Pacific Business News (Honolulu) - June 22, 1998

City sued over condo conversion ordinance

Landowners dispute the interpretation of a city ordinance and the qualifications of owner-occupants

Legal challenges to the city's residential leasehold condominium conversion program continue to come from landowners unhappy about prospects of their fee interests being condemned and sold.

Eight leasehold condominiums to date have been designated by the city Department of Housing & Community Development as qualified properties in which owner/occupants are moving to acquire their leased fee interest. Out of the eight, two lawsuits covering five properties have been filed against the city.

Both suits claim the city is not following the ordinance governing leasehold conversion. The city, which said lawsuits were not unexpected (the ordinance intended to help small-leasehold-condo owners does not sit well with landowners), insists it is following the statute.

The issue at hand surrounds Section 3 8-2.2 of the Revised Ordinances of Honolulu, which covers the minimum number of condominium owner/occupants required to petition the city to buy their leased fee interest.

For the purposes of the ordinance, an owner/occupant must hold title to the condominium unit and use that unit as his or her principle residence and must have done so for at least a year prior to applying for conversion.

The ordinance, in part, states that for condominiums with at least 10 units either at least 25 condominium owner/occupants or "at least owners of 50 percent of the condominium units" must apply to the department for a property to qualify for conversion under the program. ("Owners" in the second mention is also defined as owner/occupants.)

On June 5, a group of landowners of three Honolulu condominiums -- Piikoi Plaza at 725 Piikoi St., Prospect Tower at 927 Prospect St. and Royal Vista at 1022 Prospect St. -- banded together as the Small Landowners Association and filed suit against the city.

Plaintiffs charge rules adopted by the city to implement the ordinance in effect rewrite Section 38- 2.2 of the ordinance to base the 50 percent test on the total number of condominium owner/occupants instead of the total number of condominium units.

The rules read, in part, that "50 percent of the condominium owners (owner/occupants) of a development" must apply to the city for conversion. Again, the ordinance states "at least owners (owner/occupants) of 50 percent of the condominium units" must apply.

Plaintiffs therefore charged in the filing the ordinance is reduced to a "sham." They are unhappy the 73-unit Piikoi Plaza was qualified under the conversion program after 15 owner occupants applied. At the 76-unit Prospect Tower 22, applicants qualified the property. And 16 owner/occupants at the 60-unit Royal Vista qualified the condominium.

Basing the 50 percent calculation on the total number of owner/occupants rather than

owner/occupants of the total number of units theoretically could result in just one owner/occupant qualifying a 10-or-more unit condominium where there were just two owner/occupants.

Attorney Jim Mee representing the association said the wording of the rule "converts the qualification requirement into a nullity."

However, the city's position is the only nullity is the lawsuits. Deputy Corporation Counsel David Laxson said references to the term "condominium units" in the ordinance refers to owner/occupied units.

"That is the point of disagreement," Laxson said, adding the ordinance allows the city to condemn only owner/occupied units, so including non-owner/occupied units in the equation does not make sense.

While the example of one owner/occupant qualifying as 50 percent is theoretically valid, Laxson said it is the extreme. "That scenario is ridiculous," he said, adding the result would be one owner/occupant buying his or her percentage in the entire complex while paying attorneys fees and costs to administer the program.

Still, the fundamental question is about the wording of the ordinance and rule -- whereby the ordinance would take precedent in hierarchy, although Laxson said they should be interpreted consistently.

But the Small Landowners Association said the problem is precisely that the rule and ordinance are not consistent.

A case filed Feb. 18 by Kamehameha Schools/Bishop Estate regards conversion proceedings against Kuapa Isle and The Kahala Beach condominiums that received a City Council condemnation resolution March 11.

The case, which does not dispute the ordinance or rule, argues the rule is being misapplied.

Estate spokesman Kekoa Paulson said it is the estate's belief that if the rules were followed Kuapa Isle and Kahala Beach would not have qualified for conversion.

"We believe that many of the people the city has qualified do not deserve to be qualified," Paulson said, adding the estate argued the city is listing people as owner/occupants who are not.

He said the estate has found cases where applicants were trustees living on the Mainland with beneficiaries living in the unit.

"We are including only people who are owner/occupants," Laxson said. "There are no known [applicants] who are not owner/occupants of their respective units."

Paulson said that is not so. "To be an owner/occupant you have to live in the unit," he said. "That's the bottom line. The people living there are not the owners of the unit."

Laxson countered: "It's absolutely incorrect."

Mee raised a point that baffles him: how does the city know how many owner/occupants live in a condominium -- a number needed to figure 50 percent.

"We just don't know how they are doing the math," he said.

Laxson said the information determining owner/occupants comes from real property tax records

with homeowner's exemptions plus information applicants provide on others in their condominium.

But Mee questioned whether the records provide an accurate determination as to whether one is a qualified owner/occupant.

The Small Landowners Association case awaits a hearing. Circuit Court Judge James R. Aiona Jr. already heard the Bishop Estate case and has yet to render his decision.