

Advisory Council on Condominiums
January 26, 2007
Destin Community Center
101 Stahlman Avenue
Destin, Florida

Chair Mike Andrew called meeting to order at 1:05 p.m.

Members Present

Mike Andrew, Chair
Peter Dunbar, Vice-Chair
Joe Adams
Bob Fowner
George Geisler
Karen Tysenn
Paul Wean

Division Staff Present

Colleen Donahue
Jonathan Peet
Carol Windham

Verification of timely publication of meeting notice in Florida Administrative Weekly.

PUBLIC INPUT

Karen Gercak; unit owner in Ft. Walton Beach; Pirates Bay, 120 units (more rental units than residential). Wanted to speak regarding the state's response to owner complaints. Stated that she has had several opportunities to work with the analysts at the Department of Business and Professional Regulation (DBPR) and while she understands that investigators have many complaints, she has had problems with investigators getting back with her. Also stated that if there is a violation of condominium documents the only recourse is arbitration or lawsuit, which puts financial burden on owner and association. Would like to see DBPR investigating violations and enforcing documents. Council members asked Ms. Gersak several questions regarding the issues involved in her complaint. Jon Peet promised to follow up on her complaints.

Roland Guidry; real estate broker and former president of local board of realtors. Part of a committee of realtors interested in amending real estate contracts that relate to sale/purchase of condominiums. Distributed handouts covering his issues: (1) CCCL (coastal construction control line); Florida law requires disclosure of CCCL from seller; newer condominium documents contain survey but older ones do not. Felt this is burdensome for sellers to hire surveyor to produce this report; suggests that Chapter 718 be amended to require association to complete this survey and recorded with court along with condo docs. Considers very important issue. Chair Andrew asked if association would bear the cost of survey as common expense; Mr. Guidry stated yes. (2) Discussed Chapter 718, listing documents to be provided to buyer; specifically, deleting the "if requested in writing" portion, since he thinks the intent is for the document provision to be mandatory. (3) Special assessment payment liability. When a buyer and seller agree on price to buy condominium but haven't closed yet; during pending period between contract and closing, storm hits. There is a special assessment imposed due to

storm damages, does buyer or seller pay? Only reference he can find in Chapter 718 is "owner on due date". Thinks it's a confusing issue. Would like Chapter 718 to be amended; insert "regular" assessments and then add language to deal with special assessment responsibility for payment, such as "approval" or "levy" dates. (4) Prospectus versus recording documents. Developer gives prospectus version to first buyers in preconstruction sale. After the developer finishes and creates condominium, he removes all of the preconstruction documents and records; in a resale, that is what buyers should get. Has seen many instances of buyers get old "prospectus" versions because that's all the unit owner has. Would like to see Chapter 718 amended to require a developer to give set to each first buyer after recording documents. Has personally seen CAMs give buyers prospectus documents that are 25 yrs old. (5) Assignees of preconstruction contracts; felt that Chapter 718 is silent as to the assignees rights. Would like Chapter 718 to address these rights and provide right of rescission.

Also discussed flood insurance; stated that the most you can get from national program is \$250,000 per unit. Their last insurance appraisal was \$30 million. \$17 million is most they can get from national program and they couldn't get additional coverage for any price. They have amended documents to state that with regards to flood insurance, following annual vote of directors/owners, the board can get only coverage available through national program (to eliminate liability of board).

Julie Rawson; 54 units; Destin, still under developer control. Unit owners have just been notified that they are going to have turnover. Stated that she has many questions regarding financial responsibilities during developer and turnover periods. Shared her questions and concerns regarding the developer guarantee period. Insurance has gone through the roof; she discussed the "115% increase" rule for assessments; it's her understanding that the 15% is the developer's responsibility. Member Adams clarifies the 15% issue and who approves; Vice-Chair Dunbar stated that developer is going to face a business decision as to whether he pays entire amount, or turns over and pays his share based on the units that he still owns. Jon Peet described guarantee period; developer is not required to fund deficit. Board's responsibility is to pay bills and find mechanism to fund bills; if budget is not sufficient, borrow from bank, developer loan funds, etc., in order to adopt budget while developer is in control, and expenses exceed 15%, there will need to be a meeting to vote on budget. Member Wean felt that this issue has caught attention of Florida Bar; felt that there are concerns because of insurance rates going up, it would be a material change of documents to reflect increase in insurance on budget. Thinks developers will want to exclude insurance increases from this cap.

Ms. Rawson brought up second issue, regarding material changes; discussed statutory requirements of developer filing amendments if material changes are made. Her condominium documents specified there would be a lobby but it turned out there was none. Developer's lawyer threatened to keep entire deposit if she didn't close. Discussion ensued regarding Ms. Rawson's building.

Debbie Fowner; manager of several associations. Expressed frustration regarding recent attempts to get reimbursement (mitigation) from Citizens Insurance Company; the manager must complete additional forms, which includes an engineer's certification as to the structural make up of the condominium structures. Frustration because this information has

already been submitted to get the insurance policy in the first place.

David Sherry: Surf dwellers Condominium in Ft Walton Beach; 83 units. Asked if ground floor units are not able to purchase flood insurance, or if they lose current insurance, would all 83 owners be assessed to rebuild? Or would only the ground floor units be assessed to rebuild? Member Adams stated that typically the condominium documents will address the repair after casualty; if it's a common element, association must pay and share cost with everyone. If it is the interior of unit – owner's insurance. Brought up Plaza East insurance decision.

MOTION: Vice-Chair Dunbar, to approve minutes from November 3, 2006 meeting.
SECOND: Member Geisler
VOTE: Motion carried unanimously

OLD BUSINESS

Council Report: Jon Peet presented his draft on report and asked for comments on the executive summary, Michael Gelfand's comments, and described draft of legislation as attached.

Vice-Chair Dunbar stated that legislation deadline for bill drafting was yesterday (January 25, 2007) and suggested legislation in report is relevant for next year's session. Also stated that Senator Margolis took the Council's conversion legislation and submitted. Chair Andrew agreed and asked that report be moved along. Member Adams reminded Council that previous minutes recommended adding emergency powers language to report (same language approved from last years report). Chair Andrew asked Jon Peet to move report along. Vice-Chair Dunbar stated that Mr. Gelfand talked about general overview of the termination bill that was previously addressed; he chairs condo committee of real property committee and commented on the sections disagreement of the Plaza East Declaratory Statement. Also engaged in general description of real property's section's termination bill (as it was their initiative).

MOTION: Member Adams: to approve report.
SECOND: Vice-Chair Dunbar
VOTE: Motion carried unanimously

Member Adams stated that he has a problem with staff sharing drafts at meeting without advance notice to members who travel great distances to meetings; felt that it is disrespectful to members who volunteer time and effort for council.

Discussion ensued regarding several points in draft report, making grammatical corrections, edits, and adding "executive powers" in the Legislation Changes section.

MOTION: Member Adams: to discuss adding additional item to report, showing Council's support for termination bill.
SECOND: Vice-Chair Dunbar
VOTE: Motion carried unanimously

Discussion ensued regarding this issue; Jon Peet noted removal of 20% language. Vice-Chair Dunbar noted that the Council endorsed the original version, which did not

include the 20% language.

MOTION: Chair Andrew: to submit report as edited at today's meeting.
SECOND: Member Geisler
VOTE: Motion carried unanimously

Jon Peet will produce and submit final report to Chair Andrew; Carol Windham will share with same parties as last year.

LEGISLATIVE UPDATE

Vice-Chair Dunbar distributed copies of legislative update information.

- (1) SB250, Posey: regarding condominium units that are rented; no house companion
- (2) Termination bill
- (3) Conversion Bill (Senator Margolis)
- (4) SB348 Dawson regarding financial issues
- (5) Deutch emergency powers
- (6) Wean's insurance draft by Deutch

Vice-Chair Dunbar introduced discussion of the insurance package that was passed in the special session; three pages relate to multi-family communities. Section 12 of this package deals with insurance code that permits self insurance funds to be created; language now allows self insurance funds to be created by not-for-profit corporations that operate condominium, homeowners' and timeshare associations. Also described the elaborate process for associations to create self insurance. Stated that in order for the self insurance plan to work, modifying legislation will need to be passed during the regular session; Senator Margolis' bill will contain this language. Also stated that the legislature intends to make Senator Margolis' bill a vehicle to include changes to Chapters 718, 719, 720 and 721, ensuring that self insurance funds can be made available.

Section 37 of this package deals with non-residential condominiums; they no longer have to comply with insurance requirements in Section 718.111(11), F.S. This section adds clarity and flexibility to the requirement that limits residential condominiums' "reasonable deductibles" and allows boards to consider available funds in reserve accounts, i.e., eliminate requirement to insure roof when cash is available in roof reserve fund. Assessment authority of the board may also be considered when determining the deductible in the master policy.

Section 3 of the package allows 3 or more qualifying associations to pool insurance options (if they meet certain standards). Vice-Chair Dunbar noted that he has seen one that appears to give significant savings in premiums. Section 4 of the package notes that if there are self insurance pools approved by the Office of Insurance Regulation, and if a community elects to use these programs, it will be deemed adequate.

Member Adams shared some of the concerns that he has heard, specifically that people are taking the term "self insurance" to mean that if the condominium gets hit (by a storm), then the association will assess everyone. Current self insurance option means setting up private fund, running actuarial reports, etc. Felt that the issue that needs to be looked at is the association's assessment authority. Also stated that one his clients

found that several units couldn't be sold because they carried a 10% windstorm deductible; Fannie Mae would not accept because the deductible is too high. Lot of condominiums think they can manage premiums by raising deductibles. Vice-Chair Dunbar noted that Berkshire-Hathaway is moving forward on self insurance programs.

Jon Peet pointed out that the division will be holding an insurance rule workshop in February; the rule is supporting the division's position on the Plaza East declaratory statement. Member Adams asked why division waited until the last minute to notify Council of this rule workshop. Chair Andrew expressed frustration that the Council had not been afforded opportunity to participate in rule workshop by notifying members, other than notice in Florida Administrative Weekly.

MOTION: Vice-Chair Dunbar: to ask Chair Andrew to send letter to division (with copy to Secretary Benson) expressing position that council disagrees with the rule and the department's position.
SECOND: Member Adams
VOTE: Motion carried unanimously

Member Adams also asked if division's legal department had opined as to whether division has authority to attempt this rule making. Jon Peet stated that he did not know if there are any records about this issue. He also explained that the division had gone to the Office of Insurance Regulation (OIR) as requested by the Council, and the OIR agreed with the division's interpretation. Vice-Chair Dunbar asked to see this interpretation by the OIR in writing. Jon Peet stated that they didn't give division an opinion in writing. Vice-Chair Dunbar wanted the opportunity to rebut an opinion by the OIR and stated that they should not be giving interpretation of the Condominium Act. He also stated that he has already met with Secretary Benson and asked her to stop the division from promulgating this rule; she promised to look at issue.

Member Adams asked if Council was going to take positions on legislation, for example, Senator Posey's legislation – should Council review and go on record on these bills? Chair Andrew stated that he would be happy to take up this issue.

MOTION: Member Adams: to express concern that problem that SB250 could have unintended consequences by jeopardizing consumer's guarantees.
SECOND Vice-Chair Dunbar
VOTE: Motion carried unanimously

MOTION: Vice-Chair Dunbar; to oppose Senator Siplin's foreclosure bill again.
SECOND: Member Wean
VOTE: Motion carried unanimously

MOTION: Member Wean: to express concern that SB328 could have unintended negative consequences.
SECOND: Member Geisler
VOTE: Motion carried unanimously

NEW BUSINESS

Jon Peet gave departmental update and listing of new staff, including Secretary Holly Benson, Deputy Secretary Chuck Drago, Chief of Staff Charlie Liem, and Adam Sohn, the new communications director.

2007 Council Business:

Chair Andrew stated that next meeting could be scheduled for Tallahassee early in session so legislators may attend, or that Council members may meet with legislators. Discussion ensued regarding holding next meeting in Tallahassee on first day of session.

Member Adams asked to discuss hurricane shutters at next meeting.

MOTION: Member Wean: to adjourn meeting.

SECOND: Member Adams.

VOTE: Motion carried unanimously.

Meeting adjourned at 3:57 p.m.