

Advisory Council on Condominiums
Clearwater City Council
112 South Osceola Avenue
Clearwater, Florida
July 27, 2007

Meeting called to order at 9:01 a.m.

Members present

Joseph Adams
Chair Mike Andrew
Michael Cochran
Vice-Chair Peter Dunbar
George Geisler
Karen Tysenn
Melissa Van Dine
Paul Wean

Division staff present

Jon Peet
Carol Windham

Other guests

Representative Kevin Ambler

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

MOTION: Vice-Chair Dunbar, to approve minutes of June 2007 meeting.
SECOND: Member Wean
VOTE: Motion carried unanimously.

Vice-Chair Dunbar reviews agenda items as they relate to the work done at last meeting. Chair Andrew brings up past idea of holding a “round table” meeting in the fall with insurance experts. Vice-Chair Dunbar felt that this type of discussion would be most productive after the Council’s working draft was prepared, so that insurance people could review and comment.

Developer Transition

Vice-Chair Dunbar gives example of condominium conversion in Tallahassee, in which developer filed for bankruptcy prior to turnover. He has prepared draft language that amends Chapter 718, providing for an automatic transition to unit owners after a developer files bankruptcy. Member Wean expressed concern about bankruptcy laws; and whether a bankruptcy trustee would have to decide if he/she wants to control the association. Also wondered if this would apply in different kinds of bankruptcy – such as reorganization or a receivership. Vice-Chair Dunbar stated yes, it would apply in this case too and agreed to add receivership to the draft.

MOTION: Member Wean, to add language, F: “or when a receiver is appointed for developer by a circuit court”
SECOND: Vice-Chair Dunbar
VOTE: Motion carried, Adams dissenting

Hotel Condominiums

Draft language from Florida Bar's Real Property Section for review. Vice-Chair Dunbar stated that this draft language is an effort by a sub-committee of the Real Property Section. He also stated that he received this draft from the committee but did not get any other opinions or thoughts from them. This issue is scheduled for debate at the bar real property meeting in one week.

Member Adams stated that he thinks hotel condominiums are marketed as investments and subjected to protections of condominium laws; unless developers want to specify they are protected by SEC laws, there should be protection for people who buy these.

Member Wean stated that owners who buy hotel condominiums need more protection rather than less. Disagreed with taking jurisdiction out of division. Member Wean stated that he had drafted three provisions; 1) in a hotel condo, the developer could not reserve or assign himself limited common elements, certain components to the condominium (such as registration, laundry, telephone system); 2) does not prohibit the creation of commercial units serving residents, and 3) rental program, if operated, has to be under control of association.

Chair Andrew asked that Vice-Chair Dunbar keep Advisory Council apprised on this issue and share any new draft versions that come out of next real property meeting.

Home Court Advantage Pilot Program

Vice-Chair Dunbar stated that Representative Kevin Ambler, through local constituent workshops, felt there was no short and inexpensive way to solve disputes without going to court. Representative Ambler went to legislative drafting service and developed idea in Hillsborough County Circuit to bring all covenant disputes, no matter what type of community, into this Home Court Advantage Program. Many people looked at this bill and thought it was good idea, but also thought the bill had problems: conflicts with local judges, courthouses, costs, etc. The bill did not pass but is now the subject has been turned over to the Senate Regulated Industries Committee for further work.

Member Adams stated that these issues were already subject to hours of debate by the Homeowners Association Task Force, and pointed out that the Task Force's focus was on alternative dispute resolution. One Task Force member was a national mediation professional, and Karl Scheuerman worked hard on putting together work of the Task Force. Stated that the arbitration process is still adversarial and felt that bringing parties together early in the process informally and have a mediation before going to court. A new program would create new bureaucracy and charge more fees, while the original idea of alternate dispute resolution was to avoid costs and court. The problem with the alternative dispute resolution process is that it was given to the division to administer; many attorneys perceived that petitions were getting hung up in division; cases were delayed without accomplishing anything. The recent changes in the law attempts to alleviate this problem by using private mediation before going to court, removing from the Division. Stated that that we should give these recent changes to the mediation process a chance before we make any decisions about the Home Court Advantage Program.

Representative Ambler spoke to the Advisory Council, describing his background as an attorney, a parcel owner and a certified mediator. Explained the thinking behind the

development of the Home Court Advantage Program as a hybrid of small claims court and arbitration process. Felt that boards have had problems enforcing rules without liening authority; the program provided a way for boards to enforce rules and issue fines. His idea was to fashion an alternative dispute resolution mechanism that had the “blessing” of the court process, so people felt it was more official and felt compelled to participate. Boards or parcel owners could come to the program and have a resolution within 60 days. Hold hearings in courtrooms after hours, using court infrastructure already in place. Create set of standardized forms and checklists to level the playing field. If program rolled out successfully in these two counties (Hillsborough and Pinellas) then examine data to see if program should be expanded statewide.

Discussion ensued regarding jurisdiction of program and types of disputes eligible; Representative Ambler would be appreciative if Member Wean produced a draft that restated dispute descriptions. Member Wean agreed and will contact Representative Ambler to share his dispute definition ideas.

MOTION: Member Tysenn; that Advisory Council supports this idea and continue to work on it.

AMENDED

MOTION: Member Tysenn; to continue to work with Representative Ambler on this program idea.

SECOND: Vice-Chair Dunbar

VOTE: Motion carried unanimously.

Reserve Thresholds

Two sets of draft language for review; one draft prepared by Vice-Chair Dunbar and one prepared by Harry Charles of the Space Coast Condominium Association.

Jon Peet discussed reserve threshold issues, and the differences between using a per unit amount rather than a total dollar amount. Does not advocate a certain threshold dollar amount, just the method. Using a percentage rather than a specific dollar amount is another method; it stays with budget at the same ration. If using a specific dollar amount, it must be adjusted annually.

MOTION: Vice-Chair Dunbar; to modify previous suggestion from \$15,000 to \$300 per unit multiplied by number of affected units in condominium.

SECOND: Member Van Dine

VOTE: Motion carried unanimously.

Discussion ensued regarding using Representative Robaina’s legislation as starting point to discuss expanding identified replacement items, and modernizing the reserve/replacement process. Member Cochran asked if Council should consider choosing a median number for mandating reserves – perhaps 10 units or more.

Insurance Issues

Mike A: Paul has prepared draft; if we are going to ask for expert/stakeholder input, then our push should be to come up with a revised draft as quickly as possible for a round table session and then for session. Any other thoughts?

Jurisdiction of Division

Member Cochran stated that he took draft language the Council has been working on and prepared his own draft. Also stated that the Department of Business and

Professional Regulation in the process of reviewing all legislative ideas; he did not know what issues will make the final cut. Also does not know what Secretary Benson thinks on this issue; he anticipates that there will be further discussion on this issue with Secretary Benson.

MOTION: Vice-Chair Dunbar; that the Council endorse the concept embraced by legislation – jurisdictional changes that appear in Member Cochran’s draft.

SECOND: Member Adams

VOTE: Motion carried unanimously.

Chair Andrew asked that Member Cochran take this vote back to Secretary Benson.

Insurance Issues

Chair Andrew stated that his goal is to get a piece of legislation together that can be presented at a roundtable discussion with insurance stakeholders. Asked Member Wean to make summary of his draft; Member Wean agreed and also stated that the majority of the draft was prepared during the Aventura Council meeting in June. Member Wean explained that the draft’s concept was to make the insurance and maintenance obligations consistent; adopting the Plaza East rationale, subject to several caveats – namely, that the association has ability to make repairs and inject for reimbursements. Stated that with those caveats, he was okay with adopting the Plaza East rationale. This concept allows association to oversee maintenance and making repairs, and obtaining reimbursement for repairs made when appropriate; felt it would be satisfactory to associations and to responsible unit owners. Stated that he is satisfied with the change in concept and as something the Council should formally propose.

Member Adams stated that he favored current law; felt that this says that whatever party maintains, also insures – and thought you would then have to get into the condominium documents; felt the insurance industry would be opposed. Issue of “who pays” - let people decide for their own contracts; doesn’t have a problem defaulting to Plaza East if the documents are silent but not for everyone.

Member Wean stated again that entire document was prepared at last meeting; he has made no changes to draft. Stated that he feels this draft says insurance and maintenance are the same and feels that is desirable. He thought the Florida Bar would be receptive to this but they may have changed mind. Stated that he understands Member Wean’s position but doesn’t think they are very far apart, after reading the exceptions contained in the draft. Also stated that this draft addresses issues that Plaza East does not address – such as damage caused by unit owner, and allowing association to make repairs and treat as assessment. If owner has to have insurance and doesn’t purchase it, association can do so.

Member Andrew stated that because he does not support Plaza East, he’s having a hard time not being prejudiced about this draft. Asked if this is the draft document that the Council wants to submit for discussion and ideas at a roundtable discussion with the insurance industry. Asked that everyone move forward and treat this as the work of the Council at this point.

Member Adams stated that insurance issue contains 5 separate issues; 1) who insures what, 2) who pays when there’s not enough insurance money (deductible,

underinsurance), 3) individual unit owner responsibility – does the law really require mandatory insurance, and who will enforce, and 4) any exceptions to the rules – such as individual owner negligence or conditions arising from a unit not occasioned by negligence. Discussion ensued on 5 issues; decision made to divide issues into 5 separate motions.

MOTION: Member Adams; that Council recommends that any changes to Chapter 718 (in terms of the scope of master insurance policies for associations across the state) should be the same as required by law, not by wording of documents.

SECOND: Vice-Chair Dunbar

VOTE: Motion carried unanimously.

MOTION: Member Adams; which party pays – in non-fault casualties, how does industry allocate uninsured or underinsured losses? The default provision of the statute, unless otherwise provided in the declaration, is Plaza East; but the declaration may allocate as desired.

SECOND: Vice-Chair Dunbar

VOTE: Motion carried unanimously.

MOTION: Member Wean; that mandatory insurance coverage by unit owners is required.

SECOND: Member Geisler

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

MOTION: Member Wean; that an association be permitted to purchase a policy and make cost part of an assessment against owner, with appropriate rights if unpaid.

SECOND: Member Geisler

VOTE: Motion failed (Members Geisler and Wean voting affirmatively).

Vice-Chair Dunbar agrees to make changes to draft if Member Wean will provide electronic version.

Next Meeting

Agreed to meet in August in Orlando and then again in September in Fort Myers. Meeting date set for August 31 in Orlando, 9am – 4pm.

Meeting adjourned at 2:17pm.