

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES SEPTEMBER 22-23, 2015**

**GRANT SAWYER BUILDING
555 E. WASHINGTON AVENUE, ROOM 4401
LAS VEGAS, NV. 89101**

**LEGISLATIVE BUILDING
401 SOUTH CARSON STREET, ROOM 2135
CARSON CITY, NV. 89701**

SEPTEMBER 22, 2015

9:00 A.M.

A) Introduction of Commissioners in attendance

In Las Vegas: Barry Breslow, Stephen Aichroth, Robert Frank, Ken Williams, James Rizzi, Scott Sibley, Richard Layton, and Senior Deputy Attorney General Henna Rasul as Commission Counsel.

1-B) Introduction of Division Staff in attendance

In Las Vegas: Joseph Decker, Administrator; Sharon Jackson, Ombudsman; Claudia Rosolen, Commission Coordinator; Teralyn Thompson, Administration Section Manager; Jennifer Oerding, Education Officer; Stacey Spoerl, Program Training Officer; Chief Compliance Investigator Chris Sewell, and Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Michael Jory, Deputy Administrator

2) Public Comment

In Las Vegas: Ken Brensinger, Secretary at Anthem Highlands Community Association, commented. Mr. Brensinger provided the Commission with written public comment and read his comments into the record. Mr. Brensinger asked the Commission to look into the Division's discrimination on complaint investigations and abuse of powers.

In Las Vegas: Melany Lancelet, homeowner at Anthem Highlands Community Association Henderson, commented. Ms. Lancelet stated that current board members in her association are purposely not performing their duties. Ms. Lancelet stated that she is frustrated and supports Commissioner Frank's proposal of reviewing affidavits that have been closed by the Division. Ms. Lancelet requested that the Commission open an investigation on the Division's failure to assist her community and put this matter as an agenda item for the next Commission meeting.

In Las Vegas: Dahl Capello, homeowner at Anthem Highlands Community Association Las Vegas, commented. Ms. Capello provided the Commission with written public comment and read her comments into the record. Ms. Capello asked the Commission for a full investigation into the actions of the Division concerning the apparent inability or disregard to address

homeowners' concerns. Ms. Capello requested to have this issue placed on the next Commission meeting agenda.

In Las Vegas: Frank Capello, homeowner at Anthem Highlands Community Association Henderson, commented. Mr. Capello provided the Commission with written public comment and read his comments into the record. Mr. Capello stated that he saw first-hand the inability of the Ombudsman's Office to equally enforce NRS 116 and to remain a neutral party in disputes between board and unit owners. Mr. Capello asked for a full investigation into the unequal enforcement and retaliatory conduct that has occurred with his association by the Division.

In Las Vegas: Pennie Puhek, resident at Anthem Highlands Community Association Henderson, commented. Ms. Puhek provided the Commission with written public comment and read her comments into the record. Ms. Puhek stated that they have serious issues going on in her association that the Ombudsman's Office and the Division have failed to address. Ms. Puhek requested that the Commission instruct Ms. Briggs to re-open case #2015-5 and allow the matter to be heard by the Commission so that they can issue a determination on whether or not a violation of law occurred. Ms. Puhek stated that the Division's misconduct and retaliatory actions need to be formally investigated and requested to have her request placed on the next agenda.

In Las Vegas: Tim Stebbins, Henderson resident and director of the Nevada Homeowner Alliance PAC (NHA), commented. Mr. Stebbins read Doctor Robin Huhn of Henderson comments into the record.

In Las Vegas: Jonathan Friedrich, former Commission for Common-Interest Communities and Condominium Hotels commissioner, commented. Mr. Friedrich stated that he fully supports the proposed changes regarding board election responsibility and due process. Mr. Friedrich stated that he may not be on the Commission, but that doesn't mean that he is no longer trying to protect homeowners. Mr. Friedrich stated that he provided documents to the Division concerning Rancho Bel Air Homeowners Association and he hopes that the Division will take an active role in stopping them.

3-H) NRED v. Las Brisas HOA; Donald Piet; Ted Champaign; Judy England; Rick Ernest; Jerry Price; and John Christensen; for possible action

Case No. 2014-697

Type of Respondent: Board members

Parties Present:

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

John Piet was present representing Las Brisas Homeowners Association and all of the named board members.

Preliminary Matters:

Ms. Briggs provided the Commission with a copy of the stipulation for settlement of disciplinary action signed by the respondents, respondents' attorney, the Administrator, and Division's Counsel. Ms. Briggs read the stipulation for settlement into the record.

Chairman Breslow asked Mr. Piet if his clients are in favor of the obligations under the terms of the stipulation.

Mr. Piet stated that his clients understand and agree with the terms set forth in the stipulation.

Commissioner Frank asked what kind of plan the association has in order to handle such a deep hole.

Mr. Piet stated that a management company was hired to help with the budget process. Mr. Piet stated that the board has already notified homeowners about the issue and the association hopes to fill the reserve account within seven to ten years. Mr. Piet stated that in the next few months there should be a more concrete plan in place to put the budget together.

Commissioner Frank asked if the association has a plan to disclose the situation to new buyers.

Mr. Piet stated that the association has already drafted a letter that will be included in the documentation that new homeowners receive.

Commissioner Layton asked if there was a valid reserve study done.

Ms. Briggs stated that she received a copy of the reserve study that was done in May of this year. Ms. Briggs stated that the reserve study was prepared by a specialist and the board is adopting it.

Commissioner Williams stated that the settlement is a little light and set a precedent for board members. Commissioner Williams stated that in his opinion the settlement is short of what it needs to be.

Mr. Piet stated that the issues listed in the complaint have been corrected sturdily. Mr. Piet stated that a new president has taken over and understands the situation and the large deficit that the association is in.

Ms. Briggs stated that once the complaint was filed the board got on the right track and is moving in the right direction. Ms. Briggs stated that ultimately this is what the Division really wants. Ms. Briggs stated that considering the large hole that they are in, adding a penalty against them does not make sense.

Commissioner Frank asked if a copy of the settlement will be provided to all homeowners.

Mr. Piet stated that one of the agenda items at the next board meeting is the discussion of the result of this Commission hearing.

Commissioner Rizzi moved to accept the stipulation. Commissioner Sibley seconded.

Motion carried 6 to 1 with Commissioner Williams opposed.

4-C) Discussion and decision to approve minutes of the June 17, 2015 Commission meeting.

Commissioner Williams moved to approve the minutes. Commissioner Aichroth seconded.

Commissioner Layton stated that due to medical issues he was unable to attend the meeting and will abstain from voting.

Motion carried with Commissioner Layton abstaining.

4-D) Discussion and decision to approve minutes of the July 9, 2015 Commission meeting.

Commissioner Layton moved to approve the minutes. Commissioner Williams seconded.

Motion carried unanimously.

4-E) Discussion regarding Commissioners' speaking engagement requests.

No speaking engagements.

4-F) For possible action: Discussion and decision regarding election of officers for FY 16.

Commissioner Rizzi moved to approve Commissioner Frank as Secretary. Commissioner Sibley seconded.

Commissioner Frank recused himself from voting on the election for the Secretary.

Motion carried with Commissioner Frank abstaining.

Commissioner Sibley moved to approve Commissioner Breslow as Vice-Chair. Commissioner Layton seconded.

Commissioner Breslow recused himself from voting on the election for Vice- Chair.

Motion carried with Commissioner Breslow abstaining.

Commissioner Aichroth moved to approve Commissioner Sibley as Chair. Commissioner Layton seconded.

Commissioner Sibley recused himself from voting on the election for Chair.

Motion carried with Commissioner Sibley abstaining.

7) For possible action: Discussion and decision on date, time, place, and agenda items for upcoming meetings.

Next Commission meeting is scheduled for November 17-19, 2015 in Carson City, Nevada with videoconference to Las Vegas, Nevada.

Commissioner Williams stated that he won't be able to attend the Commission meeting on November 19, 2015.

3-A) NRED v. Leslie White, for possible action

Case No. 2014-1491
Type of Respondent: CAM.0000070-SUPR (ACTIVE)

3-B) NRED v. Leslie White, for possible action
Case No. 2014-1494
Type of Respondent: CAM.0000070-SUPR (ACTIVE)

3-C) NRED v. Leslie White, for possible action
Case No. 2014-1505
Type of Respondent: CAM.0000070-SUPR (ACTIVE)

3-D) NRED v. Ryon Collins, for possible action
Case No. 2014-4472
Type of Respondent: CAM.0007445 (ACTIVE)

3-E) NRED v. Audra Collins, for possible action
Case No. 2014-4473
Type of Respondent: CAM.0000314-SUPR (ACTIVE)

3-F) NRED v. Audra Collins, for possible action
Case No. 2014-2720
Type of Respondent: CAM.0000314-SUPR (ACTIVE)

3-G) NRED v. Audra Collins, for possible action
Case No. 2014-1485
Type of Respondent: CAM.0000314-SUPR (ACTIVE)

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

William Ebert and Sunny Jeong were present representing Leslie White and Audra Collins.

Leslie White and Audra Collins were present.

Gregory P. Kerr was present representing Ryon Collins.

Ryon Collins was not present.

Preliminary Matters:

Senior Deputy Attorney General Michelle Briggs stated that the Division and the respondents reached a settlement. Ms. Briggs stated that it is a global settlement and involves the following cases: 2014-1505; 2014-1491; 2014-1494; 2015-1443; 2014-1487 2014-4473; 2014-2720; 2014-1485; 2014-4472; 2014-1490; 2014-2718; 2015-1675; 2015-1674; 2014-1486; 2014-1492; 2014-1493; 2014-2719; 2015-1673; 2015-1672; 2015-1670; 2015-1671; 2015-1669; 2015-1667; 2014-1488; 2014-1500; 2014-1503; 2014-1489; 2014-1504; 2015-1627; 2015-1630; 2015-1626; 2015-1628; 2014-2716; 2014-1501; 2014-1502; 2014-2717; 2015-361.

Ms. Briggs provided the Commission with a copy of the stipulation for settlement of disciplinary

action signed by the respondents, respondents' attorneys, the Administrator and Division Counsel.

Ms. Briggs, Mr. Ebert, Ms. Jeong and Mr. Kerr read the stipulation for settlement into the record.

Chairman Breslow asked Mr. Kerr if his clients executed the stipulation willingly and agrees to be bound by the terms of the Stipulation.

Mr. Kerr stated that his client understands and agree with the terms set forth in the stipulation.

Chairman Breslow asked Ms. Collins and Ms. White if they understood and agree with the terms and obligations of the stipulation and do so willingly.

Ms. Collins and Ms. White both stated yes.

Chairman Breslow asked Ms. Collins and Ms. White if they want to address the Commission.

Ms. Collins and Ms. White both stated that they reserve their right to address the Commission at a later time.

Commissioner Williams asked Ms. Briggs how much money is in question in these cases.

Ms. Briggs stated that it would depend on the association because some of the records are from 2010 to 2014 and some of the records are from 2012 to 2014. Ms. Briggs stated that it looks like this was going on with multiple associations and was going on before 2010. Ms. Briggs stated that in terms of dollar amount it is a million dollars or more.

Commissioner Williams disclosed that he and Ms. White know each other through a management company. Commissioner Williams stated that this will not affect his ability to be fair and impartial.

Chairman Breslow asked if the State or the respondents' counsels had any concerns with Commission Williams being involved in the consideration of this stipulation.

Ms. Briggs and respondents' counsels stated that they were fine with having Commissioner Williams proceeding in this case.

Commissioner Rizzi asked if only the State was getting restitution.

Ms. Briggs stated that the Division's objective is to make the respondents stop and that is what the stipulation accomplishes.

Commissioner Aichroth stated that initially they had seven cases and now the settlement is for thirty-seven cases and involves seventeen associations. Commissioner Aichroth stated that the monthly fees that the respondents were charging these associations were not provided to the Commission so it is hard to determine if the penalty is adequate. Commissioner Aichroth asked Ms. Briggs if the forty-one thousand dollars is a sufficient number.

Ms. Briggs stated that this is a global settlement and involves cases and investigations that were open but weren't completed. Ms. Briggs stated that the State doesn't know the exact extent of the situation. Ms. Briggs stated that the Division's position is that the agreement is acceptable because the respondents are giving up their licenses. Ms. Briggs stated that the fine is not enough, but it is something that the respondents agreed to pay as opposed to hundreds of thousands of dollars that the State would never collect.

Commissioner Sibley stated that ten years is the maximum amount of time that they are allowed to impose on a license revocation. Commissioner Sibley stated that he feels that the fine is small compared to the severity of the case but the State is using good business judgment by imposing a fine that the Division will be able to collect.

Commissioner Layton asked how much time the Division has spent investigating all of these cases.

Ms. Briggs stated that investigations started in 2013 with the original complaint. Ms. Briggs stated that the six thousand dollars covers cases that have already been filed, but does not cover cases that have yet to be filed. Ms. Briggs stated that in terms of total cost she is unable to provide a figure.

Commissioner Frank asked if a background check was done prior to issuing a license and if the respondents have a criminal record.

Ms. Briggs stated that a background check is a requirement in order to apply for a license.

Commissioner Sibley moved to approve the stipulation. Commissioner Layton seconded.

Commissioner Frank stated that he does not like the stipulation because it is not fair for the associations but he will support it.

Chairman Breslow stated that he agreed with Commissioner Frank's comment. Chairman Breslow stated that the greater good is served by approving this stipulation, allowing people to move on and ending some of the harm that the Division believes it could have been shown. Chairman Breslow stated that the amount of the restitution while it is a significant amount of money is pretty modest compared to the alleged harm and the time period that the harm occurred over.

Motion carried 6 to 1 with Commissioner Aichroth opposed.

6-A-1) Administrator's Report on staffing updates

Joseph Decker presented this report. Mr. Decker stated that the Division has two openings in the Ombudsman's Office that are posted. Mr. Decker stated that beyond that the Division is fully staffed.

6-B-1) Ombudsman's Report on intervention

Sharon Jackson presented this report. Ms. Jackson stated that the report is a fiscal year 2014-2015 comparison. Ms. Jackson stated that 311 interventions came in 2014 and 312 in 2015. Ms. Jackson stated that the Division held 65 informal conferences in 2014 and 120 in 2015.

6-B-2) Ombudsman's Report on alternative dispute resolution filings and subsidy claims

Sharon Jackson presented this report. Ms. Jackson stated that the number of cases has increased because a lot of cases that were going to the Compliance Section are now being given the option to move forward to the Alternative Dispute Resolution (ADR) program. Ms. Jackson stated that the Division is subsidizing that program.

6-B-3) Ombudsman's Report on homeowner association and compliance audits

Sharon Jackson presented this report. Ms. Jackson stated that in fiscal year 2014 the Division had a total of 345 audits and in fiscal year 2015 the number went down to 303. Ms. Jackson stated that the reason for the decrease is because the Division has changed what the auditor is looking at. Ms. Jackson stated that previously the auditor was involved with the investigation whereas now the Division has Compliance Audit/Investigators that cover that job. Ms. Jackson stated that the auditor is used more proactively for when the registration forms come in and staff notices some inconsistencies with the registration forms.

Mr. Decker stated that this is an important change in the program. Mr. Decker stated that instead of waiting for a problem to manifest, develop and become an enforcement problem; the Division is now focusing on inconsistency and ways to proactively work with associations on the front end in order to try to avoid potential problems.

6-B-4) Ombudsman's Report on Program Training Officer's Report

Sharon Jackson and Stacey Spoerl presented this report. Ms. Jackson stated that the number of classes presented in 2014 was 105 and 65 in 2015. Ms. Jackson stated that the Division now has Q&A once a month and attendance has gone down. Ms. Jackson stated that in the last six to seven months a number of outside entities are offering classes to board members.

Ms. Spoerl stated that she is averaging 13 to 15 presentations a month. Ms. Spoerl stated that attendance is sporadic and every PowerPoint that has been presented in class has been made available online and has received positive feedback. Ms. Spoerl stated that the Division has an email address for members of the public to ask questions. Ms. Spoerl stated that starting from next month she will have office hours and people can make appointments to come in. Ms. Spoerl stated that board members now have the opportunity to request to have the Training Program Officer to come to their location.

6-B-5) Ombudsman's Report on number and types of associations registered with the State

Sharon Jackson presented this report. Ms. Jackson stated that in fiscal year 2014 they had 3,034 registered associations and in fiscal year 2015 they had 3,097 registered associations.

6-B-6) Ombudsman's Report on informal conference

Sharon Jackson presented this report. Ms. Jackson stated that the informal conferences offered by the Ombudsman's Office in 2014 were 350 with a 71% resolution rate and one mediator on staff. Ms. Jackson stated that the Ombudsman's Office in 2015 has three mediators, held 102

informal conferences and 99 of those cases have been resolved. Ms. Jackson stated that the last page of the report is for the survey on the programs that the Division offers.

6-C) Compliance Section's report

Joseph Decker presented this report. Mr. Decker stated that the Division currently has 140 active cases. Mr. Decker stated that 80% of the cases that are coming through the Ombudsman's section have been scheduled for informal mediation. Mr. Decker stated that in the Enforcement Section they are working through the inventory that the Division had. Mr. Decker stated that the Enforcement Section is accepting new cases and immediately assigning investigators.

6-D) Administrative fine report pursuant to NAC 116A.350 (4)

Teralyn Thompson presented this report. Ms. Thompson stated that these fines are administered by the Administrator of the Division. Ms. Thompson stated that the report is provided to the Commission once licensees have paid the fine in full.

Mr. Decker stated that there is certain disciplinary authority that rests with the Commission and there are some in regards to community managers licensees under NRS 116A that rest with the Administrator. Mr. Decker stated that these are fines that have been imposed by the Division without the Commission's involvement.

Chairman Breslow asked if fines are being collected.

Ms. Thompson stated that fines are being collected and if they are not collected the case would go in front of the Commission.

6-E) Licensee and board member discipline report

Teralyn Thompson presented this report. Ms. Thompson stated that this report is updated after every Commission meeting and when the Division receives an order or payment. Ms. Thompson stated that Mary Brailey is making sporadic payments. Ms. Thompson stated that Anita Herrera-Perez has paid off her fine and will not be on the next report.

4-A-1) Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to: Addition to NAC 116 to establish a Commission hearing panel.

Commissioner Frank read his proposed changes into the record. Commissioner Frank asked the Commission to vote in favor of the changes and move forward to the Legislative Council Bureau.

Mr. Decker stated that under NRS 116.615 the Commission has the authority to adopt regulations. Mr. Decker stated that those regulations have to be approved by the Division's Administrator and the Director of Business and Industry before being brought to the Legislative Council Bureau. Mr. Decker stated that under NRS 116.660 the Commission has the authority to issue subpoenas. Mr. Decker stated that under NRS 116.665 the Commission has the authority of adjudicate cases. Mr. Decker stated that under NRS 116.675 the Commission has the authority of appointing a subpanel. Mr. Decker stated that the Commission does not have authority for any administrative, operational or advisory control over the Division. Mr. Decker stated that the Commission cannot grant itself statutory authority through passing regulations that

conflict with statute. Mr. Decker stated that it would not be appropriate for the Commission to vote on this item.

Chairman Breslow asked why the Commission doesn't have the authority under NRS 116.675 to create a subpanel to take a second look at matters that are presented to the Division that ultimately are dismissed or not pursued.

Mr. Decker stated that the Commission has the authority to create a subpanel to do the type of things that the Commission currently has authority to do. Mr. Decker stated that the Commission cannot create a subpanel and ask the subpanel to do more than the law allows. Mr. Decker stated that the Division has no problem explaining to a complainant why their case was closed, not pursued or dismissed. Mr. Decker stated that generally the complaint is that the Division's decision is not the one that the complainant would prefer.

Commissioner Frank stated that he cannot find in statute and Mr. Decker hasn't shown him where in statute it states that records that are maintained after a case is closed must remain confidential. Commissioner Frank stated that it would be a valuable thing for a complainant to be able to see a full file instead of taking someone's word on what it says.

Chairman Breslow stated that a lot of administrative or criminal matters are pursued because they have information that they get from sources that they don't necessarily want to come out in a full light of day. Chairman Breslow stated that complainants have a level of right to know why their case was not pursued. Chairman Breslow stated that a complainant just doesn't have the right to look at the file and see all the evidence that went through the determination of the case.

Commissioner Williams asked Ms. Rasul's opinion as far as the authority to move this regulation forward.

Ms. Rasul stated that there is a process that needs to be followed. Ms. Rasul stated that the first step is to have the proposed regulation vetted by the Administrator and the Director of Business and Industry. Ms. Rasul stated that the Administrator and Director's Office ultimately are going to make the decision whether to pursue the regulation or not.

Commissioner Frank stated that he is aware that this proposal is on the cutting-edge of what the Commission can do. Commissioner Frank stated that he was hoping that the Commission would ask the Legislative Council Bureau to give feedback on what can be done and what should be changed in order to have a hearing panel.

Mr. Decker stated that this is a legislative issue and these are statutory procedural changes. Mr. Decker stated that it would not be appropriate for the Commission to try to pursue these changes through regulations. Mr. Decker stated that it would be proper to pursue this type of change through the Legislator.

Commissioner Frank stated that a small subpanel could be of great value to the Division to help sort out meaningful cases, help resolve some things and act as a true appeal process.

Commissioner Frank stated that the subpanel would review cases that have been closed by the Division, not cases that are currently under investigation.

Commissioner Frank asked Ms. Rasul why the Commission should not be allowed to review the Division's closed files.

Ms. Rasul stated that all records that are obtained during an investigation are deemed confidential and this is in statute. Ms. Rasul stated that the only exception is if the matter is pursued to discipline because that is done in a public meeting and the exception would only be for those items that are used as exhibits by the State and respondents. Ms. Rasul stated that when something is dismissed and there is no discipline, records that are obtained during an investigation remain confidential and there is no exception to that. Ms. Rasul stated that requesting to review case files that are closed is something that goes beyond the scope of authority of the Commission.

Commissioner Frank stated that since it is not possible to have this regulation approved to move forward at this time, it would be best to table it and ask members of the Commission help figure out what should be said or if this is just a dead issue and a waste of time.

Commissioner Sibley stated that since this is a legislative fix, Commissioner Frank could ask the Legislative Council Bureau for a legal opinion. Commissioner Sibley stated that this will have to be done through a State assemblyman and to ask for a legal opinion from the Legislative Council Bureau whether or not this can be addressed in Nevada Administrative Code or if this is something that has to be done in statute.

Commissioner Frank stated that he already tried that route and was asked what the Commission wants to do.

Commissioner Frank stated that he would like to explore the possibility of meeting with the other homeowner representatives of the Commission to discuss if there is any value in having a subpanel and what that subpanel can do.

Chairman Breslow stated that the Commission discussed this agenda item and at the moment the Commission will move on to another agenda item.

4-A-2) Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to: Amendment to NAC 116.445 regarding the annual fee required from certain associations.

Ms. Thompson provided the Commission with a copy of the proposed change and read the change into the record.

Mr. Decker stated that the fee increase was included in the Division's budget that was presented this year and is supported by the industry. Mr. Decker stated that the Division increased the cap to five dollars, but the Division will only ask for four dollars and twenty-five cents. Mr. Decker stated that the fees are set in regulation. Mr. Decker stated that the fee increase would be effective on July 1, 2016.

Commissioner Frank asked how the extra money is going to be used.

Mr. Decker stated that the Division's budget and the Division bill during the 2015 Legislative Session addressing the budget shows where the money goes regarding the fee increase. Mr. Decker stated that this increase is to keep up with additional operating costs to make sure that the Division does not run a deficit.

Commissioner Frank asked what would happen if the Commission does not approve the fee increase.

Mr. Decker stated that the reserve account would be depleted by next year. Mr. Decker stated that this has already been vetted by the Legislature and approved. Mr. Decker stated that the industry had their opportunity to speak for or against the increase.

Commissioner Sibley moved to accept the proposed changes to NAC 116.445 regarding the annual fee required from certain associations which increases to four dollars and twenty-five cents. Commissioner Williams seconded.

Commissioner Layton stated that he would preferably like to make decisions based on some type of accounting records that support the dollar amounts that are being discussed.

Mr. Decker stated that the Division's budget is public and was provided to the Commission during Legislative Session at one of the Commission meetings.

Commissioner Frank stated that he is going to represent the seniors who are on fixed income and the unemployed and vote no. Commissioner Frank stated that there isn't sufficient justification right now.

Motion carried 6 to 1 with Commissioner Frank opposed.

4-A-3) Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to: Addition to NAC 116A defining "board election responsibilities".

4-A-4) Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to: Addition to NAC 116A defining "election system characteristics".

Commissioner Frank read his proposed changes into the record. Commissioner Frank moved to approve the proposed changes.

Chairman Breslow asked if the Commission has authority to vote on agenda item 4-A-3 "addition to NAC 116A defining board elections responsibilities" and agenda item 4-A-4 "addition to NAC 116A defining election system characteristic".

Mr. Decker stated that this is still a legislative issue. Mr. Decker stated that the Commission cannot pass a regulation which grants the Commission statutory authority any more than it can

pass a regulation which changes statutory authority that already exists in the law. Mr. Decker stated that if it is identified in statute it needs the legislative approval. Mr. Decker stated that the Commission could propose to include some standards of conduct and regulations for community managers that addresses the election process. Mr. Decker stated that it would not be included as definitions but that is something to consider if the Commission wants to address elections.

Commissioner Frank stated that Chapter 116 covers election policies. Commissioner Frank stated that what Chapter 116 does not say is how to protect the integrity of election systems in order to anticipate and prevent fraud. Commissioner Frank stated that the Commission does not have to change the statute in order to put some regulation criteria to prevent election fraud.

Chairman Breslow stated that Commissioner Frank was protesting the one dollar and twenty-five cent per unit per year fee increase and now is suggesting that the Commission pursue a protocol that would involve spending a greater amount of homeowners' money to address the integrity of the election process.

Commissioner Frank stated that is not that expensive. Commissioner Frank stated that if the Commission does not set policies it will never happen. Commissioner Frank stated that he is challenging the fact that the Commission does not have the authority to vote on the proposed changes.

Motion fails due to the lack of second.

Commissioner Layton stated that there are too many issues with the proposed changes and it needs to be re-written.

Commissioner Frank stated that he is disappointed that the Commission is not giving him feedbacks.

Commissioner Aichroth stated that the Commission does not have the authority.

10) For possible action: Adjournment

The meeting recessed at 4:30 p.m. on September 22, 2015.

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SEPTEMBER 23, 2015

9:00 A.M.

A) Introduction of Commissioners in attendance

In Las Vegas: Barry Breslow, Stephen Aichroth, Robert Frank, Ken Williams, James Rizzi, Scott Sibley, Richard Layton, and Senior Deputy Attorney General Henna Rasul as Commission Counsel.

1-B) Introduction of Division Staff in attendance

In Las Vegas: Joseph Decker, Administrator; Sharon Jackson, Ombudsman; Claudia Rosolen, Commission Coordinator; Teralyn Thompson, Administration Section Manager; Jennifer Oerding, Education Officer; Stacey Spoerl, Program Training Officer; Chief Compliance Investigator Chris Sewell, and Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Michael Jory, Deputy Administrator

2) Public Comment

In Las Vegas: Ken Brensinger, Secretary at Anthem Highlands Community Association, commented. Mr. Brensinger provided the Commission with written public comment and read his comments into the record. Mr. Brensinger asked the Commission's help in directing the Deputy Attorney General to file an injunction against an individual and board members who refuse to attend association meetings in order to establish a quorum by removing them from their board position until a proper investigation can be done.

In Las Vegas: Frank Capello, homeowner at Anthem Highlands Community Association, commented. Mr. Capello stated that he is in support of the letter that Mr. Brensinger provided to the Commission.

In Las Vegas: Tim Stebbins, Henderson resident and director of the Nevada Homeowner Alliance PAC (NHA), commented. Mr. Stebbins stated that the Nevada Homeowner Alliance PAC is disappointed with the stipulation on the case of Ms. White, Ms. and Mr. Collins. Mr. Stebbins stated that homeowners are the ones that suffered and they did not receive any type of restitution. Mr. Stebbins stated that the Ombudsman's Office should provide help to those homeowners that were hurt by providing options on how to seek justice.

In Las Vegas: Jonathan Friedrich, former Commission for Common-Interest Communities and Condominium Hotels commissioner, commented. Mr. Friedrich stated that he agreed with Mr. Stebbins comment. Mr. Friedrich stated that he would hope that the Commission would be kinder towards Commissioner Frank's proposed regulations on due process.

4-A-4) Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to: Addition to NAC 116A defining "election system characteristics".

Commissioner Frank read his new proposed changes into the record. Commissioner Frank moved to include two new definitions to be added.

Chairman Breslow asked if the Commission has authority to add to the definitions that Commissioner Frank proposed.

Mr. Decker proposed that the Commission take a vote to do one of three things. Mr. Decker stated that either the proposed changes are not an issue that the Commission wishes to address, vote requesting that the Commission construct a regulation addressing election, or to take a vote to request the Division to pursue the election section of law that was written by the Division legislatively.

Chairman Breslow asked why the Commission has to get involved in this. Chairman Breslow asked why can't individual associations figure out themselves if they need a higher level of protection in regards to the integrity of their election process.

Commissioner Williams asked where someone could find a certified fraud examiner.

Commissioner Rizzi asked if Commissioner Frank is looking to prohibit hand-delivery.

Commissioner Frank answered yes to Commissioner Rizzi's question.

Commissioner Layton stated that he is a certified fraud examiner. Commissioner Layton stated that there is an international Association of Certified Fraud Examiners based out of Austin, Texas.

Commissioner Frank stated that his need to emphasize the use of an independent auditor is due to his personal experience. Commissioner Frank stated that the most vulnerable part of the election process is the handling of ballots and that is why he is recommending the prohibition of hand-delivery.

Commissioner Sibley stated that it is currently in statute that it is fraudulent to tamper with ballots and it is a felony. Commissioner Sibley stated that if the Division is having a problem and is unable to deal with this issue, the Commission could assist with a regulation. Commissioner Sibley stated that adding an additional cost to the association is not going to really deter fraud.

Commissioner Aichroth asked how many accusation of election fraud the Division received.

Mr. Decker stated that it does occur but it usually comes out after the elections or years later regarding a board member. Mr. Decker stated that the Division has a proposal to address the election process. Mr. Decker stated that the Division's proposal creates a certified election monitor that the Division screens, certifies, and regulates. Mr. Decker stated that it would be someone that does not work for the association in any other capacity, they would keep the records and the Commission would have the authority to discipline them. Mr. Decker stated that the Commission would not have any authority over a certified fraud examiner or a certified public accountant.

Sharon Jackson stated that probably 3% of associations may have some election issues.

Commissioner Aichroth asked Commissioner Layton what is the cost of hiring a certified fraud examiner or a certified public accountant in general.

Commissioner Layton stated that it would depend on the size of the association and the turnout.

Chairman Breslow asked to have more information about the monitor proposal.

Ms. Briggs stated that when this was proposed in Assembly Bill 34 in 2013 by the Division, the proposal existed as an option for associations and an option for the Commission to order an association to use a voting monitor. Ms. Briggs stated that it was never a requirement for associations. Ms. Briggs stated that the voting monitor would be required to keep the records which are usually the biggest issue that the Division has when investigating an election issue.

Commissioner Sibley asked what happened to the Division's proposal.

Ms. Briggs stated that the bill was huge and addressed a bunch of other issues. Ms. Briggs stated that the industry did not like it.

Mr. Decker stated that a bill addressed it during the 2015 Legislative Session but at the last minute the bill turned into something else.

Commissioner Sibley asked the Division's recommendation on how to handle the issue.

Mr. Decker recommended this to be pursued legislatively.

Commissioner Williams asked who would fund the monitor.

Mr. Decker stated that the association would have to pay for the monitor, fees, and the process.

Commissioner Williams stated that this would be a new item on association's budgets. Commissioner Williams stated that he is concerned because there are some associations that are already struggling; especially small ones.

Commissioner Frank stated that he has reservations on the election monitor proposed by the Division because it would require additional costs, an effort to train, certify and manage

monitors. Commissioner Frank stated that it would be cheaper to hire a certified fraud examiner or a certified public accountant.

Commissioner Frank moved to ask for the Division's assistance in drafting a regulation along those lines but not restricted to what he proposed; and to consider proposing a bill effort for next legislative session. Commissioner Rizzi seconded with the inclusion of Mr. Decker's recommendations on the certified election monitors.

Motion carried unanimously.

4-A-7) Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to: Amendment to NAC 116A.325(2) regarding management agreements.

Teralyn Thompson provided the Commission with a copy of the proposed changes and read the changes into the record.

Commissioner Frank moved to allow the Division to move forward in the regulation process. Commissioner Sibley seconded.

Commissioner Layton stated that he is opposed. Commissioner Layton stated that this regulation can create major problems for associations that meet quarterly.

Motion carried 6 to 1 with Commissioner Layton opposed.

5-1) Key Realty School

“60-Hour Association Manager Pre-Certification Course”

Request: 60 Hours Pre-certification Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval. Ms. Oerding asked to remove Asa Ashcraft from the instructors list because he is deceased

Commissioner Williams moved to approve the course. Commissioner Layton seconded.

Commissioner Sibley disclosed that Key Realty School is where he received his education as a broker. Commissioner Sibley stated that this will not affect his ability to be impartial in his vote.

Motion carried unanimously.

5-2) Angius & Terry LLP

“2015 NRS 116 Legislative Update”

Request: 3 Hours Legal Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams moved to approve the course. Commissioner Layton seconded.

Commissioner Sibley disclosed that Angius & Terry is a client of his employer. Commissioner Sibley stated that this will not affect his ability to be impartial in his vote.

Motion carried unanimously.

5-4) The Clarkson Law Group, P.C.

“Non-Judicial Foreclosure from Inception of Assessment Obligation through Foreclosure”

Request: 3 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams moved to approve the course. Commissioner Layton seconded.

Motion carried unanimously.

5-5) Community Associations Institute

“M-204: Community Governance”

Request: 17 Hours General Computer Based Interactive Training

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams moved to approve the course. Commissioner Rizzi seconded.

Motion carried unanimously.

5-6) Better Reserve Consultants

“Reserve Studies – Meet the Experts in the Field – Painting and Surface Treatments”

Request: 3 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Layton moved to approve the course. Commissioner Williams seconded.

Commissioner Frank asked if this course covers new and older developments.

Ms. Oerding stated that there is a portion on the background of the reserve study, how to use it and adopt it. Ms. Oerding stated that it goes further into depth with painting and surface treatments.

Motion carried unanimously.

5-7) Western Door and Gate

“From Behind Bars – What you Need to Know about Automated Entry Gates, Pedestrian Gates and Pool Barriers”

Request: 3 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending

approval.

Commissioner Rizzi asked if the course is addressing the difference between public and private application of fencing.

Matthew Melton stated that the class focuses on community managers and what community managers manage. Mr. Melton stated that this class is keeping managers up to date with the new codes including pool codes.

James Nance stated that laws have changed since many of the gates have been put in place and there is no enforcing agency. Mr. Nance stated that this course is for community managers to observe and prevent further incidents of kids drowning in pools.

Commissioner Sibley disclosed that Mr. Melton did maintenance to the gate in his residence. Commissioner Sibley stated that this will not affect his ability to be impartial in his vote.

Commissioner Layton disclosed that the instructors are clients of his association. Commissioner Layton stated that this will not affect his ability to be impartial in his vote.

Commissioner Sibley moved to approve the course. Commissioner Williams seconded.

Motion carried unanimously.

5-8) CAMEO

“2015 Legislative Update for the CIC Industry”

Request: 3 Hours

Legal

Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Frank stated that CAMEO is primarily a lobbying organization and spent quite a bit of funds lobbying the legislature for business related applications. Commissioner Frank stated that the Commission should not approve this course.

Keri Hawkins, CAMEO executive director, stated that CAMEO’s main objective is not lobbying and legislative work. Ms. Hawkins stated that CAMEO is working with communities and educates community managers. Ms. Hawkins stated that CAMEO is working with homeowners, management companies and vendors. Ms. Hawkins stated that CAMEO doesn’t solely solicit for nor hold major fundraising events for lobbying efforts.

Commissioner Layton moved to approve the course. Commissioner Williams seconded.

Commissioner Layton disclosed that some of the attorneys involved are attorneys for his association. Commissioner Layton stated that this will not affect his ability to be impartial in his vote.

Chairman Breslow stated that much of what Commissioner Frank wants to emphasize is already in law and some of the proposed changes are an improper way to make new law. Chairman Breslow stated that he is not in favor of Commissioner Frank's approach.

Commissioner Frank moved to ask the Division to assist the Commission with the preparation of a regulation that is lawful, permissible and meets the fundamental fairness goals.

Mr. Decker stated that the Division currently has a process that fairly and expediently handles homeowners' complaints. Mr. Decker stated that the Division does not want to add regulations to the process unless there is a good reason.

Motion failed due to lack of second.

Ms. Thompson updated the Commission on regulations that have been approved by the Legislative Commission. Ms. Thompson stated that LCB File No. R049-13 which prohibits community managers' contracts from including any form of compensation based on the number or amount of fines pursuant to NRS 116.310031 became effective June 26, 2015.

Ms. Thompson stated that LCB File No. R152-13 which makes changes to the amount of hours community managers needs to spend in class and or at a Commission meeting in order to receive continuing education credits became effective June 26, 2015.

Ms. Thompson stated that LCB File No. R052-13 which establishes procedures to request a rehearing of a decision of the Commission became effective August 10, 2015.

Ms. Thompson stated that LCB File No. R050-13 which makes changes to reserve studies, revising changes to the preparation content and distribution of interim financial statements become effective August 10, 2015.

4-B) Discussion regarding retaliatory actions.

Commissioner Frank asked if the letter of instruction has been enforced and if the Division has received any cases concerning this issue.

Mr. Decker stated that the Division issued an advisory opinion that sets out what constitutes retaliation and retaliatory actions. Mr. Decker stated that the Division has cases of retaliation that have been filed and are under investigation.

8) Public Comment

In Las Vegas: Tim Stebbins, Henderson resident and director of the Nevada Homeowner Alliance PAC (NHA), commented. Mr. Stebbins commented on the due process issue that was discussed by the Commission as he has seen it happen. Mr. Stebbins stated that a friend of his had a problem with due process and it was very frustrating.

9) Commissioner Comment

Commissioner Frank stated that he is disappointed that the Commission could not deal with the due process issue. Commissioner Frank stated that he is frustrated from the years' worth of

debates and unsatisfactory actions by the Division which it is not concerned with the fair treatment of homeowners. Commissioner Frank stated that this is an injustice to the people.

Commissioner Layton stated that he is really impressed with the way that Chairman Breslow has conducted the meetings and his leadership of the Commission.

10) For possible action: Adjournment

Meeting adjourned at 11:27 p.m. on September 23, 2015.

Respectfully Yours,

Claudia Rosolen
Commission Coordinator