

**MINUTES OF COMMISSION MEETING**  
**February 15, 2007**

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Chairman Vito A. Gagliardi, Jr., Commissioner Andrew O. Bunn, and Commissioner Sylvia Pressler. Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

**Minutes**

The Minutes of the January 18, 2007, meeting were unanimously approved as submitted after a motion by Professor Garland and a second by Commissioner Bunn.

**Title 39**

Chairman Gagliardi requested that Staff contact Mitch Sklar, the Executive Director of the New Jersey Association of Chiefs of Police, as that Association is interested in reviewing the project and commenting on it at this time.

**Criminal Code Causation**

John Cannel explained initially that he had made the change requested by the Commission, dividing subsection (c) into 2 parts.

Commissioner Pressler suggested that in subsection (e), for drafting purposes, the Commission should stay as close as it can to the language of the code itself. As a result, the subsection should read "the element has not been established unless the result is a reasonably foreseeable consequence of the actor's conduct and not too remote"

Professor Garland asked if the language of the draft should read "voluntary" rather than "volitional". After discussion, the Commission determined that it would remain "volitional" as a result of small differences between the definitions of those two terms.

The Commission agreed to distribute the project as a tentative report, with the distribution to include the criminal practice committee.

**Municipal Land Use Law (C and D variances)**

John Cannel indicated that he has received a recommendation that the draft of this project be sent to League of Municipalities.

Commissioner Pressler indicated that before any distribution was done, the Commission needed to review the matter since she was not sure that the approach taken during drafting was the correct one. She explained that there is considerable case law pertaining to the C and D variances, and that if that section of the statute was rearranged,

as was done in the draft offered for consideration at this meeting, the references in the case law would be lost and it would not be easy to search on the subsections to locate the pertinent case law. Commissioner Pressler suggested that the Commission make the clarifications deemed necessary, but do it in the context of the current structure.

Moving to the specifics of the statute, Commissioner Pressler said that there was considerable debate regarding the purpose of the (c)(2) variance. She explained that it was initially supposed to be a special reasons bulk variance, but no one refers to it in that fashion any more. Instead, it is a bulk variance that uses the special reasons analysis of subsection (d). Commissioner Pressler noted that the statute would be easier to structure if subsection (d) went first, but did not believe that was a good idea from a practical perspective. She said that subsection (c)(2) was meant to address situations in which the applicant for a variance did not have an odd shaped lot but that the change they proposed to their lot was a good idea. Commissioner Pressler suggested that subsections (c)(1) and (2) did not have to be maintained in their present form, but should be clarified and restructured to make it clear that those sections cover two different scenarios, one in which there is an awkwardly shaped lot, and another in which the variance applicant is proposing a good idea. She suggested defining the “special reasons” in subsection (d) as the affirmative criteria, which is the promotion of the desiderata of zoning, and the negative criteria, which is that what you propose does not interfere with the goals of zoning as set forth in the statute. Commissioner Pressler also noted that for an “inherently beneficial use”, they are said to meet the positive criteria, but the applicant still has to meet the negative criteria.

Mr. Cannel said that the sections could be rearranged to make sure they retain their (c) and (d) identifiers. Commissioner Pressler suggested that subsection (c) had to start with the language "Except as otherwise provided by". Mr. Cannel said that further drafting needed to clarify that if a variance application can be brought under subsection (d), it must be brought under (d), and said that he would make sure that subsections (c) and (d) retained their letters. For drafting purposes, Commissioner Pressler recommended that subsection (d) start with (d)(1) applicability, then move on to the substance of the subsection. She said that subsection (c) should also start with an applicability section, which would distinguish between the oddly shaped lot option and the “good idea” option, and then move on to the criteria, then the procedure (the number of votes required, etc.)

Professor Garland asked if there was a reason that the subsection (c)(3) variance uses the terms "extraordinary and exceptional". Commissioner Pressler responded that the term “extraordinary” should not be included. Commissioner Bunn said that subsection (c)(1) should include a reference to size.

### **Poor Law**

Mr. Cannel provided details for the Commission of the meeting between Commission Staff and a large group of individuals from the Department of Human Services as well as county and municipal welfare agencies. He explained that, during the

course of the meeting, which lasted several hours, Staff was able to review a great deal of material (basically covering all of the substantial first chapter of the existing law), and, as a result, was very pleased with the progress of the meeting.

Mr. Cannel explained that the first issue raised in the meeting was the change in the existing nomenclature. It was explained that the terms that were changed are taken from the federal law. As a result, the next draft will revert back to the original language. Mr. Cannel explained that the state and local welfare officials recommended that certain provisions of existing law not be eliminated.

Mr. Cannel indicated that the next meeting is set for the last week in February, at which time Commission Staff hopes to review a number of smaller chapters, specifically chapters 2-8 which, taken together, are shorter than chapter 1. After that, there are some chapters that will be of considerable significance and will require more time. Mr. Cannel said that, from the perspective of Staff, the meeting went very well. He explained that the individuals in attendance at the meeting caught errors and pointed out issues as a result of their extensive experience with the statute that Commission Staff might well have missed. He said that he had explained to those in attendance at the meeting that Staff would bring their suggestions back to the Commission, and that he thought that the Commission would be very responsive to their concerns and requests for modification of the draft language.

Mr. Cannel indicated that a new draft will be provided to the Commission for the next meeting which will indicate the changes made at the request of welfare officials.

Commissioner Pressler asked if the term used could be “public assistance”, rather than “poor law”.

### **Potential New Projects**

Ms. Tharney raised the issue of Title 22A, the statute concerning civil fees. She briefly summarized some of the areas covered by the law, and noted that while some of them were kept relatively current, court filing fees, for example, there were areas of the statute that had not been updated since 1953, and which contained unusually low fees and even terminology that was no longer used (counselors and folio, for example). She suggested that if those sections of the statute were no longer in use, perhaps it might be appropriate to remove them.

Chairman Gagliardi asked who the constituency would be for such a project, and Commissioner Pressler said that the Administrative Office of the Courts would be the constituency and that Jane Castner would be very knowledgeable about this area and that Staff should contact her. Chairman Gagliardi requested that Staff contact the AOC to determine if there was support for such a project before beginning any work.

Mr. Cannel said that if any Commissioners had any suggestions, now would be a good time to initiate some new projects. He said that there is a fair amount of work to be

done in Title 2A that Staff could begin with. Commissioner Pressler said that Title 9 would benefit from revision. Mr. Cannel said that Staff could take a look at it, but there were problems of reaching a consensus on basic issues in the title. Chairman Gagliardi said that Staff could consider some smaller “clean up” projects at this point.

### **Miscellaneous**

The next meeting of the Commission is scheduled for March 15, 2007.

A motion to adjourn was made by Commissioner Pressler and seconded by Professor Garland.