

Advisory Council on Condominiums
November 13, 2007
Teleconference/Tallahassee, Florida

Members Present via Teleconference

Mike Andrew, Chair
Mike Cochran
Jane Cornett
Pete Dunbar, Vice-Chair
George Geisler
Jerry Koenig
Karen Tysenn
Melissa Van Dine

Division Staff Present

Sharon Malloy, Rudy Prinz and Jon Peet

Members of the Public – on record

Joe Adams
Steve Hirst, FAIA

Quorum Established

Verification of timely publication of notice in Florida Administrative Weekly

New members Jane Cornett and Jerry Koenig introduced.

MOTION 1: Geisler to approve the minutes of the September 27, 2007 meeting

SECOND: Dunbar

Discussion to conform minutes to insurance draft.

VOTE: Unanimous (Koenig abstains)

Legislative Update:

Pete Dunbar provided legislative update. Sen. Posey and Rep. Gardner may propose legislation on insurance. There will also be estoppel language coming from by Sen. Jones. Four shell bills filed. Rep. Robaina will probably file something.

Mike Cochran provided information on the division jurisdiction language that is now being reviewed by the Governor's Office for inclusion in the department's package. Mike Cochran will check on whether the draft can be provided to council members.

Jane Cornet provided information on what The Florida Bar subcommittee was working on. Rep. Robaina is working with them and has given them some concepts and ideas. December meeting in Tampa planned. Mike Andrew will get Jane Cornett and other members a copy of the Advisory Council's comments on the bill filed by Rep. Robaina during the 2007 Legislative Session.

Old Business – Insurance Draft

Jon Peet provided general information on the draft changes made at the last meeting. The Council agreed to go through the draft language section-by-section.

Dunbar made general comments on problems with the technical drafting of language appearing on pages 1 through 2. The council needs to redraft the language with everything in it and (e) starting on the bottom of page 2 will all be new language.

MOTION 2: Cornett to change "section" to "subsection" and delete last underlined sentence in (11) on page 1.

SECOND: Geisler

VOTE: Motion carried unanimously

MOTION 3: Dunbar to change references to "subparagraph" and "subsection" to "paragraph" in 1. and 2. on page 1.

SECOND: Van Dine

VOTE: Motion carried unanimously

Dunbar pointed out that "best efforts" should be underlined in (b) on page 2. Cornett brought up the issue of timeframes for appraisals in (c) on page 2. Dunbar suggested that appraisal timeframe should be set according to acceptable standards within the insurance industry.

MOTION 4: Dunbar to insert "independent insurance" before "appraisal", delete two commas, and delete last sentence of current (c) on page 2.

SECOND: Cornett

VOTE: Motion carried unanimously

MOTION 5: Dunbar to replace "valuation" with "replacement cost" in current (c) on page 2.

SECOND: Cornett

VOTE: Motion carried unanimously

MOTION 6: Cornett to delete ", regardless of any requirement in theor the like," New subparagraph (a) and renumber.

SECOND: Koenig

VOTE: Withdrawn

Dunbar feels that there needs to be a separate paragraph dealing with adequate insurance. Dunbar agrees to draft a new section (a) defining adequate insurance and renumbering current draft.

Break for 5 minutes until 10:15

MOTION 7: Geisler regarding appraisal timeframe to be added in Dunbar's new draft (11) (a):

"The full insurable value shall be determined not less frequently than every 36 months."

SECOND: Cornett

VOTE: Motion carried unanimously

MOTION 8: To accept Dunbar's new language and reordering of sections with the following editorial changes. In (11) change "section" to "subsection". Put a period after "prior appraisal" and delete the rest of the sentence. Create new paragraph 2. after 1st

sentence in new 1. and renumber. Delete "is" in new 2. between "insurance coverage" and "sufficient".

No opposition

MOTION 9: Cornett in 3. on page two, the second sentence should read "... shall state any potential assessment amount against each unit, if any."

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 10: Dunbar to make paragraphs 1. and 2. on page 2 complete sentences and fix (c) by removing the comma and putting a period after "board".

SECOND: Cornett

VOTE: Motion carried unanimously

MOTION 11: Dunbar to add in 3. on page 2 "the proposed deductible". The second sentence will read as "The notice of such meeting shall state the proposed deductible and the available funds and the assessment authority relied upon by the board and shall estimate any potential assessment amount against each unit, if any."

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 12: Cornett to delete "called and" in first sentence of 3.

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 13: Dunbar to delete "of administration" in first sentence of 3.

SECOND: Cornett

VOTE: Motion carried unanimously

Pete Dunbar will send a new draft around. See insert 3.

Discussion on less than full value coverage. Koenig would like to see a provision that requires a 14 day notice in relation to potential assessments and possibility of less than full value coverage.

Mike Andres: Issues in question: (1) In exercising discretion on deductibles, does the council want to statutorily determine what a reasonable amount should be? (2) Does fiduciary duty require 100% coverage?

MOTION 14: Koenig, add at end of (11) (a): Unless otherwise provided by the declaration, adequate insurance shall mean full insurable value, subject to the deductible as set forth in (c), provided however, that in no event may a declaration provide for insurance at less than 80 % of the full insurable value.

SECOND: No second

VOTE: Motion fails

MOTION 15: Koenig to create a new 4. The deductible shall be that portion of the full insurable value not covered by the insurance policy and shall not be more than 20% of the replacement cost of the property to be insured.

SECOND: Dunbar

VOTE: Motion fails

MOTION 16: (11(a) 2. by Dunbar. Add “individually or” after “insurance coverage” and before “for a group of not fewer than three communities”

Second: Cornett

VOTE: Motion carried unanimously (roll call vote)

MOTION 17: Koenig insert “(d)” before 1 in (d) 2. on page 2.

No opposition

MOTION 18: Cornett to delete “for” in (f) 3., second new line.

No opposition

MOTION 19: Cornett to place a period after “any of the foregoing” and strike remaining language in (f) 3., on page 3.

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 20: Cornett to delete “which are available for the benefit of all unit owners” in (f) 2. on page 3. Language is not needed.

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 21: Cornett to change “current” to “currently” in (g) 2. on page 3.

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 22: Dunbar to delete “non-structural” in (g) 3. on page 4.

No opposition.

MOTION 23: Dunbar to replace “section” with “subsection” at the end of (i) on page 5.

No opposition

MOTION 24: Cornett in (j) delete first phrase and start with “Any”. Delete the word “provision” in last sentence:

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 25: Dunbar in (j) 2., change the “which” to “that”. End the sentence with “in that condominium”.

SECOND: Koenig

VOTE: Motion carried unanimously

MOTION 26: Use “that” instead of “which” in (j) on page 5.

No opposition

MOTION 27: Cornett to put a period after common expense on line 4 of (j) and delete the rest.

SECOND: Dunbar

VOTE: Motion carried unanimously

MOTION 28: Cornett make (j)(1) a (k) and reword. “An association may, upon the approval of a majority of the total voting interests in the association, opt out of the

provisions in paragraph (j) for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements."

SECOND: Geisler

VOTE: Motion carried unanimously

MOTION 29: Dunbar to make (j)2 an (l) to read: "In a multicondominium association that has not consolidated its financial operations under Section 718.111(6), any condominium operated by the association may opt out of the provisions of paragraph (j) with the approval of a majority of the total voting interests in that condominium. Such vote may be approved by the voting interests without regard to any mortgagee consent requirements."

Change (j)3. to (m) to read: "Any association or condominium voting to opt out of the guidelines for repair or reconstruction expenses in paragraph (j) must record a notice setting forth the date of the opt out vote and the official records book and page at which the declaration is recorded. The opt out shall be effective upon the date of recording of the notice in the public records by the association. An association that has voted to opt out of paragraph (j) may reverse that decision by the same vote required under paragraph (k) and (l), and notice thereof shall be recorded in the official records.

Make 4. new (n), and delete lead in to read: "The association shall not be obligated to pay for any reconstruction or repair expenses due to casualty loss to any improvements installed by a current or former owner of the unit or by the developer where the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit, except to the extent of any insurance recovery specifically for any such improvements."

SECOND: Cornett

VOTE: Motion carried unanimously

Discussion on how to present draft language. Suggestion that it be a strike all and reword amendment.

MOTION 30: Dunbar to take out underlined language in (d) on page 2 and move 1. through 4. to (j). Reference to (d) 1. in paragraph 2. should be changed to (j) 1.

SECOND: Koenig

VOTE: Motion carried unanimously

Suggestion by Joe Adams to look at flood insurance

Dunbar e-mailed final draft to council members

Dunbar will send this version to Harry Charles for bill drafting. Harry Charles is the point person for the Posey/Gardner bill.

New Business

MOTION 31: Dunbar to make insurance language a part of council report.

SECOND: Cornett

VOTE: Motion carried unanimously

Discussed items to be included in annual report: record of testimony, schedule of meetings, synopsis of public comments, emergency powers provision, jurisdictional change language, education piece including the certification of other programs to expand the education program, and items previously approved but not adopted by Legislature.

Will follow same process as last year. Jon Peet will prepare a first draft as soon as possible. December 1st final report deadline. Report draft will be circulated before meeting.

Election of Officers:

MOTION 32: Cornett to leave officers Andrew and Dunbar as is.

SECOND: Van Dine

VOTE: Motion carried unanimously

Next meeting: Telephone conference to approve annual report sometime around the first of December.

Motion to Adjourn 2:39 p.m.