

CONDOMINIUM REVIEW COMMITTEE
Real Estate Commission
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.state.hi.us/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: November 14, 2001

Time: 11:00 a.m.

Place: Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Mitchell Imanaka, Chair
Peter Rice, Vice Chair
Charles Aki, Member
Michael Ching, Member
John Ohama, Member
Alfredo Evangelista, Member – early departure
Iris Okawa, Member
Casey Choi, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Gina Watumull, Condominium Specialist
Cheryl Leong, Condominium Specialist
Gordon Arakaki, Condominium Recodification Attorney
Diane Choy Fujimura, Senior Real Estate Specialist
Lorene Arata, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Excused: Patricia Choi, Member

Call to Order: Chair Imanaka called the meeting to order at 11:00 a.m., at which time quorum was established.

Chair's Report: No report was presented.

Condominium Specialist's Report: **Additional Distribution**

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

4.d. Condominium Seminars and Symposium – CAI Hawaii Second Amended Proposal to the REC, October 23, 2001

At this time, Chair Imanaka took the agenda out of order.

Condominium
Governance and
Management:

Proposed Legislation – Representative Willie Espero

Representative Espero informed the committee that he will be proposing legislation this session and has provided to the committee three draft bills. The first bill relates to mediation. The intent of this bill is to keep costs down and resolve issues. Rep. Espero reported that he is aware of an incident involving one of his constituents whereby the constituent was told prior to mediation that the attorney and property manager would not participate in mediation unless the individual paid for the preparation costs which would be in excess of \$1,000. Rep. Espero noted that this defeats the purpose of mediation. Rep. Espero informed the committee that the bill that passed last legislative session needs to be clarified and refined. Rep. Espero is proposing additional language that “Each party shall be wholly responsible for its own costs of participating in mediation unless at the end of the mediation process both parties agree that one party will pay all or part of the mediation costs.”

Vice Chair Rice questioned whether this practice has been heard of outside of this one issue.

Rep. Espero replied that according to the mediation people, this is the first time this practice has been heard of.

Commissioner Okawa informed Rep. Espero that the committee appreciates his bringing forward this issue and noted that she also lives in a condominium and is impacted by the new legislation. Commissioner Okawa further informed Rep. Espero that she is in support of mediation. She is also aware of the increase in cost to the owners. She favors resolving issues amicably. If all cases go to mediation there may be an increase in cost to the association and in turn to the owners.

Rep. Espero replied that the owners are able to keep costs down via mediation rather than taking their cases to court. He further reported that he understands that the attorney’s fees in this specific case may be \$3,000.

Chair Imanaka questioned whether the employee had to pay the association \$3,000 to participate in mediation.

Rep. Espero replied that his constituent was presented with a bill for the preparation of mediation.

Commissioner Evangelista questioned whether his constituent was presented this bill for mediation before or after the statute took effect.

Rep. Espero replied that it was done after.

Commissioner Evangelista questioned the practice of requiring attorney fees be paid in order for the attorney and property manager to participate in mediation. Without first amending the current statute, any property manager might be able to say that they will not participate in mediation. This may force the owner to go to court in which case the expenses will be higher.

Specialist Choy Fujimura reported that she participated in the mediation program provided by the Regulated Industries Complaints Office (RICO) as an employee.

When the parties come to mediation at RICO and an attorney is present, the mediator will ask the two parties to go through the mediation without the attorney being present during the mediation process and that the party discuss their issue with their attorney on their own. Often times it is up to the mediator to be sure that it is an even playing field for both parties. The intent of the mediation process is to resolve the dispute between the two parties.

Rep. Espero replied that the Board refused to participate in mediation without the presence of its attorney.

Ms. Mary Lee Pons, an owner attending the CRC meeting, informed the committee that when her AOA wanted to change its managing agent, the attorney for the management company threatened to sue and went through mediation with the presence of its attorney. The management company ended up with one more month payment than the actual amount due. The mediator did not log dates. She did not feel that the playing field in her situation was even and now mediation is mandatory.

The second proposal by Rep. Espero involves the notification of assessment fees to owners. A constituent wrote a letter to the board requesting clarification of a bylaw amendment. The property manager did not know the answer and gave the letter to the board's attorney, the attorney responded and the association billed the owner for the attorney's time.

Vice Chair Rice stated that Rep. Espero is proposing a new section to Ch. 514A, to "notify the apartment owner in writing of the association's intent to assess a fee not less than ten days prior to any assessment."

Specialist Yee informed the committee that the condominium specialists also receive phone calls and walk-ins regarding this issue. Many of the apartment owners find out after the fact that they are being billed for information provided by the Board's attorney.

Chair Imanaka questioned whether the Board is aware of the situation and condones what the managing agent is doing?

Mr. Tom Berg, owner in the condominium project, informed the committee that he has executed an affidavit requesting the board provide him with the authority that allows the Board to bill him for attorney fees. To date, he has not received a response. Mr. Berg further informed the committee that he is being billed as a third party for all letters written to the management company. Mr. Berg further reported that this has been an ongoing issue since May 2000.

The third proposal would extend from 120 days to 365 days, the deadline for obtaining from the apartment owners the required percentage of votes to amend the bylaws of a condominium property regime. The proposed legislation applies the 365 days deadline to proposed bylaw amendments submitted by either the board of directors or a volunteer apartment owners' committee.

Rep. Espero reported that he welcomes any input and suggestions for improving the proposed legislation.

Chair Imanaka asked Rep. Espero to inform the Commission of the introduction of the bills and that the Commission is interested in tracking the bills.

Condominium Seminars & Symposium – CAI HI Second Amended Proposal

Specialist Yee informed the committee that staff has been working on this contract with the Deputy Attorney General and has incorporated the negotiated amendments approved by the Commission and the contract has been presented to CAI Hawaii for signature. Included in the packet is CAI Hawaii's response to the proposed contract.

Milton Motooka, representative of CAI Hawaii was present to go over the issues regarding the proposed amendments to the contract.

Chair Imanaka informed Mr. Motooka that the Commission is in general agreement about item number 1 with CAI Hawaii providing a brief description of each seminar topic. Mr. Motooka agreed that CAI Hawaii could provide a brief description of each seminar topic.

In regards to item # 5, Chair Imanaka reported that the Commission has paid for the labels and postage of the seminar flyer in the past, but not the cost of the flyer.

Mr. Motooka replied that if the Commission wants to expand the mailing list to all registered associations, it must bear the cost of the flyers. At this time Mr. Motooka is unsure of the cost of producing the flyers.

Specialist Yee informed Mr. Motooka that the contract has a ceiling amount and all costs apply towards the contract ceiling amount.

Mr. Motooka stated that in the past CAI Hawaii has provided copies of the flyers to managing agents to distribute to their AOA's, but is unsure how many of the flyers are actually distributed by the CMA.

In regards to Attachment S3, paragraph 5, "if there are profits...CONTRACTOR will consider either lowering the registration fees for future seminars or inviting out-of-state speakers, or both," the Commission has reconsidered this language.

Mr. Motooka replied that CAI Hawaii would "consider" either lowering the registration fees, etc. CAI Hawaii does not want to make it a mandatory condition.

Chair Imanaka agreed with CAI Hawaii's language, "consider" either lowering the registration fees, etc. but that the Commission review the issue again.

Upon a motion by Commissioner Rice, seconded by Commissioner Okawa, it was voted on and unanimously carried to recommend to accept the changes requested by CAI as outlined in its Second Amended Proposal to the REC dated October 23, 2001 subject to Commission's revisiting the issue of CAI's application and use of profits from the seminars when it reviews it option to renew the contract.

Commissioner Evangelista was excused at 11:50 a.m.

Minutes: Upon a motion by Commissioner Rice, seconded by Commissioner Ohama, it was voted on and unanimously carried to accept the minutes of the October 10, 2001 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

Mediation & Arbitration

Specialist Watumull reported that mediation quarterly reports for the period July 2001 to September 2001 were received from all five contracted mediators. The Mediation Center of the Pacific, Inc. reported 9 cases, Mediation Services of Maui reported 2 cases and the three neighbor island mediators reported no condominium cases mediated during the period July through September 2001. The three neighbor island mediators have not entered into any condominium mediations since the execution of the contract in January 2001.

AOAO / CMA Registrations

Specialist Leong reported that as of October 31, 2001, 1,413 AOAO have successfully registered. She further reported that 105 CMAs are currently registered.

Upon a motion by Commissioner Aki, seconded by Commissioner Rice, it was voted on and unanimously carried to recommend approval to ratify issuance of effective registration dates for Association of Apartment Owners through October 31, 2001 for the 2001-2003 registration. The associations are as follows:

40 Mohala Place	10/19/01	85 Walaka Street	10/02/01
Aina Ku'ai Kai	10/16/01	Alii Lani	10/09/01
Bellevue Tower	10/02/01	Cliff View Terrace	10/03/01
Destiny at Mililani	10/19/01	Diamond Head Surf	10/17/01
Hillside Villa	10/03/01	Hu'elani, Phase 1	10/31/01
Kihei Manor	10/02/01	Kukui Mountain Park Condo	10/12/01
Lilipuna Condominium	10/31/01	Mamuad Ohana	10/24/01
Ocean View	10/02/01	Plaza at Century Court	10/01/01
The Ridge	10/02/01	Wai'aka Village	10/30/01
Waipahu Knolls I	10/03/01		

Case Law Review Program

The following articles were distributed for information purposes: "Amendments to Declaration Judged by Reasonableness Standard" *Community Association Law Reporter* (July 2001) and "Building Design & Construction, A Landmark Case" re Evergreen Terrace, *Hawaii Community Associations Newsletter* (September 2001).

Condominium Related Articles

The following articles were distributed for informational purposes: "What Community Associations Need to Know About Art" re the Visual Artists Rights Act" *Hawaii Community Associations Newsletter* (September 2001) and "Ombudsman's Office Establishing Successful Track Record" *Open House, A Newsletter from the Nevada Real Estate Division* (Summer/Fall 2001) were distributed for informational purposes.

Condominium Project Registration - Public Reports Issued

Project Registration: Upon a motion by Commissioner Aki, seconded by Commissioner Rice, it was voted on and unanimously carried to recommend approval to ratify issuance of effective dates for public reports for the month of October 2001 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4711	1041, 1041-A & 1039 NINTH AVENUE	1041 1041-A & 1039 NINTH AVE HONOLULU HI 96816	(1)3-02-013:029	Final	10/10/01
4724	140A & 140C PROSPECT STREET	140A & 140C PROSPECT ST HONOLULU HI 96822	(1)2-02-006:039	Final	10/02/01
4744	2134 HUNNEWELL STREET	2134 HUNNEWELL ST HONOLULU HI 96822	(1)2-08-020:056	Final	10/10/01
4672	913 MCCULLY STREET CONDO	913 MCCULLY ST HONOLULU HI 96826	(1)2-07-001:019	Final	10/02/01
4712	BRUNO CONDOMINIUM PROJECT	HONOMAKAU KOHALA HI	(3)5-04-002:010	Final	10/16/01
4492	COCONUT PLNTN@KO OLINA RESORT & MARINA	92-1070 OLANI ST KAPOLEI HI 96797	(1)9-01-056:004	Final	10/08/01
4725	COLEMAN-LYDGATE AINA	LOT 5-C WAINIHA HUI LAND HANAIEI HI	(4)5-08-010:025	Final	10/04/01
4754	CORTEBELLA PHASE 11	91-1921 LUAHOANA ST EWA BEACH HI 96706	(1)9-01-010:048	Prelim	10/22/01
4740	DESTINY AT MILILANI MAUKA - PH III	PUUANU ST MILILANI HI 96789	(1)9-05-002:034	Prelim	10/03/01
4735	HALEMALU AT PUHI	HANALIMA ST PUNA HI	(4)3-03-003:038	Cont Fin	10/12/01
4121	HOLOHOLO KU AT PARKER RANCH	RFD KAMUELA HI	(3)6-07-002:001	Final	10/18/01
4746	HU'ELANI PHASE 6	91-209 LUKINI PL EWA BEACH HI 96706	(1)9-01-069:018	Prelim	10/22/01
4728	KAI LANI	ALIINUI DR KO OLINA HI	(1)9-01-056:002	Prelim	10/04/01
3341	KALIHAIWAI MOUNTAINS ESTATES	KAHILIHOLE RD KALIHAIWAI HI	(4)5-02-022:023	Suppl 3	10/03/01
4586	KAUHALE KAMAHAO CONDO	LOT 3 WAINIHA HUI LAND WAINIHA HI	(4)5-08-010:014	Suppl 1	10/22/01
4680	KIHEI COMMERCIAL CONDO II	300 OHUKAI RD KIHEI HI 96753	(2)3-09-045:014	Suppl 1	10/24/01
4592	KONA SEA RIDGE	ALII DRIVE KAILUA-KONA HI 96740	(3)7-05-019:044	Final	10/25/01
4690	KUIAHA PAUWELA CONDOMINIUM	1089 W KUIAHA RD HAIKU HI 96708	(2)2-07-012:058	Final	10/10/01
4715	LOT 2 SLEEPING GIANT ACRES	LOT 2 SLEEPING GIANT ACRES SUB KAPAA HI	(4)4-04-011:001	Final	10/16/01
4717	LOT 4 SLEEPING GIANT ACRES	LOT 4 SLEEPING GIANT ACRES SUB KAPAA HI	(4)4-04-011:001	Final	10/19/01
4718	LOT 5 SLEEPING GIANT ACRES	LOT 5 SLEEPING GIANT ACRES SUB KAPAA HI	(4)4-04-011:001	Final	10/19/01
4719	LOT 6 SLEEPING GIANT ACRES	LOT 6 SLEEPING GIANT ACRES SUB KAPAA HI	(4)4-04-011:001	Final	10/19/01
4720	LOT 7 SLEEPING GIANT ACRES	LOT 7 SLEEPING GIANT ACRES SUB KAPAA HI	(4)4-04-011:001	Final	10/19/01
4721	LOT 8 SLEEPING GIANT ACRES	LOT 8 SLEEPING GIANT ACRES SUB KAPAA HI	(4)4-04-011:001	Final	10/19/01
4749	OHANA HALE MA WEKIU O WAILELE	45-1039 WAILELE RD KANEHOE HI 96744	(1)4-05-002:032	Final	10/17/01
4697	RITA AGRICULTURAL CONDO	KALAHEO HMSTDS POR LOT 45 KALAHEO HI	(4)2-04-005:018	Final	10/12/01
4750	THE VILLAS AT KE ALAULA	KE ALAULA PL KAUPULEHU-KONA HI 96740	(3)7-02-010:008	Prelim	10/12/01
4521	WAIHAI BEACH CLUB	2249 POIPU RD KOLOA HI 96756	(4)2-08-017:012	Final	10/25/01
4743	WALUA	WALUA RD PAHOEHOE 1ST N KONA HI	(3)7-07-008:055	Final	10/04/01

Preliminary Reports: 5
 Contingent Final Reports: 1
 Final Reports: 20
 Supplementary Reports: 3
 Total: 29

“Condo Mania – Condominiums are the Newest Crop Growing on Kauai’s Agriculture Land” *Hawaii Business* (October 2001) – article distributed for informational purposes.

Rule 13, Hawaii Planning Department Rules Regarding Farm Dwellings – Peter K. Kubota, Esq. – Transmittal from Mr. Kubota dated November 1, 2001 acknowledged and distributed for informational purposes.

Program of Work: **Recodification of Chapter 514A**

Recodification Attorney Arakaki reported that he is reconciling the uniform act and the state law to meet an end of the year deadline. He is also working on the recodification report to the Legislature due in December.

Chair Imanaka reported that there are plans of convening a committee of interested parties involved in the practice. Recodification Attorney Arakaki and Chair Imanaka continue to interface with the community on the recodification project.

Rulemaking, Chapter 107

Specialist Yee reported that the Chapter 107 rulemaking has undergone extensive reviews by staff and current and past commissioners. Staff is seeking the committee’s approval to move forward with the rulemaking procedures.

The Deputy Attorney General noted that she has not yet reviewed the current draft of Chapter 107.

Upon a motion by Commissioner Ching, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend approval to the REC to ratify draft 5 of the proposed Chapter 107 rules dated November 5, 2001, for submittal to formal rulemaking subject to staff making a final stylistic and non-substantive check.

Hawaii Condominium Bulletin – Reference: material and communication – Mary Lee Pons

Ms. Pons informed the committee that in her research of the condominium reference material provided by the Commission to the library system, she has found that the copies have been taken. At her AOA Board meetings, much of the information presented goes over their board members’ heads. She has seen a publication by the Hawaii Real Estate Research and Education Center on Fiduciary Duty and feels that most directors and managing agents are not aware of what Fiduciary Duty is. She further reported that her Association’s managing agent may have failed to carry out their fiduciary duty in failing to inform the Board of sample vinyl fencing costs. Ms. Pons is further seeking help in getting the meeting agendas for her AOA posted. Their previous CMA would post the notice and agenda. When the Board changed CMAs, the CMA only posted the agenda and then eventually no agenda was posted. The minutes of the meetings are never posted. Further, materials provided to the managing agent for distribution doesn’t always get distributed to the association members, an example would be the educational material such as the Condominium Bulletin prepared by the Commission.

Chair Imanaka delegated to staff for resolution of the various methods of distributing educational materials to AOA's and report back to the Condominium Review Committee.

SEO Kimura suggested incorporating a survey question in the upcoming Condominium Bulletin and on the Commission's website as to the distribution of educational material.

Interactive Participation with Organizations

Vice Chair Rice reported that he, along with Specialist Yee and Recodification Attorney Arakaki, attended CAI's Community Leadership Forum in Charlotte, North Carolina. Recodification Attorney Arakaki made a presentation regarding the Commission's recodification project. A written report will be submitted.

Neighbor Island Outreach

It was announced that the January Real Estate Committee meetings will be held on January 4, 2002 on the island of Maui.

Legislative and Government Participation

The issue, deferred from the Laws and Rules Review Committee and Education Review Committee meetings is further deferred for discussion to the November 30, 2001 Real Estate Commission meeting.

Proposed Legislation – Representative Willie Espero

Commissioners questioned to what degree has the Commission showed support of a bill in the past and it's appropriateness.

SEO Kimura replied that the Commission has showed support of bills from all sectors. The Commission has also been neutral or did not support a bill in the past.

Commissioners Ohama and Ching requested more information and input from the industry regarding the proposed legislation prior to making a decision to support the proposed bills.

Committee members further requested that staff communicate the Condominium Review Committee's appreciation for Rep. Espero's presentation at the CRC on proposed legislation in the area of mandatory mediation, owners costs for requesting legal or other information from an AOA, and the time period for bylaw amendments; and inform him further that the CRC will consider his request for support as the proposed legislation moves through the legislative process. The committee also requested to hear comments from the condominium community on the proposed bills.

Condominium
Governance and
Management:

CMEF Budget &
Finance Report:

No report presented.

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Condominium Organizations Forum: There were no comments, recommendations or concerns 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: No discussion presented.

Next Meeting: December 13, 2001; 11:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Bldg.
1010 Richards Street, Second Floor
Honolulu, Hawaii 96813

Adjournment: With no further business to discuss, Chair Imanaka adjourned the meeting at 12:22 p.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee
Cynthia M. L. Yee
Senior Condominium Specialist

December 13, 2001
Date

Minutes approved as is.
 Minutes approved with changes; see minutes of _____