

**Report and Recommendation of the Lease Negotiation
Committee
on One Elk Street**

June 10, 2021

David P. Miranda, Chair
Michael J. McNamara
Sandra D. Rivera

House of Delegates Agenda Item #6

Whereas, the New York State Bar Association and The New York Bar Foundation are parties to a lease, as tenant and landlord respectively, for property at One Elk Street, Albany, New York, that ends on December 31, 2021; and

Whereas, the Association and Foundation have concluded negotiations regarding future use of One Elk Street; and

Whereas, the Association President signed a Memorandum of Understanding with the Foundation on May 20, 2021 calling for the transfer of One Elk Street from the Foundation to the Association subject to, inter alia, the approval of the Association's House of Delegates;

Now, therefore, it is

Resolved, that the House of Delegates hereby approves the May 20, 2021 Memorandum of Understanding, subject to the terms and conditions set forth therein and the provisions of this Resolution:

Further resolved, that the Association President is authorized to conduct necessary due diligence, including but not limited to obtaining the written opinions of counsel regarding any tax implications, fundraising matters, and approval of the Attorney General concerning the proposed transaction;

Further resolved, that the Association President is authorized to enter into a final agreement regarding the property transfer as outlined in the Memorandum of Understanding.

Report of the Lease Negotiation Committee on the Status of the Lease at One Elk Street and Necessary Renovations

David P. Miranda, Chair
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INTRODUCTION

The Association leases the Bar Center at One Elk Street from The New York Bar Foundation (Foundation). The current lease, which dates from 1991, and was amended and extended in 2007, expires on December 31, 2021 (*See Attachment 1, 1 Elk Lease Agreement Including 2007 Amendment*). In September 2020, President Scott M. Karson appointed a lease negotiation committee comprised of David P. Miranda, Michael McNamara, and Sandra Rivera. This committee was charged with reviewing the present lease, the current use of the Bar Center, the Association's needs going forward, and also was tasked with negotiating a long-term facilities plan.

HISTORY

Founded in 1876, the New York State Bar Association rented space in a number of Albany locations (its first official office was a room on the first floor of the State Capitol) before acquiring its own headquarters at 99 Washington Avenue in 1953 (*See Attachment 30 – New York State Bar Center Rededication Booklet 1990*).

The Association remained headquartered at 99 Washington Avenue until the planned building of One Commerce Plaza necessitated the demolition of the building and forced our relocation. The Association proceeded to purchase four townhouses two blocks away on Elk Street. Although the Association originally planned to demolish these buildings in favor of new construction, opposition from historic preservationists ultimately resulted in maintaining the facades of three of the townhouses with a modern building behind them. The rowhouse designated as 1 Elk Street. was not able to be saved and was demolished. The new Bar Center was dedicated in 1971.

The original Bar Center space occupied numbers 1 through 4 Elk Street and faces Academy Park. The design combines a new building with three 19th century town houses, welding them together to form a single, functional complex. This unique combination of historic architecture and award-winning contemporary design led former *New York Times* design critic, Ada Louise Huxtable, to write that the building “...is one of the neatest architectural achievements in the country...it is a sophisticated triumph in the most delicate, complex and poorly understood art of the environment: urban design” (*Id.*).

The project won the 1969 Progressive Architectural Award from the American Institute of Architects. It was formally dedicated on September 24, 1971. The Association has since received widespread acclaim for the preservation of a section of the historically significant Elk Street/Academy Park neighborhood. The result of the State Bar's civic-minded preservation led to the Department of Interior recognizing the Bar Center as worthy of inclusion in the National Register of History Places (*Id.*).

The uniqueness of the Bar Center's design was highlighted in a 1987 book written by Ms. Huxtable, entitled "Goodbye History, Hello Hamburger," in which she recounts the remarkable creation "of a building for the New York State Bar Association out of three row houses adjacent to the State Capital." As Huxtable tells it, "the preservation of three architecturally middling but urbanistically significant row houses occasioned a marshalling of many preservation interests. A classic case for historic district preservation resulted, to which the Bar Association and its architect, James Stewart Polshek, a fellow of the American Institute of Architects, responded successfully" (*Id.*). She writes, "the result is a demonstration project of how to use the past without turning it into a charade and how to extend its fabric functionally into the 20th century for the best kind of living environmental continuity" (*Id.*).

There was a need for additional space by the 1980's, as the Association grew in both membership and staff. In 1986, the Bar Center was transferred from the Association to the Foundation. The Foundation acquired the townhouses at 5 and 6 Elk St., and a capital campaign was planned to incorporate those townhouses and additional office space into the existing Bar Center. The expanded Bar Center was rededicated in 1990. No capital fundraising for building improvements has occurred in the 30 years since the rededication ceremony. The building and property were assessed at \$3,237,500 in 2020. (*See Attachment 5, 1 Elk Appraisal at 12*). An independent appraisal in 2021 valued the building and property at \$3.7 million, without considering necessary renovations. (*See Attachment, 1 Elk Appraisal*).

HISTORIC PRESERVATION

When the Bar Center was expanded, it was agreed that in order to address historic preservation concerns some of the ground floor areas of 5 and 6 Elk should maintain their historic character. While the ground floor of 5 Elk had been gutted by fire, the space could serve as a board room, with the current Peck Room featuring wall murals depicting the Elk Street area as it might have appeared at the time of the Association's founding. In 6 Elk, the front parlor was recreated as it had been in the 1880's, using a painting of the space at the Albany Museum of History and Art as a guide, with a dining room featuring a backlit stained-glass window. When 5 and 6

Elk were acquired, the latter still had its original four-story winding staircase with a stained-glass skylight at the top. While historic preservationists wanted to maintain the staircase in its entirety, the Albany Fire Department objected on the basis that it could cause a chimney effect in the event of a fire. One flight of stairs was retained as a compromise. Historic preservation restrictions remain in these areas of the Bar Center along with the building façade located on Elk Street.

ACCESSIBILITY

Because of the design, construction, and historic preservation restrictions of the building, full access for individuals with disabilities has always presented difficulties (*See Attachment 19, Correspondence Received from NYSBA Disability Rights Chair Regarding 1 Elk Accessibility Issues.*). The five townhouses do not have street-level access, requiring individuals with disabilities to use one of the rear entrances. There is no sidewalk directly behind the building, which means that visitors must park on the street and use the sidewalk and steps to reach an entrance. Any plan to improve street-level access in the front of the building would alter the historic appearance of the townhouses. There is limited on-site parking, with a total of 42 spaces allocated to employees and nothing available for guests, who must pay for parking either on the street or in a nearby garage.

Inside the building, there are several areas with split levels and stairs impeding access across the floors, as the original townhouses did not have floor levels at the same height. For example, it is difficult for an individual who has trouble walking to go from the main lobby to the Cromwell Room or the President's Office because there is a flight of several steps in the hallway. Most of the bathrooms and elevators at One Elk were constructed prior to 1991 (when the ADA was passed) and must be updated to meet current accessibility standards.

ASSOCIATION-FOUNDATION RELATIONSHIP

As the Association is a 501(c)(6) tax-exempt organization, donations to the Association are not tax-deductible. The Association's status as a 501(c)(6) organization enables it to engage in governmental relations activities that would otherwise not be permitted. The Foundation, by contrast, is a 501(c)(3) tax-exempt organization, and contributions it receives are tax-deductible. The Foundation was formed in 1950, as "Foundation of the New York Bar Association, Inc."

The purposes set forth in the 1950 Certificate of Incorporation included: [t]o apply its income ... to the use of the New York State Bar Association for the following charitable purposes ... (1) to facilitate and improve the administration of justice; (2) to facilitate the cultivation and diffusion of knowledge and understanding of the law

and the promotion of the study of the law ... through the maintenance of a law library, and the publication of addresses, essays, treatises, reports and other literary works ...; (3) to provide for the acquisition, preservation and exhibition of rare books and documents, sculptures, paintings and other objects of art and historical interest relating to the law, the courts, and the legal profession.

In 1975 the Foundation's Certificate of Incorporation was amended. It was renamed "The New York Bar Foundation," and its purposes were restated as the following: to advance legal research and education; to improve the administration of justice; to promote professional ethics and responsibility and service to the public; to cultivate the preservation of the history and traditions of the law, the courts and the legal profession; to encourage better public understanding of our legal heritage; to aid in making legal institutions more responsive to the public interest; and to sponsor studies, conferences, publications, and any and all other means of discourse, communication and exchange of ideas appropriate to the foregoing.

As noted in the January 1975 President's Message of then-President Whitney North Seymour, Jr., the amendment was intended to broaden the Foundation's outreach beyond the Association to also serve the profession generally. The connection with the Association is maintained in the membership of the Foundation, which consists

of the members of the Association's House of Delegates. Since the 1975 amendment, the Foundation created the Fellows of The New York Bar Foundation, who commit to financially support the Foundation; establish memorial gifts and matching gifts programs; and establish endowed and restricted funds. (*See* Attachment 21, TNYBF Bylaws 2018-2019).

Since the formation of the Foundation, two capital campaigns have been conducted for the Bar Center. From 1967-1971 the Foundation was instrumental in efforts to raise \$1,600,000 to build the Bar Center, and from 1986-90 \$6,800,000 for the Bar Center's expansion – a total of over \$24,000,000 in today's dollars. The historic financial support through the Foundation for building and expanding the Bar Center is important in understanding the basis for the 1991 facilities lease requiring NYSBA to pay the Foundation rent, and all utilities, expenses, upkeep repairs (internal, external, and structural), and taxes for premises owned by the Foundation.

The relationship between the Association and The Foundation has significantly evolved since the 1975 amendments to the Certificate of Incorporation, and in the thirty years since the expansion of the Bar Center in the late 1980s. Foundation revenue in recent years includes Association contributions of approximately 47.666% per annum (*See* Chart – TNYBF Contributions and Other Revenue). These

contributions include rental income from the Association to The Foundation (\$302,229 per annum); NYSBA member unrestricted contributions from dues renewal (\$171,237 in 2018, \$157,081 in 2019, and \$144,000 in 2020); and restricted fund contributions from the NYSBA Sections (\$66,200 in 2018, \$106,500 in 2019, \$82,000 in 2020) (*See Id.*). This 47.666% per annum figure also does not reflect the significant staffing and administrative support that the Association provides to The Foundation. This support includes, for the year 2020, human resources support of \$7,621; marketing and design services of \$30,707; print shop and graphics services of \$6,707; accounting services of \$138,312; and IT support and services of \$27,238, for a total \$210,585 of direct support and services in 2020. This total does not include any collateral support provided by other public facing NYSBA departments, including Executive Staff and Sections and Meetings Services, nor does it incorporate complete costs associated with the transition to a completely new association management system in 2020.

The New York State Bar Association and The New York Bar Foundation are organizations joined by the mutual ties of a shared membership, similar mission, and interconnected histories. The membership of The Foundation consists of the members of the House of Delegates, and The Foundation President is often invited to give a report at each meeting of the House of Delegates concerning the ongoing

charitable work of the organization. Thousands of NYSBA members make charitable contributions to The Foundation each year; and many of the Fellows and officers of The Foundation also occupy leadership roles within the Association, including within the various sections and committees.

The mission of the New York State Bar Association, as a non-for-profit membership organization, is centered on advocacy on behalf of the legal profession, the rule of law, and the science of jurisprudence. The Association's Bylaws acknowledge the importance of such goodwill as an integral part of NYSBA's purpose. Article II of the Bylaws expressly refers to several purposeful goals of the Association, including "to elevate the standard of integrity, honor, professional skill and courtesy in the legal profession; to cherish and foster a spirit of collegiality among members of the Association; [and] to apply its knowledge and experience in the field of the law to promote the public good." The Association's motto is "Do The Public Good" and its support of The Foundation furthers that goal.

The goals of The Foundation, in comparison, center on improving the administration of justice, advancing service to the public by the legal profession, and supporting legal research, education, and an understanding of our proud legal heritage here in New York State. The Foundation was established to function as the charitable arm

of the Association and help the legal profession of New York State meet the purposeful goals and “do the public good.”

The shared history of the two organizations is full of numerous examples of this strong partnership, including the production of educational and historical programming and events, the sponsorship of charitable drives on behalf of individual NYSBA sections, and, of course, the historic shared campaign to build and renovate the Bar Center at One Elk Street. This mutual partnership has enhanced the great work of our Association, and, if properly attended and nurtured, will advance the mission, meet the goals, and serve the members of both organizations into the future.

CURRENT LEASE

Under the current Foundation-Association lease, the Association pays the Foundation rent calculated based on a percentage increase in the Consumer Price Index for All U.S. Consumers, All Items, U.S. City Average (CPI-U) (*See Attachment 1, 1 Elk Lease Agreement Including 2007 Amendment*). The current rent is \$302,229 annually, with monthly payments in the amount of \$25,185.75.

There is no reduction in rent if there is a decrease in the CPI-U. The Association is responsible for maintaining insurance for physical loss, property damage and

personal injury, all maintenance expenses, both exterior and interior, all taxes, and all utilities. For 2020, these additional costs were \$864,335. Due to a change in enforcement of the laws of the City of Albany, the Bar Center lost its tax-exempt status in 2019, and in 2020 NYSBA paid approximately \$164,995 in taxes. (*See Attachment 4, NYSBA/Foundation Complaint on Real Property Assessment 2020 – Filing to grieve the denial of tax-exempt status of 1 Elk*). These total costs, including rent, taxes, maintenance, and utilities were about \$1.1 million for the 2020 fiscal year.

TAX ASSESSMENT

Under the current lease, the Association is responsible for the payment of taxes on the Bar Center. Until 2011, the Association paid regular property tax assessments to the City of Albany, having been advised that the property was not entitled to an exemption. In 2011, the Foundation submitted an application to the city for exemption from taxes pursuant to RPTL §420-a (mandatory exemption for property used for charitable purposes); the exemption was granted. In 2019, the City of Albany applied an ordinance providing that property being used for a bar association is not tax exempt and determined that the property is not entitled to an exemption based on RPTL §420-b (permissive exemption for not-for-profits). That determination is the subject of a current RPTL Article 7 proceeding in Supreme

Court, Albany County. When asked to share in the Association’s cost of the legal challenge the Foundation chose not to, noting correctly, they had no obligation to do so under the current lease. The Association is now paying property taxes of approximately \$165,000 per year, and incurring all costs related to the legal challenge.

NYSBA STAFFING AND BUDGET

In 2017, NYSBA had approximately 125 full time employees, and there were no remote employees. Currently, NYSBA has 89 full time employees (including 5 at the print shop in Green Island, NY). Several of these positions are remote. NYSBA expects to have a full-time staff of 95 by the end of 2021. However, some will be located outside of the Albany area and continue remote working permanently. Remote capabilities enable NYSBA to obtain employees with expertise necessary to its future success and also improve the diversity of its workforce.

In 2018, NYSBA outsourced its entire IT department to a Maryland-based company whose employees – working remotely – handled the entire data migration of NYSBA’s antiquated member data system to Salesforce, the new Association Management System (“AMS”). Having the flexibility to acquire talent from outside its immediate geographic area made the transition easier and provided NYSBA with

some security in that it had retained a group with the required expertise to implement the data migration and technological transition. NYSBA also retained a Chicago-based company to redesign the website. The locations of these respective companies were not an impediment to the projects, and in fact, the retention of these companies enabled NYSBA to ensure it was able to receive the best possible services for its money, uninhibited by the personnel confines of the Capital Region or New York State boundaries.

As a result of the pandemic, the traditional workday and in-person office requirements have been upended. According to some studies and reports, the pre-pandemic model will not return – perhaps ever – as many employees prefer at the very least a hybrid model of virtual and in-person work and have demonstrated that productivity has not been negatively impacted as a result. In fact, productivity has improved as workers are able to fit their work around their personal and familial responsibilities.

The Finance Committee has prepared revenue and expense projections based on trends over the past 10 years (*See Report of the Finance Chair – April 2021*). Current projections anticipate that the Association will incur a deficit budget in future years, regardless of its facilities location. A significant reason the Association is not

already in a deficit budget is because of substantial cuts in staffing and services made in 2017, when it faced a deficit of over a million dollars, and further cuts in 2020 due to the COVID-19 crisis. The pandemic, coming in the late winter of last year, impacted membership renewals and associated revenue projection.

FACILITY SPACE

The Bar Center has 60,119 square feet of available space, including the basement and the garage. There is about 42,000 square feet of above ground, professional work, and office space. Of the 60,119 square feet, 40% is not fully utilized and within the remaining 60% of the leased space, there are some inefficiencies (*See Attachment 11, MADesign Architecture – Space Needs Analysis and Memo*). Office space of approximately 300 square feet is allocated to the Foundation staff in the building.

Flexible work from home models (or some combination of work at the office and work from home) have grown and even when the pandemic ends will likely become more common. As a result of this trend, and considering the significant challenges presented by the current buildings, the role of the Bar Center and NYSBA's physical footprint should be examined. It is estimated that needs of the NYSBA workforce will require approximately 23,000-27,000 square feet professional office space, not

counting larger meetings such as the House of Delegates meetings and other large receptions that take place in the Great Hall. That leaves approximately 10-15,000 square feet of professional office space at One Elk potentially available for alternative uses.

PRINT SHOP

NYSBA also leases a 19,612 square footprint facility in Green Island, NY (*See Attachment 15, NYSBA Green Island Print Shop Lease Agreement 2009-2024*). The lease began on April 23, 2009 and will expire on December 31, 2024. The annual rent for the facility is \$231,814. Since 2015, NYSBA full time staff at the print shop has been reduced from 14 to 6. During that period, printing for CLE and section events was reduced by 42% from 2015 – 2020 and direct mail was reduced by 37% (*See Attachment 17, NYSBA Continuing Legal Education and Publications 2019-2020 – Production and Efficiency Comparison Pre and Post Pandemic*). Digital platforms have disrupted the print industry and NYSBA has invested a significant sum to acquire the technological tools necessary to improve the speed and accessibility of our content to our members. Print will remain an important communication tool, but the reduction in the amount of print will necessitate eliminating the print shop space when the lease ends in 2024. It is expected that by the time the print shop lease expires, NYSBA will be able to incorporate a more

modest print shop into One Elk Street in Albany, for additional savings. (*See Attachment 16, Analysis of NYSBA Print Shop Needs and Staffing 2015-2021*).

NEED FOR RENOVATIONS

In anticipation of the need to transition the NYSBA print shop capabilities out of the current print facility in Green Island, NYSBA retained the services of Synthesis Architects, LLP of Schenectady, New York, to see if it was possible to reconfigure the basement at One Elk Street to accommodate the necessary print shop equipment (*See Attachment 9, NYSBA Facilities Director's Listing of Improvements and Repairs Needed – Considerations and Costs to Remain at 1 Elk*). Synthesis also noted that the building's heating and ventilation systems were outdated and in need of renovation and that the building's restrooms and elevators are in need of repair and renovation in order to increase accessibility (*See Attachment 8, Informational Document from Synthesis Architects on Ventilation Improvements*). Because the One Elk Street facility consists of multiple, interconnected, independent buildings, it is challenging to easily provide access throughout the building to persons with difficulty walking (*See Attachment 13, Building Scan by Chase Pierson of Scan2Plan – Professional Blueprints of 1 Elk July 2020*). This challenge is further compounded by historical preservation requirements that prohibit any major structural changes to the front facade of the building on Elk Street.

Expert analysis confirms the need for substantial and significant renovations and repairs to the entire One Elk property. Synthesis advised that accessibility would be improved if the main entranceway to the building were located off Eagle Street, with a central system of elevators and restrooms, creating a new center hub of the building off of the new Eagle Street entrance. Synthesis provided initial architectural drawings and cost estimates of renovations required on Elk Street, to consolidate print shop operations, improve handicap accessibility, have appropriately accessible restrooms, upgrade the ventilation, heating, and cooling systems, and provide a centralized ADA compliant elevator system. NYSBA has looked into whether the renovations could be performed in phases, and it is estimated that the most urgent needs will cost approximately \$4.8 million over the next three years.

The Association retained the services of Metropolis Group, Inc. (“Metropolis”), to ascertain the current site conditions at the One Elk property. Two members of Metropolis’ staff visited One Elk on February 16, 2021, and spent several hours touring and examining the property. Additionally, the Metropolis consultants reviewed the property records available at the City of Albany’s Department of Buildings and Regulatory Compliance. Metropolis subsequently prepared a Due Diligence Report based on these findings. The Report addresses, among other considerations, code compliance, handicap (ADA) accessibility, accessible routes,

accessible parking, elevators, bathrooms, mechanical and electrical systems, and the fire alarm system (*See Attachment 26 – Metropolis Due Diligence Report – One Elk Street*). The findings contained in the Due Diligence Report, including challenges to making the premises fully accessible, warrant the attention of the Association, (*See Id. at 5*). As an association that promotes diversity and inclusion, there is a strong desire for its home to be fully accessible to all members, staff, and guests. Work on necessary renovations will naturally implicate compliance issues, and Metropolis concluded that any proposed alterations and repairs will address these issues. (*See Id. At 5-6*).

Metropolis further found that the mechanical and electrical systems at the property needed upgrades and replacements. The report states that “it is not a question of if, but a question of when this equipment will fail.” (*See Id. at 6*). The report additionally notes concerns about the Great Hall sprinkler, alarm, and emergency exits that require attention. (*Id.*).

Synthesis Architects has advised that the current HVAC systems do not meet ventilation requirements in many of the spaces at the One Elk property, and that certain units must be updated in terms of enclosure, fresh air intake, and safety controls” (*See Attachment 8 – Informational Document from Synthesis Architects*

on Ventilation Improvements). Necessary HVAC repairs are estimated at \$841,100 (See Attachment 10, 1 Elk Vendor Estimates for Building Improvements Needed). Nevertheless, the Due Diligence Report commends NYSBA for the “exceptional job keeping the space properly heated and ventilated with extremely old equipment” (See Attachment 26 - Metropolis Due Diligence Report – One Elk Street, at 6). The Finance Committee, after review of all renovation and repair, estimates approximately \$4.8 million in repairs and renovations will be necessary within the next three years (2021-2024).

NYSBA engaged with Inspiron Management, a New York City-based owner representative company specializing in the construction industry, to organize and proactively support any efforts related to possible renovations of the One Elk property. (See Attachment 32 – Inspiron Assessment – One Elk – March 29, 2021). Inspiron has reviewed over 600 pages of material related to the status of the property. This includes an estimated \$1,029,100 in heating and cooling renovations; \$280,768 in renovations to the exterior of the property; \$73,430 in alarm and security upgrades; \$221,332 in elevator and lift renovations; \$6,000 to replace the doors in the Great Hall; and \$956,486 to replace carpets, desks, and update restrooms.

FUTURE OF NYSBA

NYSBA serves members both domestically and internationally. Of the 320,000 New York admitted attorneys, 67,000 reside outside of the state, and more than 22,000 live outside the United States. The Association has members in 50 states and over 100 countries worldwide. NYSBA's International Section includes 65 chapters located in other countries.

New York is the economic and legal capital of the world. New York law, and New York lawyers and judges, are globally recognized as the gold standard in the profession. Likewise, the New York State Bar Association is a global force. We are widely regarded as the world leader among bar associations; our reputation is unmatched.

Over its 145-year history, NYSBA has frequently adapted to meet the needs of members and the legal profession and do the public good. Time and again, we have expanded operations and broadened our outlook, as dictated by the needs of the day. In the past, change meant expanding NYSBA's brick-and-mortar presence either through relocation of our headquarters or overhauling physical space. Major moves and ambitious renovations of the Bar Center on Elk Street signaled new beginnings

and an expansion of NYSBA's role as the leader for lawyers across the state and nation.

In 2017, MCI, a company that provides marketing and consulting services to NYSBA, surveyed international members and non-members, and found international members to be an area of potential exponential growth for NYSBA. Of the 26,000 New York attorneys out of the country only 3,600 were NYSBA members. MCI interviewed attorneys in Canada, Britain, Germany, France, China, Japan, Hong Kong, and Korea. The key finding was that NYSBA has no significant competition and is considered the global leader of bar associations.

NYSBA underwent a digital transformation during 2019 and 2020 to become a virtual bar center. Over \$2,000,000 was invested in technology and the personnel expertise to move the Association to new platforms – this investment included a new Association Management System (i.e., member database which connects to CLE registration, section and committee appointments, and member dues renewal); a completely new website; new accounting software; and the use of new telecommunication hardware and software (i.e., Zoom in place of WebEx or MeetingBridge). This complete technological transformation, and the necessary obtainment of skills and training to effectively use and implement the new

technology, required the complete attention of the entire Association staff amidst an already tumultuous year of change.

The completion of the initial stage of this transformation to a virtual bar center, the result of the vision of Past President Hank Greenberg, occurred just weeks before the COVID crisis hit New York. As a result, the Association has continued to seamlessly serve its members, to reach its members digitally and provide them with real-time information about developments related to the pandemic and other news pertinent to the legal community throughout this crisis.

CLE programming is a testament to the successful flexibility of the virtual bar center, as the Committee on Continuing Legal Education and CLE Department quickly pivoted to schedule hundreds of CLE webinars throughout 2020 and 2021. This adaptation and hard work should be commended, both as a member service during the COVID-19 pandemic and as a bright spot for 2020 finances despite projections anticipating both continued declining membership dues revenue and total revenue over the next decade (*See Report of the Finance Chair – April 2021*). CLE net revenue increased from \$614,144 in 2019 to \$1,778,676 in 2020 (*See April 2021 Treasurer’s Report at 3*). This almost triple increase in revenue would have been impossible without the prescient timing of the technological transition and advent of

the virtual bar center. Indeed, the quick move to virtual programming allowed NYSBA members to continue to receive timely updates and developments in the law during a period of seminal change in court operations, emergency orders, and indeed major shifts in the function of the practice of law itself. Additionally, NYSBA was able to quickly adapt to Zoom remote conferencing, including for NYSBA sections, committees, and Association governance meetings. The January 2021 House of Delegates meeting, which was held completely virtually, had the highest attendance of a House meeting in recent memory.

During the pandemic, NYSBA's virtual bar center has powered an unprecedented surge and enhancement in our CLE programming and delivery of services. NYSBA had the highest net revenue in CLE in over a decade, 34% increase in HOD attendance, over 40,000 CLE registrants (an increase of 15,000 over 2019), reduced travel expenses for staff and leadership of over \$2 million, 4,516 virtual attendees of the 2021 NYSBA Annual Meeting, and increase of over \$200,000 net revenue for the Annual Meeting.

STATUS OF LEASE NEGOTIATIONS

In September 2020 then President Scott Karson appointed the NYSBA lease negotiation committee to coordinate the facilities plan. On October 20, 2020, the

President of The Foundation advised President Karson that David Schraver, John Horan, and Bruce Lawrence would be The Foundation's team regarding lease negotiations. On October 23, 2020, the chairs of the respective lease negotiation teams, Mr. Miranda and Mr. Schraver, conferred. The need for a substantial investment for necessary repairs and improvements to One Elk, involving, accessibility, ventilation, restrooms, and ADA compliance was discussed. The Foundation was asked if it had the capacity and/or inclination to raise money through a capital campaign or to otherwise fund necessary renovations.

In order for The Foundation to understand the nature of the renovations and costs required, the Foundation lease negotiation team and Foundation officers were provided with confidential copies of the Synthesis architectural plans and estimates (*See Attachment 7, New York State Bar Association Lease Documents to the New York Bar Foundation December 2020*). Additional confidential information was provided regarding NYSBA's cost of maintenance, repairs, and utilities for the building, as well as supporting documentation for the free services that previously had been provided by the Association to The Foundation. On December 3, 2020, The Foundation was provided with confidential documents pertaining to the lease and estimated repairs to One Elk. The Foundation was asked to provide its position

regarding raising the funds necessary to keep One Elk viable as the Association's long-term home.

On December 31, 2020, the Foundation President advised that the Foundation was not "in any position to pay for renovations desired by the Association at the One Elk Street property." but that it was open to discussions regarding a possible joint capital campaign to raise necessary renovation funds.

With the understanding that The Foundation was not in a position to provide necessary funding for the renovations, NYSBA sought estimates for the cost of performing only the most immediate and necessary repairs, identified above, and determined that the cost will be approximately \$4.8 million in the next three years to make necessary repairs and renovations. In January 2021, the Finance Committee reviewed the financial data and offered resolutions prohibiting the use of the Association's Reserve Funds to pay for renovations for a property the Association did not own and provided cost estimates of remaining at One Elk under current lease requirements. (*See* Attachment 2, January 2021 Lease Presentation to NYSBA Finance Committee; Attachment 3, January 2021 Finance Committee Resolutions). An "Informational Presentation on NYSBA Facilities" was held on Saturday, January 23rd, 2021, and attended by the Executive Committee, members of the House

of Delegates, including past presidents, and committee, section, and task force chairs. The Lease Negotiation Committee gave an overview on the status of negotiations with the Foundation, the current state of the One Elk property and associated financial costs, and a summary of the current and future needs of the Association (*See Attachment 23, PowerPoint Presentation, January 23, 2021*). The Lease Negotiation Committee gave an additional update at the meeting of the House of Delegates held the following Saturday, January 30th, 2021 (*See Attachment 24, PowerPoint Presentation, January 30, 2021*).

At the House meetings, members were encouraged to send any questions about the One Elk negotiations to David Miranda in his capacity as chair of the NYSBA Lease Negotiation Committee. In response, several House members, including Past Presidents of the Association, raised questions concerning the status of the lease negotiations, and the feasibility and cost of renovations and repairs to the One Elk property. In light of these questions, and similar concerns expressed by several members at the House of Delegates meeting on January 30, 2021, the Association retained the services of Metropolis Group, Inc. (“Metropolis”), to ascertain the current site conditions at the One Elk Property. In order to understand the landscape for alternative available space in Albany, the Association authorized CBRE to issue

RFPs to four possible locations – three in Albany and one in a suburb of Albany (*See Attachment 14, MADesign Architecture Test Fits for Possible Properties*).

On February 5, 2021, President-Elect Brown sent a proposal to Foundation Vice President Palumbo, President Rosenthal, and Mr. Schrauer outlining a seven-point framework that would allow the Association to remain at One Elk, including a joint fundraising campaign to finance the necessary renovations, the formation of a joint renovations committee, The Foundation obtaining a mortgage on One Elk to help pay for renovations, the Association continuing to pay rent to The Foundation, as well as maintenance and taxes at One Elk and share in the cost of an outside appraisal. This proposal was not accepted by the Foundation (*See Attachment 18 – NYSBA Proposal by President- Elect Brown to the Foundation, correspondence February 2-10, 2021*).

On February 24, 2021, a completed questionnaire was sent to all Past Presidents of the Association, with responses to individual inquiries (*See Attachment 27 – Response to Past Presidents - Lease Negotiation Questions*). The Past Presidents were also given access to a DropBox account containing documents related to the lease negotiations, cost estimates for repairs and renovations, and the structural condition of the One Elk property. This information was also sent to Foundation

representative Carla Palumbo on March 1, 2021. Additionally, on February 24, the Association agreed to the Foundation's request to share in the cost of an appraisal of One Elk and asked that the appraisal be completed as quickly as possible. All of this information has been made available to House members and is part of this Report.

On March 11, 2021, the Foundation offered to have the Association renew its lease for three years under the current lease terms and conditions. Under this proposal the Association would remain responsible for rent, all maintenance, repairs, utilities, taxes, and all renovation costs. (*See Attachment 29 – Response from Foundation to President Karson – March 11, 2021*). This proposal was not accepted.

On March 22, 2021, NYSBA President-Elect Andrew Brown and Mr. Miranda were invited to address The Foundation Board. In addition to providing all reports related to necessary renovations, the NYSBA representatives addressed issues regarding renovations, cost estimates, the various reports produced, and information regarding alternative site costs. The Foundation questions included whether NYSBA would take the building back as a gift and NYSBA advised it would consider such an offer if made. The parties discussed the fact that because certain renovations were immediate and necessary that even a short-term lease extension beyond the end of the year would require a structure in place to pay for renovations.

Following the meeting, leadership of both organizations continued discussions on terms for transfer of ownership, and payment for necessary renovations. (*See Id.*) The Foundation also requested the opportunity to address the Association's Executive Committee and House of Delegates. On April 2, 2021, The Foundation was invited to address the Executive Committee on April 9, 2021, and time was allotted for The Foundation at the meeting of the House of Delegates on April 10, 2021.

After numerous additional meetings and discussions, the Association's Lease Negotiation Committee and the Foundation came to an agreement on terms for transfer of ownership from the Foundation to the Association on May 21, 2021. A Memorandum of Understanding (MOU) between the Association and the Foundation was executed by leaders of both organizations on May 20 and 21, 2021, agreeing that the Foundation will transfer One Elk to the Association subject to the following conditions, including approval by the Association's House of Delegates:

1. The Foundation will transfer ownership of One Elk to the association for consideration as enumerated hereafter. In this regard, the Association will cooperate with and assist the Foundation in securing necessary approvals for the transfer, including approval of the New York State Attorney General.
2. The Association will provide office space to the Foundation in accordance with its needs, using a benchmark that is comparable to the space currently

utilized by the Foundation, of no less than 300 square feet, for as long as the association owns One Elk or 15 years, whichever period is longer.

3. The Association will provide services to support the business operations of the Foundation up to \$300,000 per year for the years 2022 and 2023, after which the cap on services will be reassessed with the expectation that the cap will be reduced to \$250,000 per year. Services to be provided will include Accounting, Graphics (including printing, management of outside printing and mailing, office supply fulfillment, mail and package pick-up and delivery, meeting space set-up, and office cleaning and maintenance); Human Resources (including benefit administration, orientation and training, records maintenance, performance evaluations); Information Technology (including peripheral equipment such as printers and telephones, desktop support, Microsoft Office 365, internet access and Wi-Fi, telephone service, and security); and Marketing and Design (including creation of promotional pieces and e-mails). The value of such services will be computed as actual hours per staff member times each staff members pay rate, plus a 15% fringe rate covering employee benefits. The Association shall pay the Foundation Program Coordinator's salary and benefits. The Program Coordinator will be considered an employee of the Association, will continue to provide similar function and services to the Foundation as is currently provided, and such services and salary will be considered part of, and included in, the in-kind services. In the event an employee in that position needs to be replaced the Foundation will participate in the new hiring. This provision of services will continue as long as the Association owns One Elk or 15 years, whichever period is longer.
4. The Association will bear responsibility for all costs of renovating and maintaining One Elk.
5. No direct financial consideration will be paid by the Association to the Foundation in connection with the transfer of One Elk.
6. The Association considers the Foundation the philanthropic arm of the Association and intends to continue to work closely with Foundation fundraising in order to meet common goals of both organizations. The Association agrees to form and actively participate in a joint fundraising committee, in a form and manner to be determined jointly by leadership of both organizations.

7. The parties agree to develop a more detailed services agreement, and an amended loaned employee agreement, consistent with the terms set forth in paragraph 3.
8. This Memorandum of Understanding is contingent upon approval of the Association's House of Delegates and the Foundation's Board of Trustees; development of an appropriate contract of sale; and approval of any required governmental authorities.

The Foundation's Board of Directors approved the Memorandum of Understanding on May 20, 2021. The MOU is contingent on approval by the Association's House of Delegates, which is recommended by this Committee.

CONCLUSION

The Association and the Foundation have a long-standing relationship that is both physically and philosophically anchored by the Bar Center at One Elk. The Foundation, which is quite literally an offshoot of the Association, raised the funds to allow for the construction of the Association's current physical home from which it works to realize its mission and serve its members. The Association, in turn, as discussed at length above, provides financial support and space that enables the Foundation to continue to fulfill its own mission. In this way, the two entities are deeply intertwined with a shared history that is enshrined in the brick and mortar of One Elk, the preservation of which has become clear is a priority about which many on both sides feel passionately.

In an attempt to forge a way forward that meets the changing needs of both the Association and the Foundation, this committee has made multiple presentations to the House of Delegates, Executive Committee and Finance Committee - including special informational meetings regarding the necessary renovations at One Elk and negotiations with the Foundation. These meetings have involved many hours of discussion and hundreds of pages of financial reports, renovation estimates, and documents related to One Elk have been shared.

The preparation of this report, and the preparation for the corresponding series of presentations to the NYSBA membership over the last six months, include more than 900 pages of detailed financial data and expert assessments of the structural condition of One Elk and the need for renovations. The Committee has transparently provided information to the House throughout this process, to ensure that delegates, as members of NYSBA's governing body, have been equipped with the information to make an informed decision on this important issue regarding the home of the Association.

The Committee recognizes the necessity of preserving the Association's long-term financial health. Fiscal discipline will ensure that the Association fulfills its core

mission and can meet the evolving needs of its members. This Memorandum of Understanding, by returning ownership of One Elk from the Foundation to the Association, will relieve the Association of its rental payment obligations and enable it to use that money towards necessary renovations. Ownership of One Elk will make the costs of renovations more palatable as the Association will be investing in a building it owns and controls and from which it derives a clear benefit. This plan also permits a reevaluation of the use of the entire Bar Center, including the possibility of leasing, subletting, dividing portions of the property, creating co-working spaces or novel adaptations of segments of the building, and other bold options to revolutionize the Bar Center for the 21st Century. Importantly, our Association will remain at its long-term, historically significant home alongside New York's executive, legislative and judicial branches of government. The prominent address of One Elk and the size and scale of the Bar Center befits an organization that is growing in stature and in clout – both across the nation and around the world – though use of the ample space it provides will need to be reconceived as the years progress.

The proposed agreement also preserves the aforementioned relationship with the Foundation and establishes a joint fundraising mission that will help bring the two entities closer through the pursuit of a shared goal. In addition, it takes the first

steps toward repairing some of the difficult but necessary upheaval that occurred during the discussions about the best use of One Elk and future home of the Association as the life of the current lease nears an end. Approval of this MOU is a necessary first step in moving our Association forward. Its formal ratification is contingent on the approval of the New York State Attorney General and the execution of a contract of sale of One Elk from the Foundation to the Association. Nevertheless, this MOU, and the reinforced pledges of partnership and friendship between both organizations provide a blueprint for the Association to advance into the future while safeguarding its mission and the interests of its members for years to come. Though it will require continued planning and creative thinking by our leadership, this MOU sets us on a path for the Association to continue to work together with the Foundation towards common goals. We are gratified to have been able to overcome significant obstacles to forge an agreement that is amenable to both sides, and strongly believe that preserving both the Association's current home and its ongoing relationship with the Foundation is ultimately of significant benefit to merit approval.