

CONDOMINIUM REVIEW COMMITTEE
Real Estate Commission
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by Section 92-7(b), Hawaii Revised Statutes.

Date: April 11, 2007

Time: Upon adjournment of the Education Review Committee meeting which follows the Laws and Rules Review Committee meeting scheduled to convene at 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Present: William Chee, Chair, Broker / Honolulu Commissioner
Mark Suiso, Vice Chair, Public / Honolulu Commissioner
Louis Abrams, Broker / Kauai Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner
Carol Ball, Broker / Maui Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner
Michele Sunahara Loudermilk, Public / Honolulu Commissioner
Annette Aiona, Broker / Hilo Commissioner
Frances Gendrano, Salesperson / Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Lorene Kimura, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Anne Deschene, Hawaii Association of Realtors
Nancy Keese-Sato, Condominium Owner – Cliffside Villages at Waipio

Absent: None.

Call to Order: Chair Chee called the meeting to order at 10:20 a.m., at which time quorum was established.

Chair's Report: No report was presented.

The Chair announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Section 92-5(a)(1), HRS, and/or to consult with the Commission's attorney on questions and issues pertaining to the Commission's

powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Condominium
Specialist's
Report:

Additional Distribution

The following materials were distributed prior to the start of the meeting:

3. Senior Condominium Specialist's Report
 - a) Introductions, Announcements, Correspondence, and Additional Distribution

6. Program of Work, FY07
 - g. Government and Legislative Participation Report
 - 1) Report

Minutes:

Upon a motion by Commissioner Nishihara, seconded by Commissioner Suiso, it was voted on and unanimously carried to accept the minutes of the March 14, 2007 Condominium Review Committee meeting as circulated.

SEO Kimura reported that a draft copy of the proposed Fiscal Year 2008 Program of Work was distributed as a work in progress item. At this point in time, the proposed draft basically mirrors the current FY 07 Program of Work. This inclusion in the CRC agenda and this initial discussion provides the notice to the condominium community of this action item and that CRC seeks their recommendations especially with justification. The CRC agenda, minutes, and the REB website reaches the condominium community including almost all the organizations. The Condominium Community can view the current FY 07 Program of Work and Budget on the Commission's website and provide their comments to staff as soon as possible. Commissioners should also review and provide comments and recommendations to staff as soon as possible. Staff is targeting finalizing the Program of Work and Budget FY08 by the end of May 2007 and presenting it to the Administration for approval prior to the start of fiscal year 2008.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Grupen reported that as of March 30, 2007, 1,560 AOAOs have successfully registered.

Education Advisory Group

An Ad Hoc Committee on Condominium Education and Research has been created to work on such matters as a strategic plan, scope, and type of education and research programs the Commission may consider sponsoring and or subsidizing from the Condominium Education Fund. Invitation letters to major condominium non-profit organizations, including CAI-Hawaii, HICCO, HCAAO, HAR, etc., and other individuals have been sent out. At the time of this meeting, positive responses have been received from Certified Management, CAI Hawaii Chapter, John Morris – former Condominium Specialist, and Peter Rice – Former Commissioner involved with CHOs and CMAs. Ms. Anne Deschene of HAR informed the committee that HAR will also be participating and will inform staff of

their representative shortly. No responses received from the Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, Condominium Council of Maui, Hawaii State Bar Association Real Property Section.

Chair Nishihara suggested inviting a participant from Hawaiiana Management.

Condominium Related Articles

The following articles from the February 2007 issue of *Hawaii Community Associations* were distributed for informational purposes: "Reserve Fund Plans Make 'em SMOOTH"; "Who Lives in Our Community"; and "Do You Know Where Association Documents Are".

Information regarding §514B-149, HRS, "financial institution located in the State" was distributed for informational purposes.

Condominium Project Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of March 2007 were distributed for informational purposes.

Proj #	Project Name	Project Address	TMK #	Report	Date
6262	1344 KINAU STREET	1344 KINAU ST HONOLULU HI	(1)2-04-011:023 96814	B Rpt	03/09/07
6209	1721 & 1725 MARQUES	1721 MARQUES ST HONOLULU HI	(1)2-08-016:058 96822	B Amd 1	03/05/07
6219	2341 AND 2341A AHAMOA STREET	2341 AHAMOA ST PEARL CITY HI	(1)9-07-061:029 96782	B Rpt	03/01/07
5756	2633 MAUNAWAI	2633 MAUNAWAI PL HONOLULU HI	(1)2-07-025:006 96826	Suppl 1	03/19/07
6190	2846 MAKAU STREET	2846 MAKAU ST LIHUE HI	(4)3-02-008:068 96766	B Rpt	03/15/07
6231	84-552A & 84-552C FARRINGTON HWY	84-552A & 84-552C FARRINGTON WAIANAE HI	(1)8-04-018:116 96792	B Rpt	03/05/07
6233	84-952 LAHAINA STREET	84-952 LAHAINA ST WAIANAE HI	(1)8-04-021:079 96792	B Rpt	03/15/07
6266	91-797 MAKULE ROAD	91-797 MAKULE RD EWA BEACH HI	(1)9-01-008:034 96706	B Rpt	03/19/07
6242	BLOSS CONDOMINIUM	42 AWAIKU ST LAHAINA HI	(2)4-07-009:065 96761	B Rpt	03/27/07
6254	D. G. CONDOMINIUM	LOT 34 PUA NIU WAY LAHAINA HI	(2)4-07-009:037	B Rpt	03/30/07
6228	GREEN STREET CONDOMINIUM	1007 GREEN ST HONOLULU HI	(1)2-04-017:039 96822	B Rpt	03/23/07
5958	HAUAALA MAKAI CONDOMINIUM	4610 HAUAALA RD KAPAA HI	(4)4-05-014:014 96746	Suppl 1	03/21/07
6102	KAPOLEI CENTER	KAPOLEI PARKWAY KAPOLEI HI	(1)9-01-118:008 96707	Suppl 1	03/21/07
6119	KAWAIHAU OCEAN & MOUNTAIN VIEW	5587 KAWAIHAU RD KAPAA HI	(4)4-06-037:057 96746	Final	03/07/07
6240	KAWILI PALMS	4126 KAWILI ST LIHUE HI	(4)3-06-020:035 96766	B Rpt	03/27/07
6138	KE KAILANI PHASE II	68-1122 NA ALA HELE RD KOHALA HI	(3)6-08-036:016 96743	B Rpt	03/13/07
6139	KE KAILANI PHASE III	68-1122 NA ALA HELE RD KOHALA HI	(3)6-08-036:016 96743	B Rpt	03/13/07
6259	KIHEI ESTATES	353 KENOLIO RD KIHEI HI	(2)3-09-015:021 96753	B Rpt	03/09/07
6239	MAKALEHA ACRES CONDOMINIUM	6403 WAIPOULI RD KAPAA HI	(4)4-04-003:009 96746	B Rpt	03/28/07
6247	MAKANA KAI AT WEHILANI - PH I (INCR 1-B)	WAIKOLOA RD KOHALA HI	(3)6-08-002:027	B Rpt	03/15/07
6236	MALUAKA	KEONEOIO RD	(2)2-01-006:037	B Rpt	03/15/07

Condominium Review Committee Minutes
 Meeting of April 11, 2007
 Page 4

6187	MOKUOLA VISTA	MAKENA HI 94-333 MOKUOLA ST WAIPAHU HI	96753 (1)9-04-017:053 96797	A Amd 1	03/16/07
6248	NOHONA KAI AT MAUNA LANI	68-1312 N PAUOA RD KAMUELA HI	(3)6-08-022:014 96743	B Rpt	03/09/07
6264	NORTH SHORE VILLAS	68-105 AU ST WAIALUA HI	(1)6-08-011:050 96891	B Rpt	03/19/07
6251	OV CONDOMINIUM	75 ILIAHI WAY LAHAINA HI	(2)4-07-010:071 96761	B Rpt	03/28/07
6211	PEKE MANOR	94-1268 PEKE PL WAIPAHU HI	(1)9-04-009:200 96797	B Rpt	03/21/07
6224	PENSACOLA CHELSEA CONDO	1310 PENSACOLA ST HONOLULU HI	(1)2-04-013:021 96814	B Rpt	03/07/07
4032	PUU LOIHI	LOT 9 ANINI VISTA SUBDIV KALIHUWAI HI	(4)5-03-009:009	Suppl 1	03/09/07
6243	RICKETSON POINT NO. 3 CONDO	2190 PIIHOLO RD MAKAWAO HI	(2)2-04-013:190 96768	B Rpt	03/28/07
6253	ROYAL PALMS AT POIPU BEACH	2393 KIAHUNA PLANTATION DR KOLOA HI 96756	(4)2-08-014:008	Cont. Final	03/15/07
6256	SAKIHAMA ESTATES	5918 C KAPUNI RD KAPAA HI	(4)4-06-011:070 96746	B Rpt	03/23/07
6186	SEASCAPE CONDOMINIUM PHASE I	KAKAHIKA ST KAILUA KONA HI	(3)7-03-010:051	B Rpt	03/15/07
6250	SUNSET POINT VILLAS II	59-031 HUELO ST HALEIWA HI	(1)5-09-001:116 96712	B Rpt	03/06/07
6274	TOWN HOMES AT FAIRWAY'S EDGE INCR 7 THE	KEONEULA BLVD EWA BEACH HI 96706	(1)9-01-012:070	B Rpt	03/27/07
6196	WAILEA BEACH RESORT & RESIDENCES	3550 WAILEA ALANUI DR WAILEA HI 96753	(2)2-01-008:067	B Rpt	03/16/07

Preliminary Reports: 0
 Contingent Final Reports: 1
 Final Reports: 1
 Supplementary Reports: 4
 B Reports: 27
 B Amendment Reports: 2

Total: 35

"Bill to restrict Kauai vacation rentals makes progress" *Honolulu Star Bulletin* Vol 12, Issue 81, March 22, 2007 and "Kaua'i Board of Realtors News A Brief Summary of the New ADU Law" *Hawaii Realtor Board News* March 2007

The following articles were distributed for informational purposes: "Bill to restrict Kauai vacation rentals makes progress" *Honolulu Star Bulletin* Vol 12, Issue 81, March 22, 2007; and "Kaua'i Board of Realtors News A Brief Summary of the New ADU Law" *Hawaii Realtor Board News* March 2007.

Commissioner Abrams reported that the new ADU Law is still in committee awaiting a legal opinion regarding the non conforming section. This issue will become a disclosure matter for the real estate industry. Commissioner Abrams reported that he will monitor the issue and report back to the Committee.

Program of Work: Government and Legislative Participation Report

SEO Kimura reported that the deadline date for surviving bills is April 12, 2007. The Commission supported bill is still alive - SB No. 1704.

Senate Bill No. 1837 – Copies of written testimony submitted by HICCO (Richard Port) and the Real Estate Commission were distributed for informational purposes. SEO Kimura reported that Mr. Port, during the hearing, testified that in

a review of the minutes of any meeting of the Real Estate Commission, it demonstrates that the Commission is preoccupied with the licensing of real estate agents and complaints against real estate agents. He further testified that a Condominium Commission is needed to deal with the many concerns, complaints, and problems of condominiums. This information was also reported in Mr. Port's written testimony. He has stated over the years that he wants the Commission to hear and make decisions on unit owner's complaints against the board of directors, board members, condo managing agent, resident manager, and others, as well as prosecuting the violators. The SD1 version of this bill removed the section on the condominium commission and introduced a concurrent resolution on the sunrise review of the new regulatory measure.

SEO Kimura noted that Mr. Port is and has been on the Commission's mailing list to receive both the Condominium Review Committee meeting agenda and minutes and the Real Estate Commission meeting agenda and minutes. The Condominium Review Committee was not mentioned in his testimony. Mr. Port has been told on numerous occasions that the Real Estate Commission does not review, investigate, or prosecute complaints against real estate licensees. He has continued to provide false testimony that the Commission spends its meeting reviewing complaints against real estate licensees. Mr. Port was informed that his testimony on SB 1837 and SCR 160 would be placed on the agenda for this CRC meeting and he is welcome to attend and participate. Mr. Port is not present.

Mr. Port has been constantly informed over years of the various laws involved and that all forty plus boards, commissions, and programs, including the Commission, do not receive, review, or make decisions on complaints, nor prosecute complaints against the statutory regulated individuals or entities. That all complaints, its investigation, and prosecution are handled by RICO and OAH handles the administrative hearings. That the boards, commission, and Director do make decisions on RICO settlement agreements and Administrative Hearing Officer's Findings of Facts, Conclusion of Laws and Recommended Order, which is only a fraction of the total complaints filed with RICO. Mr. Port has been told many times that due to "due process" issues, the authority (Commission) cannot be involved, including receiving complaints, making decisions on complaints, investigate or prosecute complaints. Mr. Port has previously served many years on the Civil Rights Commission.

SEO Kimura further reported that Mr. Port wants condominium owners to be able to go before a condominium commission with complaints and have the condo commission and its staff investigate complaints, prosecute the complaints, and make judgments.

Mr. Port has also been informed many times that the Commission has only partial authority over the condominium laws. This is unlike the real estate licensing law, which the Commission has full authority, or the 39 other regulated areas by PVL. Under 514A, the Commission has authority on 46 sections of the 135 sections, with most of the 46 sections dealing with public reports, sales and development of condo, and owner-occupant offerings. The Legislative Policy for the condominium law is self governance by the unit owners, owners' enforcement, remedies through mandatory mediation and mandatory arbitration, and the pilot

program on administrative hearings, court action, minimal complaint filings with RICO, and very little government involvement. No other law has such multiple remedies or options available. The real estate licensing has only complaint filing with RICO or direct filings with the courts, no dispute resolution processes and no self enforcement options.

It should be noted that The Auditor conducted numerous reviews of the Condominium Management Education Fund and the Commission programs. In its November 2005 report to the Governor and Legislature, The Auditor states that the Condominium Management Education Fund . . . "continues to serve the purpose for which it was created and its intended beneficiaries. Condominium associations, board of directors, and apartment owners benefit from the fund's comprehensive education and research program." Previously, all the reports from the Auditor have been brought to Mr. Port's attention.

SEO Kimura noted that an invitation letter was sent to Mr. Port as a representative of the Hawaii Independent Condominium and Cooperative Owners to participate on the Condominium Review Committee's Ad Hoc Committee on Condominium Education and Research. To date, no response has been received from Mr. Port and the deadline has passed.

Lastly, in Mr. Port's testimony on SB 1837 SD1, he brought up an issue with 2 condo bylaws. These bylaws preclude the board of directors of making a decision to not to renew the contract with the managing agent and require a vote of the majority of unit owners at a meeting within one year of the renewal date. One of the bylaws requires an affirmative vote of 80% of the unit owners. In addition, Mr. Port was concerned that the managing agent has the right to cancel the contract with the AOA with 60 days written notice, whereas the AOA has to provide a one year notice of cancellation.

Senate Concurrent Resolution 160 – Copies of written testimony submitted by HICCO (Richard Port), HCAAO (Jane Sugimura), and the Real Estate Commission were distributed for informational purposes. Senior Condominium Specialist Yee reported that the Ways and Means committee passed the measure unamended at this morning's hearing.

Neighbor Island Outreach and Specialist Office of the Day

The next neighbor island outreach and specialist office of the day is tentatively scheduled for the Island of Kauai on June 15, 2007.

Condominium Organizations Forum:

No comments, recommendations or concerns were received from the following: Community Associations Institute Hawaii Chapter, Alakahi Foundation, Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, Hawaii State Bar Association/Real Property & Financial Services Section, Land Use Research Foundation, Condominium Council of Maui, Hawaii Association of Realtors/Institute of Real Estate Management Hawaii Chapter/ Oahu Arm Committee, others.

Open Forum: **Nancy Keese-Sato**

Ms. Keese-Sato informed the committee that she is a condominium owner in a Waipio Gentry condominium development. She noted that in listening to the committee's discussion she questioned whether the Commission has gotten out the word regarding the importance of condominium associations adopting Chapter 514B.

SEO Kimura responded that the Commission has held statewide seminars, workshops, and provided educational sessions to non-profit groups over the past year. This issue has been included in the Condo Bulletin and within REB website as well as many talks with managing agents, board of directors, and unit owners.

It should be noted that one of the more prominent AOA with efficient management, Yacht Harbor Towers, has not adopted 514B, as reported by its President, Mr. Port.

Ms. Keese-Sato noted that it does not seem that board members or associations are availing themselves to these educational opportunities.

SEO Kimura responded that the Commission has issued out press releases regarding the statewide seminars and has made information available on its website. He further noted that under the present partially repealed 514A, those Associations which do not opt into 514B may be faced with problems, depending on the advice of attorney. It has been reported that there may be challenges on AOA's lien rights or collecting maintenance fees, issues on the sale of units, issues with applications for new mortgages, issues with insurance policies and underwriting, challenges as to elections and authority of board of directors, etc. Basically, Ch. 514A is without about half of the original sections of the law including the definition section.

Ms. Keese-Sato informed the committee that she had faxed to its office this morning a letter regarding a situation involving the Association's resident manager, site management company, vendor/contractor who specializes in repairs and the managing agent. Ms. Keese-Sato noted that the State needs to consider licensing and regulating these site management companies that manage multiple projects. Their condominium project has a resident manager who has been a full-time employee of the Association since 1992. It has been recently brought to their attention that he also owns a company which is not properly licensed, but does specialized repairs and has become the Association's highest paid vendor who in addition is also site manager for approximately 30 other projects. The Association feels that their property is suffering tremendously because of the multiple site management being done by their resident manager and his company. The association has already filed complaints with RICO and has filed for mediation which was declined by the resident manager.

Chair Chee questioned if the resident manager disclosed the other properties he manages. Chair Chee informed Ms. Keese-Sato that the Commission cannot get involved in the administration of contracts between the AOA and the managing agent and the possible disqualification of Commissioners to decide its case.

SEO Kimura explained to Ms. Keese-Sato about Ex Parte Communication and informed her that staff would be available to talk to her about her situation and give her some direction.

CEF Budget &
Finance Report:

No report presented.

Next Meeting:

May 9, 2007
Upon adjournment of the Education Review Committee meeting which follows the
Laws and Rules Review Committee meeting scheduled to convene at 9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment:

With no further business to discuss, Chair Chee adjourned the meeting at
11:02 a.m.

Respectfully submitted:

/s/ Calvin Kimura

Calvin Kimura
Supervising Executive Officer

May 9, 2007

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____