected for a Michigan Legal Milestone. This item will be discussed further at the June Council Meeting.

The next Council Meeting will be June 13 and 14, 2008 at Higgins Lake.

The meeting adjourned at noon. The meeting was followed by a one hour program during which Chris Dunsky, Gary Klepper of Conestoga Rovers & Associates, Ltd., and Administrative Law Judge Manager Gregory Holiday lead a discussion of the issue whether the head of an administrative agency is obliged to accept the unanimous recommendations of the agency's technical and legal staff. The discussion focused on EPA Administrator Stephen Johnson's denial of California's request for permission to regulate greenhouse gas emissions from vehicles.

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KEMP KLEIN
LAW FIRM

MEMORANDUM

To: Environmental Law Section Council
From: Patricia Paruch
Date: February 20, 2008
Re: Liaison Report – Real Property Law Section

1. The RPLS 2008 Winter Conference will take place on March 6-8 in at the Sofitel Hotel in downtown Chicago. Information concerning registration, program, and lodging is available on the RPLS website.

2. The RPLS 2008 Summer Conference will take place on July 16-19 at the Grand Traverse Resort in Traverse City. Preliminary information about the program and other conference details are posted on the RPLS website.

3. The RPLS is currently developing a partnership with the University of Detroit Mercy Law School. The purposes of the partnership are to provide UDM law students with possible writing projects in the real property area, to expose law students to practice opportunities in real property and land use, and to increase the number of new lawyers joining the Real Property Law Section upon graduation. Specific writing projects being discussed are brief writing when the RPLS receives a request from the Michigan Supreme Court for an amicus brief on a pending case, and article writing for publication in the RPLS *Review*. Specific details are still being worked out with an ad hoc committee of RPLS Council members and UDM administrators and instructors.

4. Two RPLS members participated in a recent “Ask the Lawyer” program on mortgage foreclosures produced by WJIM-Lansing. The “Ask the Lawyer” program is produced with the assistance of the State Bar (see the State Bar website for more information) and is simulcast on ten stations throughout the state. Call-in questions overloaded the telephone lines during taping of the mortgage foreclosure episode resulting in some technical difficulties, but overall the program was successful. A follow-up program is being discussed due to the overwhelming response to the initial program.

5. The RPLS is a co-sponsor of the Young Lawyers Section conference on May 15-17, 2008 at the Soaring Eagle Casino. RPLS speakers will present a section program on leasing issues.

6. The Young Lawyers Section is co-sponsoring the RPLS “Homeward Bound” program on December 4, 2008 on current issues in condominium law.