

**NEW YORK STATE BAR ASSOCIATION  
ENVIRONMENTAL LAW SECTION  
EXECUTIVE COMMITTEE MEETING**

**COOPERSTOWN, NEW YORK  
OCTOBER 3, 2010**

**MINUTES**

**Attendance:** Barry Kogut, Terresa Bakner, Kevin Reilly, Carl Howard, Gail Port, Melody Kight, Lisa Bataille, Walter Mugdan, Peter Ruppap, John Greenthal, Alan Knauf, Edward Premo, Rosemary Nichols, Wendy Marsh, Jean McCarroll, Michael Fogel, Brody Smith, Philip Dixon, Gary Bowitch, Marla Wieder, Janice Dean, Ylena Simonyack, Ruth Moore, Bob Feller, Telisport Putsavage, David Freeman, Miriam Villani, Ginny Robbins, Gary Abraham, Erica Powers, David Quist

**Treasurer's Report (Kevin Reilly)**

Reviewed Budget for Calendar Year 2011. Discussed role of the NYSBA staff in putting together the budget. The budget is conservative expecting a dip in dues and a decrease in sponsors. Meetings take up the lion's share of the budget. We are trimming AV expenses and are trying to be frugal. We have less flexibility for the meeting in NYC in January. Expenses are halfway through the budgeted amount. To date some additional surplus is anticipated.

**Section Chair's Report (Barry Kogut)**

Barry thanked everyone for hard work to get programs, event and sponsors together.

Barry thanked Miriam for managing the essay contest. Discussed the 2010 Essay Contest Winners that were announced at the dinner last night. There was a dramatic increase in participation particularly from Mike Gerrard's efforts at Columbia.

Approval of minutes of the May 19 meeting. Kevin Reilly moved, Gail Port seconded and all voted in favor of approving the minutes.

Barry Kogut, the Section Chair, reported on the regional programs in the summer celebrating the anniversary of DEC. Each meeting had a theme and an ethics program. The programs took place in many Regions except for two meetings that had insufficient signups. Barry talked about the meeting that included a trip on the Hudson River on the Clearwater sloop out of Beacon which had a view of Storm king—a visual representation of the environmental movement in New York State. That meeting also involved discussions of current DEC permitting proceedings on facilities related to the River such as Indian Point. One meeting also took the sloop out of the City and Walter Mugdan gave an on board presentation on the history of the remediation of the Hudson River by the dredging of PCB laden sediments. Barry mentioned Laurie Silberfeld who was of great help in setting up the program. Barry also showed photos of the Seneca Meadows

landfill and discussed the program tour of the landfill and nearby wetlands mitigation project on former farmland.

Barry noted that the Fall meeting PowerPoints will be placed on the Section website. Barry also discussed the organizations that sponsored the Fall meeting.

Section subsidization program, if you make less than a certain amount you can apply for the subsidy so you can participate. The ethics folks at the bar have confirmed that the subsidization program is fine since it covers any attorney who meets the criteria and applies for the subsidy.

Discuss of planning for the Annual meeting in January in New York City. Tentative title to date is “Climate change--making a house from brick--what can we do.” The CLE presentations will include one on the Nuts and Bolts of green building. Richard Fedrizzi will speak at the luncheon he is the founding chairman of the U.S. Green Building Council. Other topics may include “Sea Level Rise Task Force issues” and the SEC ruling on any required reporting for climate change or GHG impacts on company finances.

Barry indicated that Thursday night format will include the traditional EPA update (with CLE credit given by EPA), the annual meeting of the Section potentially including announcing the winners of the minority fellowship, results of the nominating committee report (TMB, Lou Alexander and Janice Dean) and then the reception which will be open to all members of the Section.

In support of the effort to continue the reception, a motion for \$5,000 for the reception allocation was made. As in previous years the Section will seek to have the law firm sponsor the reception. This motion was made by Erica Powers and seconded by Phil Dixon. To encourage participation the reception at the Hilton will be open to all Section members. Based on comments by Gail and Ginny the amount was amended and the motion was changed to increase the amount to \$10,000. Lisa is going to do a save the date so that everyone knows that the reception and annual meeting will be on Thursday. The amended motion was approved.

Terresa Bakner reviewed the discussion at the audio conference on compliance with Lobbying act and gift rules that took place on September 23, 2010. Lisa also discussed the audio conference. Barry shared his concern about not having guidance for volunteer leaders to follow with a degree of certainty rather than on a strictly case by case basis on these issues.

John Greenthal talked about the discussion of this issue that occurred at the delegates meeting. John thinks that we are out in front of this issue (i.e. more careful to comply) in comparison to other sections. The Section cabinet will be careful to work with Bar staff to ensure that all ethics and lobbying requirements are met.

Barry Kogut discussed the proposed bylaw amendment – elimination of the second vice chair position. This will make it easier to get people to participate—a five year commitment is just too

long. No defined role for the second vice chair position. Wendy Marsh moved and Ginny Robbins seconded the motion. There will likely not be a new officer proposed by the nominating committee, just a re-approval of the slate. It will likely be Howard as vice chair, Kevin as treasurer, Terresa as Secretary. Phil will automatically move to Chair from first vice chair. The discussion of the proposal was favorable. All voted in favor of the amendment to the bylaw.

Meetings with DEC counsel—Barry is going to get those restarted and the tentative agenda will go out to the EC. Looking to meet in November. Please send Barry issues and topics to make part of those discussions. There will be a report back to the executive committee.

Webinars—more webinars/webcasting will be the goal. In particular there is a seminar on environmental insurance coming up and it will only take place in NYC. Efforts will be made to have the seminar and/or materials available afterwards for people buy them. It worked well for the petroleum symposium. If you are doing CLE please work with the Bar on this issue well in advance of the meeting. Alan asked Lisa if the petroleum symposium was still available to get CLE credit. Lisa is checking to see how you get CLE credit. Lisa will also check to see if the petroleum symposium information is still available.

SEQRA statute of limitation. The section would like to see this conflict of rulings get resolved one way or another.

The DEC update had to be cancelled as John Parker was unable to attend the meeting. John called Barry earlier in the weekend to let him know he could not be there or send a substitute. Barry reviewed some issues including Smart growth, the SGEIS and hydraulic fracturing in the Marcellus Shale and Budget impacts. Discussion of proposed 209 layoffs at DEC and the sections' response. Impact of layoffs on economic development. Barry requested permission to send a letter sharing the sections view that these layoffs are not a good idea. This also came up at the Region 8 meeting. Gail suggested that the section put together an agenda for discussion issues with the new governor's counsel. Ginny suggested that we may wish to partner with Patty Salkin perhaps on this issue.

Terresa made a motion to authorize Barry to draft a letter to raise objections to the lay off of 209 more people at DEC, the motion was seconded by Phil Dixon there were two friendly amendments offered, that Barry have the cabinet review the letter before it goes out and that the significant impact that this will have be emphasized along with the economic impacts of having substantially fewer DEC personnel to interact with. The friendly amendments were accepted and the proposal was voted upon. All voted in favor with three executive committee members abstaining and not participating in the deliberations—Ruth Moore, Janice Dean and David Quist, all attorneys who work for the State of NY.

**Delegates Meeting (John Greenthal)**

John discussed a new proposal to govern registration of in house counsel working in NY but admitted to practice in a jurisdiction other than New York. This would allow them to advise the corporation in NY (cannot advise any other clients or appear in court) until they no longer have the position with the company as in house counsel. This was discussed among the section members including the general issue of reciprocity. It will be voted on at the annual meeting and John asked for a sense of the group, of those present only one had questions and concerns the rest of the group were generally favorable to the proposal, if any one has any further comments please send comments by email to John Greenthal before November 6. John will reach out to the co-chairs of the corporate counsel committee – Hallman and Rusk.

### **Membership Committee Report (Janice Dean)**

Janice indicated that demographically we need to get younger members. We also need to get more members. We should all bring in one more member. Janice also worked hard to get students and younger members present at the fall meeting. Discussion about how to make things easier for people coming up from NYC, such as ride sharing, carpooling, and access to public transportation. Making alternate lodging available that is less expensive. The membership committee will run point on these issues and try to offer alternatives for people.

Gary Bowitch suggested that we incorporate programmatic changes to include people. Something more formal. Introductory program before the cocktail hour perhaps.

### **Green Guidelines (Carl Howard)**

It is a work in progress, a lot of it is already being done. Journals will be by electronic format rather than just hard copy. People make the choice whether they want to receive it electronically. Carl amended the guidelines to reflect that people will have to indicate their choice rather than being have the choice default to “electronically” to address Lisa’s concerns. Meeting notices will be sent out electronically. Use buying power with hotels to urge them to adopt green guidelines. Can we use the website to encourage share riding and carpooling, as well as encouraging off site participation. For meeting materials distribute outlines in hard copy but post other materials on the website. Books are getting smaller and power points are up on the web. The suggestion was made to post materials on the website ahead of time so people can download the info and bring it if they wish. Take the green guidelines to your offices and to our homes. Carl Howard moved the guidelines, Erica Powers seconded it. The guidelines were approved.

### **Climate Change Committee (Virginia Robbins)**

The materials from Ginny’s Friday presentation will be posted on the website. Ginny suggested that the EC follow the proposed legislative changes on climate change at the federal and State level.

**Committee on Brownfields (Dave Freeman)**

Dave suggested that the issue be discussed with Alison Crocker, DEC General Counsel, and whether the section can develop a proposal to address the brownfields issue.

**Land Use Committee (Rosemary Nicols and Ed Premo)**

Rosemary and Ed are looking at the new infrastructure smart growth legislation. They are going to have a committee meeting by telephone conference to follow up.

**Petroleum Committee (Gary Bowitch)**

Gary has an idea for an April symposium to discuss topic areas and hypotheticals based on real cases as discussion topics. The idea is to have a roundtable discussion of selected issues. Bob Feller suggested getting the governmental side involved as a follow up to the previous symposium. Allan Knauf was optimistic about the Oil Spill Fund's involvement in the last symposium. Discussed ways to increase interaction with DEC and with the AGs office.

Fall meeting in 2011 at Gideon Putnam jointly with the Municipal Law Section. Third weekend in October - a save the date will be sent out.

Need some planning on the Legislative Meeting for the Spring 2011.

Meeting adjourned at 11:15 a.m.