

1001 Bishop Street, Suite 780
Honolulu, Hawaii 96813-3410
February 16, 2010

COMMITTEES ON JUDICIARY AND CONSUMER PROTECTION & COMMERCE
REGARDING HOUSE BILL 2110

Hearing Date : THURSDAY, February 18, 2010
Time : 2:00 p.m.
Place : Conference Room 325

Chairs Herkes and Karamatsu and Members of the Committees,

My name is John Morris and I am testifying against HB 2110. I have been involved with condominiums since 1988, when I served as the first condominium specialist with the Hawaii Real Estate Commission (from 1988 to 1991). Since then, I have served as an attorney advising condominium and homeowner associations.

Contrary to the statements in HB 2110, the issue is not whether board meetings can be recorded but whether they should be recorded without the permission of the board. Meetings should not be recorded without the permission of the board members because board members should have the right to control their own meetings. Taking away that right takes away control of board meetings from the board for no valid public purpose.

Owners usually try to tape board meetings for two reasons: 1) under the mistaken belief that the minutes of the board meeting are supposed to include everything that was said at the board meeting, not just what was actually decided; or 2) to intimidate the board.

1) Taking "correct" minutes. The law relating to planned communities clearly states that board and association meetings are to be governed by Robert's Rules of Order (see section 421J-6). Robert's clearly states that the entity that is meeting should control the meeting. Robert's also clearly states that the minutes of the board meeting are intended to record what was done, not what was said (see Robert's section 48). Board meetings are not intended as discussion groups but as meetings to make decisions and get things done.

Nevertheless, owners frequently believe that board minutes are supposed to be a verbatim record of exactly what was said throughout the meeting. The situation would be just as if the Legislature had to include everything that was said at a hearing in a committee report. When owners discover that the minutes do not record everything that was said at a board meeting, they often take offense, particularly if the minutes omit long statements made by the owners at the meeting. The owners then mistakenly conclude that the board is not taking "correct" or "accurate" minutes because the owners' statements are not included in

the minutes. As a result, the owners insist that they must be able to tape record or videotape board meetings to ensure that the board includes absolutely everything that was said at the meeting. In fact, no matter how long an owner speaks at the meeting, if the speech does not result in a board decision, the speech is not relevant and should not be included in the minutes.

Requiring that owners be allowed to tape board meetings, as House Bill 2110 proposes, will only perpetuate the confusion. Boards should not be forced to keep long and rambling minutes simply because owners mistakenly believe that the minutes should record everything that was said at a board meeting. Ultimately, as Robert's recognizes, the main purpose of the minutes is to record the decisions of the board of directors because ultimately that is all that affects the owners.

Owners who cannot attend board meetings can still review board minutes to find out what the board has been doing, which is the main purpose of the board meetings. Owners have no need to review videotaped or audiotaped records of the meeting to obtain that information.

2) Intimidating the board. Board members are unpaid volunteers who come together, at a board meeting, to take action on behalf of their fellow owners. The main purpose of board meetings is to accomplish the business of the board. Therefore, while the law allows owners to attend board meetings -- except executive sessions -- it does not necessarily give owners the right to speak at a board meeting if a majority of the board votes otherwise. Without that limitation, owners would be able to disrupt and unnecessarily prolong board meetings.

Videotaping and audiotaping is sometimes used for similar purposes. Many people who are not used to speaking in public become intimidated if they are recorded. Some owners recognize that reluctance and try to intimidate board members by forcing a microphone or a video camera into their faces while they are conducting board meetings.

If the Legislature adopts HB 2110, the situation would be similar to a law stating that anyone can come to a committee hearing at the Legislature and put a microphone or videotape into the face of the legislators who are meeting, regardless of whether the legislators approve of the practice. **Many legislators would find that practice objectionable for themselves, yet HB 2110 proposes to force that very situation on members of a planned community board of directors.**

In summary, legislators have the right to decide how to run their own committee meetings and should not take that right away from the members of a planned community board by

Testimony re: HB 2110
Hearing Date: February 18, 2010
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passing HB 2110. Serving as an unpaid volunteer on a community association board of directors is not easy under the best of circumstances. Passing a law that allows any owner to force a microphone or video camera into the face of a board member while the board member is speaking will not improve the situation and will only discourage owners from serving on boards.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John A. Morris', is written over a horizontal line.

John A. Morris

JAM:alt

Connie K. Vohden

February 17, 2010

Committee on Consumer Protection & Commerce

Chair: Robert N. Herkes
5th Representative District
Hawaii State Capitol, Room 320
415 South Beretania Street
Honolulu, HI 96813
E-mail repherkes@Capitol.hawaii.gov

Vice-Chair: Glenn Wakai
31st Representative District
Hawaii State Capitol, Room 316
415 South Beretania Street
Honolulu, HI 96813
phone 808-586-6220; fax 808-586-6221
E-mail repwakai@Capitol.hawaii.gov

RE: HB2110; Opposing Testimony; Hearing Date: 2/18/2010;

Dear Chair Herkes, Vice-Chair Wakai, and Members of the Committee:

I am writing this letter on behalf of APOPO Bayview Estates at Keauhou (99 members), APOPO Keauhou Estates (135 members), AOA Alii Lani (367 members), AOA Kona Plaza (83 members) and Alii Point Association (19 members).

House Bill 2110 would force associations to allow any member to video-tape the private association or board meetings. In order to stop this video-taping, the associations would have to amend their bylaws.

Rules are already adopted to prohibit taping or video-recording at association meetings.

Board members are unpaid volunteers and many of the owners may not want to be video-taped.

This latest legislative micro management of the association's operations is completely unacceptable. In the past, video-taping and recordings have been used to intimidate other owners.

Even though the bill provides for "private personal use" only, there are no criminal penalties (e.g. a year in jail or anything similar) if somebody posts it on a website.

If the video-tape is not accurate and is used to show to realtors or prospective buyers, then property values could suffer.

Please kill this bill!

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Vohden".

Connie K. Vohden



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

February 17, 2010

**Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice-Chair**

**Comm. on Commerce and Consumer Protection VIA EMAIL:CPCTestimony@Capitol.hawaii.gov
State Capitol
Honolulu, HI 96813**

**Re: HB 2110 Testimony in OPPOSITION: Electronic recordings of association meetings.
Hearing: February 18, 2010, 2:00 pm, Conf Room 325**

Dear Chair Herkes, Vice-Chair Wakai and Members of the Committee:

My name is Will Kane, Vice-President of the Mililani Town Association (MTA). As you may be aware, MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

MTA does NOT support this bill and believes it should be deferred for the following reasons:

- 1. An association meeting is restricted to members of that association and is not open to the general public. Therefore, the general public has no inherent right to information concerning association meetings, as opposed to public meetings of elected officials which are open too the public.**
- 2. By allowing private individuals to record these meetings without any oversight whatsoever, there exists a tangible threat of a video or recording being edited in such a way as to misrepresent what actually occurred at the meeting. Additionally, there is no way to enforce that these recordings be delivered to individuals that have a vested interest in these proceedings. As we all know, with the click of a button, any video can immediately be distributed world wide, which would defeat the intent of this bill.**
- 3. The bill states that the intent is...“to video record association meetings so that these recordings may be made available to other members who are unable to attend.” Nearly all associations, including MTA, make their meeting minutes available for their members, and are required to do so according to their DCCR’s.**
- 4. Lastly, there seems to be virtually no demand for this legislative action, as only one individual has submitted testimony in favor of this bill, all the while expressing the flawed argument that because court and legislative proceedings, (which are open to the general public), are recorded, that meetings for PCA’s should be as well.**

Due to the reasons stated above, MTA respectfully asks that HB 2110 be deferred. Thanks you for your consideration in this matter. If you have any questions, please feel free to contact me at wkanemta@yahoo.com.

Sincerely yours,

William T. Kane II

**Will Kane
Vice-President, Board of Directors**

**Cc: Senator Kidani
Senator Bunda
Representative Lee
Representative Yamane**

Management Information Consultants

February 16, 2010

Chair: Robert N. Herkes
Vice-Chair: Glenn Wakai
Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 316
415 South Beretania Street
Honolulu, HI 96813

**RE: HB2110; Testimony in OPPOSITION; Hearing Date: 2/18/2010;
Sent via web.**

Dear Chair Herkes, Vice-Chair Wakai, and Members of the Committee:

This testimony is provided in my capacity as an experienced professional registered parliamentarian for numerous condominium associations and Planned Community Association clients.

Many Planned Community Associations have already adopted meeting rules prohibiting taping or video-recording at their meetings. A sample of the adopted rule is, "No video-taping or other electronic recording is permitted (except for production of the minutes) during any of the proceedings unless first approved by the Association members at the meeting."

These associations, who are not all clients, include at least,

- Bayview Estates (Hawaii)
- Ewa by Gentry Community Association
- Hokulia (Hawaii)
- Keauhou Estates (Hawaii)
- Kolea Community Association (Hawaii).
- Kukilakila Community Association
- Lokahi Makai (Hawaii)
- Mauna Olu Estates
- Moana Estates (Maui)
- Palehua Community Association
- Poipu Kai Community Association (Kauai)
- Puu Alii Community Association
- Puu Heleakala Community Association
- Royal Kunia Community Association
- Village Park Community Association
- Waianae Community Development Project
- Waikoloa Villages Association (Hawaii)

HB2110, if it becomes law, will nullify and override at least these association rules. It would require an amendment to the association's bylaws in order to prohibit video-taping or other electronic recording.

There are several reasons for opposing HB2110.

1. Planned Community Association meetings are private meetings, restricted to homeowners, proxy-holders, etc.
2. Videotaping and recording has been used to intimidate owners as well as board members.
3. The most recent example of video-taping becoming unruly occurred at the Ewa Neighborhood Board meeting in December 2009.

One individual insisted on videotaping the meeting, placing microphones behind the board chair and constantly moving behind and in front of the board members.

The aggravation to the public and the chair was patently obvious on the Olelo video which was also being produced. Finally, the chair adjourned the meeting due to loss of control and the potential for physical confrontations.

The private video-taping was eventually posted on Youtube.

The video of this meeting, including the public complaints about the videotaping is on Youtube at: <http://tinyurl.com/nb23-20091211>.

Another video of this meeting, with people expressing anger about videotaping and including an alleged threat of violence may be viewed through Youtube at: <http://tinyurl.com/nb23-20091211a>.

The video is also on Olelo at:

http://olelo.granicus.com/MediaPlayer.php?view_id=25&clip_id=10184

4. Another example occurred in a Pacific Grand meeting in November 12, 1997. There was contention with an owner who insisted on video-taping only those people he disagreed with. Owners became angry and the meeting was very contentious. Two individuals who were recording were both requested at least three times to stop disrupting the proceedings. A recess was called to summon the police. (Police report no. 97442319-Officer A. Ramos)
5. Videos and recordings have been altered or inappropriately used out of context.
6. Videos and recordings often fail to pick up parts of the meeting, leading to inaccurate results.

7. The technology with mini parabolic microphones permits directed recording of private consultations with attorneys and individual owners or board members.
8. HB2110 states in part, "[t]he recording is made for the private personal use of the member making the recording or another association member." There are no sanctions for violation of this law. Also, once the video or recording is posted internationally, it is almost impossible to remove it.
9. HB2110 requires prior notification to the board of directors. It ignores the inherent danger to an owner if the owner informs the association about criminal behavior in the neighborhood.
10. Even state boards and commissions under Chapter 92 don't have videotape mandates for their regular meetings.

There was only one item of written testimony posted on the internet regarding this bill in the Housing Committee hearing. It mentioned transparency but failed to provide even a single example of an association which would need this draconian action.

I suggest that there must be a specific compelling public interest to override an association's decision to protect their membership from multiple video-taping, recordings, etc. **There was only one written testimony in the previous committee hearing. It failed to describe a case where video-taping would have assisted any association.**

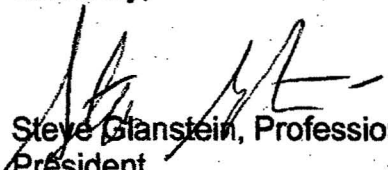
Every owner has a right to go to the meeting and observe the actions of their fellow owners or board members. I don't believe they have an individual right to take pictures, record, use parabolic microphones, x-ray film, full-body scanners, etc. if it disturbs the assembly.

I believe there is a compelling public interest to permit Planned Community Associations to govern themselves, in accordance with their documents. If anybody wants video, he or she can do it in accordance with policies that the association adopts, instead of the legislature.

I OPPOSE this bill and urge you to hold it.

I may be contacted via phone: 423-6766 or by e-mail: steveghi@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,



Steve Glanstein, Professional Registered Parliamentarian
President

SG:tbs



Princeville *at Hanalei* Community Association

Enhancing the Quality of Life and Princeville Experience for its Members

February 16, 2010

Honorable Chair Representative Robert N. Herkes
and Members of the Committee on Consumer
Protection & Commerce and
Honorable Chair Representative Jon Riki Karamatsu
and Members of the Committee on Judiciary

Re: HB 2110 – Relating to Planned Community Associations; Thursday, February 18, 2010;
Conference Room 325, 2:00 p.m.

Dear Representatives Herkes and Karamatsu and Members of the Committees:

My name is Rohit J. Mehta and I am testifying on behalf of the Princeville at Hanalei Community Association (“PHCA”), a planned community association under Chapter 421J, Hawaii Revised Statutes. PHCA is strongly opposed to the adoption of HB 2110.

HB 2110 would mandate that meetings of each Planned Community Association and of its Board of Directors (other than executive sessions) may be videotaped or recorded by any other electronic means by any member. Having members carry their own video cameras to tape proceedings and having the ability to edit tapes would necessitate each association or board to have a similar videos made. It would lead to unnecessary challenges to minutes and will have a stifling effect on many members making comments, which they intend solely for the assembled group. While the proposed bill does allow association bylaws to restrict this, for many planned community associations, bylaws amendments are extremely difficult. As one example, the bylaws of PHCA were adopted in 1971 and have been amended only once in 1997 over nearly forty years. Video taping or electronic recording may be appropriate in particular circumstances, but the members and the association boards should be permitted to determine that for themselves. The bill purports to say that a recording can be made for the “private personal use of the member”, but what is meant by that. For example, would that permit posting on a member’s website or YouTube? Often, audio or video recordings, especially of sensitive matters, are disruptive and impede free discussion. One of the purposes of board meetings is to encourage the free exchange of ideas, without fear of retribution. Recorded meetings tend to discourage the exchange of ideas on record, particularly when the recorder controls the editing. The reason members want to record meetings is to have proof of what was said or occurred in a meeting, but such recordings often are used to take statements out of context. Rather than having to defend everything said or done during a multi-hour meeting, the association’s or the board’s action should be memorialized in minutes of the meeting and left at that. Please let members of our many associations and boards decide what is appropriate and not disrupt operations and make management even more difficult for no reason.

Based on the above, we respectfully request that HB 2110 be held. Thank you for your consideration with this testimony.

PRINCEVILLE AT HANALEI COMMUNITY ASSOCIATION

Rohit Mehta

Dr. Rohit J. Mehta, General Manager

wakai2-Daniel

From: Mike.Watson@shell.com
Sent: Tuesday, February 16, 2010 10:52 PM
To: CPCtestimony
Subject: RE: HB2110; Opposing Testimony; Hearing Date: 2/18/2010;

Dear Chair Herkes, Vice-Chair Wakai, and Members of the Committee:

I am writing this letter on behalf of Kona Bali Kai Apartment Owners Association – Kialua Kona

House Bill 2110 would force our association to allow any member to video-tape our private association or board meetings. In order to stop this video-taping, we'd have to amend our bylaws.

We already adopt rules to prohibit taping or video-recording at our meetings.

Our board members are unpaid volunteers and many of our owners may not want to be video-taped.

This latest legislative micro management of our operations is unacceptable.

Video-taping and recordings have been used to intimidate other owners.

Even though the bill provides for "private personal use" only, there are no criminal penalties (e.g. a year in jail or something like that) if somebody posts it on a website.

If the video-tape is not accurate and is used to show to realtors or prospective buyers, then property values will suffer.

Please kill this bill.

Sincerely,

Mike Watson

Board Member and Owner

Richard S. Ekimoto
1001 Bishop Street, Ste 780
Honolulu, Hawaii 96813

February 16, 2010

The Honorable Representative Rep. Robert N. Herkes, Chair
Committee on Commerce, Consumer Protection, and Housing

The Honorable Representative Jon Riki Karamatsu, Chair
Committee on Judiciary

**RE: House Bills 2110 & 2624 , Hearing on Thrusday, February 18, 2010 at 2:00
PM in Conference Room 325**

My name is Richard S. Ekimoto and I reside in a planned community and have represented community associations as an attorney for over 20. I respectfully request that HB 2110 and 2624 be held by the committees.

HB 2110 would override the decisions of planned community associations and their members to prohibit taping of their meetings. Many members feel that they should not be taped without their consent. What makes this practice even worse is that many times, those individuals that are taping meetings do so to intimidate other that disagree with them. If a member wishes to tape an association meeting, he or she can seek to obtain the approval of the membership. If he or she cannot get sufficient votes to permit the taping, he or she should not be able to force this on the other residents. Personal privacy should mean that the legislature should not force me to accept being taped against my wishes.

HB 2624, HD1 omits the provision for granting of proxies to the Board. There is no reason that the legislature should take away the owners' right to give their proxy to the Board if they wish to do so. The current law does not require owners to give the Board their proxies, it simply gives them the option. Every owner should have the choice to give their proxy to whomever they wish, wether it is to the Board or someone else.

HB 2624, HD1 also eliminates the right of developers or owners of unbuilt units from voting. Why shouldn't an owner (whether a developer or otherwise) be able to vote. They own units in the community and should be able to exercise their democratic right to decide how the community should be operated. Just because I haven't built on my lot should not prevent me from voting how the community is operated. Some believe that the developer should have no say in the operation of the community. However, developers normally have a large amount of money tied up in their developments often for decades (large planned communities are built over a long period of time) and it is their financial interest that the community succeed. You may wish to check with the lenders to

The Honorable Representative Rep. Robert N. Herkes, Chair
Committee on Commerce, Consumer Protection, and Housing

The Honorable Representative Jon Riki Karamatsu, Chair
Committee on Judiciary

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determine whether the prohibition on voting unbuilt units would affect the ability to obtain mortgages on units in planned community associations.

Except for the above deviations from the Condominium Property Act, HB2624 (both the original version and HD1) also attempts to conform (but not completely) the statute on proxies for planned community associations with the Condominium Property Act. There is no reason to make the provisions the same and many reasons to make them different. What some people do not understand is that while really large condominiums are rare (the largest condominium in the State has less than 1000 residential units), planned community associations often consist of 5,000 or more units. These numbers mean that the cost concerns for even the largest condominium is dwarfed by the costs for a planned community association. For example, increasing the 100 word statement to one page in a 10,000 unit community would mean that the association would have to mail out 100 pages of statements to 10,000 owners if only 1/10th of one percent of the owners requested permission to mail out statements at the Association's expense. That's copying charges for a total of 1,000,000 pages plus postage, envelopes and labor.

Even for those planned community associations that are smaller, the differences between the Planned Community Act and the Condominium Property Act exist because they are different types of entities. The proposed change prohibiting solicitation of proxies on the common elements is an excellent example. Planned community associations do not have common elements, only condominiums have common elements. Moreover, a different dynamic exists in planned community associations than in a condominium. In a condominium, the legislature wanted owners to be able to go door to door to solicit proxies. While I object to the idea that someone can come to my condominium unit and harass me about proxies, I at least understand the reasoning for the law in a high rise condominium. In a planned community, that same dynamic does not exist. I don't want an owner setting up a table to harass me while I'm at the pool or other common areas. There is already a mechanism in Hawaii Revised Statutes §421J-8 that will allow owners in a planned community association to attempt to solicit proxies by mail.

For these reasons, I respectfully request that you hold these bills.

Very truly yours,



RICHARD S. EKIMOTO

wakai2-Daniel

From: Antonette Port [portr001@hawaii.rr.com]
Sent: Wednesday, February 17, 2010 11:08 AM
To: CPCtestimony
Subject: HB 2110

Rep. Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce

Rep. Jon Riki Karamatsu, Chair
Committee on Judiciary

Hearing: Thursday, February 18, 2010

Testimony: HB 2110 Relating to Planned Community Assocoations

Dear Representatives:

This testimony is in support of HB 2110 which would allow the recording of meetings of Planned Community Associations by those present at the meetings. Now that most court and legislative hearings are recorded, it seems reasonable to allow PCA meetings to be recorded to provide an accurate record of public proceedings.

Our society is clearly moving towards greater transparency. HB 2110 represents a very modest step towards greater openness in what is actually a public arena. In case of disputes, recording of the proceedings will improve everyone's perception of what has transpired at such meetings.

Thank you for this opportunity to testify in support HB 2110.

Richard Port