

Advisory Council on Condominiums  
March 6, 2007  
Tallahassee, Florida  
Northwood Center Boardroom

Meeting called to order at 9:11 a.m.

Members Present

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

Division staff present:

Rudolph Prinz  
Carol Windham

Verification of publishing of timely notice in the Florida Administrative Weekly.

MOTION: Vice-Chair Dunbar, to approve minutes from January 2007 meeting  
SECOND: Member Geisler  
VOTE: Carried unanimously

OLD BUSINESS

Legislative issues:

HB1373: : discussion ensued; Member Wean noted that the Ombudsman's proposed legislation is included in this bill. Noted that there were a lot of problems; a provision currently in Chapter 720; no prohibition to a 720 running more than one community; that is stricken in this bill. Another example under 720, the ability to fine has been stricken; but states that person who violates election process could be fined; typos, extractions that don't make sense anymore;

Chair Andrew: if we can get through rest of legislation today, perhaps Council can go through this bill page by page so that council can take a position. Asked Chair Dunbar if this bill will go quickly; thinks that Villalobos & Robaina are not imminent in terms of their first hearing; doesn't think they have been referred yet either. Practical observation; little or no chance that either bill moves. Has also looked at bills and sees unintended consequences; are some political live wires such as those that use CDDs; effort to expand division's role to include mandatory HOAs. Thinks Council should go through these 2 bills today if we have time. Domino & Jones bills are up tomorrow morning; Geller bills also up tomorrow, followed by Margolis bill on Thursday and possibly the house companion on Thursday too. All scheduled to go up this week; Chair Andrew asks if anyone has objection to moving through the rest of legislation and then working on the Robaina and Villalobos bills.

SB 396 (Margolis): Member Dunbar stated that this bill has morphed significantly as a result of changes to insurance options that were made during special session. Senator Margolis' original bill was expanded (base bill still intact, includes conversion issues recommended by the Advisory Council). Also contains provisions for Chapters 718 and 719 concerning changes in budget that occur as result of unforeseen expenses. The language that appears in the bill came from the Real Property Section of the Florida Bar. Includes requirement that budget estimates be made in good faith. Scheduled to be heard Thursday morning; the following changes are going to be made: Section 718.618 is being clarified; reference is made to converter reserves. There is a section in this bill that states "current provisions of documents notwithstanding", community can take advantage of new insurance options.

Member Dunbar asks what the Division's opinion will be regarding filings made and not yet amended; a new budget can be needed by the time a community is completed and ready to close. Rudy Prinz stated that discussion during Real Property Meeting led to decision that legislative route was most appropriate. Member Dunbar restates question: if presales were done in 2004; contracts are in place; no amendments; look ahead to 2006, buildings are complete and ready to close. Do unit owners have right to rescind contracts because budget going forward is different than original filing? Rudy Prinz stated that developer has obligation to give best estimate budget to owners. The division has not addressed whether developer has to file an amendment and doesn't imagine that division would if this issue is going through the legislature this week.

Vice-Chair Dunbar points out that language from special session (1A) relates to SB396. With regards to condominiums only, there is a revision to what a reasonable deductible means, and associations may now (in determining what is reasonable) look at cash on hand and their assessment authority to determine this figure. An association won't have to insure 100% if they have reserve funds on hand to cover replacement. Association can also take into account that unit owners have special assessment coverage in their unit owner policies. Second option applies to condominiums, cooperatives and mandatory homeowners' associations, and a "pooled" insurance option, so that 3 or more of these communities can get together, and based on an actuarial report, predict their insurance needs and buy a product to cover all three and be considered to have adequate coverage. Third, the ability for 10 or more associations (condo, coop, mandatory HOAs, timeshare) to participate in self insurance fund. Self insurance: under insurance code, you are required to file your trust arrangement with Office of Insurance Regulation and once approved, policy can be issued and coverage put into place, and considered to have adequate coverage by Condominium Act. This clarifying language states that if association wants to use self insurance option, that is an appropriate common expense and is allowed. Also stated that no self insurance product exists today; Berkshire Hathaway is only company working on filing.

HB 433 (Domino) and SB902 (Jones) will be up tomorrow: strike all amendment will make them look identical. Stated that bills should come out of committee without much debate tomorrow.

SB1844 (Ring) provides deferred payment of attorneys' bills; HB1365 (Gibbons) contains emergency powers provisions; a few other provisions regarding retrofit for fire sprinklers and mandatory homeowners' associations.

MOTION: Member Adams, to take position of supporting Gibbons bill  
SECOND: Member Wean  
VOTE:

HB923/SB1444 (Ambler/Justice): Vice-Chair Dunbar stated that the bill would create the Home Court Advantage Program in circuit court, an alternative dispute resolution process that's different from the one that currently exists (which was created by the HOA task force). Would create special masters under the circuit judge in 2 pilot circuits. Member Adams thought this bill is unconstitutional; Chair Andrew stated that language creates overlap and confusion regarding where to go if unit owner has dispute.

MOTION: Member Wean; to advise that we are not supporting this bill.  
SECOND: Member Adams  
VOTE: Motion carried (Member Tysenn opposed)

Discussion ensued regarding contacting bill sponsors and copying staff directors of committees of substance.

Back to Gibbons bill:

HB1365 (Gibbons) Member Adams stated that bill contains what the Advisory Council approved in the past; changes fire sprinkler deadline to 2020 (versus 2025 in the last bill that was vetoed).

MOTION: Member Adams, to support this bill  
SECOND: Member Wean  
VOTE:

Discussion ensued: Vice-Chair Dunbar asked if Council can support only the portion that members like and leave out the fire sprinkler portion. Member Adams withdraws motion.

MOTION: Member Wean; to support HB1365, with the caveat of taking no position on lines 198 and 199  
SECOND: Member Fowner  
VOTE: Motion carried unanimously

Chair Andrew asks Member Cochran about rule workshop. Member Cochran stated that there will be no more workshops at this time; rule promulgation on hold. Stated that division has suspended investigation on Plaza East type issues; matters are pending at 1<sup>st</sup> DCA and DOAH.

MOTION: Vice-Chair Dunbar; to make 718.111 top priority of Council in upcoming year  
SECOND: Member Wean  
VOTE: Motion carried unanimously.

HB1433 (Robaina)

MOTION: Vice- Chair Dunbar; to limit discussion and review to those issues that impact condominium associations because they are the only items within our jurisdiction  
SECOND: Member Adams

VOTE: Motion carried (Members Tysenn and Wean dissenting).

Member Wean stated that Council has looked at Homeowners' Associations a lot in the past year; Member Tysenn felt it proved Council wants to protect the status quo by not giving people who live in homeowners' associations the same remedies as those who live in condominiums. Chair Andrew stated that Council has a statutory charge to address condominium issues, not homeowners' association issues. Chair Andrew asked Member Cochran if adding second division for homeowners' associations would impact regulation of condominiums; Member Cochran stated no. Member Adams read statutory charge of Council from Chapter 718. Vice- Chair Dunbar stated that all members have opinions on the other parts of this bill but thinks statutory mission is clear. If members want to speak to mandatory homeowners' associations, there are forums for these issues.

Page 27: changes to ownership share calculation.

MOTION: Vice-Chair Dunbar: that this change, if made, consideration should be given to permitting approximation of the square footage assignment.

SECOND: Member Tysenn

VOTE: Motion failed.

MOTION: Member Adams, that Council express a concern that equal assessments are a common method of sharing costs and apartment square footage does not always relate to consumption of services; should be the option of the purchaser to choose method of apportionment.

SECOND Member Wean

VOTE: Motion carried. (Members Tysenn and Fowner dissenting)

Page 27:

MOTION: Member Wean; to change date on Page 27 to April 1, 2008

SECOND: Member Geisler

VOTE: Motion failed.

Page 28:

MOTION: Vice-Chair Dunbar; line 759 and 760; requirement that notice of proposed amendment sent to unit owners via certified mail: the idea of providing advance notice of proposed amendment is good idea, but narrowing only to distribution via certified mail is unnecessarily expensive and inefficient.

SECOND: Member Adams

VOTE: Motion carried (Member Tysenn dissenting)

Discussion ensued on this issue; Member Adams stated that certified mail is hard for people who work, expensive, and unable to send out of country. Encourage notice but not certified. Vice-Chair Dunbar felt it was a good suggestion but not certified mail, creates problems plus significantly expensive.

Line 775:;

MOTION: Member Wean; believes onerous to require two persons and requirement

that one is member of board. Line 775 have a representative of board in lieu of board member.

SECOND: Member Geisler  
VOTE: Motion carried (Member Fowner dissenting)

MOTION: Vice-Chair Dunbar; 2 people are not required when person is performing routine activity and person is bonded or insured

SECOND: Member Geisler  
VOTE: Motion carried unanimously

MOTION: Vice-Chair Dunbar; that notice should be given in person and to the unit occupant and not the unit owner.

SECOND: Member Tysenn  
VOTE:

Discussion ensued; Member Geisler doesn't mind 24 hour notice but felt that two persons is too much. Member Adams stated that written notice is difficult; one day before means telephone notice would be appropriate.

AMENDED MOTION: Vice-Chair Dunbar; notice be given to unit occupant and delivered to unit within 24 hours of activity

SECOND: Member Wean  
VOTE: Motion carried unanimously

Chair Andrew recognizes the Ombudsman joining the meeting. Ombudsman Danille Carroll appreciates listening to discussion on the legislation. Thinks everyone is working together to make things better.

Page 29

MOTION: Member Wean; on lines 787 and 788, to oppose this insertion and instead insert county where condominium is located.

SECOND: None  
VOTE: Motion died for lack of a second.

MOTION: Member Adams; to oppose this language.

SECOND: Member Wean  
VOTE: Motion carried (Members Wean, Geisler and Tysenn dissenting)

Discussion ensued: Member Adams stated that condominium law used to specify that condominium records were kept in same county as condominium. Difficult for rural condominium to use management company or accounting firm in another city. Felt that there was not a problem with telling someone in Naples they shouldn't have to drive to Miami but thinks it artificially limits working with management companies.

Page 31:

MOTION: Vice-Chair Dunbar; on line 842 to 844; to insert "and pass codes for control of association funds and records"

SECOND: Member Tysenn  
VOTE: Motion carried unanimously.

Discussion ensued: Member Adams stated that he agrees in concept, but felt the terms “other personal identifying information” could conflict with statutory requirement of disclosing addresses. Vice-Chair Dunbar agreed and felt that Member Adams has good point. Could prevent unit owners from communicating with neighbors. Thinks council should recommend that “personal identifying information” be reconsidered so that all owners will have contact information and names of other unit owners.

MOTION: Vice-Chair Dunbar; that consideration be given to rephrasing lines 844 and 844 so as not to exclude the name and contact information of the unit owners to other unit owners.  
SECOND: Member Adams  
VOTE: Motion carried unanimously.

Lines 857 and 858

MOTION: Vice-Chair Dunbar; to oppose because of increased costs  
SECOND: Member Wean  
VOTE: Carried unanimously.

Line 929

MOTION: Vice-Chair Dunbar; to oppose this artificial generation of financial reports  
SECOND: Member Adams  
VOTE: Carried unanimously

(15)(a): Provisions that read from lines 933 to 940; require a rebuild exactly as building

MOTION: Vice-Chair Dunbar; that this language in 15A be reconsidered in light of protections that may not be given to unit owners at time of rebuild (for example, building codes).  
SECOND: Member Fowner  
VOTE: Motion carried unanimously.

Discussion ensued: Vice-Chair Dunbar stated that if you rebuild a condominium today, you have to build to new building codes and this bill says you’ll build to original codes. Probably not intended but could be the unintended outcome. Member Adams felt that bigger problem was "60 days" provision; no way that within 60 days you can rebuild. Member Geisler: stated that it would be hard to get repair estimates within 60 days after disaster.

MOTION; Member Geisler; to ask that the language in lines 939 and 940 be removed because the 60 day window to make repairs is not practical  
SECOND: Member Wean  
VOTE: Motion carried unanimously.

Line 946:

MOTION: Vice-Chair Dunbar; that language is added to state “registered architect or engineer”  
SECOND: Member Adams  
VOTE: Motion carried unanimously.

Discussion ensued: Member Wean asks if this language conflicts with Member Adam's emergency powers language? Member Adams stated no. Member Geisler felt it should follow state building code instead, which would reflect seriousness of damage. Member Adams: thinks we should recommend to sponsor that this not pass, most is addressed in docs and addressing casualty should be a part of this discussion. Disservice to importance of this issue by merely tweaking certain words. Should be resolved & analyzed in context of insurance issue.

MOTION: Member Geisler; to add language to above motion (after engineer) "when required by state building code".

SECOND:

VOTE: Motion died for lack of second.

MOTION: Member Adams; to suggest to sponsor that everything on Section 15 not be considered until Advisory Council has opportunity to come up with comprehensive solution to unique challenges of condos in reconstruction

SECOND: Member Wean

VOTE: Motion carried (Member Geisler and Vice-Chair Dunbar dissenting)

Page 36, Line 976:

MOTION: Vice-Chair Dunbar; that language be clarified how this determination is made.

SECOND: Member Geisler

VOTE: Motion carried (Member Wean dissenting)

MOTION: Member Adams; that unless documents otherwise provide, board members should be unit owners.

SECOND: Member Wean

VOTE: Motion carried unanimously

Line 995

MOTION: Vice-Chair Dunbar; to oppose increased costs of unit owners

SECOND: Member Wean

VOTE: Motion carried unanimously

Lines 1002 and 1005

MOTION: Member Wean; to oppose increased costs of unit owners

SECOND: Vice-Chair Dunbar

VOTE: Motion carried unanimously

Lines 1010 to 1017

MOTION: Member Wean; to recommend reinsertion of 1010 to 1017, because of increased costs to association.

SECOND: Member Adams

VOTE: Motion carried unanimously

Line 1038

MOTION: Vice-Chair Dunbar; this line should not be repealed.  
SECOND: Member Wean  
VOTE: Motion carried unanimously

Lines 1072 to 1074:

MOTION: Member Wean; that this line is inconsistent with other portions of statute and should be revisited by author.

AMENDED

MOTION: Vice-Chair Dunbar; to add "except as otherwise provided by the act".

SECOND: Member Geisler

VOTE: Motion carried unanimously

Lines 1097 and 1098:

MOTION: Member Wean; to strike this insertion of lines 1097 and 1098.

SECOND: Member Adams

VOTE: Motion carried (Vice-Chair Dunbar and Members Fowner and Tysenn dissenting)

MOTION: Member Adams; to recommend to author that this line be changed to be consistent with HOA statute.

SECOND: Vice-Chair Dunbar

VOTE: Motion carried unanimously

Line 1133:

MOTION: Member Wean; to strike word "cost"; clarify to mean intent reflects use and amount of proposed assessment.

SECOND: Member Geisler

VOTE:

Discussion ensued: Member Adams asked how a board would know the cost until they've received bids? Member Wean stated that he urges his clients to pick a general amount and thinks it's essential to notice. Chair Andrew stated that intent is to give a "heads up" of cost for meeting. Vice-Chair Dunbar asked if this redundant to 116.11? Also stated that he thought this takes condominiums out of using self insurance funds.

AMENDED MOTION: Member Wean; to add word "approximate" amount to his motion

AMENDED SECOND: None.

ORIGINAL MOTION STANDS

VOTE: Motion failed.

MOTION: Vice-Chair Dunbar; that section needs to be checked for consistency with other notice requirements in Condominium Act.

SECOND: Member Fowner

VOTE: Motion carried unanimously

Line 1163:

MOTION: Member Adams; to amend and recognize validity of term limits and limiting members from one unit.  
SECOND: Member Wean  
VOTE: Motion carried (Vice-Chair Dunbar dissenting)

Lines 1218:

MOTION: Vice-Chair Dunbar; to clarify how representative is designated.  
SECOND: Member Geisler  
VOTE: Motion carried unanimously

Line 1240:

MOTION: Vice-Chair Dunbar; to recommend this not be repealed  
SECOND: Member Adams  
VOTE: Motion carried unanimously

Lines 1246:

MOTION: Member Adams: to clarify that ballot box or outer envelopes not be opened in advance of either recertification meeting or election meeting.  
SECOND: Member Fowner  
VOTE: Motion failed.

Discussion ensued: Ombudsman stated that this issue comes from unit owners having lack of faith in election process. People are more comfortable seeing ballots coming out of locked box, with the process done in open forum. Vice Chair Dunbar stated that this would not work for 2 unit community or resort communities. If there is a reason for mistrust, have a trigger mechanism to enforce this provision but don't penalize communities that don't need or don't want. Member Wean stated that under current FAC rules, committee can process ballots but this legislation removes this process.

Line 1299:

MOTION: Member Wean; to restore this repealed language because it is consistent with earlier recommendation to ability of smaller associations to opt out.  
SECOND: Member Adams  
VOTE: Motion carried unanimously.

Same motion on lines 1318

Line 1306:

MOTION: Member Adams; to remove this language; because it gives expectation of voting right of binding decision and other items that unit owners must vote upon are already in statute.  
SECOND: Member Wean  
VOTE: Motion carried (Member Tysenn dissenting).

Line 1387:

MOTION: Member Wean; that author insert additional item “unfunded insurance losses”  
AMENDED: to change unfunded to “uninsured or underinsured casualty loss”  
SECOND: Member Geisler  
VOTE: Motion carried unanimously

Lines 1453-1458.

MOTION: Member Wean; to strike these lines.  
SECOND: Member Geisler  
VOTE: Motion carried unanimously

Discussion: Ombudsman stated that this language came from her, and was intended to exclude emergencies. Member Wean felt it will prevent owners from rebuilding after emergency and cause financial problems. Ombudsman agreed that board should be able to do so after emergency. Intent was not to stop for emergency items. Member Wean gave example; he has association that had to rebuy their clubhouse and pool; if the loan comes up for majority and has a balloon mortgage; do they pay off by special assessment or refinance to pay off over time. Issue is clearly not emergency; if you put to majority vote, wealthy are going to control that vote. Would rather see this decision in hands of board.

Line 1459: Discussion ensued: Council doesn’t understand point of new language. Intended to repeal developer guarantee? Ombudsman stated that she can't tell. Member Wean stated that there are no common expenses until condo is created/recorded. Clearly all expenses are developer’s expenses until this time; delineation of expenses is mandatory. Vice Chair Dunbar felt that this inadvertently repeals developer’s guarantees.

MOTION: Member Wean; to strike lines 1459 through 1463, as it would be a physical impossibility and could inadvertently repeal developer guarantees.  
SECOND: Member Adams  
VOTE: Motion carried unanimously

Line 1466:

MOTION: Member Adams; this language should be revisited to ensure that it clears up existing uncertainty in statute regarding frequency of assessments.  
SECOND: Member Wean  
VOTE: Motion carried unanimously

Line 1474:

MOTION: Member Wean: to change language back to original form.  
SECOND: Member Adams  
VOTE: Motion carried unanimously

Line 1529:

MOTION: Member Wean; that from lines 1529 to 1617, current statute be reinstated.  
SECOND Member Fowner  
VOTE Motion carried (Vice-Chair Dunbar dissenting)

Discussion: Member Adams would like to hear from Ombudsman, and wants to know if she was involved in this drafting. Proposed idea violates basic notion of due process. Ombudsman stated that she understands and agrees with Member Adams and doesn't disagree with possible problems; issue was included in the bill this way because it was easier than creating new entity to certify rather than board. Stated that she is open to possibilities and suggestions on this issue. Felt that it should be taken out of boards hands; happy that it not be Ombudsman but open to suggestions for better process.

Line 1618:

MOTION: Member Wean; lines 1618 and 1619 be restored  
SECOND:  
VOTE: Motion failed for lack of a second.

Line 1759:

MOTION: Member Adams; to remove "at each annual meeting"  
SEDOND: Member Tysenn  
VOTE: Motion carried unanimously.

Line 1791:

MOTION: Member Adams; to recommend that line 1791 be changed to read "for the purpose of recommending necessary deferred maintenance"  
SECOND Vice-Chair Dunbar  
VOTE: Motion carried (Member Geisler dissenting)

Line 1798:

MOTION: Member Wean, to strike paragraph 7.  
SECOND: Member Adams  
VOTE: Motion carried (Vice-Chair Dunbar and Member Tysenn dissenting)

Line 1857:

MOTION: Member Adams; that while everyone should be protected from abuse, the Council does not think this is a role for the division as a regulatory agency. Therefore, we recommend striking this language  
SECOND: Member Wean  
VOTE: Motion carried (Vice-Chair Dunbar and Member Tysenn dissenting)

MOTION: Paul, to strike lines 1944 – 1952.  
SECOND:  
VOTE: Motion died for lack of a second.

Line 2015:

MOTION: Member Wean; to restore original language  
SECOND:  
VOTE: Motion died for lack of a second.

Line 2071:

MOTION: Member Wean; to restore "and mediation"  
SECOND: Member Geisler  
VOTE: Motion carried (Vice-Chair Dunbar dissenting)

Line 2237:

MOTION Member Wean; that the word "approval" be stricken and instead state  
"reviewed by attorney" instead  
SECOND Member Adams  
VOTE Motion failed.

Line 2234:

MOTION: Member Fowner; to strike all of new paragraph 3  
SECOND: Member Geisler  
VOTE: None, motion withdrawn.

Discussion: Member Fowner felt that 3 years is not long enough; if you are going to statutorily set a figure, it should be 5 years. Member Adams: thinks intent is to prohibit management contracts from binding associations for lengthy terms. He recommends any contract to state termination at will for any reason. Thinks this protects owners against onerous contracts.

Line 2263:

MOTION: Member Wean; to strike entire provision.  
SECOND: Member Adams  
VOTE: Motion failed.

Chair Andrew states that Council can watch movement of this bill between now and next meeting, as Council is only third of way through the text (halfway if only condo) make note that we tried to do as substantive a review as possible and there may be other issues.

Next meeting to be held in Sarasota during week of April 9. Member Geisler would like to see the meeting after that to be in South Dade.

Meeting adjourned at 2:00 pm.

