



Maryland Municipal Attorneys Association

Lynn Board, Acting President; Frank Johnson, Secretary; Jason DeLoach, Treasurer

MINUTES FOR MAY 9, 2019 MMAA MEETING

APPROVED JUNE 24, 2019

The Thursday, May 9, 2019 MMAA meeting was held at Fisherman's Inn at Kent's Narrows, Maryland. Judge Brynja Booth, who had been serving as President, called the meeting to order at 12:22 p.m. She welcomed everyone, but noted for the record that, with her appointment as Judge to the Court of Appeals and her service having started on April 18, she has formally resigned as an MMAA member and thus as President of MMAA. She noted Lynn Board has been nominated to serve as President for the next year starting at the MML convention in June and as Vice President will now be serving in that role on an acting basis until that time. She said she has enjoyed being part of MMAA and that we will always be close to her heart.

At that point, on behalf of members, MMAA Secretary Frank Johnson presented a plaque a plaque to Brynja to recognize her contributions as former MMAA President and in serving MML and municipal attorneys through her training presentations over the years. Lynn Board, MMAA Vice President and Acting President, then assumed presiding over the meeting, and also welcomed everyone. She asked everyone to briefly introduce themselves.

1. Minutes of the February 7, 2019 MMAA meeting were unanimously approved, on motion by John Barr and seconded by Jason DeLoach.
2. Treasurer Jason DeLoach reported \$2,328 in the MMAA checking account as of the last statement for April, which does not include any deduction for the costs for today's lunch. He noted we should decide at this meeting whether to continue the annual dues of \$50.00 per member, as of July 1. John Barr moved to continue the annual fees of \$50.00 per member, which was seconded by Elissa Levan and passed unanimously.
3. Secretary Frank Johnson also noted interest in updating the Code Enforcement Manual, published by MML in 2016, with the support of MMAA and the Code Enforcement and Zoning Officials Administration, into a second edition. Changes would include adding sections on service of process, especially for groups, HOAs and businesses, as well as noting the impact of this year's HB 515 which clarified that certified staff or attorneys can present municipal infractions cases. He also noted that because each of the district courts throughout the state handle municipal infractions in specific ways, and the goal would be to let practitioners know what to expect in each part of the state. In that regard, he noted it will be important to communicate both with district court staff statewide and attorneys actually handling these cases, and may call members for background information.
4. Acting President Board announced that nominations had been received for all positions and committee representatives for 2019-2020 – Lynn Board for President, Todd Pound for Vice President, Frank Johnson for Secretary and Jason DeLoach for Treasurer; and Eliot Schaefer as MMAA representative on the MML Legislative Committee, with Elissa Levan on the MML Board of Directors. A motion was made and seconded to close the nominations and accept the slate, which was passed unanimously, followed by a motion to elect and approve the nominees as officers for 2019/2020, which was duly seconded and unanimously approved by members.
5. We received a legislative update from MML staff (Justin Fiore, Director of Government Relations and Bill Jorch, Manager of Government Relations and Research) as well as Eliot Schaefer, MMAA's representative on the MML Legislative Committee. Justin started by noting passage of legislation enhancing opportunity zones, allowing a more robust tax credit program, which was meshed from 6 different bills and will require several agencies to operate. A bill will require housing elements in Master Plans, addressing affordable housing plans, as of October 2020. A Constitutional amendment to add environmental rights as a protected right has attracted some

interest from those advocating for strong environmental protections. The bill filed this year was extremely broad and would have expanded standing for almost anyone to sue local governments; it received an unfavorable vote in the House Judiciary Committee but may return next year. Bill noted that data privacy was an issue that arose late in the session, and would have imposed strict federal standards for data privacy regarding anyone, at a potentially extreme burden and high cost. He noted the law now requires reasonable standards in place to protect privacy, giving each entity some flexibility and takes into account available funding. While the bill failed this year, many expect it will come back next year, and MML will have workshop on data privacy at the summer convention. As to municipal infractions, HB 515 was passed to ensure municipalities can send code officers without an attorney to handle these cases in district court, as long as the agents have the required training certification.

Another bill will require that when any local government requires rental licensing, the applicant must certify that HOA and condo fees are less than 60 days in arrears to receive any local rental license. The fee shifting bill for constitutional claims was introduced again this year, and while our concerns were again rejected by proponents, the bill failed again. A bill that would have allowed broad disclosure of personnel records also failed; the intent was to disclose police personnel records but in the face of opposition the bill failed. Similarly, Anton's law, a bill allowing a person to receive information related to any police complaint filed against an officer, failed as it passed the House but died in Senate; as a consensus with police support, the bill will probably come back next year. A property tax bill paid to allow options for installment payments more often than every six months, if the local government wishes to do so, also passed, which also authorizes municipalities to authorize advance payment of property tax. A bill requiring municipalities to notify property owners of all tax changes, including regarding any vehicle inventory tax, also passed. Lastly, as to small cells, MML's priority, a summer study was passed and Bill noted they have received no word yet as to future meeting, but will inform members and noted another effort to pass similar legislation may be made next year. He also noted municipalities need to have rules and laws in place to be ready when the providers come forward to us with application sites. Lynn Board also noted that as to federal litigation regarding the FCC, the Ninth Circuit case has aggressive scheduling, with briefing in October/November, and also warned members that the FCC now starting discussion on considering some pre-emption of zoning authority, in addition to limiting authority to control rights of way, but no formal initial action has yet been taken.

6. Judge Booth introduced Judge Christopher Kehoe, who has served on the Court of Special Appeals for a decade and before then had been town attorney for Easton for about 25 years. She noted he was a mentor of hers and has a wealth of knowledge about municipal law. Judge Kehoe noted a listing of cases he found interesting from the local government point of view, and highlighted details of a few for us. He first noted the case holding in Wilfredo Rosales v. State of Maryland, in which the Court of Appeals held that the 30-day appeal deadline is no longer a jurisdictional time limit but a deadline subject to waiver by the court or based on actions of the parties. He also noted the Court of Appeals decision in Town of Forest Heights v. MNCPPC, in which the Court found that a change in assessment of properties in the 1970's did not, based on legislative research, also mean a change in the annexation consent requirement or that owners of public or nontaxable land were now to be included in the 25% consent requirement. He also noted the WV DIA Westminster, LLC v. Mayor and Common Council of Westminster decision in which the Court found a zoning decision by the Council was quasi-judicial, but still denied the appeal as the zoning decision was justified. Judge Kehoe also noted that in Johnson v. Francis, punitive damages were allowed in extreme claims under the Local Government Tort Claims Act, and that while in Washington County v. Perennial Solar the Court found pre-emption, the Court did not do so recently in Montgomery County v. Complete Lawn Care.

7. Acting President Board noted MMAA would be holding its summer meeting at the normal place and time, at the Convention Hall in Ocean City during the MML Summer Convention on Monday, June 24, and we'd have a presentation on the recent update on the Amicus Brief participation process as well as a roundtable discussion. She thanked Judge Kehoe and everyone for attending, and with no further issues for the good of the order, adjourned the meeting at 2:18 p.m.

Frank Johnson, Secretary