MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
May 11, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:16 a.m. on Monday, May 11, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman John C. Carpenter (excused)
Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Karen Dennison, Vice Chair, Real Property Section, State Bar of Nevada; also representing Lake at Las Vegas Joint Venture, Las Vegas, Nevada
Michael Buckley, Chair, Real Property Section, State Bar of Nevada; Chair, Commission for Common-Interest Communities and Condominium Hotels
Mandy Shavinsky, Real Property Section, State Bar of Nevada
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada,
John Leach, Las Vegas, Nevada, representing the Nevada Chapter, Community Associations Institute
Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry
Robert Robey, Private Citizen, Las Vegas, Nevada
Roy Oxenrider, Private Citizen, Las Vegas, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada

Chairman Anderson:
[Roll was called and Committee rules and protocol explained.]
Let us start with Senate Bill 261 (1st Reprint).

Senate Bill 261 (1st Reprint): Makes various changes relating to common-interest ownership. (BDR 10-789)

Karen Dennison, Vice Chair, Real Property Section, State Bar of Nevada:
I would like to explain how this bill was brought forward.

The Real Property Section of the State Bar of Nevada (Bar) has a common-interest community (CIC) subcommittee, which is composed of about 15 lawyers who represent developers, homeowners' association boards, and community managers. Our mission statement, so to speak, as volunteers from the Bar, is to bring forward legislation in an unbiased fashion which we feel will benefit the real estate community as a whole. As the Committee may be aware, *Nevada Revised Statutes* (NRS) Chapter 116 was adopted in 1991 as

the Uniform Common-Interest Ownership Act (Act). Since that date, there have been two revisions to the Act made by the Uniform Laws Commissioners, once in 1994 and again in 2008.

Our subcommittee looked at the revisions that have been made to the Uniform Act and selected three topics we felt were needed in Nevada and are the subject of this bill. Those are exempting nonresidential condominiums from NRS Chapter 116, exempting cost-sharing agreements from NRS Chapter 116, and creating a new category of master planned community.

I would like to go through those sections of the bill. Sections 2 and 3 deal with nonresidential condominiums, and they are defined in section 2 as condominiums in which all units are restricted exclusively to nonresidential use. Currently the law exempts nonresidential planned communities, but nonresidential condominiums are not exempt from the Act. The Bar subcommittee felt that the protections that are afforded in NRS Chapter 116 and its various provisions are more tailored toward a residential community and do not really fit the nonresidential context. An example of a nonresidential condominium would be an office condominium. They do not need all of the protections and the consumer-oriented provisions that are found in NRS Chapter 116.

Basically section 3 allows a developer of an office condominium to exempt the project completely out of the Act or out of certain sections of the Act. Likewise, section 4 of the bill exempts cost-sharing agreements. An example of a cost-sharing agreement would be a road maintenance agreement. I recall several years ago a group of owners had a private road with 15 lots, and they had to form an association and thus had to comply with NRS Chapter 116 simply because of the cost-sharing agreement to maintain the road. That was the only common-use property. Section 4 would exempt cost-sharing agreements from the provisions of the Act so that the owners of lots, such as that group, would not have to form an association. Also, two associations or an association and a private lot owner can enter into a cost-sharing agreement.

I have provided written testimony (Exhibit C). The tabs represent the Uniform Act provisions from which this bill was taken.

Section 5 creates a new category called master planned communities. This is identical to section 2.123 of the Uniform Act. It is tab "C" of the exhibit. Currently there is no provision for master planned communities in NRS Chapter 116. I want to differentiate from master associations, which are in NRS 116.212. A master planned community is a very large community of at least 500 acres, and the developer has to have reserved the right to develop at

least 1,000 units. This is a long-range community which is developed over many years, and at the outset the developer does not have a specific plan for each of the portions of that community. It is therefore difficult to comply with some of the provisions of NRS Chapter 116.

Section 5, subsection 2, of the bill exempts master planned communities from stating the maximum number of units which will be developed. It would be difficult for a developer to identify with any certainty the maximum number of units which may be built in these larger projects. The second part of subsection 2 should be read together with subsection 3, and together they say, at the outset, the developer does not have to comply with the requirements that must be set forth in the declaration, but once a unit in the master planned community is conveyed to a purchaser, then the declaration must contain everything that any other declaration must contain.

The counterpart to that is subsection 4, which basically states that the undeveloped portion of the planned community is not subject to NRS Chapter 116. As the area is brought in, it becomes subject to NRS Chapter 116.

Assemblyman Manendo:
Because there are no homes developed at that time, you want these developments to be exempt from NRS Chapter 116 until there is a home built?

Karen Dennison:
The idea is that there is a lot of property and you do not have specific plans and therefore you cannot make specific disclosures or provisions in the covenants, conditions and restrictions (CC&Rs) which would otherwise be required of a smaller community. The idea of a master planned community is that the declaration must be amended—which is what the Uniform Act language states—to include those provisions once a unit is sold. So for the units that are sold, and for all of the units that were previously sold, you would have a complete declaration, but for the undeveloped portion of the community, there will not necessarily be references in the declaration, or there will not be disclosures in the public offering statement.

Currently a developer cannot add unspecified real estate from the outset which exceeds 10 percent of that which was described in the declaration. Section 5, subsection 6, would exempt a master planned community from that requirement, so if there is other unspecified real estate which was not specified at the beginning to be added, it can be added by the developer.

Finally, subsection 7 of section 5 states that the declarant can set its own terms for declarant turnover of the association. We are talking about turnover of board control to the owners. Generally speaking, current law states that when 75 percent of the units have been sold, the association must be turned over to the owners. In a large master planned community you could have many acres of land that are yet undeveloped, and it is in the best interest of the developer, in that case, to keep control considering the developer's investment in the community. The consumer protection in all of this is that the declaration must specify the conditions under which the board is assumed by the owners, so that anyone going into that community is going to know when developer control will be turned over to the owners.

Chairman Anderson:
I am curious about how some things are going to fit. In these master planned communities, is there going to be a specified date of when the sections are going to be turned over, or is it going to be open-ended? In this economy, one may be in the middle of development for years and it is not known how large the community is going to be.

Karen Dennison:
Your point is well taken, and part of the reason for the master planned community section of the Uniform Act has to do with the ups and downs of market conditions and the fact that this can be a long, drawn-out process over decades, even in the best of circumstances. Section 5, subsection 7, does provide that the declarant must, from the outset, specify the conditions under which the control turnover will be made. It is set going in, and there is also a provision which allows a declarant to voluntarily surrender the control, which is also in current law.

Section 7 is the definition of a common-interest community. This is the Uniform Act definition of CIC, and the benefit is that it talks with specificity as to what makes a community a CIC, which is the sharing of real estate taxes, insurance premiums, the maintenance of improvements and services, or other expenses related to the common elements. It also talks about expenses pertaining to real estate which is described in the declaration which may not be common elements; for example, many large communities are required to maintain median strips and public roads.

Chairman Anderson:
So section 5, subsection 7, is where the time factor is further defined?

Karen Dennison:
Yes. This refers to the declarant voluntarily surrendering all rights to control the activities of the association as an option for the declarant. Either the conditions for turning over must be specified initially or there is the option to voluntarily surrender control, which is in current law.

Chairman Anderson:
Is this going to change the status of the amounts of reserves that these business parks have to maintain? Will they still be able to participate in making sure that the reserves are such to take care of the common interests? How does this impact the public meetings requirement and the election of the boards of directors?

Karen Dennison:
This bill does not affect the reserves requirements for associations, which are generally based on the property that is annexed to or included in the declaration. Meetings and other rights of homeowners would remain intact. The only changes are the ones in subsections 1 through 7 of section 5 of the bill.

Chairman Anderson:
The nonresidential condominium groups are still going to have public meeting requirements?

Karen Dennison:
Nonresidential condominiums could conceivably have none of the requirements of NRS Chapter 116, but other specific provisions could be adopted. One of the choices in this law is that the developer could choose to have only the assessment lien provisions apply. This would allow for foreclosure on the individual condominiums that do not pay their assessments. It is conceivable that none of the provisions that are normally afforded to residential owners would be allowed. Current law does allow commercial planned communities to be exempt from NRS Chapter 116 entirely, so this bill mirrors that.

Chairman Anderson:
I wanted to make sure I was clear that we are not taking away a right that they currently have.

Assemblyman Horne:
It looks like we are creating a Frankenstein of CICs. We are taking what we want and leaving out bits and pieces of other laws.

I would like some more clarity on the nonresidential condominiums in section 3. You said it could be an office building, is that correct?

Karen Dennison:
Yes, an office building would be probably the most common example of a nonresidential condominium.

Assemblyman Horne:
I have never heard of an office complex called condominiums before. Is that in statute?

Karen Dennison:
Currently, both residential and nonresidential properties can be subdivided into condominiums, and the idea is that a person can own their office within, say, a high-rise building by making it a condominium. There currently are provisions in the law which allows office buildings to become condominiums.

Assemblyman Horne:
Section 3, subsection 2, paragraph (b), states "purchasers of units must execute proxies, powers of attorney, or similar devices in favor of declarant...." Could you explain that please?

Karen Dennison:
One of the elections that can be made by a commercial condominium developer would be that the entire chapter of NRS Chapter 116 would apply to the project. If that is the case, then there are a couple of provisions here from which the commercial condominium would be exempt. One of those would be subsection 2, paragraph (b), which provides that the purchasers of units execute proxies or powers of attorney or similar devices in favor of the declarant regarding specific matters which must be enumerated in the proxy. So up front, an office owner could be required to give the declarant certain voting rights with respect to matters that come before the association.

Assemblyman Horne:
This is saying they would not have to do that if they are exempt?

Karen Dennison:
If they are entirely exempt from the Uniform Act, they are then not governed by the Act and the proxies. One of the features of this bill is to allow proxies to be given. Now NRS Chapter 116 only allows proxies to be given to people who live in the CIC or a relative of that person, so it is an owner, a tenant, or a relative of the owner. This provision, if one were to opt into NRS Chapter 116, would allow proxies to be given to the declarant as well.

Assemblyman Horne:
It would make it mandatory?

Karen Dennison:
It would make it mandatory only if the declaration so required. It would be in the declaration.

Assemblyman Horne:
Section 5, subsection 6, states, "Limitations in this chapter on the addition of unspecified real estate do not apply to a master-planned community." You were saying that a master planned community was 500 acres or more, so this provision would allow them to add additional unspecified acreage at their whim?

Karen Dennison:
The limitation of 10 percent of unspecified acreage would not apply to the master planned community, so if there were an opportunity to acquire and develop another portion of land which exceeded 10 percent of the original amount specified in the declaration, then that could be added to the master planned community.

Assemblyman Horne:
That seems problematic if we are also going to consider them not having the maximum number of units to declare. It seems very expansive and open-ended, and it does not seem like a master plan anymore.

How is the change in the definition of a CIC going to change existing law?

Michael Buckley, Chair, Real Property Section, State Bar of Nevada:
Last August the Attorney General's (AG) Office, for the Real Estate Division (Division), opined that if there were CC&Rs in place, then there was a CIC. I know the Commission for Common-Interest Communities and Condominium Hotels (Commission) and our subcommittee in the Real Property Section believed that was an overly broad interpretation of what a CIC is. This is the uniform definition and it tries to tighten up the interpretation a little so that just because you have CC&Rs does not necessarily make it a CIC. There has to be an obligation to pay taxes, common elements, or common expenses. It is part of the same law that NRS Chapter 116 came from. It is not intended to change the definition of CIC where they have a declaration that complies with NRS Chapter 116, but to exclude other arrangements that might not rise to a full CIC.

Assemblyman Horne:
Do you know how many jurisdictions have adopted this Uniform Act?

Michael Buckley:
The Uniform Common-Interest Ownership Act was an expansion of the Uniform Condominium Act, and I believe the Uniform Condominium Act was adopted by 15 or 17 states. Then there is also something called a Master Planned Community Act, and I am not sure how many jurisdictions have adopted it. The Act was an idea to make one law that applies to condominiums, planned communities, cooperatives, et cetera, which was adopted in 1982 by the Uniform Laws Commissioners and then amended in 1994 and 2008. I believe it has been adopted in four to seven states. I know that Colorado and Connecticut have adopted it, and I think Alaska has too. We have changed it substantially since it came to Nevada.

Assemblyman Segerblom:
Would Summerlin and Lake at Las Vegas be master planned communities?

Karen Dennison:
If this law had been in effect, they could have been. In my opinion, I do not know how one could go back and make an existing community fall under this new law because the disclosures are already done and the maximum number of units has already been set. There are already developer control turnover provisions in the CC&Rs. So this bill would be prospective—for future communities.

Assemblyman Segerblom:
So assuming there are master planned communities, what about the neighborhoods? Do they have homeowners' associations (HOAs)?

Karen Dennison:
There are one or two, or more, separate HOAs at Lake at Las Vegas. Generally the master association there controls the entire project.

Assemblyman Segerblom:
So we have the master planned community which would be governed by this bill, and then there are HOAs underneath it. Which law applies in examples like the 75-percent control?

Karen Dennison:
I would say that only the master association would be subject to the master planned community rules because the other associations would not fit the 1,000-unit, 500-acre criteria set forth in this bill.

Michael Buckley:
Assemblyman Segerblom has it right in that there is this big association and underneath it the smaller associations. In Summerlin for example, Howard Hughes would have been the developer, but for the other associations it would have been Pardee Homes or Pulte Homes, et cetera, and they would have had their own set of rules for their own group. There would be different issues for different associations.

Assemblyman Segerblom:
But it could not be argued that because there are fewer than 1,000 units in the community, then even for the HOAs the 75-percent rule does not apply because we have to look at them as part of the larger picture?

Michael Buckley:
No.

Assemblyman Cobb:
You mentioned the exemption from the rules for turning over the board in certain circumstances with some of these new developments coming up. I live in a newer development, and something I see as a substantial problem is that we are exempting the developers from the rules but not the members who live under the CC&Rs. For example, the restriction on the overall number of rentals allowed within a homeowners' association is currently included under NRS Chapter 116. If we were to allow for exemption of the developers under the 75-percent rule, would we also want to exempt all those other rules for the members as well?

Karen Dennison:
The purpose of section 5 is to overlay onto NRS Chapter 116 these particular rules for a master planned community. They are not intended to; in any way affect the other portions of NRS Chapter 116 which would apply to the master planned community association.

Assemblyman Cobb:
In the newer developments, if they have a prohibition against having a certain percentage of rentals, the developer generally builds all of those properties and is the first able to rent out properties that cannot be sold. So now we see the situation where individuals cannot afford their properties anymore, but cannot rent their properties because of the percentage rules. When they go to the board to try to get the rule changed, the developer owns the board and will not change the rules.

My question is, if we are going to give exemptions to the developer so they can stay in control of the board, is it not a good thing to provide the same exemptions to the members of the communities?

Karen Dennison:
The restrictions on the rentals would be in the CC&Rs, and that would be controlled by the amendment provisions of the CC&Rs, and developer control of the board does not allow the developer to control the amendments to the CC&Rs. Those are done by whatever percentage of owners is required to vote. Granted, the developer, in the beginning and for a long time, will have control of these master planned communities—will have control of the vote for the amendments—but that is a fact of the CC&Rs. Let us say it is a majority requirement. When 51 percent are sold, then the owners would have, if they all voted, the ability to amend the CC&Rs without a developer vote.

Assemblywoman Parnell:
This issue came up before and I know you were going to address it. I could not agree more with Assemblyman Cobb. We need to pay attention to this issue in whatever homeowners' association bills pass because it is happening in his area, and in mine, where there are X number of rentals owned primarily by the developer and if there are extenuating circumstances, the owner is unable to rent the property. We need to protect all homeowners, not just the developer-owner.

Chairman Anderson:
You are referring to Senate Bill 253 (1st Reprint), and it is in a work session document.

Mandy Shavinsky, Real Property Section, State Bar of Nevada:
I will be discussing sections 8, 12, 21, and 24. The purpose of our changes was to make certain changes to NRS Chapters 116 and 116B regarding references to plats and plans.

A plat is generally referred to as a final map and is one of the instruments that actually creates the CIC. One of the difficulties that the real estate practitioners and others have is that in sections 8, 12, 21, and 24, and in various other places throughout NRS Chapters 116 and 116B, are the references to the word "plans." There has been a struggle over what was the exact definition of the word "plans" in the context of the creation of a CIC. Generally, the declaration and the plat upon recordation create the CIC. In connection with trying to obtain some clarification as to what "plans" meant, we met with Ron Lynn at the Clark County Building Department, and Jeff Ohrn, formerly of the Clark County Surveyors Office, as well as the Nevada Association of

Land Surveyors. After talking with all of those representatives and with various lawyers, we agreed that no one was in agreement on what the term "plan" meant, and that it was superfluous and quite confusing.

In addition, there are other sections of NRS Chapter 116 which seek to provide consumer protections in addition to whatever the word "plans" was intended to mean. What we have done with input from various governmental agencies, lawyers, and the private surveyors association is to delete the words "and plan" out of several sections of this bill. The Committee will see those changes in the sections to which I have previously referred.

In section 12, subsection 2, paragraph (e), there is an addition of the words "with reference to an established datum...." That change was made to be analogous to NRS Chapter 116B, which passed in the 2007 Legislative Session. The surveyors we had talked to looked at that bill and this language, and there is a section that is exactly the same, and they determined that language would be helpful in locating dimensions and unit boundaries.

Section 12, subsection 4, is another analogous change. The word "elevations" was added in response to some comments by the Nevada Association of Land Surveyors. In subsection 5, there is a reference to the declarant providing a plan of development for a CIC and provisions that have to be met. This was the same concept as the word "plan." No one really knew what a plan of development was; however, there are provisions in the 400 series of NRS Chapter 116 which require and mandate the developer provide certain disclosures. We determined those disclosures always have to be made and that the disclosures set forth in section 5, so far as a plan of development goes, were confusing at best.

Chairman Anderson:
I understand the "plat" question, but what about the height of buildings and such? Are those also covered on a plat?

Mandy Shavinsky:
Those would definitely be covered on a plat.

Chairman Anderson:
I thought the plat was generally a physical description based upon the landmarks that are set for roads and other terrain features. I thought it also dealt with city zoning questions, and now you are of the opinion that by using the word "plat" consistently it will take care of all that?

Mandy Shavinsky:
I think that is a bigger question, but as far as the elevation of a particular building being included on a map, every final map I have seen contains an elevation of the building itself. There is usually not an elevation indicator for each single floor if you are talking about a high-rise condominium. Generally the height of the building is reflected on the final map. There are different measurements on how to calculate height.

In section 12, subsection 6, there are additional changes that were recommended by the Nevada Association of Land Surveyors. The Committee will see the word "independent" has been deleted. The Nevada Association of Land Surveyors wondered what "independent" meant, because generally a surveyor is contracted by the developer or a government association to prepare the plat. They determined the word to be quite confusing. I do not think it was in the Act as originally passed.

The additional deletion is in subsection 6 which had said that the plans of the units could be certified by an architect or engineer. Because we had deleted the word "plans" throughout NRS Chapter 116 this was no longer necessary.

Subsection 7 was originally included in this bill when it was proposed, and had been included in NRS Chapter 116B. This section says that one does not have to show the locations and dimensions of the unit boundaries and the limited common elements if the plat already shows those locations generally. We took this section out because there were some comments submitted by the City of Henderson and Clark County because their determination was that they wanted as much shown on the plat as possible. So, that change has been taken out, and this provision of NRS Chapter 116 will remain unmodified. An analogous change was also made to NRS Chapter 116B. This section was originally included in NRS Chapter 116B when it passed in 2007. We are proposing to remove it from NRS Chapters 116 and 116B.

The next section that was originally proposed to be deleted and has been added back in is section 21, which is a change to NRS 116.4119. This section was proposed to be deleted, but I think that was a mistake. This is the section I was referring to which provides consumer protection for homeowners, insofar as disclosing that the improvements marked "need not be built" should be built and that the declarant complete the improvements depicted on the site plan they provide to unit owners in connection with the sales process. It will remain in the bill, as several members of our committee expressed concern that it should remain intact.

Section 24 has changes to NRS Chapter 116B which are exactly the same changes I have discussed. These are the same changes that were made to section 12. We are trying to make the plats provision in NRS Chapter 116 and NRS Chapter 116B analogous.

Chairman Anderson:
The bill is dropping the word "independent" for the land surveyors, so the part about professional engineers or architects is dropped at the same time. So if there is a professional engineer who is not the surveyor, are we not going to cover him?

Mandy Shavinsky:
The thought there was a licensed surveyor should be the only one signing that plat. As to different kinds of things like engineering plans, et cetera, which are not necessarily addressed by NRS Chapter 116, a licensed engineer could definitely sign those. The language that was taken out in regards to an architect or engineer was in reference to the "plans."

Chairman Anderson:
This then goes back to my original question of the difference between a master plan, which might include the number of stories in a hotel and the actual dimensions of the properties, as compared to a plat. Is that what we are removing in section 24?

Mandy Shavinsky:
Section 24 is analogous to section 12. Section 24 addresses NRS Chapter 116B while section 12 addresses NRS Chapter 116. They are the same changes; they just relate to different acts.

Chairman Anderson:
By removing the word "independent," are we removing the city and county surveyors?

Mandy Shavinsky:
The surveyor in each respective county would review a final map, and the different utilities always review the final plats, but they are not the ones signing and certifying the content of the plat. Usually a third-party private surveyor is responsible and puts his license on the line for signing those plats. The county surveyor would review all of the plats and then eventually sign off on the map as having reviewed it. Those are two different things.

Chairman Anderson:
Are we still guaranteeing that it is someone with a professional standing separate from the government entity or utility?

Mandy Shavinsky:
The word “independent” was deleted because no one really knew what it meant. The private surveyors who were contracted by developers to prepare, sign, and then submit the plats to the state were confused as to what categories had to apply for them to really be independent. That is, completely independent of, say, the Clark County surveyor or the Washoe County surveyor, because they have to review the plats anyway and this statute is not intended to take anything away from the county surveyors or in any way hamper their ability to protect the public in reviewing those plans before approving them for recording.

Michael Buckley:
I would like to add something to what Ms. Dennison said at the beginning of her testimony. It is not the policy of the State Bar to take a policy approach to anything; it is only to help make good law. I mention this in relation to section 5. If the Committee believes this is a policy issue, we have no problem backing away from that proposed amendment on master planned communities. As we looked at it, it is part of the uniform law, and we thought it made sense because it allows flexibility for large developments; however, large developments have been built in Nevada without it. To the extent the Committee believes that we are somehow affecting policy, it is not our intent.

Chairman Anderson:
I will turn to those who are opposed to S.B. 261 (R1).

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I have about four points which are delineated in my handout (Exhibit D). The first item is section 12, subsection 4, line 32, which deals with elevations. It does not make sense if it is not a high-rise. It states, "Unless the declaration provides otherwise, when the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part, the elevations need not be depicted on the plats." How does one know the inside and the outside dimensions are not the same unless they are shown on the plat?

Section 12, subsection 5, lines 34 to 44 on page 9 and lines 1 to 8 on page 10, indicates that in a master planned community, someone would know what is going in there. For instance, a clubhouse, swimming pool, or golf course would be shown. Removing the language is taking that protection away from a

potential buyer, where it says "must be built" or "need not be built." I heard something in previous testimony about it being put back in, but it is not in this version.

Section 24, subsection 4, paragraph (b), needs to be restored as it clearly defines what owners are purchasing and eliminates any misunderstandings or misrepresentations. The final item, in the subsection renumbered 5, is the same issue as we had discussed in section 12, that elevations need not be depicted in certain circumstances.

A lot of times, when developments are being built, people buy from a set of plans. They do not know what the topography is; they could be in a hole or on a hillside.

Chairman Anderson:
I have never bought a home that was not already constructed, but I have looked at plenty of maps. I cannot imagine someone purchasing a new home without taking a close examination of the terrain features, such as drainage, whether they are at the bottom of a hill, how close are they to a major intersection, et cetera. Why would you think those things are not depicted on the plats?

Jonathan Friedrich:
Several things come to mind. Back in the boom days of 2004 and 2005, people were buying off of a schematic plan and they did not even see the plat. I purchased a home in Arlington Ranch, which had a release every Saturday morning, and their attitude was, "If you do not like it, there is the door." A sophisticated buyer might bring in an architect or they might be able to read drawings, and they might be able to determine where the house would be situated in relationship to the topography. In August 2003, there were heavy rains and a number of homes in the Summerlin area were inundated and sustained substantial damage. They were in a runoff area.

Chairman Anderson:
I think the question you are raising is one of a person speculating in real estate versus the individual who is planning on purchasing and moving in right away. You are right; when there is a place that does not have to discriminate among its buyers, it is a market that does not exist today and did not exist 20 years ago.

Jonathan Friedrich:
I see it as a bit of added protection for the buyer.

Chairman Anderson:
You think that the plan and plat should remain?

Jonathan Friedrich:
There are going to be plans which are going to have to be filed with the local jurisdiction for approval which will show the topography, drainage, and the underground utilities, so why not include those on the plat, and have one-stop shopping?

Chairman Anderson:
Ms. Dennison, did you have any amendments?

Karen Dennison:
No, we have no amendments to S.B. 261 (R1); they were put in on the Senate side.

Chairman Anderson:
I will close the hearing on S.B. 261 (R1). I will open the hearing on Senate Bill 351 (1st Reprint).

Senate Bill 351 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-1145)

John Leach, Las Vegas, Nevada, representing the Nevada Chapter, Community Associations Institute:
I presented this bill in the Senate. I would like to take a moment to explain the origination of this bill. Prior to this session, I met with several practitioners, meaning attorneys who represent common-interest communities (CICs) or homeowners' associations (HOAs), in northern and southern Nevada. You are familiar with Mr. Buckley and Ms. Dennison. Their practices deal mostly with the developers and builders, whereas the practitioners I am talking about represent CICs and HOAs sometimes during the declarant-control period, but more often than not, after the control period has lapsed. We are working mostly with lay board members. So before the session we tried to come up with provisions concerning the issues we believe are very important. In my handout (Exhibit E), I tried to highlight the sections that I thought were of greatest concern.

Section 3 of the bill would add a new provision to *Nevada Revised Statutes* (NRS) Chapter 116 that would expressly address association funding and investments. Currently there is a *Nevada Administrative Code* (NAC) provision that specifically says that the community association manager and the board will "deposit all money of an association that is in the possession or control ...

in a federally insured financial institution authorized to do business in this State." Many questions arose from that. Board members were asking what types of investments they can invest in and what is acceptable and reasonable. Section 3 attempts to address that.

There are three parts to section 3. Parts one and three describe the types of institutions in which the funds may be invested, whereas part two of section 3 addresses the types of investments where the funds of the associations may be invested. We believe this is an important clarification on an existing code provision.

Section 6 would adopt an amendment to allow an executive board of an association to amend the association's governing documents without membership approval if the amendment is for the sole and limited purpose of bringing the association's governing documents into compliance with Nevada law.

As the law is currently, if this amendment is not adopted, then an association has two options. They can do a traditional amendment through the membership, mail out notices and ballots, and have a vote; but irrespective of that outcome of the vote, the law is what the law is. The law has already said that that provision of the governing documents no longer applies. The second option is to keep handing out documents that are outdated and contain provisions which are no longer valid and enforceable because of the changes in the law.

Purchasing a home is still the most significant purchase for most consumers, perhaps more now than ever before. They cannot be expected to read outdated governing documents, be asked to read NRS Chapter 116, and then decide which provisions of their governing documents for the home they are buying have been superseded by the law and which are still enforceable.

Disclosure is a pretty critical component in the purchase of a residence as evidenced by NRS Chapter 116. The fourth section of that Chapter (NRS 116.4101-116.412) was consumer protection. It was in the context of consumer protection that the law required developers to give public offering statements and make disclosures to homeowners regarding the homes they are buying. Other parts of the fourth section of NRS Chapter 116 talk about resale and how important it is that when one is selling a unit as an individual, he provides documents and information to the new buyer. It seems inconsistent to require a vote of the membership for amendments to those documents when the law has already changed them. The general public and consumers benefit from accurate governing documents, and there is no known detriment to the

general public or unit owners by allowing the board to amend the governing documents for the sole and limited purpose of bringing those documents into compliance with the law.

In 1999 the Nevada Legislature adopted what was a reviser's note, which made it mandatory for all CICs or associations created after January 1 of 1992 to amend their governing documents on or before October 1, 2000. The reviser's note was removed sometime after the 2003 Session. Even though the requirement has been removed, it has still been customary in the industry for CICs to try to update their governing documents so they are in compliance with the law.

There has been some suggestion that this provision would put too much power in the hands of a board, but my firm represents 500 to 600 homeowners' associations that have been involved with hundreds of amendments to the governing documents to bring them into compliance with the law, and I am not aware of a single incident where a board has attempted to use this process to circumvent the normal amendment process. I am not aware of it, and I do not think it happens.

This amendment would benefit more the consumer who is not yet an owner—someone who moves to Nevada, has never lived in a CIC, buys a home, and is handed a set of covenants, conditions, and restrictions (CC&Rs) that are no longer consistent with the law.

Chairman Anderson:
Reviser's notes carry for a short period of time with the hope that it will become common practice for the boards and commissions, knowing that it will not happen in a day, but it will eventually. The Legislature changes the law and then dictates that the CICs' rules conform to their set of rules and that is the way it is. So I am not sure about the statement regarding the reviser's note; maybe we should just leave it there, so that the CICs will do what we ask.

John Leach:
That is a good point. First, board members under Nevada law are fiduciaries and are bound by the business judgment rule. The Commission for Common-Interest Communities and Condominium Hotels has adopted regulations regarding the responsibilities of board members, and one of those says that they must keep informed of new developments in the law. They have an obligation to stay abreast of these changes and to try to implement them in the governance of their associations.

Another excellent point you made is that there are going to be times when the Legislature makes a change, but the Legislature acknowledges that change is subject to the CC&Rs. There is an indication that the existing CC&R provisions are still controlling so the Legislature is not necessarily always undoing that instrument under which a person bought. But in the last several sessions, there were some rather significant changes made that were substantive and would have superseded the CC&Rs. Those might be everything from rentals to political signs, use of the units, and things of that nature. Those types of things should be updated in the governing documents. Those substantive types of changes may not occur every session, but every once in a while we get those kinds of changes, and section 6 of this bill would give the board the discretion to amend their governing documents to come into compliance with the law. When the board hands out those documents, they can have a clear conscience that the people who are buying that property, no matter if they are coming from Nebraska or Iowa and have never been in a common-interest community, are being given documents that are accurate and consistent with the laws that the Legislature has asked us to implement.

Chairman Anderson:
I appreciate the subtlety of that even as I appreciate the fact the CICs differ dramatically depending on population size. Some are much more sophisticated than others, and they have voluntary boards of directors, who may or may not recognize the full legal obligations of the fiduciary responsibilities that they pick up. How are you going to make the people in the CICs knowledgeable about the changes in the law that will affect their day-to-day activities, for example political signs?

John Leach:
The mechanism to educate the homeowner is already in NRS Chapter 116. As the Committee well knows, we can offer the education—you can lead a horse to water, but you cannot make him drink. Before the board takes any action of that nature it must be placed on an agenda for a board of directors meeting. So every homeowner in that association is going to get a notice of a meeting and an agenda on which would be, "amending the CC&Rs to come into compliance with law, board action may be taken." The homeowner knows there will be a discussion about it at the meeting, and ultimately they will have access to the minutes of the meeting. *Nevada Revised Statutes* Chapter 116 also requires that after an amendment to the CC&Rs has been implemented, it must be mailed out to all of the homeowners. So the existing homeowner now has the update that is consistent with the law. When the owner gets ready to sell his unit, he is required to give governing documents to the buyer. If he does not have them he goes to the board and gets a copy, and then he knows with some

certainty that the documents being passed on to the buyer do include the substantive changes in the law that affect the use in that community.

There is a system in place already where the existing homeowner gets the notice. Our big concern truly is twofold, not just for the existing homeowner but also the prospective buyer who might be given documents that are not consistent with the law. It is not reasonable to require a prospective buyer to read the documents, and then read NRS Chapter 116, and make their own analysis as to what supersedes. The board has an obligation to notify the membership of that.

[Vice Chair Segerblom assumed the Chair.]

Assemblyman Horne:
After hearing your comment about boards not abusing their authority, I wish you could see the emails I have received since 2003. A couple of board members once told me, "How dare you tell us how to run our association. You have no right to do so." Those boards are out there. They may not be the ones you deal with, but they are out there.

In section 3 regarding investments, the law currently says that the funds have to be deposited into a Federal Deposit Insurance Corporation (FDIC) insured institution. This new language is talking about investments. Is it public policy that associations should be investing the funds of an association in the first place? I can understand having meetings and a majority of the owners vote to invest the funds, but poor investments can result in harm to the entire community including those who thought the investment choices were ill-advised. Are there currently boards that are doing investments other than depositing the money into regular bank accounts or certificates of deposit (CDs)?

John Leach:
I think there have been more inquiries than there has been actual investment. All the current provision says is that they have to be deposited in an institution that is federally insured—it does not say that the amount has to be insured. There are limits on what the bank will insure; we know the limit has gone up to $250,000, but most likely, that amount will go back to $100,000 at the end of the year. We have associations throughout the state that spend more than six figures in a month, if they were to have all of their funds insured, would have to have accounts all over town.

The concept of the provision is twofold. One is to try to define the type of institution the funds could be placed in, and that is what section 3 attempts

to do. The second part is the issue of types of investments. The objective is not to place the money in the stock market. Subsection 2 mentions insured accounts, whether it be FDIC or Securities Investor Protection Corporation (SIPC) insured accounts.

There is another statute about insured funds, so I do not view this as a vehicle by which we are trying to allow boards to unilaterally put association funds at risk, but there are vehicles out there that can help them deposit the funds into a depository and then, within that depository, invest them in different vehicles. The two provisions read hand in hand.

Assemblyman Horne:
I agree with you in part about a board's ability to act in bringing their documents in compliance with the law. Reserve funds come to mind, especially when the association has members who refuse to vote to bring the reserves to the levels required by law. In these situations the board is hamstrung because they are supposed to have a certain amount in their reserves, but the association is not electing to raise it to that. The problem is, if the association has to have $500,000 in reserve and the amount is below that and you need to raise fees to get it up to that reserve, then the members should be allowed to take part in the board's decision to raise the reserve level above the $500,000. If the board wants a buffer, say $600,000, that is the purview of the association to determine if they wish to have a buffer. In that instance I think it is appropriate that the issue be brought before the homeowners.

John Leach:
Section 3 has language that the Commission was instrumental in putting together, so Mr. Buckley might be able to address the issue.

[Chair Anderson resumed the Chair.]

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:
The language came from the Commission, and the intent was not to allow associations to invest; section 3 really specifies those deposits be insured. There was first a problem that it is not the institution that is insured; it is the account. We wanted to make that change, and we also wanted to expand it to include credit unions and SIPC. Associations like Summerlin have millions of dollars coming and going in a month. The change would allow them to put the deposits into government securities accounts, which is why it mentions government-backed securities. This was not an attempt to allow anything beyond an insured account or United States government-type securities.

John Leach:
On the section 6 issue, Assemblyman Horne gave an excellent example with respect to the board's authority to raise assessments to address reserves. The way the statute reads is: are the reserves fully funded? Concerning having a surplus of funds, an argument can be made that is going above and beyond the authority the statute gives. Most associations that have found themselves underfunded in reserves base the entire decision on a reserve study. They hire a reserve specialist who prepares a reserve study, which identifies how much money should be in the reserve account today and then over a 30-year time period. Traditionally, the board tries to get up to fully funded, which would be 100 percent, under the reserve specialist. There have been some associations that over time, maybe as a result of litigation, had funds deposited into their reserve account that caused them to be overfunded. They then have the ability to control their assessments on a future basis with the budget.

Taking that parallel with section 6, all we are asking is to be allowed to update the governing documents so they are consistent with what the Legislature believes is important for the homeowner. There is a mechanism in NRS Chapter 116 that allows us to notify all of our existing homeowners by giving them a copy of the updated records and also giving notice before it goes into effect. If there is a board that goes beyond that and tries to incorporate something that is not required in order to come into compliance with the law, there is the Commission and the Real Estate Division to examine whether a board has gone beyond the scope of their authority and acted inappropriately. We have a system in place to review the process to make sure boards are doing things correctly.

Assemblyman Segerblom:
You want to allow boards to make these changes, but will the homeowners be notified beforehand or afterwards?

John Leach:
They have an obligation to do both. First they have an obligation to send every homeowner a notice of a board meeting and have as an agenda item that the board will take action relative to this process. While I cannot promise that the homeowner will read the notice, it is our mechanism of communication. Thereafter, any homeowner who requests it is entitled to a copy of the minutes of a meeting, and this is governed by NRS 116.31083 which is the section that governs board meetings. After the amendment is done, then the homeowner will also get another notice which will include a copy of the language that was changed.

Assemblyman Segerblom:
People would probably feel more comfortable if the obligations were delineated. Even though I understand that under rules, they are required to do that, it sounds like they are going to sit in the backroom and make these changes without telling anyone ahead of time or after the fact.

John Leach:
I am probably one of the few practicing lawyers who went to board meetings before NRS Chapter 116 was in existence, and in those days meetings were treated just like for corporations. Homeowners were treated as shareholders, and for board meetings in corporations, notices do not go out to shareholders. So prior to 1992, the meeting would consist of the board, the manager, and me because homeowners did not even know we were having a meeting because no notice was required. Fortunately, since NRS Chapter 116 was adopted in 1992, that all ceased. Now, if there is going to be board action, it must be on a notice and an agenda; the board does not have the authority to make decisions outside a board meeting.

Assemblyman Segerblom:
When you read section 6, subsection 2, it says "without complying with the procedural requirements of NRS 116.2117...." It specifically says the board does not have to comply. I would like to change that part.

John Leach:
That section refers to the membership vote. It says that most amendments would require a majority vote and this would bypass the amendment process, but all of the other notice requirements would still be required under NRS 116.31083, which is the section that governs board meetings.

Assemblyman Manendo:
Could you go back to the comment about the minutes being distributed to the members? Is that for any board meeting?

John Leach:
Yes, any homeowner is entitled to request a copy of the minutes of a board meeting. Most associations do not normally make a bunch of copies of the minutes and take them to their meetings, but any homeowner who requests a copy of the minutes of an executive board meeting or a membership meeting is entitled to those minutes. The only exception being an executive session meeting if there is a hearing regarding another homeowner. If it is your hearing about a violation, you are entitled to a copy of the executive session decision regarding you, but you are not entitled to get a copy of the hearing of someone else. The minutes are restricted by law in that one area.

Assemblyman Manendo:
Is there a fee, and what is the timeline after the request is submitted? Is it six months or a year?

John Leach:
No, NRS Chapter 116 specifically says you are supposed to make the request in writing. Under the statute once the meeting is over the minutes of the meeting are supposed to be prepared within 30 days. Sometimes boards do not meet every 30 days, so there might just be a draft of the minutes. The law in NRS 116.31177 requires that once something is in writing, the requester is supposed to have a copy within 14 days.

Chairman Anderson:
The question about the availability of minutes has always been a bit of a problem for smaller associations that do not have a secretarial staff. The question about turnaround or the release of draft minutes often becomes problematic. Here at the Legislature we are live on the Internet, and anyone can put a compact disc (CD) in their home computer and record the whole thing; however, when our minutes actually come out after having been reviewed by several people, they might not be posted until long after the 30 days. So I am concerned about the reality when you say they should be out in 30 days.

Homeowners' association boards generally know how many people are going to show up at public meetings who have requested copies of minutes. Would it not be prudent, as a management practice, to make an initial printing of the whole thing at one time?

John Leach:
Let me start by answering more of Assemblyman Manendo's questions. The maximum cost for copies is 25 cents a page. I know that some associations do not necessarily charge for minutes, but most do. There is a pending bill that would change that to 10 cents a page.

Chairman Anderson, most associations that have community association managers are doing a pretty admirable job of preparing minutes within 30 days. The law does not mandate that an association have a community association manager, so there are many that are self-managed. In the discussions I have had with the Division, I have been advised that most associations have a manager, but there are still some that do not. I really do believe that most associations have the draft minutes done within 30 days. As you pointed out, there are times when they do not get them approved in the very first meeting, but at least the draft has to be completed in 30 days. There may be notation on the document that it is just a draft. One of the concerns about bringing the

minutes to the meeting, say February's minutes to the March meeting, and distributing them is that someone may make a motion to amend the minutes and then they are adjusted. Then there are two sets of minutes out there and one is inaccurate. Most associations are doing an admirable job of meeting the 30-day requirement. Some associations probably are bringing minutes to the meetings, but I do not think it is the norm. More often than not, they wait for the request.

Section 7 is an attempt to bring our statute into compliance with the Uniform Common-Interest Ownership Act (Uniform Act). It is also intended to remove the hardship created by the *Red Hills* Nevada Supreme Court case [*Red Hills Homeowners Association v. Knopp*, Docket No. 46095 (Order of Affirmance, July 5, 2006)] which basically said that changes to the use to which a unit is placed—most associations have a section of the CC&Rs called use restrictions, which covers pets, signs, and nuisance—would not need unanimous consent, which is practically impossible, but rather a supermajority.

Section 8 was intended to address what we thought was some confusion because there is currently some introductory language in NRS 116.3102 which says "subject to the provisions of the declaration," and then enumerates many powers that the boards of directors and executive boards may implement. We proposed some language which you see in the bill, but I have also submitted an amendment (Exhibit F) which would return it back to the original language. There is belief that the changes in the bill would create some unintended consequences where certain powers that would generally be given to an executive board could then be omitted through expressed language in the CC&Rs. While I think that is still the case the way it currently reads, I did not want there to be any confusion.

Section 9 was intended to grant powers to the board and specifically says that one of the powers is to fill a vacancy on the board. Most governing documents make a distinction between a vacancy that is created because a person moves, resigns, dies, et cetera, versus a person who is removed from the board by an election of the membership. Many governing documents would specifically say that if a director is removed by vote of the membership then the membership should be the ones that fill the vacancy. This tries to recognize that if the vacancy is created by removal by vote of the membership, then they should fill it, not the balance of the board. This is in keeping with the membership having the ability to determine as much as possible who is serving on their board of directors.

Section 10 addresses removal elections and special meetings. There is some confusion on this matter, and the bill clarifies the powers of the board, keeping

in mind that associations are nonprofit corporations. In nonprofit corporations, the executive board or board of directors is empowered to call meetings of the membership. *Nevada Revised Statutes* 116.3108 specifically says that a special meeting of the owners may be called by the president, a majority of the board, or the units' owners constituting 10 percent. There is no qualifier as to what types of meetings board members cannot call. *Nevada Revised Statutes* 116.3103, subsection 2, lists restrictions on the boards' powers. If the Legislature had intended executive boards to not be entitled to call special meetings, they would have changed NRS 116.3108. Please keep in mind, it is the unit owners' vote. We are talking about meetings of the membership. The statute then goes on to say that "The same number of units' owners may also call a removal election...." You will note there is no provision that says the board can call a removal election, only a special meeting. The statute then delineates two different procedures; if there is a call for a special meeting of the members to vote on removal, or if there is just a petition. The time frames are a little different and there are two separate processes.

One of my clients received a letter from the Real Estate Division demanding that they cease and desist holding a special meeting of the membership for the purpose of voting on the removal of a director. Their conclusion was that they do not have the authority to call it. The law does not say that. It is standard practice for elections and removal elections to take place at membership meetings. I have seen some negative comments toward this provision, which I do not understand because it allows the members to vote. If the board calls the meeting, there must be a special meeting, which means that the board must give notice, an agenda must accompany it, members would be allowed to speak, everything. But if the membership petitions for just a removal election, there is no notice requirement, no agenda, and no membership forum. The ballots get mailed out, the membership votes, and it is done. These are two different processes that are delineated in statute. The bill tries to clarify this in light of the issuance of the letter by the Division.

Assemblyman Manendo:
You want to be able to allow the board to call a special meeting, and in that special meeting, the board could recall board members and would go through the process. If I wanted to recall a board member, I would have to go around and collect the 10 percent.

John Leach:
Yes. General corporate law like NRS Chapter 82, or any of the sections regarding corporations, allows a board of directors to do just what you suggested, which is to call the meeting, at which the shareholders, or in this case, the homeowners, would be voting, and that is the law already.

The example that frequently comes up is that there is a five-member board and one board member either chooses to never participate, never attend, or he cannot even be found. The board president could call a meeting of the homeowners to allow the homeowners to vote on whether this person should still be on the board. It is not the board deciding; it is the homeowners who get to vote. If the homeowners do not want to remove a person, it does not have to happen. The minimum standard is 35 percent of all homeowners to remove him, not 35 percent of those who participate.

Assemblyman Manendo:
I am concerned because sometimes there are board squabbles. If there were a three-member board and two were in alliance and did not like the other, they could continuously attempt to recall that member as a form of harassment. I have concerns about this section.

John Leach:
I am not aware—which does not mean it is not happening—of a situation where directors continually call meetings for removal. I have seen some instances where petitions filed by homeowners failed, but they do another and another and another meeting. I agree that there are situations where a minority number of the board may feel, at times, that they cannot get things done. This is a byproduct of the system which is that the majority is going to make the decision. This is a chance for the members to vote on something. This is not the board voting to get rid of another board member; the board would only have the authority to call the meeting and then ask the homeowners to support it.

Assemblyman Manendo:
You just said they have the ability to do it. I think this point is moot.

John Leach:
I would agree with you except that I have had clients who have received letters that have contrary interpretations from the Division. We want the Legislature to make the law.

Assemblyman Manendo:
Who cannot recall them?

John Leach:
The executive board can call the meeting. Right now the law already says that the executive board may call a special meeting of the units' owners, and that would include a vote by the membership for the removal of a board member, but there is written correspondence from the Division saying an executive board does not have the authority to call the meeting. So all this section does is

clarify that the executive board may call a special meeting of the units' owners to address that issue. We would not have recommended this amendment to the existing law but for the letters from the Division, which seem inconsistent with the statute.

Assemblyman Manendo:
Those of us in the Legislature do not recall ourselves but our constituents can, so to me if there is a bad board member, the constituents can recall that board member.

John Leach:
The board cannot remove him. There needs to be a distinction between a government and a corporation. Homeowners' associations are corporations and the practices of the boards of directors tend to be in harmony with corporate law unless modified by specific statute. While the board members, or the president of the board, may call the meeting to bring the issue to a head, the units' owners are still the only ones that can take the action.

Assemblywoman Parnell:
I, too, have concerns about this section. I would imagine that most HOAs have bylaws, is that correct?

John Leach:
Yes.

Assemblywoman Parnell:
Most bylaws would give cause for dismissal from the board. In the example you used of someone who has missed meetings or cannot be found, that should not have to be dependent upon a board vote. It should be in the association bylaws that, if any board member misses two meetings in a row or a total of three meetings in X amount of time, then that person is off the board. That is what keeps it objective—the objective criteria for a board member should be clearly stated as cause in the bylaws. Then that takes any personality or any of the concerns out of the process. That is how I would prefer to see it.

John Leach:
Most bylaws do not grant that authority to the boards. I do not represent many builders or developers, so I do not draft the original bylaws that are usually created for CICs and associations. The bylaws usually contain the procedure for election and removal, but it is rare that one would find a set of bylaws that state what you have said, which is that after certain conduct or behavior, one is no longer on the board. What has evolved over the years is that the membership gets to elect and they get to remove. People do resign because

these are volunteer positions. I have seen a few bylaws over the last 20 years where there was a provision that said if a board member missed three consecutive meetings without cause, then his seat could be deemed vacant, but that is by far and away the minority. Your point is well taken and is a positive thing, but it is not required.

Assemblywoman Parnell:
I would just add then perhaps what we need to look at doing in this piece of legislation is in fact requiring the stipulation and cause in bylaws. You used the words "conduct" and "behavior" and that gives me great concern.

John Leach:
Even if we were able today at this juncture to amend the law to address the situation with prospective developments, we are talking about thousands of CICs that do not have that provision. It just does not exist. All this is doing is allowing for an issue to be brought to the membership; the key is that the units' owners have the right to make the decision, not the board.

Section 11 would amend NRS 116.31083 to clarify that the executive board may meet and conduct workshops outside of the presence of the membership without satisfying the formalities of the statute, which are the notices and agenda, et cetera.

Chairman Anderson:
Sometimes when one arrives at a meeting, he thinks he clearly understands what the impact is going to be of some proposed change, only to find in the course of the discussion that it has several tentacles to it that were not anticipated. The workshops are closed, but the interaction between the staff and the executive board may be helpful to members of an association who want to become involved. How would the membership find out that maybe the board members are not happy, because sometimes there is the public face of the board compared to that at a workshop? There are the people who ask good questions in workshops, but they sit quietly in the public meeting.

John Leach:
There is no way to legislate away human nature. Mr. Buckley was kind enough to share in his submission an example where the Commission has had to address this issue in a CIC in northern Nevada. It was believed that everything was being done outside the meeting and then a de facto, rubber-stamp meeting was run in public. The Commission has a good feel when that is happening and, when they see it, will sanction the board members or the association that is involved for doing it that way.

The concept behind this is more efficient, productive governance. The law currently reads that no action can be taken except if it is on the agenda at an open meeting of the board. The example in my handout is that oftentimes board members seek board training and go to a location where there is someone presenting changes in the law. If workshops are not allowed then when a quorum of the board shows up at a seminar, they would have to send notice to the homeowners that the board members are going to a seminar to receive board training. If workshops are not permitted, not only does it become more expensive and time consuming for associations but it deprives them of the opportunity to prepare to do their job more efficiently.

Another example is vendors working in the community. The vendor may be a landscaper the board is having problems with, so on a Tuesday morning, three members of the board are going to meet with the landscaper to walk through the community to discuss the landscaping and what can be done to improve the landscaping under the contract. If the board is not allowed to do this, then what is being said is that notice has to be mailed out at least ten days in advance so if the homeowners want to tag along, they can.

Common-interest communities already have so many situations right now where they are having interference with existing contracts. People are quitting because the homeowners think they can negotiate individually with the landscaper or tell him what to do. Those are contracts with the association, and if the board wants to meet with them informally to walk through the property, we do not understand why there would have to be notice to all of the homeowners. The board is trying to resolve an issue on a contract. There are other examples in the handout such as interviewing potential vendors, like an accountant. To think that the board would interview him in an open meeting while other accountants are sitting in the lobby waiting, and then have someone in the meeting tell the waiting interviewees what the bid is, seems to undermine the bid process.

Chairman Anderson:
You are going to preclude the attendance of the homeowners and also the report and notification of workshops and the recording and distribution of minutes of the workshop, so the homeowner could not even review it as an after-action report. I can appreciate that if three board members show up somewhere, and if notice has to be given, it creates a problem. But what about when all of the board members go to the same cocktail party, is that a board meeting? The answer simply is no. If on the other hand the board members are discussing board business, then it is a yes. There will be a record of the meeting for use of the members of the executive board; why would we exclude

that information from the units' owners? While recognizing it is a corporation, not a governmental body, there are still questions about the open meeting law.

John Leach:
Even in the opposition there is the suggestion that properly conducted workshops are beneficial. There was a suggestion that a workshop might have 24 hours notice and there is no public comment, but then we are creating another subset of types of meetings that is not necessary. Workshops are not intended as forums to make decisions, have minutes, agendas, or notices. They are informal meetings where board members prepare themselves for the next board meeting. Chairman Anderson gave a good example of our dialogue on section 11, which is: what can we do to prevent board members from going to a workshop, sharing their ideas, coming to a consensus or feeling about a matter, going to the board meeting only to make a motion, and then the motion is seconded and passed without discussion? The spirit and intent of the law clearly has been violated because the membership has the right to hear the discussion. When that happens, those boards should have a meeting with the Division and Commission. But competitive bidding, meetings with vendors, counsel, or management to get more training fall within the exceptions which are the executive session parameters.

Take a large association like Summerlin or some of these master planned communities we were discussing before. A single notice can be to thousands of people, which is expensive. When I discussed this with other practitioners in this area, we thought the key concern is "action being taken." As long as no action is being taken and it is placed on the agenda for a future meeting, the membership is entitled to see the action and hear the decision. And if the board is not doing it correctly, then the Commission is there to consider a potential violation.

Assemblyman Manendo:
There was something mentioned that had to do with the towing of cars. I know that part of it is in existing language, but I recall something about HOAs towing cars that are on public streets. Has that been removed?

John Leach:
That was not in S.B. 351 (R1). There are two statutes that have references to towing.

Assemblyman Manendo:
Maybe that was what section 8 would have done without your amendment.

John Leach:
Section 8, if it was not deleted, would have said that unless the governing documents prohibit it, the HOA can do those things.

Assemblyman Manendo:
I wanted to make sure that was on the record.

Chairman Anderson:
You are talking about section 8, subsection 1, paragraph (s), which says, "Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038...." You are establishing for the record that all of those provisions are still in there.

John Leach:
That removes that concern, and then there is NRS 116.350, which also specifically prohibits an association from regulating parking on public streets. It gives four examples of exceptions, but those do not allow towing.

Chairman Anderson:
Did you work with the former chair of this Committee on the formation of this chapter?

John Leach:
Mr. Buckley was far more involved in the process than I was.

Michael Buckley:
The Commission is generally in support of the bill. The Commission has some concerns, the first of which is section 6 about the board amending governing documents; it is not necessary and is subject to mischief. Assemblyman Segerblom's proposal that there be some specific language in the bill, if the Committee does approve it, to spell out a procedure, like sending out the draft amendment, would go a long way to solving our concerns.

The other concern was in section 10. Dealing with removals is a complicated section already. The removals appear in a number of sections, and the Commission was in opposition to this proposal because we thought it mixed up meetings with the election itself.

The Commission tried to draft a regulation in two or three meetings on workshops. We concluded that although we support workshops and think they are important and useful, putting it into statute or regulation just could not be done where there was one set of rules all of the time. We are therefore in opposition to section 11.

We had a case in the Commission earlier this year, where a board was deciding things in workshops. The Commission felt that rather than having the tension there saying, "If you have a board meeting, this is how you have do it," we do not need to define it. If it is a legitimate workshop, there does not need to be notice. It is not a board meeting.

I did have a technical note on section 3. There is some use of the phrase "financial institution," but looking at it, I do not think we really know what it means. If we allow associations, as the Commission proposes, to put money with a credit union—and I am not sure that a credit union is a financial institution—we need to take a more careful look at the use of that term.

Chairman Anderson:
The email (Exhibit G) that Mr. Buckley sent will be in the work session document.

Karen Dennison, representing Lake at Las Vegas Joint Venture, Las Vegas, Nevada:
My comments are only about section 6, which has been discussed at length by the Committee (Exhibit H). It is a slippery slope to allow a board to amend CC&Rs without the check and balance of an owner vote. Mr. Leach and I have had discussions about this, and we do not see eye to eye. It is not that difficult to allow the amendment to go out to the owner vote. That is what the owners bought into, that the CC&Rs say any amendment has to go to owner vote. Covenants, conditions, and restrictions can be very complicated. For example, the CC&Rs at Lake at Las Vegas are 110 pages. To have a lay board simply take a red pen to the existing CC&Rs and to put those of record without an owner vote, and then put the onus on the owners to correct any mistakes because the amendments were not in compliance with NRS Chapter 116, is an unnecessary burden to put on the homeowner. The law is working fine the way it is. As far as the common practice is concerned, a reviser's note is not law. I am not aware of anyone in our office who has ever taken it upon themselves to amend CC&Rs with just a board vote, even if it is just to comply with NRS Chapter 116.

We have put in a protection in section 14 as an amendment submitted in the Senate. That has not been discussed. It is part of the information statement which is handed out to all owners, both those who buy from the developers and also resales. The change is in subsection 2 and says, “Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of Chapter 116 of the Nevada Revised Statutes." Then it gives the

website to look at the NRS sections which may interest a prospective purchaser.

Assemblyman Segerblom:
Do you agree with Mr. Leach that current law would require membership be notified before the board met to change the CC&Rs to conform with law, and they would have to receive notice after the fact also?

Karen Dennison:
Yes, that is current law. Board members would have to notice this as a board agenda item, and members would be allowed to attend; then after the fact the amendments would be sent out to the owners. The owners would have no opportunity to vote; they can only speak at the board meeting.

Chairman Anderson:
I will enter a letter from Richard Post, the President of Sun City Summerlin Community Association, Inc., as well as one from Kay Dwyer of Henderson, and one from Michelle Duncan of Las Vegas (Exhibit I).

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:
This is in regard to section 10, special meetings of the units' owners. I have discussed this with my staff and the Real Estate Division counsel, and that resulted in the letters Mr. Leach has referenced. In subsection 2, a meeting for a removal election is called out separately from the special meeting of the units' owners. That needs to be looked at. It is mentioned separately under NRS 116.31036 and that may be part of your consideration.

Chairman Anderson:
Ms. Chisel and Mr. Anthony, could you look into that for us?

We will turn to those in opposition.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
[Read from prepared statement (Exhibit J).]

Robert Robey, Private Citizen, Las Vegas, Nevada:
I am a board member; however, I am representing myself only. [Submitted comments (Exhibit K).]

I have sat here in awe today with what you all have to put up with. I would like to explore further the idea that those of us who live in a CIC live in a corporation. When my children were very young, I bought my first townhouse

and was on the board. We ran the association as though it were a city. I believed in the open meeting law that had just come out, and in my townhouse association we had open meetings.

I drove up here last night to be able to participate today. The Legislature states that it cannot pass legislation to decide who is right and who is wrong. I am not asking them to do that. I am asking that I and everyone else who made the mistake of buying into a corporation when we thought it was a CIC be given back our dignity, our right to vote, and not allow these secret workshops. This bill is taking away the rights of the person.

We have heard about architectural control committees that are going to meet in secret. Why? Because one cannot see the plans? No, one cannot copy the plans, but one can sit in an open meeting to hear his neighbors say that they want to build a 20-foot gazebo in their backyard. One has the right to hear that, and to participate in the meeting.

I ask the Committee to restore the rights of people who live in CICs. I do not ask for myself because I live in a good association. I am on the board of Sun City Summerlin, from whom you got the letter. I have gone to, and been in, board meetings where members have said that they cannot release certain information. We had an attorney come to an executive session of the homeowners association I serve on, and she had a legal opinion to present to us. I asked, "Do you think it is proper for you to talk about a legal opinion that belongs to the owners in an executive session?" She reviewed NRS Chapter 116 and said, "You are right; it has to be done in the open." The other board members were shocked and said that they had been told that it had to be done in secret. I asked her if we should release the opinion, and she said she had to release the opinion. It still has not been released.

That is not the fault of the board; it is the advice they get. I wonder why we cannot know what is going on. The second page of my handout reads, "If the board of directors obtains a legal opinion because of alleged confusion as to the interpretation of any governing document and or statute then that attorney's opinion must be footnoted ..." so that people know why the governing document has been changed. I want more openness.

Chairman Anderson:
I know that you have testified many times in Las Vegas and I appreciate the time you have taken. This is why we make sure we are videolinked every meeting. It is good to know that there are people out there who are following through to make sure the bills are debated and watched by those with an active interest.

Roy Oxenrider, Private Citizen, Las Vegas, Nevada:
I would like only to submit my handout (Exhibit L) and make a couple of comments. I would like to thank Assemblyman Mark Manendo because he has gone above and beyond the call of duty to keep me informed about the HOAs. I appreciate his concern and care.

I moved to Nevada in 2004 and into the first HOA I have ever lived in. All unit owners must be treated fairly and equally, and I believe section 2 of this bill will not do that. If you look at the letter dated February 28, 2009, this is the one Assemblyman Manendo helped me with. We obtained a cease and desist order, and he took it from there to see if the board had the recall right. The Division said it did not. I am here to ask that boards stay out of the recall process. That is a democratic process and I would not expect the board members to agree on all subjects. We need differences of opinions and just cause to remove someone. We do not have transparency in our community. Our budget for attorney's fees is 11 percent, which is over $37,000 of last year's $350,000 budget. That is too much. The board is trying to raise a legal case against me because I ask these questions. It takes multiple requests to obtain a financial statement. The last one I received was from December 2008.

Chairman Anderson:
Assemblyman Manendo has been actively involved in this area of legislation for many sessions.

John Radocha, Private Citizen, Las Vegas, Nevada:
I strongly disagree with John Leach, and I am very aware of abuses by boards (Exhibit M). He is the attorney for my CIC.

I would like to see section 6, subsection 2, deleted. I would like section 8, subsection 1, where it says "the associations may do any or all of the following" deleted because it gives boards a blank check. The phrase "may do any or all" is the problem. I would like the bill to say, "The homeowners shall have the right to overrule the boards by paper ballot." I say this because I live in a working community and the board meetings are at 5:00 or 5:30 p.m. when people cannot attend. At the meetings the president says "all in favor" and the vote is over in a flash. If there is a paper ballot, then it is fair. There should be 25 to 30 percent vote by the membership when the board amends bylaws, rules, and regulations. I agree that this should not apply to legislative law; the boards should be allowed to amend the bylaws for that. It is when boards just make changes and spend money without checks.

In my community, we have speed bumps. We paid $15,000 for signs for those and some people complained about them. Now the signs are gone, but what

about the $15,000? I asked my fellow homeowners if they knew about the signs and the response was no one knew. We should be able to vote by paper on items that concern the community.

Chairman Anderson:
We could allow for those with the access to participate electronically, and we do not want to preclude electronic balloting.

John Radocha:
In section 11, subsection 8, paragraph (d), I would like it to read, "A record of each member's vote or proxy vote on any matter decided by a vote at the meeting." In other words, if a person comes to a meeting and they have a show of hands, and a person was authorized by homeowners to represent them if they cannot attend the meeting, this proxy vote should be acceptable. Mr. Robey also made the point that people cannot make all of the meetings.

Chairman Anderson:
The question of proxies is difficult. What would preclude someone coming out and taking a group of proxies and then voting as he wants, rather than representing the proxies?

John Radocha:
Here is an example; my HOA had a meeting about speed bump removals. I had a list with about 50 signatures of owners and the board refused to take it. The president then held a vote, the board voted, and it was over with. I spent the time to get these signatures and people came to me to sign since they could not attend the meeting. I agree that proxies should only be allowed for yes or no votes, not to change anything.

Chairman Anderson:
Is there anyone else to testify? [There were none.] I will close the hearing on S.B. 351 (R1).

I will enter the email from Robert Hall regarding several Senate bills into the record as well (Exhibit N).

We are adjourned [at 11:46 a.m.].

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

Katherine Malzahn-Bass
Committee Manager
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary
Date: May 11, 2009 Time of Meeting: 8:16 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 261 (R1)	C	Karen Dennison, State Bar of Nevada	Written Testimony
S.B. 261 (R1)	D	Jonathan Friedrich, Private Citizen	Handout
S.B. 351 (R1)	E	John Leach, Community Associations Institute	Handout
S.B. 351 (R1)	F	John Leach, Community Associations Institute	Proposed amendment
S.B. 351 (R1)	G	Michael Buckley, Commission for Common-Interest Communities and Condominium Hotels	Email in support with exceptions
S.B. 351 (R1)	H	Karen Dennison, representing Lake at Las Vegas Joint Venture	Proposed amendment
S.B. 351 (R1)	I	Chairman Bernie Anderson	Letters in support
S.B. 351 (R1)	J	Jonathan Friedrich, Private Citizen	Prepared Statement
S.B. 351 (R1)	K	Robert Robey, Private Citizen	Comments
S.B. 351 (R1)	L	Roy Oxenrider, Private Citizen	Handout
S.B. 351 (R1)	M	John Radocha, Private Citizen	Letter in opposition, proposed amendment
S.B. 351 (R1)	N	Robert Hall, Private Citizen	Letter in opposition