

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS TELECONFERENCE MEETING
MARCH 1, 2013
DEPARTMENT OF BUSINESS AND INDUSTRY
2501 E. SAHARA AVE., 2ND FLOOR CONFERENCE ROOM
LAS VEGAS, NEVADA 89104**

MINUTES

MARCH 1, 2013

9:00 A.M.

1-A) Introduction of Commissioners in attendance.

In Las Vegas: Randolph Watkins, Robert Frank, Scott Sibley, Jonathan Friedrich, Robert Schwenk, Gary Lein.

By telephone: Scott Sibley and Senior Deputy Attorney General Henna Rasul as Commission Counsel.

Barry Breslow was not present.

1-B) Introduction of Division staff in attendance.

Teralyn Thompson, Commission Coordinator.

2) Public Comment

Bob Robey commented. Mr. Robey stated that he received an alert on the internet from the Community Association Institute regarding opposition to Assembly Bill 34. Mr. Robey stated that the alert is a fabrication of what Assembly Bill 34 says. Mr. Robey stated that he is concerned when a commissioner whose duty is to all of the people, receives information from a group of people who are not interested in the common person. Mr. Robey provided the Commission with a document titled "Save My Community" dated February 21, 2013.

John Currell, Henderson resident, commented on what to do with monies collected for resale units. Mr. Currell suggested that the statute be expanded to say that the money should be put into the association's bank account. Mr. Currell provided the Commission with a document titled "Proposed Revision to NRS 116.4109 Resale of Units".

Tim Stebbins, Henderson Nevada resident, commented on his appreciation of the Commission for having meetings to go over the proposed legislation.

3-C) For possible action: Discussion and decision to approve minutes of the February 15, 2013 Commission teleconference meeting.

Commissioner Schwenk moved to accept the minutes as presented with corrections. Seconded by Commissioner Lein.

Chairman Watkins stated that on page one of the minutes under agenda item 3-B-1, the name of Mr. Mulliner's law firm needs to be inserted.

Chairman Watkins stated that on page 3 within the second line; the first word should be “months” instead of “month”.

Chairman Watkins stated that on page 6 under Section 3, the spelling of Mr. Schaefer’s name should be corrected and the correction to Mr. Schaefer’s name should be corrected on page 8.

Chairman Watkins stated that on page 9 under Commissioner Comments; the last word should state DCAL.

Unanimous decision.

3-A) For possible action: Discussion and decision regarding 2013 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or Real Estate Division.

Assembly Bill 34

Chairman Watkins stated that Assembly Bill 34 was heard February 22, 2013. Chairman Watkins stated that he spoke to Gail Anderson and she was unable to attend the Commission meeting. Chairman Watkins stated that Assemblywoman Spiegel presented a multitude of questions to the committee which Ms. Anderson is preparing to answer. Chairman Watkins stated that Ms. Anderson’s answers to Assemblywoman Spiegel’s questions might have some bearing on the Commission’s discussion. Chairman Watkins stated that Ms. Anderson will provide the Commission with the answers to the questions on Assembly Bill 34 and any suggested amendments that Ms. Anderson is going to pursue. Chairman Watkins stated that the Commission will not take a position on this bill until the Commission sees the results of the amendments and proposed changes.

Section 9:

Mike Randolph, manager of Homeowner Association Services, commented. Mr. Randolph stated that he is in support of this section. Mr. Randolph stated that there have been problems with trustee sales and six to eight months waiting to find the deed because no one is being notified. Mr. Randolph stated that this section will protect associations and get them the right information much earlier.

Tim Stebbins commented in support of this section of the bill. Mr. Stebbins stated that the homeowner association needs to know who owns property within the common-interest community for operations and communication purposes.

Don Schaefer commented in support of this section of the bill. Mr. Schaefer stated that he is concerned about how this section would be enforced with the banks.

Section 10(11)(g):

Commissioner Friedrich stated that there should be some language in this section concerning enforcement.

Chairman Watkins stated that the enforcement is right at the table when someone tries to submit more than one ballot.

Tim Stebbins commented. Mr. Stebbins stated that this section is to ensure that association members are eligible to vote and assures that no one votes twice.

Section 12(1):

Commissioner Friedrich stated that he has a major problem with this section. Commissioner Friedrich stated that if board members do not know each other very well, how they will be able to recognize a voice over a speaker phone. Commissioner Friedrich stated that someone without authority could be standing in for that board member. Commissioner Friedrich stated that this is another recipe for more fraud.

Commissioner Friedrich stated he would like the language “or the association’s community manager” to be changed to “and the association’s community manager.”

Mike Randolph, treasurer of Paradise Greens homeowner association, commented. Mr. Randolph stated that he supports this section of the bill because there are times when small boards have a hard time getting members to be available.

Commissioner Frank stated that a way to solve the problem is by making the person chairing the meeting personally accountable for the integrity of the people participating in the conference call.

Section 12(6)(e):

Tim Stebbins commented in support of this section.

Commissioner Lein stated that some associations have a capital improvement fund or capital contribution fund. Commissioner Lein stated that he would like to add the language “and any other accounts that fall under the control of the association.” Commissioner Lein stated that those should be reviewed each quarter.

Pam Scott commented. Ms. Scott stated that capital improvement accounts are not necessarily from the capital contribution. Ms. Scott stated that in CC&Rs capital contributions are set up on new sales and not resales. Ms. Scott stated that very few associations get contributions on resales. Ms. Scott stated that CC&Rs set up that capital contribution is to fund the start up of the association. Ms. Scott stated that some associations account for capital improvement fund on their balance sheet but have not set up a separate bank account.

Section 16(1):

Tim Stebbins commented that he supports this section and likes the language “whenever possible”. Mr. Stebbins stated that he likes that the section states that bids are to be read aloud so that the community is informed of bids.

Commissioner Friedrich stated the “disclosed” and “discussed” came from him through the Division.

Chairman Watkins stated that this section interferes with the operation of the association and does not support this section. Chairman Watkins stated that associations are corporations and should not have to try to determine bids on every single project. Chairman Watkins stated that it should be at the discretion of the board of directors.

Section 16(3):

Don Schaefer commented. Mr. Schaefer stated that he has a problem with a contract that an association would have to go out to bid if it exceeds more than one year. Mr. Schaefer stated that his association has a three year maintenance contract with the grounds keeper with no increase. Mr. Schaefer stated that for his association to bid for other maintenance groups when his association is satisfied with their current service is a waste of time.

Dr. Robin Huhn commented. Dr. Huhn stated that her issue with homeowner associations is transparency. Dr. Huhn stated that the homeowner association is there because of the members and the members need to have full disclosure, full rights and be able to have their voice in what their money is going to be spent on.

Greg Toussaint commented that he opposes this section. Mr. Toussaint stated that board members are volunteers and completing a request for proposal yearly to multiple vendors are immensely complex projects. Mr. Toussaint stated that this will deter people from being board members.

Mike Randolph commented. Mr. Randolph stated that it would be very expensive for a small association to bid on services every year.

John Currell commented in favor of going out for competitive bids depending on the size of the contract.

Tim Stebbins commented in favor of this section.

Donna Toussaint commented that this section would be cumbersome for small associations.

Commissioner Frank stated that this section is needed for service contracts.

Commissioner Friedrich stated that he sees this section as transparency and protecting the homeowner.

Commissioner Friedrich stated that he is opposed to section 16(3)(b).

Section 17(4)(e):

Commissioner Frank asked how the Ombudsman's job description will be changed to reflect the training and experience to be able to do the job. Commissioner Frank stated that he doubts that the current criteria for selecting an Ombudsman include the duties and expertise. Commissioner Frank stated that he doubts that previous Ombudsman could have done these tasks without continuing education or prior education.

Chairman Watkins stated that the referee program is a substitute for the mediation process because it satisfies the same requirement. Chairman Watkins stated that the referee program and the arbitration program are both non binding. Chairman Watkins stated that governing document disputes should be settled by the referee program and that should be it.

Section 17(9):

Pam Scott commented that this section should be changed to state “declarations and any amendments” because bylaws and design criteria are not recorded documents. Ms. Scott stated that Ms. Anderson had indicated that she also wanted plat maps. Ms. Scott stated that plat maps change all of the time and it would be onerous for associations to know every time a plat map was amended.

Section 20(1):

Commissioner Friedrich stated that Ms. Anderson indicated that the word “breach” was brought about by the Legislative Counsel Bureau to differentiate between breach of the governing documents and violations of law. Commissioner Friedrich stated that “breach” was used because of the referee program.

Section 23:

Pam Scott commented that she does not support this section. Ms. Scott stated that this section allows the administrator to bypass the Commission to issue subpoenas and open investigations without a complaint going to the Ombudsman’s Office. Ms. Scott stated that it was unchecked power.

Tim Stebbins commented. Mr. Stebbins stated that under NRS 116A the administrator already has authority to impose certain sanctions on community managers.

Fred Carlson, from Sundown HOA, commented that the administrator would do this duty on behalf of the Commission.

Commissioner Friedrich stated that Ms. Anderson stated that the purpose to adding this language was because in the past only the Commission could issue subpoenas. Commissioner Friedrich stated that there have been several cases where the respondent objected to the Commission signing the subpoena and the case coming before the Commission. Commissioner Friedrich stated that the Division would have to dispute the subpoena in District Court. Commissioner Friedrich stated that this section would eliminate this problem. Commissioner Friedrich stated that this section is very important and is not an overreach of power.

Commissioner Schwenk stated that he disagrees with Commissioner Friedrich and this section is over stepping the bounds of the administrator.

Pam Scott commented that the administrator is given the same subpoena power in section 18.

Section 26:

Tim Stebbins commented in favor of this section. Mr. Stebbins stated that this language already exist in NRS 116A and now it will include associations who do not have a community manager.

Commissioner Friedrich stated that he has difficulty with the word “intentionally” in subsection 4(a). Commissioner Friedrich stated that if someone wants to play games with the homeowner, the person could take that quarterly assessment payment and hold it or use the payment to pay a fine or a fee.

Commissioner Friedrich stated that he is in favor of subsection 4(b).

Commissioner Lein stated that subsection 4(b) says “refuse to accept” but does not state that those funds have to be deposited into the association’s bank account. Commissioner Lein stated that sometimes funds are accepted but then turned over to the collection agency and deposited into the trust account of the collection agency which is then remitted back to the association.

Mike Randolph, manager of Homeowner Association Services, commented and agreed with Commissioner Lein. Mr. Randolph stated that NRS 649 says that any money that a collection agency receives on the first through thirty first of any given month must be remitted within thirty days of the close of business of that month.

John Currell commented on the practice of his association. Mr. Currell stated that his board passed a special assessment for homeowners to pay. Mr. Currell stated that the board gave homeowners the option to pay the special assessment when the homeowner sold their home. Mr. Currell stated that there are a large number that remain unpaid yet homeowners pay their annual assessment currently. Mr. Currell stated that he does not know in what manner the funds should be credited to homeowners’ accounts.

Dr. Robin Huhn, Calico Ridge Owners Association board member, commented. Dr. Huhn asked if funds are taken and placed toward past assessments and the homeowner continues to not be able to pay the current assessments when the homeowner will will catch up.

Section 29:

Pam Scott commented. Ms. Scott stated that this section is taking the confidentiality out of an investigation before a formal complaint has been filed by the administrator with the Commission. Ms. Scott stated that this section is broad on who the administrator can disclose to and might need to say law enforcement.

Commissioner Lein stated that he supports this section. Commissioner Lein stated that this section is broad. Commissioner Lein stated that the Commission had a disciplinary case come before them where the Division could not disclose certain facts to the Commission which was frustrating. Commissioner Lein stated that there should be some disclosure to the Commission of certain events that are occurring behind the scenes that would be useful for the Commission in making informed decisions.

Commissioner Friedrich stated that he is opposed to the fact that everything is confidential. Commissioner Friedrich stated that it should be open as it is in court with discovery allowed so that the aggrieved party knows what the response is.

Chairman Watkins stated that he agreed with Commissioner Friedrich.

Section 30:

Commissioner Friedrich stated that he was in Carson City when this section was discussed. Commissioner Friedrich stated that a gentleman who is a licensed insurance agent commented that there is no coverage for this type of insurance.

Commissioner Lein stated that he would like to ask Ms. Anderson to look at subsection 21(b). Commissioner Lein stated he would like to get clarification from Ms. Anderson as to what the expectation is.

Chairman Watkins suggested that Commissioner Lein contact Ms. Anderson and bring subsection 21(b) to her attention. The Commission agreed.

General comment:

Greg Toussaint commented. Mr. Toussaint stated that there are a lot of sections in the bill granting new powers to the administrator. Mr. Toussaint stated that he is concerned because the position of the Commission and the administrator are not always the same. Mr. Toussaint stated that this might put associations in a situation of not knowing who they need to report to.

Tim Stebbins commented in favor of the bill.

Commissioner Friedrich stated that he likes the concept of the bill. Commissioner Friedrich stated that there are a number of things that he disagrees with in the bill. Commissioner Friedrich stated that he hopes something good comes out of the bill.

Commissioner Frank stated that he participated in the original meeting with former Director Johnson when they were identifying the problems that this bill is supposed to respond to. Commissioner Frank stated that he is disappointed that the Commission was not allowed to participate in the final recommendations of the legislation to try to anticipate some of the concerns. Commissioner Frank stated that he is worried that the election monitor will not work. Commissioner Frank stated that it has not been tested. Commissioner Frank stated that he does not see companies in this business receiving the power of running elections with the uncertainty of who the certification agent is. Commissioner Frank stated that whoever certifies the quality of the election at the end of the day has the ultimate power. Commissioner Frank stated that he is worried about the current language.

Chairman Watkins stated that although there are some things in the bill that are worthwhile, there are lots of things in the entire bill that he does not support.

4) Public Comment

None.

3-D) For possible action: Discussion and decision regarding date, time, place and agenda items for upcoming meetings.

Commissioner Friedrich stated that on March 8, 2013 Senate Bill 130 will be heard by the Senate Judiciary at 9:00 a.m. Commissioner Friedrich stated that he will be at the Grant Sawyer Building speaking on that bill.

Commissioner Frank stated that he will not be available on March 8, 2013.

5) Commissioner Comments

Commissioner Lein stated that he disagrees with Commissioner Friedrich about the Commission being an obstruction as it relates to investigations. Commissioner Lein stated that the Commission has pushed hard for the Division to move forward with investigations. Commissioner Lein stated that the Commission is not part of the process or struggles of bringing cases forward.

Commissioner Schwenk stated that he agrees with Commissioner Lein. Commissioner Schwenk stated that there has to be a separation between the Division and the Commission for fairness to everyone.

Commissioner Friedrich stated that there were two former commissioners who did a disservice to the people of the State regarding the way that they voted while on the Commission.

Commissioner Schwenk stated that he did not think that Commissioner Friedrich's comment was called for.

6) For possible action: Adjournment

Meeting adjourned on March 1, 2013 at 11:19 a.m.

Respectfully Yours,

Teralyn Thompson
Commission Coordinator