

Advisory Council on Condominiums  
April 9, 2007  
Sarasota County Terrace Building  
101 South Washington  
Sarasota, Florida

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

Members Present

Mike Andrew, 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.

MOTION: Member Fowner, to approve meeting minutes of March 6, 2007  
SECOND: Member Geisler  
VOTE: Motion carried unanimously

PUBLIC INPUT

Frank Zenie; board member and unit owner at Tidy Island Condominiums in Bradenton. Stated that his condominium association is struggling with certain aspects of hurricane shutters; many people don't like them and their approach is to put narrow time frames for installation (24 hours before storm) and/or 5 days after. His units are multi-storied and thinks this is obstacle to complying with law. Can't find any guidance on this topic.

Member Adams stated that he sees this issue in his legal practice all the time. Many year round residents don't like hurricane shutters being down because they feel it looks abandoned. Many owners use them for privacy or sun control as well. Also stated he thinks law should encourage hurricane protection, but in reality in coastal areas there is a high percentage of snowbirds. If big hurricane is coming in 72 hours; board can't find someone to install shutters. Stated that past arbitration allowed board to adopt reasonable rules for shutter specifications. Felt that if rule is passed for time frame restrictions before storm, then association takes the liability for installing shutters in emergency situation.

OLD BUSINESS

Member Wean stated that he would like to take a position on Representative Robaina's bill (HB 1373) in its entirety rather than line by line; instead, go on record that he has concerns about portions of bill and therefore could not support bill as a whole.

MOTION: Wean, to convey this idea to Rep Robaina and the Senate sponsor, and invite them to discuss portions that could be useful  
SECOND Member Fowner  
VOTE: Motion failed (Adams, Andrew and Tysenn dissenting)

Discussion ensued on motion: Member Geisler stated that he has a lot of concerns about the bill; there are a few good things in the bill, but doesn't think it's productive to go through 80 pages. Would be happy if Representative Robaina could sit down with the Advisory Council and hear the Council's objections. Supports the motion as long as the Council's letter to Representative Robaina is couched in such a way that the Council is trying to cooperate. Also stated that there are issues in bill that are impossible to comply with, and that negate the good parts of the bill.

Member Adams stated that he is against the motion; felt that the main feature is to take the previous version and eliminate all of the HOA regulation parts (as per vote at last meeting). Already spent a fair amount of time going through the changes which are still in the bill. Felt that we have made an effort with Representative Robaina to give him the Council's input in a respectful fashion and should continue what the Council has already started.

Member Wean stated that this bill continues to contain HOA material; if the Council continues its review, which version should be used – the Senate version (200 page) or current 80 page version. Did not think previous review was waste of time; felt it was educational process for members. Asked again that members send letter to Representative Robaina stating that the Council can't support the bill in its entirety, but welcome the idea to sit down with Representative Robaina and discuss portions of bill that are good and those that are not.

MOTION: Member Adams, to look at previous minutes to see where we left off and pick up there.  
SECOND: Member Tysenn  
VOTE: Motion carried unanimously

Page 12, line 343

MOTION: Member Wean, recommend that we strike "two" and leave number of inquires at "one" (revert to original language)  
SECOND: Member Adams  
VOTE: Motion carried unanimously

Page 33, lines 993 & 994

MOTION: Member Adams, to recommend that this not be changed because it's not reflective of the way condominiums are actually developed, nor reflective of the way many limited common elements are maintained  
SECOND: Member Wean  
VOTE: Motion carried unanimously

Page 36, lines 1072 & 1073 (hurricane protection)

MOTION: Member Adams, that we strongly encourage this amendment  
AMENDED: and move to line 1070

SECOND: Member Geisler  
VOTE: Motion carried unanimously.

Member Wean notes that word “or” could mean either shutters or hurricane protection; would this exclude if both were desired? Chair Andrew suggests putting sentence in beginning of subsection 5 on line 1058: this language actually enables it; further down in paragraph discusses maintenance. Member Adams felt it should go on 1070 instead.

Page 37: 1101 – 1103: religious items at door of unit: previously voted in March to strike entire paragraph. Language has changed (removed “not”)

Page 37 lines 1110-1131 (cable):  
MOTION: Member Geisler, to take no position on new language  
SECOND: Member Tysenn  
VOTE: Motion carried (Wean and Andrew dissenting)

Member Wean stated that he does not know what a “religious item” is – the bill does not say. Absent a definition of religious item, he stated that he is very uncomfortable with this language. Andrew commented that “reasonable” only relates to size.

Page 38; SLAPP Suit language

MOTION: Member Wean, to strike entire Section 9 (Lines 1151 - 1223)  
SECOND: Member Fowner  
VOTE: Motion carried; (Geisler and Tysenn dissenting)

Discussion ensued: Member Wean felt that this provision does not belong in HOA or condominium statutes. Felt that it belongs in another law; while the idea is a good one (not to penalize person who appeals to governmental entities), he believed it would be used as weapon against managers and associations and does not provide protection to associations/boards. Stated that he is aware of pending case in which attorney has brought action against association, alleging that they are a quasi governmental entity. This was meant to be used against developers (buyers who want to picket, or appear before county, etc) Stated that he strongly opposed this language and it should be a separate statute/tort.

Member Tysenn disagreed and stated that she thinks it belongs in the condominium statute.

Page 50: Lines 1505 – 1511

In minutes of previous meeting, this section was reviewed (see page 11 of minutes) The new language changes “approval” to “written advisement of attorney”.

MOTION: Member Adams, no action required on lines 1508-1511.  
SECOND: Member Tysenn  
VOTE: Motion carried unanimously

Lines 1505-1507

Language has not changed; reviewed at last meeting, Council will move on.

Page 51: Member Wean points out that eminent should be “imminent”.

Page 55: line 1658

MOTION: Member Adams, to retain “shall” but strike “prospectus and”  
SECOND: Member Wean  
VOTE: Motion carried unanimously

Member Wean asked Jon Peet to remark on this subject; Mr. Peet said he was not aware that division has ever developed prospectus. Division will typically tell developer that you have to disclose this or that (litigation, toxins on property). Division has other information that fills this need (before statute included “shall”) and are already in compliance. If language changed to state “shall”, division would have a lot of work to do.

Page 55, Line 1682 – 1684

MOTION: Member Wean, to strike this paragraph  
AMENDED: Member Wean, to strike “at the association’s expense”  
SECOND: Member Adams  
VOTE: Motion carried unanimously

Chair asked Colleen Donahue if this language is from the Ombudsman’s Office; Ms. Donahue said no. Member Geisler stated that the Ombudsman should recommend what education is needed because she sees the problems. Maybe not in this paragraph, but she should have input. Member Adams agreed with Member Geisler and wants to encourage the Ombudsman to do so, but stated that he doesn’t understand the “at association’s expense” – felt it was ambiguous. Jon Peet mentioned that the Division is currently working with the Ombudsman on condominium education programs.

MOTION: Member Adams, to strike “in conjunction with” and add “and may consider recommendations of Ombudsman with regards to such programs”  
SECOND: Member Wean  
VOTE: Motion carried unanimously

Page 57, line 1727-1732

MOTION: Member Adams, to oppose this language  
SECOND: Member Wean  
VOTE: Motion carried unanimously

Page 66, Lines 1847-1852 (requiring association to send letters to each unit owner when violation has been found by the Division). Jon Peet stated that the Division often requires this as part of consent order (when there are penalties). Also stated that many violations are dealt with through education or information letters. Asking the association to send letters like this could be large cost; doesn’t see a desire to add to this. Member Wean expressed concerns that association has to draft the letter and may not prepare it properly; if associations have to do it, let them use division’s official letter and send it out. Agreed that it is probably unnecessary expense. Colleen Donahue stated that this suggestion came from the Ombudsman; public has complained that after a complaint is filed, unit owners do not know about complaints or the outcomes. Errant board members could continue to be elected if unit owners do not know. Member Geisler stated that he liked the concept but felt it was poorly written: felt direct communication received from division should be sent out (not a letter from association) and time period should be described.

MOTION: Member Wean; to strike all new language in section (1) of 718.5011  
SECOND: Member Adams  
VOTE: Motion carried unanimously

Member Wean stated that this is inconsistent with what the Council spent time working on last year. Thought it allowed Ombudsman to work outside the department without any controls. In addition, language on page 60 (regarding the advice of the Ombudsman) could leave a unit owner in middle between the division and Ombudsman's advice/guidance.

Page 59, line 1786: strike "shall develop policies and procedures"

MOTION: Member Adams, to support this change  
SECOND: Member Wean  
VOTE: Motion carried unanimously

Page 60; line 1809:

MOTION: Member Wean, to revert to original language  
SECOND: Member Adams  
VOTE: Motion carried unanimously

Page 60, Page 1830

MOTION: Member Wean, to strike words "any penalties or actions" and insert "civil liability"; also, to add word "written" in front of word 'advice'  
SECOND: Member Geisler  
VOTE: Motion failed (Adams, Andrew, Fowner, Wean dissenting)

Chair Andrew felt it is attempt to fix a gap; statutory provision provides immunity to board acting upon attorney's advice but not upon the Ombudsman's advice. Member Wean stated that the problem is the use of the word "penalties" – the only entity that uses penalties is the Division. Felt that this can possibly set an association up against the Division. Member Adams did not support this motion or idea at all; felt it is contrary to authority of Ombudsman; also doesn't see where Ombudsman has authority to give advice or opinions to anybody – instead, to encourage, act as neutral resource, etc.

MOTION: Member Adams, to remove lines 1830-1832.  
SECOND: Member Fowner  
VOTE: Motion carries unanimously

Page 74; lines 2240

MOTION: Member Wean, strike Section 21; subject already adequately covered by state and federal fair housing laws  
SECOND: Member Adams  
VOTE: Motion carried (Tysenn dissenting)

Section 22; line 2285: language from Posey's bill added into Robaina's bill about developer's units. Council had already opposed language because it might negate developer guarantees.

MOTION: Member Wean, to oppose new language  
SECOND: Member Fowner  
VOTE: Motion carried unanimously

Chair Andrew stated that he will send similar letter to Representative Robaina and the Senate companion. Member Adams asked that letter also be sent to Secretary Benson and the Ombudsman.

Andrew: send similar letter to Robaina and Senate companion. Any committees to be copied? Joe: send copies to Sec Benson and Ombudsman.

#### UPCOMING MEETING

Andrew: how do we attack insurance at this point? 718.111(11). How do we start addressing insurance for this year? Insurance will be on agenda for next meeting. Council agreed that next meeting be in Miami/Dade County; Carol Windham should look for Aventura (north Dade County) locations and dates for June. Two day meeting with evening for public input and day meeting for work on insurance drafting. Invite Representative Robaina and other legislators to attend.

Jon Peet asked if hotel condominiums could be added to next agenda. Insurance issues: at June meeting: come up with list of issues and plan a round table with experts for following meeting.

MOTION: Member Adams, to adjourn meeting.

SECOND: Member Wean

MOTION: Motion carried unanimously

Meeting adjourned at 4:02 p.m.