

Leasehold conversion law ailing

A bill making it easier for lessees to buy from landowners appears likely to die

Starbulletin - Thursday, October 10, 2002

The tide is turning quickly in favor of landowners with City Council Chairman John DeSoto condominium conversion program.

And supporters of mandatory conversion are questioning the decision by the Council's Executive Matters Committee to "defer indefinitely" a bill designed to make it easier for lessees to buy the leasehold land under their buildings.

The controversy likely will need to be resolved after a newly elected Council takes office in January.

Under the mandatory conversion program, lessees have used the city's condemnation powers to force landowners to sell their fee interests.

Executive Matters Chairman John Henry Felix, a leading proponent of leasehold conversion, said he called for the deferral of Bill 53 after failing to muster five votes to advance it to the full Council.

What's more, Felix said that he will not bring the matter up again during the remaining three months left on Council members' terms, which end in January.

Bill 53 allowed a minimum of either 25 owner-occupants or 50 percent of all owner-occupied units to petition the city. The city had been using that minimum, but a Hawaii Supreme Court decision in May said the city misinterpreted its own law and should have been allowing only 50 percent of the owners of all units to petition.

The number of eligible condominiums, as a result of the court decision, dropped to 37 from 360, while the number of eligible lessees shrank to 2,500 from 5,700, according to Realtor Michael Pang, who handles many conversion applications. The city said petitions by lessees in 12 of 17 projects were made ineligible by the ruling.

Councilman Gary Okino, who previously had supported Bill 53, reversed his position yesterday. Okino said he was swayed by indications that the words "50 percent of owner-occupants" had been taken out of the bill at the last minute in 1991 to appease detractors.

Not only are he and returning Council members Romy Cachola and Ann Kobayashi against Bill 53, he said, but so are the majority of the 12 candidates still up for the six remaining Council seats.

Lex Smith, city special counsel for mandatory conversion issues, said there may be legal consequences to Bill 53's not passing.

"Some leasehold condominium units, which were designated for conversion prior to the Hawaii

Supreme Court's decision ... will remain ineligible for conversion," Smith said. "The city may incur liability to some of these lessors as a result of dropping the condemnation proceedings after designation."

DeSoto, a vocal opponent of the leasehold program, said it will be his goal to push through the repeal before he leaves office in January.

David Nakashima, an attorney who has represented lessees, said repeal of the law could expose the city to lawsuits from both landowners and lessees.

"I suspect there are going to be some unhappy lessors who settled under the threat of condemnation," he said. "And yes, I think there a number of lessees, including my clients, who have spent a considerable amount of time and effort following a law they thought that was valid."

Small landowners and supporters of Queen Liliuokalani Trust, who showed up in throngs, applauded the committee's decision to shelve Bill 53.

Phyllis Zerbe, a leader with the Small Landowners Association of Hawaii, said she was grateful that the Council finally realized her long-held view that the city's condemnation authority was being used unfairly to take property for the benefit of just a few.

But Pang said he does not think the debate is over. He noted that many of the leasehold condominium owners will be facing the terms of their surrender clauses in the next five years, "which basically means they pack their bags and leave. Will they? I don't think so."