

## MINUTES OF COMMISSION MEETING

May 17, 2001

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey were Commissioners Albert Burstein, Hugo Pfaltz, Jr., Vito Gagliardi, Jr. and Peter Buchsbaum. Professor William Garland and Grace Bertone attended on behalf of Commissioners Patrick Hobbs and Rayman Solomon, respectively.

Also attending were Michael Ticktin of the Department of Community Affairs and Charles Centinaro of the Office of Governor's Counsel.

### Minutes

The Commission asked staff to correct the Minutes of April 19, 2001: (1) insert month of year (March) under heading "Minutes;" (2) correct misuse of singular "for example" in first paragraph of hearing "New Project;" and (3) rephrase last sentence in fourth paragraph of "New Project" to state that tax foreclosures involve bidding on interest rates on the taxes. The Commission then approved the Minutes as corrected.

### Recordation

John Cannel explained that Professor Garland had identified an issue requiring clarification in the draft report: at what time is a document treated as recorded given the fact that the proposed statute give the clerk a two-day grace period to record documents. He and Professor Garland proposed that the draft should clarify that the effective date is the date stamped on the document not the later date including the grace period. The Commission asked Mr. Cannel to incorporate that principle in TR-5(b) and OE-1: "shall from the time stamped on the document."

TR-1. The Commission also asked Mr. Cannel to alter the language of TR-1(b)(1) to include "deeds and other conveyances" and to use the disjunctive "or" consistently throughout that section.

OE-2. The Commission found the language of this section confusing. The section deals with the effect of unrecorded documents against judgment creditors and purchasers who have recorded. As written, the section permits the interpretation that the unrecorded document can beat the judgment creditor or purchaser even if recorded later. Language along the following lines was suggested: "An unrecorded document affecting title to real estate is ineffective against a judgment creditor and bona fide purchaser who have recorded their

deed or mortgage and who do not have notice of the unrecorded document." However, the current phrase, "without notice" is a term of art having a particular meaning within the case law and should be preserved. The Commission asked Mr. Cannel to look at decisions and to prepare a memorandum on this section making clear the intended meaning.

The revision should not alter the rule that New Jersey is a race notice state, that is, the first to record has priority. This principle is set forth in OE-1. This rule is mitigated by the power to record a notice of settlement. The Commission asked Mr. Cannel to include a discussion of the effect of notices of settlement in his memorandum.

The Commission then discussed the effect of recorded but inaccurate documents of title. Current law provides that if a reasonable search would have revealed the document, then it is effective despite its inaccuracy. The rule of the recording officer's mistake places the risk upon the purchaser searching the records, not upon the person recording the original document. Professor Garland opposed the current law because the party in the best position to identify the error is the person recording the document, not the person searching the land records. Professor Garland stated that the person who records the document might do a search to verify that the document was recorded and indexed; title companies in fact routinely do these searches. A buyer then is protected from the recording officer's mistake if the buyer has title insurance. Commissioner Bertone stated that a title policy would not be issued without the continuation search. The Commission asked Mr. Cannel to research the cases and prepare a memorandum on this point of law.

#### Abandoned Building Rehabilitation Act

John Burke stated that the memorandum prepared for the meeting identified many of the laws governing unfit buildings, demolition and rehabilitation of buildings. The statutes contain many laws addressing the problem of under-maintained buildings. Commissioner Buchsbaum found the statutes inconsistent and the remedies scattered throughout them; he preferred reorganizing and updating them. Most current law deals with demolishing buildings not rehabilitating them.

Mr. Ticktin stated that the Commissioner of Community Affairs has the authority to order the demolition of buildings at the request of local authorities. He stated that an important statute, not noted in the memorandum, is N.J.S.A.

55:19, the New Jersey Urban Development Corporation Act that permits municipalities to plan urban renewal projects. However, with respect to demolition, the major issue is lack of funding. The law is sufficient and provides adequate mechanisms to alleviate abandoned properties, but, at the municipal level, funding is inadequate. To some extent, the Demolition Bond Act has mitigated this problem by providing a source of funds to finance demolition projects. An economic impact of abandoned buildings upon surrounding property by fixing their exteriors rather than knocking them down. Again, the major impediment is lack of funding.

Commissioner Buchsbaum noted that the scope of the project goes beyond the demolition of buildings and addresses problems associated with the rehabilitation of abandoned or occupied buildings; the range of remedies available to the municipality to compel the renovation of existing residential and commercial property and the sale remedy transferring ownership of the property to a party willing and able to undertake its rehabilitation. The statutes are archaic and inconsistent in approach; some give the right to sue other liens. Improvements to the law might make an economic difference given the current climate in New Jersey cities.

Commissioner Gagliardi noted that the law appears to be underutilized because of lack of funding. He asked what mechanisms the Commission could put in the law that would make a practical difference since enactment of the statutes does not solve the problem. Commissioner Pfaltz broached the idea of establishing a revolving fund replenished by the projects themselves. Mr. Ticktin pointed out that there is a 1944 law establishing a public housing development authority to complete housing projects; but it is under-funded and contains obsolete provisions, including one limiting rents to \$10 per month.

The Commission then discussed the best level of government to deal with the renovation of buildings. The counties lack administrative structure and appropriate taxing authority. The state level has the resources but is remote from local problems. The municipality is best situated, has the interest and the structure, but lacks the money to finance the projects.

Mr. Ticktin stated that there would be no problem with a consolidation, reduction and re-organization of current law to provide a coherent statement. The new statute could provide a broader trigger, a private remedy and revolving fund. The new statute might provide for automatic application of the law and funds to specified municipal property if certain criteria are met. The

rehabilitation sub-code has spurred substantial renovation. The construction code impeded that renovation by requiring that all buildings meet the standards of new construction that made projects prohibitively expensive.

Commissioner Gagliardi stated that the most vital idea was that of the private remedy since private parties were the ones most likely to take the initiative to rehabilitate buildings. If that were to happen, municipalities might notice that activity and ask the state for money to participate in similar projects. The main issue, in Commissioner Gagliardi's view, was which party would be most likely to act upon a plan to rehabilitate a building. Making applications to the state for funding and resources was not likely to spark initiative and produce any tangible results. The Commission agreed that the private remedy open to profit and non-profit persons was an important aspect of the project.

Mr. Ticktin stated that most buildings authorized to be demolished are already publicly owned. He did not know the percentage of buildings approved for rehabilitation. Mr. Cannel noted that the project would deal with buildings that still have value and are not candidates for demolition.

The Commission asked the staff to prepare "more than a memo and less than a draft" containing the broad outlines of the ideas discussed: the governing authority, potential remedies, demolition criteria, rehabilitation criteria and critical steps in the process. As to due process, the Commission noted that, in some cases, court approval was needed; in others, an agency proceeding might be enough. Extending transfer remedies to individual properties rather than to an entire area or municipality was an area for statutory revision.

#### Election Law

Judith Ungar reported on the meeting she and Mr. Cannel had with Peter Incardone, Jr., Chairman/Commissioner of the Bergen County Board of Elections. Bergen County has purchased modern voting machines for the entire county at a cost of about six million dollars. Mr. Incardone urged removal of voting provisions in NJS Titles 28 and 40 and their inclusion in Title 19. He did not mention any specific statute that he would recommend revising. There are two parallel structures in the county for elections: one for conducting the election and the other for voter registration. When asked about state involvement, Mr. Incardone believed the state should have the larger role in the election process. The question of which state agency was a separate problem.

The number of provisional and absentee ballots is increasing markedly with each election; that issue must be addressed. The friction stems from voter registration, change of address and right to vote in a particular district. Existing law requires county board of elections to clean voter registration records but generally the election boards do not do this. Mr. Ticktin proposed a statewide registration database. Two counties, Salem and Sussex, still use paper ballots. These counties would be most likely to accept state involvement and update their election procedures.

The Commission decided that there should be a state structure deciding approved methods. Funding and administration should be at the county level. The state level authority would have the powers now exercised individually by the counties. The Commission asked staff to prepare a statute along those lines.

The Commission believed that the time was right to address the question of statewide voting standards in view of the latest federal presidential election. It was therefore likely that the Legislature would take up the problem of resistance at the local level. The elections laws do not work well in the field. In addition, federal funds may be available for new machines.

#### Legislative Update

Mr. Cannel informed the Commission that Article 9 of the UCC was conditionally vetoed by Acting Governor DiFrancesco, and that UETA had passed both houses and was ready for signature by the Acting Governor. There did not appear to be any opposition to the signing. The Commission asked Mr. Cannel to prepare a memorandum identifying Commission bills pending in the Legislature, their status in committee, the reasons why they are being held up and suggestions for resolving objections.

#### Miscellaneous

The next Commission meeting is schedule for June 21, 2001.