

# Common Interest

The Official Publication of CAI-Connecticut

Vol. XV: Issue 7 • 2020



CONNECTICUT CHAPTER

community  
ASSOCIATIONS INSTITUTE

*Inside:*

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## **TREES: The Health of New Plantings Versus the Desire for Privacy**

## **CRAWL SPACE VENTILATION**

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### Who Is CAI?

The Connecticut Chapter is one of 63 Community Associations Institute chapters worldwide. CAI-CT serves the educational, business, and networking needs of community associations throughout Connecticut. Our members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to associations. The Connecticut Chapter has over 1,200 members including nearly 150 businesses, and over 450 community associations representing 50,000 homeowners.



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To submit an article for publication in *Common Interest* contact Kim McClain at (860) 633-5692 or e-mail: kim@caict.org.

## President's Message



Reggie Babcock

*“Zoom is wonderful, and we necessarily will continue to depend on it and other electronic communications for the foreseeable future.”*

Greetings – Again and again, the staff and volunteers who work on behalf of CAI-CT amaze me. Despite the climate in which we find ourselves, we successfully just concluded two in-person events. One of the events was the golf tournament, the other a seminar at a brewery with social gathering outside. I have to say that it was gratifying to see so many CAI friends in person. Zoom is wonderful, and we necessarily will continue to depend on it and other electronic communications for the foreseeable future. But we still need real contact if it can be achieved safely.

The challenges mount as we enter colder weather. The Legal Symposium was held completely electronically. And perhaps the most important decision by the Conference Committee is our decision to go forward with the Conference & Expo in the usual timeframe in March, in electronic form! This initiative will rely on the same corps of volunteers to drive the event’s success. We have sampled electronic tradeshows hosted by other CAI chapters. The experience is a different one decidedly. The Committee will have to work hard to bring in the vendors and entice the other participants. We seriously considered alternatives – different dates and other formats. But in the end, we determined that we could control events better by going forward as we now have planned. You will hear more in the near future and hope that you will support CAI-CT in all of our efforts to surmount the COVID challenge. ■



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## From the Chapter Executive Director

**“When it comes to life the critical thing is whether you take things for granted or take them with gratitude.”**

~ Gilbert K. Chesterton



Kim McClain

Courtesy CAI-CT

A recent discussion on the radio was a reflection on what we have learned to both miss and also appreciate since the pandemic turned our world upside down. Kids opine about actually missing school. Office workers might dread the endless Zoom calls, but long for the camaraderie of being together in the same workspace. Perhaps when we find our new normal, we will have opportunities to be truly grateful for the experiences we may have taken for granted in the past.

At CAI-CT we are very thankful for our loyal members and our phenomenal volunteers. We have a bounty of hard working, energetic volunteers who strive to make our organization a strong anchor in these stormy times.

We continue to add new programs. I wish to draw your attention to the one we have on tap for December 8th. The holiday season is often stressful for many during normal times, no doubt this year will be especially challenging for even more of us. Our topic is: Minding Your Mind & Mental Health. We think you will enjoy it. Please plan to join us! ■



**Calling all  
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Be sure your listing is correct!

- **Member Managers, Management Companies & Business Partners:**  
Visit <https://www.caict.org/page/Directory> to proof your listing.
- **Member Homeowner Leaders:**  
Please update your listing by visiting <https://www.caict.org/page/2021AssDire>

## Errata:

In Issue #6 we included an out-of-date bio for Scott J. Sandler, Esq., CCAL. We sincerely apologize for the error. The correct bio appears below:

**Scott J. Sandler, Esq., CCAL** – Sandler & Hansen, LLC

Scott is the managing partner of Sandler & Hansen, LLC. From 2001 to the present, Scott has focused on representing condominium and homeowner associations. Scott is a fellow of the Community Associations Institute's College of Community Association Lawyers. He also has an AV Preeminent® rating. Since 2010, Scott has served as the chairman of the Legislative Action Committee of the Connecticut Chapter of the Community Associations Institute. He also serves as a member of the Institute's Government & Public Affairs Committee. Scott is a co-author the Connecticut Common Interest Ownership Manual (2nd Ed.), published by the Connecticut Bar Association. Mr. Sandler is a graduate of the State University of New York at Albany (B.A., Economics, 1997) and Quinnipiac College School of Law (J.D., 2000). While in law school, he was an associate editor of the Quinnipiac Law Review. ■

## Minding Your Mind & Mental Health

Tuesday, December 8, 2020 • 12:30-1:30 pm



The holidays can be stressful even without a pandemic! Join us to discuss coping skills/tactics to help build resiliency and find calmness.



Pricing: \$25 (CAI Members who sign into their account prior to registering will receive a \$10 discount)

(Approved for 1 continuing ed credit)

Sponsorships Available for this event. Contact [ellen@caict.org](mailto:ellen@caict.org).

## Jump Start January

Wednesday, January 13, 2021 12:30 – 2:30 pm



This is a two-part program designed for Community Association Managers and Business Partners.



Part 1 will feature the Nerdy BFF – Beth Z – who will help us How to be Human with Technology.

Part 2 will offer two different sessions. Managers will learn about collections, mechanics liens and breach of contract. Business Partners will go for a tour of our 2021 Conference & Expo!

Pricing: \$35 (CAI Members who sign into their account prior to registering will receive a \$10 discount)

(Approval pending for 2 continuing ed credits)

Sponsorships Available for this event. Contact [ellen@caict.org](mailto:ellen@caict.org).

## CONDO INC.

Saturday, February 6, 2021 – 8:30 am – 3:00 pm



Do you serve on the board of your association? Are you considering serving? Whether you are a seasoned board member, a recently elected board member or unit owner seeking to understand more about how an association runs, this course is for you!

Pricing: \$75 (CAI Members who sign into their account prior to registering will receive a \$25 discount)



## SAVE THE DATE!

### CAI-CT Annual Conference & Expo

Friday & Saturday, March 19 & 20, 2021

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Visit [www.caict.org](http://www.caict.org) to register and for updated information.



## Statutory Snippet...

**Board Meetings.** (1) at least two per year; (2) must be open to all unit owners (except for executive sessions) who must be given notice of the meeting as well as an opportunity to be heard. (C.G.S. 47-250)

*This is an excerpt from a Condo Inc. presentation given by Michael Feldman, Esq. & Kasey Burchman, Esq. of Feldman, Perlstein & Greene, LLC. Reprinted with permission.*

## Website & Virtual Insights – Your Membership and Facebook



**Y**our Membership (YM) powers our [www.caict.org](http://www.caict.org) website, email communication, registration and invoicing. When you log into your account you automatically receive discount pricing and can track your event registrations, invoices and continuing education credits. Update your address, email preferences and company/association details. Contact [ellen@caict.org](mailto:ellen@caict.org) if you need your password reset.

**Facebook** – Don't forget to Like and Follow CAI-CT on Facebook and be sure to invite your friends. Check out upcoming events, photos and connections! We don't want you, your associations or colleagues to miss a minute of the fun. ■

## NEW & RENEWING MEMBERS

### Welcome New Members

#### Associations

3000 Madison  
Loveland Farms Condominium Assn., Inc.  
Oronoque Village Condominium Assn.  
Sheltered Ponds Condominium Assn.  
Twin Lakes Condominium Unit Owners Assn.

#### Individual Managers

Thom Hansen, CMCA

#### Management Companies

Premier Property Management

#### Business Partners

Sweep Away Chimney Services, LLC

### Thank You Renewing Members

#### Associations

Castle Rock Owners Assn., Inc.  
Clearview Hills Assn., Inc.  
Clocktower Close Condominium Assn., Inc.  
Copper Square Assn.  
East Mountain Village Condominium Assn., Inc.  
Fairview at Oxford Greens  
Farmington Woods  
Fernwood Estates Assn., Inc.  
Forest Glen Condominiums of Middletown Assn., Inc.  
Glen Oaks Condominium No. 1, Inc.  
Harbour Village Condominium Assn., Inc.  
Heritage Sound Assn.  
Hopmeadow Place Condominium  
Kings Landing Owners Assn., Inc.  
Lexington Mews  
Newington Ridge Condominium  
Newtown Woods  
Northfield Green Condominium Assn., Inc.  
Pine Meadow at the Canal Condominium Assn.

The Preserve Condominium Assn.  
Quaker Green  
Seaside Village Homeowners  
Strawbridge Assn., Inc.  
Taylor Townhouse Condominium Assn.  
Tunxis Village Condominium Assn.  
The Village at Hunt Glen Condominium Assn.  
Wallingford Staffordshire

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Carina Bridgemohan  
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Jessica Didomenico  
JoAnn M. Dwyer, CMCA, AMS  
Jennifer Ferri, CMCA  
Elise Marie Geter  
Francesca Gregoriades, CMCA  
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Debra Rainone, CMCA, AMS  
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Deborah A. Roeder, CMCA  
Peggyann Routhier, CMCA, AMS  
Katrina Sharkis  
Benjamin W. Stueck, CMCA, AMS  
Thomas Peter Thomches, CMCA  
James Wakim, Esq., CMCA

#### Management Companies

REI Property & Asset Management  
Scalzo Property Management, Inc.  
Signature Properties of New England LLC  
The Windsor Management Company  
US Properties Realty, LLC  
White & Katzman Management, Inc.

#### Business Partners

Advanced Reserve Solutions, Inc.  
Association Dues Assurance Corporation  
Avidia Bank  
Bender, Anderson and Barba, P.C.  
CINC Capital, LLC  
Collins Hannafin, PC  
CondoCerts  
Feeney Insurance Associates, LLC  
First County Bank  
Gambardella, Cipriano, Gottlieb & Hathaway PC  
The Milford Bank  
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## Legally Speaking...



Adam Cohen, Esq.

## Legal Fee Reimburseals When Someone Else Must Pay the Association's Attorney

By Adam J. Cohen, Esq.

One of the most common questions clients ask their lawyers is whether they can force their adversary to reimburse their attorney's fees. The answer isn't simple.

Connecticut follows the "American Rule" which says that, most of the time, each side pays for its own lawyer no matter who prevails in the dispute. Various rationales have been offered for this rule, such as that a "loser pays" system would discourage valid claims, especially by the poor, or add unfair punishment after a close case. The rule does, however, have limited exceptions. Where either a statute or contract entitles one side to recover its attorney's fees from the other, a court will generally enforce it. In addition, a court might decide that actions or allegations of a party during the litigation were so unjustifiable that the party should be ordered to reimburse the attorney's fees incurred by the other side as a matter of equity. The courts exercise this power in only the most outrageous cases.

The overwhelming majority of lawsuits between community associations and their residents involve collection of unpaid assessments or to otherwise enforce provisions of the declaration, bylaws, or rules. The Common Interest Ownership Act (CIOA) does have a "fee shifting" clause which authorizes courts to make reimbursement of attorney's fees part of the final judgment in these cases. It simply says that "[a] declarant, association, unit owner or any other person subject to [CIOA] may bring an action to enforce a right granted or obligation imposed by [CIOA], the declaration or the bylaws. The court may award reasonable attorney's fees and costs." Whichever side wins can ask the court to award legal fees for either successfully prosecuting or successfully defending the case as part of the judgment.

Another section of CIOA is more strict against the community's original developer, or declarant. It says that the developer "is" (not just "may" be) responsible to reimburse attorney's fees whenever it is sued for many kinds of wrongdoing committed during the period of declarant control. Under that statute, if a developer loses a lawsuit accusing it of not properly expending the funds it collected for the association while under its control, the developer would be automatically responsible to pay the winner's attorney's fees in addition to repaying the underlying funds.

The fee-shifting provisions of CIOA do not, however, apply to litigation against parties who are not governed by CIOA, such as outside vendors. Any right the association may have to recover its



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*"The fee-shifting provisions of CIOA do not, however, apply to litigation against parties who are not governed by CIOA, such as outside vendors."*

attorney's fees for successfully bringing or defending such a lawsuit will depend on the language of the vendor's contract. For example, a contract that says a vendor can sue for its collection expenses including attorney's fees if the association defaults in payment generally would not allow an association to recover its own attorney's fees for defeating such a lawsuit by the vendor. Such a "one-way" fee shifting clause also would not apply to other kinds of litigation the association might bring against the vendor, such as for providing a defective product or shoddy services. Other kinds of contracts, such as most insurance policies, do not authorize attorney's fee awards in any kind of disputes between the parties. The language of the contract will control, so associations should read their vendor contracts carefully to determine whether they contain fee-shifting clauses at all, whether they are "reciprocal" or "one-way," and whether they apply to all or only certain kinds of disputes which might come up.

Other fee-shifting statutes may apply to different kinds of lawsuits. For example, various state and federal laws allow unit owners to add their attorney's fees to any damages recovered for racial, handicap, or age discrimination and similar illegal conduct by the association.

*[Continues on page 8.]*

LEGALLY SPEAKING...from page 7.

These statutes are often one-way, so the association might have to bear its own attorney’s fees even if it wins. In almost any kind of case, if a court believes that a defendant’s wrongdoing was deliberate or reckless, it may also award punitive damages which are typically equal to the amount of the plaintiff’s own attorney’s fees. This might apply in the case of a trespasser who vandalized a condominium’s facilities or a board member who embezzled funds.

Notably, even when a court is willing to order that a party’s attorney’s fees be reimbursed, the court will limit the award to a “reasonable” amount. The rationale is that a person and his lawyer can agree to whatever fee arrangement they wish, but the law will only hold the adversary responsible for fees which are reasonable under the circumstances. This determination will be made in light of the complexity of the matter, the amount of time the attorney devoted to it, the extent of the attorney’s expertise, prevailing rates in

*“The rationale is that a person and his lawyer can agree to whatever fee arrangement they wish, but the law will only hold the adversary responsible for fees which are reasonable under the circumstances.”*



the community, and other factors. A special hearing may be necessary to review these considerations. Very often, the court will reduce the attorney’s fee award at least somewhat, so as not to encourage more litigation.

Associations which are considering bringing lawsuits, or learn they are being sued, should talk to their counsel at the earliest stages about the likelihood of getting their attorney’s fees reimbursed by their adversaries. These discussions should also be considered during negotiations with outside vendors over the terms of their contracts and nearly any time the association is or might foreseeably become forced to pay for legal services in an adversarial situation. ■

*Adam J. Cohen is an attorney with the Law Firm of Pullman & Comley, LLC headquartered in Bridgeport, Connecticut. As the Chair of its Community Law Section, he represents and gives seminars to condominiums, tax districts, and other communities in matters ranging from revenue collection strategies to commercial disputes. He is also the author of regular newsletters with circulations throughout Connecticut called Special District Update and Condominium Update.*

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# CAI-CT 2021 CONFERENCE & EXPO

## TREND SETTERS!



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## Financially Speaking...



Daniel Levine, CPA

# State and Local Tax Obligations

By Daniel Levine, MBA, CPA

While there is much discussion about taxes at the federal level, there are a lot of different tax types out there. The state of Connecticut has multiple different tax types and individual towns can levy their own taxes as well. This article will look to highlight and cover some state and local tax types associations may not be aware of but could apply in their specific situation.

### Personal Property Tax

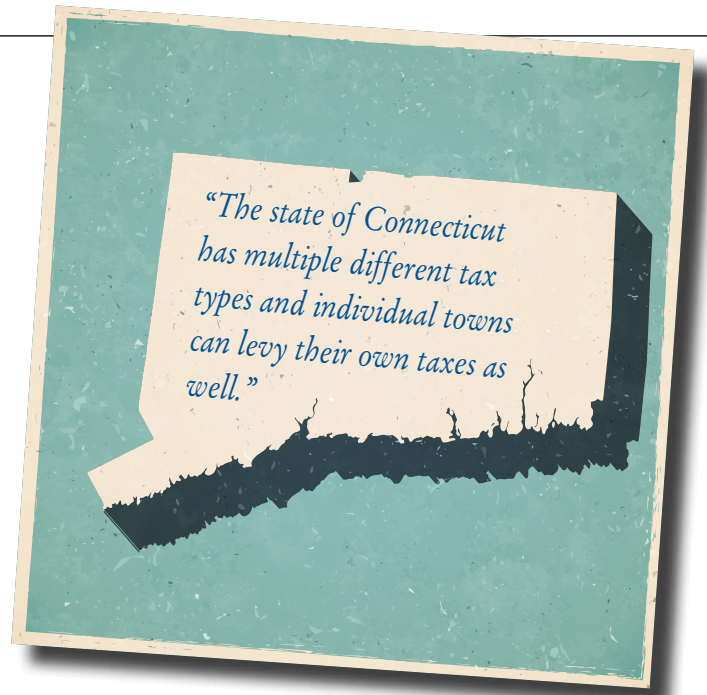
This is a tax that is levied based on the equipment and assets an association owns. For larger associations that have maintenance equipment, this might be a tax that they pay. The filing requirement comes from the town the association is located in. The calculation of this tax is determined by reporting total assets on hand at the start of the year, adding assets acquired, and subtracting assets disposed of during the period of 10/1 through 9/30 each year. Towns provide to associations a form for completion which is known as a personal property tax declaration to list these assets.

On this form an association lists all their equipment, vehicles, office supplies, etc. by asset class. These classes are further stratified by the year of their purchase date. Listing items in this manner allows the town to apply varying reduction factors to items which reduce the original purchase value of the item based on how old it is and what kind of item it is. This reduced value is then used when calculating the overall tax. The logic behind this is that different asset classes reduce their value at different rates (e.g. a computer vs. a desk).

The town takes these reduced values listed by asset class and determines the total value of assets held by the association which they then tax via the applicable mill rate. The town then sends the association an invoice for payment of this tax. There is no formal tax paid when completing the declaration. There are penalties for filing a late declaration which are typically a percentage of the assets listed which can be a large penalty in some cases.

### State Income Tax

While everyone is aware of the income taxes paid to the federal government, the association is also responsible for its state income tax obligations. As with previous articles where we have discussed the types of income tax filings available, the association's state income tax obligations depend on how they file their federal return. Should



bobblue/Digital Vision Vectors/Getty Images

the association elect to file their federal return under Internal Revenue Code Section 528 (filing form 1120-H) the association becomes exempt from the state tax filings. A return listing this exemption should still be filed, despite listing only zeros.

Should the association choose to file their federal return under Internal Code Section 277 (Form 1120), the association is still subject to taxation by the state of Connecticut. This state income tax is the highest of the following three calculations:

- 1) A flat \$250
- 2) 3 and 1/10 mills per dollar of minimum capital.
  - a. Minimum capital is calculated by determining the average equity of an association from using the amounts at start and end of the year. This average then has the mill rate applied to it to calculate the dollar amount of tax.
- 3) 7.5% of net income as defined by Connecticut taxation rules less the applicable carryforward losses.

The state income tax return is due a month after the deadline of the federal tax filing. The Connecticut Department of Revenue Service has also mandated electronic filing of corporate tax returns. To complete an electronic filing, an association will need to know its state tax

[Continues on page 12.]

## CAI-CT's Recommended Course for All Connecticut Community Associations



**CONDO, INC.**  
**The Business of Running Your Community**  
 Do you serve on the board of your association? Are you considering serving? Whether you are a seasoned board member, a recently elected board member or unit owner seeking to understand more about how an association runs, this course is for you!

Topics include:

- **LEGAL:** CIOA, Documents, Rules Enforcement, Meetings, Contracts
- **FINANCIALS:** Budgets & Financial Statements
- **CONTEMPORARY ISSUES:** Reserve Analysis, Long-Term Planning
- **INSURANCE:** CIOA, Risk Management, HO6 Policies, D&O Insurance



**February 6, 2021 • WEBINAR**

All sessions 8:30am-3:00pm  
 Members \$50, Non members \$75

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## Minding Your Mind & Mental Health

December 8, 2020 • 12:30 - 1:30 pm



Join us for an interactive session where we will discuss the current challenges our industry has faced as managers/leaders. We will discuss coping skills/tactics individuals have used during the past nine months that have helped to build resiliency in their personal and professional lives.

In addition, this program will discuss:

- Promoting resiliency and self-care in the workplace.
- How to continue providing support to homeowners while taking care of our families and ourselves.

**Pricing: \$25\***

*\*CAI Members who sign into their account prior to registering will receive a \$10 discount.*

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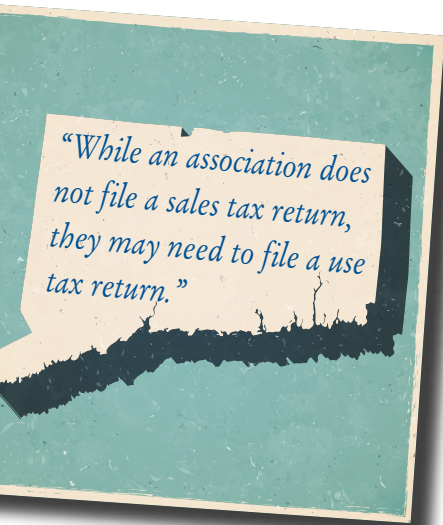
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**FINANCIALLY SPEAKING...from page 10.**

identification number. If no number has been issued, an association can file what is known as a REG 1 to apply for and be assigned a number by the state.

**Sales & Use Tax**

The last tax this article will highlight is the sales and use tax. This is a state levied tax most individuals are familiar with by paying it on their own personal purchases. Despite being a corporation, the association is also subject to sales tax on its applicable purchases. Sales tax is charged by vendors the association uses if those goods or services are applicable to the tax. Those vendors remit the tax to the State of Connecticut when they file their sales and use tax return and the association is not required to report the sales tax that they paid. Some service providers are exempt from charging a sales tax and therefore may have no tax listed on their invoices.



While an association does not file a sales tax return, they may need to file a use tax return. Use tax returns become relevant if an association is buying items that would normally be considered applicable to have sales tax charged, but the association was not charged the sales tax. This occurs typically when purchasing items from out of state. These types of returns are typically rare for an association where most goods and services are sourced locally but could be applicable in certain situations.

Being a residential community, the association can mitigate its sales tax obligations by completing and submitting to certain vendors a form known as a CERT 103. This cert lists what percent of units were not owner occupied and requires vendors of specific services to charge sales tax based on the percentage of non-owner-occupied units. Completing a CERT 103 annually can help an association save money on the amount tax that is being charged.

**Conclusion**

As can be seen, there are a wide variety of taxes that an association can be responsible for. Having a general understanding of taxes and when they are due and what is required to file can help an association stay compliant and avoid penalties. ■

*Dan Levine, MBA, CPA is a Certified Public Accountant at Tomasetti, Kulas, And Company P.C. Dan has extensive experience with tax and attestation services to condominium associations from all around Connecticut. Dan is an active participant in CAI-CT related programs and can be found presenting accounting best practices at these events throughout the year. Dan is also a member of our Legislative Advocacy Committee.*

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## Golf Tournament 2020

Like most things this year, activities are different, and our Annual Golf Tournament was no exception. However, the differences did not seem to interfere with the fun that all of our golfers experienced that day. While the event is normally held in June, we had absolutely glorious weather on September 24th. Our golfers seemed genuinely excited to be out on the links. Even teams with disappointing scores were still very much all smiles — beneath their masks of course! We switched up a few features of the tournament, but our 74 golfers had a great day!

Our Golf Committee had many COVID challenges, but they created a terrific tournament! Thank you to all! Save the date: Friday, June 4, 2021 for our next golf outing!

*Chairperson* - Carrie Mott, EBP - *Bowvier Insurance*  
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Our volunteers were wonderful! We wish to thank Alan Barberino and Deann Uberti for their photography creativity on the course. Licia Ciotti and Annissa Smith with United Property Restoration Services were superb registration and raffle sales people! We appreciated all of your great energy!



(above) Chas Ryan, Esq., *Pilicy & Ryan, P.C.*; Chris Townsend, *CSC Services*, Bob Mastroianni and Mike Famiglietti, *CM Property Management*



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*More pics on the next page...*

GOLF continued from previous page.



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## Manager's Column...



Rich Wechter, CMCA

### Being Practical, Part LXVI

# Trees: Health of New Plantings Versus the Desire for Privacy

By Rich Wechter, CMCA

In this column, we tackle various topics of interest with the intent of imparting practical advice. This issue's column looks at a subject that virtually all associations must address: the perpetual battle between the need to plant trees in a manner designed to best ensure the long-term health of new plantings against the privacy desires of residents. This is a topic that brings out many passionate comments from residents who live near the proposed plantings. We hope to explore this topic in an effort to better prepare board members and property managers for the likely battles that will breakout when trees need to be replaced.

#### A. Setting the Table on this Topic

During their sale of units and homes, developers are initially faced with a decision with respect to trees: Do they listen to their landscapers/arborists/landscape architects who advise developers to plant trees far enough apart for the long-term health of the trees or do they succumb to the demands of prospective purchasers who not only desire instant privacy but are prepared to walk away from deals without assurances of such instant privacy. Developers are then likely to cave into such sale pressures and, accordingly, plant trees closer to each other than appropriate. Once developers have completed construction of all units and have left the scene and after any warranties have expired, associations are left with plantings that are generally too close to each other. Within a relatively short time, many of these plantings are found to be in distress and Boards are then faced with decisions on these trees.

It is within this context that we begin our discussion of this matter.

#### B. The Competing Interests

"Until you dig a hole, you plant a tree, you water it and make it survive, you haven't done a thing. You are just talking." — Wangari Maathai

Once an association has a tree border separating units/homes from each other or from adjoining properties, residents view these tree borders as essential and take offense at any effort to alter these borders. In the likely event that such tree borders suffer from distress throughout the border, it is very difficult to convince residents that action must be taken with respect to these tree borders.

In cases where a particular tree needs to be removed, then a one-for-one replacement is usually acceptable to residents as long as the replacement tree is of a size worthy of taking its place next to the originally planted trees. However, where the distress found in a tree border is more systemic, the fun begins to convince residents that a much



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*"Once developers have completed construction of all units and have left the scene...associations are left with plantings that are generally too close to each other."*

larger number of trees need to be replaced, and, in some instances, the entire border requires removal and replacement.

In those circumstances where an entire tree border is in distress, a number of considerations come into play. Boards need to decide if the type of species must be changed due to conditions in a particular area. Developers do not often plant the correct species or plant a correct species properly. Upon the finding of extreme distress in a tree border, Boards have the opportunity to correct mistakes made by developers in the initial plantings placed at their association. Boards should rely upon the advice of the Association landscapers, arborists and landscape architects in the selection of the replacement plantings. A detailed plan must be prepared with all viable options offered and considered. Resident opinions should be solicited. However, Boards should not become paralyzed in making a decision since Boards are charged with making such decisions.

#### C. How to Avoid a Battle Over a Tree Border Replacement

An Association Board can follow all of the advice set forth in this article and still find itself in the middle of a battle with residents who

disagree with a decision made regarding a tree border. It just takes one resident to challenge a decision. In response to this very real likelihood, we offer a few suggestions for Boards and their property managers.

The first is to have all of your ducks lined up before making a decision. You need to have your consulting team fully engaged in the decision that was made and the implementation of same. Boards and property managers should not go it alone. If your association has a landscaping committee, utilize them in working on and endorsing any decision to dramatically alter a tree border.

The second suggestion is to secure the biggest replacement trees possible as to both height and width. If you have to replace a tree

*[Continues on page 20.]*

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MANAGER'S COLUMN...from page 19.

border, go for the gold with the size selection. You thus eliminate any argument that a Board “cheaped out” for budgetary considerations. It is worth the few extra dollars to secure a few more feet high and wide for the replacement trees.

The third suggestion is to select the best species for the particular location in distress. It is easy to succumb to pressure and replace the wrong species with the wrong species. It is much harder to pick a species that should have been planted in the first instance. However, the correct species is the one that will generally last longer and is the one that should be selected.

The fourth suggestion is to have the placement of the replacement trees made in the best interests of the trees, while pushing the envelope on the separation distance. This is a very difficult balance, but one that can be made with a lot of thought and planning.

The final suggestion is to communicate the thought process for the replacement project and decision-making effort as early as possible. Having a meeting at the replacement tree site is always a good idea before implementing a replacement plan.

#### D. Conclusion

The good news is that following all of the suggestions set forth in this article, Boards can generally avoid heated battles over tree replacements. The bad news is that even if all suggestions are followed, war may be declared over a tree border replacement. Ultimately a Board must make the hard decision for the best interests of their association, even if some residents do not support such decision. ■

*Rich Wechter, CMCA is Senior Vice President at Westford Real Estate Management, LLC. Rich serves as a Delegate member of our Legislative Action Committee.*



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### Conversion to Smoke-Free Condo is Possible

**M.H. from Fairfield County, Connecticut writes:**

Dear Mister Condo,

Our condo association was incorporated 2005. We never thought to ban smoking back then. Now we want to alter declarations/bylaws to ban smoking to future owners and tolerate present smokers. We’re told we need 100% compliance to do this. We’re looking for guidance. Thank you for any advice or suggestions.

### Mister Condo replies:

M.H., yes, the tides have certainly turned on smoking in general. As you can imagine, smokers are not likely going to agree to a non-smoking policy in their well-established homes. I am not sure what you mean by 100% compliance as a requirement but I think you mean 100% agreement to modify your Declaration and/or By-Laws. Without seeing your governance documents, I am not certain what requirements you have in place for document modification. I am also not sure why you would need to tolerate present smokers. If the buildings go smoke-free, that means no occupants can smoke. Contrary to popular belief, there is no “right to smoke” as so many smokers claim. In fact, second-hand smoke is very dangerous and, in High Density Housing (HDH) such as condos, it is commonly banned. The State of Connecticut’s Department of Public Housing (DPH) has an excellent resource page for you and your Board to review: <https://portal.ct.gov/DPH/Health-Education-Management-Surveillance/Tobacco/Smokefree-housing-for-Condos>. If you have questions about your procedures necessary to implement a smoking ban at your condo association, I would strongly recommend that you work with your association’s attorney. As you can imagine, placing a smoking ban won’t go over well with your smoking residents. However, with determination and perseverance, I have no doubt you can “clear the air” over smoking at your association. Good luck!

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## Fall Fun

Fall Fun was also quite different in 2020 – but also very cool! Our event was held at Hops on the Hill in Glastonbury, CT. This venue is on a bucolic farm a stone’s throw from the Connecticut River. However, proving, once again, that technology does not always offer assistance, several of our attendees were guided by their GPS to take the ferry across the river instead of the bridge. Sigh. Hopefully, the journey was pleasant, nevertheless.

We had fabulous fall weather! We began the event with an abbreviated Flash education program. All of our speakers were excellent!

The fun part was being outside while sipping freshly brewed beer, hard cider and other non-alcohol beverages. All the attendees appreciated being able to see friends and colleagues for real. The feedback was so positive that we already booked the same venue for next year. Save the date: September 29, 2021!

Our fantastic Fall Fun Committee did an excellent job of organizing all of the fun! We appreciate all their time and energy!

### Fall Fun Committee

**Chair:** Carrie Mott, EBP - *Bouvier Insurance*

Mea Anderson, EBP - *Crystal Restoration Services of Connecticut*

Licia Ciotti - *United Property Restoration Services*

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(right) Scott J. Sandler, Esq., Sandler & Hansen, LLC; Reggie Babcock, Westford Real Estate Management, LLC and Carrie Mott, Bouvier Insurance



## Annual Legal Symposium – Virtual Style



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Although our Legal Symposium Task Force needed to shift gears once we realized that an in-person event at the Marriott in Trumbull was not going to happen in 2020, they rose to the challenge brilliantly! We quickly realized there are some virtues to holding an event virtually. For example, all the sessions are now archived and can be viewed at leisure. In the past, only up to 4 CEUs were available. Given that the other sessions can be viewed online, it is possible to receive 8 credits if all sessions are properly viewed. Bonus! Also, typically, when we leave the event, we are bound to experience some type of traffic, or accident or other delay. Not this year! And no driving home in the pouring rain either!

One of the other features of Hopin, the virtual event platform we used, is the ability to ask questions in real time while the speaker's pre-recorded presentation is being viewed. We also like the ability to connect with attendees with a live video in a private meeting room. Very cool!

We are grateful to all of our speakers who patiently learned with us the many ins and outs of producing their presentations. It was also a great benefit to be able to have Dawn Bauman, VP CAI Government & Public Affairs and Scott Canady CAI's Federal lobbyist offer their insights and wisdom about the importance of advocacy and the issues they see on the horizon.

A big THANK YOU goes to all of our attendees! This was new to all of us and you all seemed to adapt really well. We genuinely appreciate your support and confidence in us to deliver quality programs.

Thank you to our Symposium Task Force: Scott J. Sandler, Esq., CCAL – Sandler & Hansen, LLC; Karl Kuegler, Jr., CMCA, AMS, PCAM – Imagineers, LLC; Rich Wechter, CMCA – Westford Real Estate Management, LLC; Andrea Dunn, Esq. – Bender, Anderson & Barba, P.C. and Mark Sperry – Fernwood Estates.

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Timothy Wentzell, P.E.

## TECHNICAL EXPLANATIONS

This column appears in each edition and is intended to touch on technical topics of general interest to common interest associations. Topics will be of a general nature, but I will also accept and respond to questions from readers. On occasion, it will be guest authored when topics can best be addressed by experts in other fields.

### Crawl Space Ventilation

By Timothy Wentzell, P.E.

I'm sure that the title of this column would capture very little interest unless, of course, one has this somewhat specific problem. The problem I'm referring to concerns the many buildings built in areas of the country such as Connecticut that were built over dirt crawl spaces because of high-water table or other issues. We have run into many of these situations over the years, especially recently, when building structures have been experiencing some fairly significant rotting issues, in particular, of the main carrying beams or (in some cases) the subflooring or (less frequently) the floor joists. The issue in these buildings is related to dew point problems in the structure, where, because of high moisture levels either emanating from groundwater or merely from the moisture in the soil on which these buildings are constructed, the crawl spaces are at high enough moisture levels that the wood in the structure stays damp enough to deteriorate at a much higher than expected rate. This can obviously cause failure of the entire structure. However, in most cases that we have seen over the years, the main carrying beams that typically run down the center of the building, because of their sandwich-type construction, hold the moisture for extensive periods of time and slowly rot, resulting in a situation where they either fail because of this rot or, more frequently, twist and buckle because of their loss of carrying strength. This issue is really not dissimilar from problems associated with indoor pools where, because of the high moisture load, the structure absorbs and holds enough moisture to deteriorate at a significant rate.

This problem can probably be best understood by examining the building code requirements for crawl spaces under structures, and from this we



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*“The International Building Code requires under-floor ventilation for any space between the bottom of the floor joists and the earth under any building...to be provided with ventilation...”*


will lead into the appropriate remediation techniques. The International Building Code requires under-floor ventilation for any space between the bottom of the floor joists and the earth under any building (except for spaces occupied by a basement or a cellar) to be provided with ventilation through the foundation or exterior walls. This ventilation shall be a minimum area of not less than one square foot for every 150 square feet of building area, which is fairly significant.

Interestingly, the building code goes on to offer some exceptions or modifications to these rules, where it states, “Where warranted by climatic conditions, ventilation openings are not required if ventilation openings to the interior are provided,” i.e., as in a useable basement. It is further modified by stating that the total area of ventilation can be reduced to 1/1500 of the under-floor area when the ground surface is treated with approved vapor retardant material. Later in this column, I will discuss how that can best be accomplished.

Lastly, the building code allows another exception for this ventilation when mechanical ventilation is provided that would supply a


*[Continues on page 31.]*

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*[Continues on page 30.]*

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**TECHNICAL EXPLANATIONS...from page 26.**

similar approach to the venting and when, once again, an approved vapor barrier is installed. In practice, this section of the building code has often been met by the installation of dehumidification systems, which, although not technically mentioned in the code, are generally assumed to provide a suitable lowering of the dew point, which ultimately is the concern of the building code.

The main point of an article on a problem as specialized as this must be the question of how a problem of this type can be resolved. As mentioned in the previous discussion of the building code about sealing the floor of the basement area, this is typically accomplished by one of two methods. The most common “old school” method is the installation of fairly heavy plastic (typically a six mil poly) with the seams taped and running up the walls and sealed as best as can be done in order to provide an effective barrier from the moisture that migrates through the soil. More recently, some firms have started to offer a rubber or plastic (typically PVC) liner, which acts very much like a swimming pool liner, where the seams are glued together and sealed against the wall areas and any penetrations in order to provide a very effective barrier to moisture migration. Either method, if done properly, can provide a reasonable barrier to moisture migration, which then allows for the very significant reduction in ventilation needed for a space such as this. This ventilation, by the way, can be very problematic in some cases where piping runs through basements that could be subject to freezing, which is often one of the reasons why insufficient ventilation was installed in the first place.

Another option concerns that ventilation. Certainly, either ventilation criteria could result in a suitable situation. However, the originally quoted ventilation requirements of the building code (one square foot for every 150 square foot of area) is often extremely difficult to


meet and can result in a system of vents, which appear as a cornucopia of vents along the entire foundation, that are needed in order to meet this criteria. However, the second criteria, where a vapor barrier is installed, results in significantly lower ventilation levels and is often fairly easily met.

However, the third option offered of conditioning the air in these types of spaces can also be a very effective solution, albeit fairly expensive. If the appropriate level of ventilation is not installed, an alternative is to install dehumidification systems that generally need to be low temperature units to operate in all seasons and which are inherently slightly less efficient and significantly more expensive.

As you can see from the options delineated in this column, the most important point to be made is that something needs to be done in these situations to protect the integrity of the building. Simply maintaining the status quo can frequently result in a building system where the slow deterioration can cause an incredible amount of damage to the structure, and the cost of repairing this damage can certainly be onerous. Probably most important is providing a vapor barrier, which is certainly required unless a very significant amount of ventilation is available, and which, as mentioned previously, can result in frozen pipes and other issues. Lastly, the decision between mechanical conditioning of the air (i.e., dehumidification) versus ventilation is somewhat subjective. This decision is often based on the space available for ventilating these crawl spaces and/or the preference of the Association, but, certainly, either one, if undertaken properly, can result in an appropriate humidity level in a structure. ■

*Please address any questions or areas of interest that you would like answered in future columns to Timothy Wentzell, P.E., e-mail: [CommPropEng@cox.net](mailto:CommPropEng@cox.net).*

*“...something needs to be done in these situations to protect the integrity of the building.”*



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