

**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](http://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: February 12, 2003

Time: 11:00 a.m.

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

Present: Mitchell Imanaka, Chair  
Louis Abrams, Member  
Marshall Chinen, Member  
John Ohama, Member  
Iris Okawa, Member  
Vern Yamanaka, Member

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

Others: Eric A. James, Carlsmith Ball LLP  
Jean K. Campbell, Carlsmith Ball LLP  
William C. Byrns, MacDonald Rudy Byrns O'neill & Yamauchi  
John Dotten, Lowell D. Funk, Inc.  
Richard Vial, Esq., Oregon

Excused: Kathleen Kagawa, Member  
Patricia Choi, Member  
Peter Rice, Vice Chair

Call to Order: Chair Imanaka called the meeting to order at 11:08 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:

5.a.6)b) Delivery of Developer's Preliminary Public Report & Section 514A-31 & 62,  
HRS

Minutes: Upon a motion by Commissioner Abrams, seconded by Commissioner Okawa, it was voted on and unanimously carried to accept the minutes of the January 10, 2003 Condominium Review Committee meeting as circulated.

The agenda was taken out of order at this time to accommodate those present with issues to address the committee.

Condominium  
Project  
Registration:

**Informal Non-Binding Interpretation Request - Delivery of Developer's Preliminary Public Report and Sections 514A-31 and 62, HRS**

Representing their client, Centex Homes, were Eric James, Esq. and assistant Jean Campbell. Mr. James questioned whether there is a requirement that the developer's preliminary public report be given to prospective purchasers at the time they sign the reservation agreement. Mr. James reported that in reviewing Chapter 514A and the rules, neither specifically defines when a developer's preliminary public report must be delivered to a prospective purchaser.

Mr. James further reported that the \$5,000 deposit and reservation agreement for the Kolea condominium project only gives the prospective purchaser the opportunity to participate in a drawing to be selected to purchase a unit. The \$5,000 deposit is fully refundable and will be held in escrow by Title Guaranty Escrow Services.

Each building within the project was registered separately with the Commission, therefore, the project consists of seven different registration numbers and seven different preliminary public reports. The developer feels that it will be confusing to prospective purchasers to receive seven different preliminary public reports regarding seven different buildings at a point when the individuals have only placed a deposit to enter a drawing and do not at that point have a right to purchase any unit.

Once the prospective purchasers are selected via a drawing at the grand opening event, a final or contingent final public report should be in place and be provided to the prospective purchasers along with the receipt form.

Commissioners Abrams and Yamanaka questioned the reasoning behind collecting \$5,000 deposit to enter into a drawing. Normally a \$5,000 deposit would be collected to enter into a binding contract.

Mr. James replied that it is a marketing strategy and the \$5,000 deposit only allows participation into a drawing to be held at the grand opening event. He further replied that the \$5,000 deposit establishes some level of interest. The deposit will be held in escrow and is fully refundable.

Commissioner Abrams questioned whether the developer intends to market all the buildings at the same time.

Mr. James replied that the current plan is to have all units in the seven buildings available for selection at the drawing.

Commissioner Abrams questioned the reason the developer does not want to provide all prospective purchasers with copies of developer's preliminary public reports for all buildings?

Mr. James responded that seven public reports for seven different buildings is a lot of paper and documents which may only confuse the prospective purchaser as they are

under the understanding that the \$5,000 allows them only participation in the drawing. There is nothing in the statutes stating that the developer's preliminary public report must be provided to the prospective purchaser.

Commissioner Yamanaka noted that in visiting the sales office of the project, there is no information regarding the project besides that actual physical structural information. He further noted that if someone were placing a \$5,000 deposit, more information would be expected, such information as that provided in the developer's public report.

Mr. James replied again that the \$5,000 deposit is a marketing approach and that the prospective purchasers will receive the required information when they enter into a binding contract.

Chair Imanaka informed Mr. James that the committee will confer on the issue with its deputy attorney general.

Upon a motion by Commissioner Okawa, seconded by Commissioner Ohama, it was voted on and unanimously carried to take the matter under advisement.

#### **Diamond Head Terrace**

William Byrns, Esq. of MacDonald Rudy Byrns O'Neill & Yamauchi, was present representing Diamond Head Terrace, a cooperative being converted to a condominium project along with a representative of the cooperatives' managing agent, Mr. John Dotten.

Mr. Byrns reported that Diamond Head Terrace is a leasehold property housing cooperative originally developed in 1958. The project was completed in 1959. In 2002, the shareholders of Diamond Head Terrace voted to convert to condominium status. In going through the conversion process a letter was requested from the City and County confirming compliance with the building and zoning requirements of the city and county. A response was received back from the Department of Planning and Permitting informing Diamond Head Terrace that although there are 25 units within the project, the building permit issued on September 2, 1958 was for a 24 unit building.

Mr. Byrns stated that due to the age of the project, the City and County of Honolulu does not have much information on file as files may have been purged. There is no record that shows whether or not the 25<sup>th</sup> unit was approved at a later date. The file plans are also no longer on file with the Department of Planning and Permitting. Mr. Dotten who represents the managing agent of the project did have a copy of the plans which seems to show that unit #27 was initially intended as a laundry/storage unit although it has always been treated as a dwelling unit. Mr. Kato, the original proprietary lessee is still the owner of unit #27. Mr. Byrns has been unsuccessful in locating a certificate of occupancy for any of units or the project in its entirety, with the City and County of Honolulu.

Mr. Byrns stated that his client would prefer to handle this matter as a disclosure issue in the developer's public report. At this time, no sales are intended but there may be possibilities of sales in the future. The second proposal suggested by Mr. Byrns would be if the Commission was not comfortable with the disclosure statement, developer would attempt to obtain a revised letter from the City and County of Honolulu to include all 25 units instead of 24 units based on the original

plans, a copy of which the developer has, and disclose the non permitted unit 27 in the public report. The third proposal would be to remove unit 27 from the conversion to condominium status and show only 24 units in the conversion.

Commissioner Okawa questioned whether title insurance was issued on unit 27.

Mr. Byrns replied that there may have been, but it would have been done in 1960. Mr. Byrns stated that he would check on that information with Mr. Kato. Currently there is no mortgage on the unit. No one was aware of the problem until the issue of conversion surfaced.

Specialist Yee questioned what would happen should the condo be destroyed. What can be rebuilt?

Mr. Byrns replied that probably 24 of the 25 units would be able to be rebuilt, but this is an issue that would require further research.

Commissioner Chinen questioned how the City and County would handle the real property tax assessment.

Mr. Byrns replied that each unit is assessed individually. Mr. Dotten stated that he recently looked into this issue and Mr. Kato is listed as an owner and has been given the exemption provided by the City and County.

Chair Imanaka questioned whether it has been discussed with the City and County to see if they would issue a no-action letter.

Mr. Byrns stated that it was a good suggestion and would look into it for his client. He further reported that they could convert the project to condominium status less the offending unit 27.

Chair Imanaka questioned what would happen should the project convert to condo status less unit 27.

Mr. Byrns replied that a lease would be issued from the association for unit 27 and unit 27 would remain a co-op. Mr. Byrns further reported that each proprietary lessee would be turning over their stock certificate for an apartment lease.

SEO Kimura reported that a public report is issued if units will be offered for sale. The exchange of proprietary lease in the change from co-op to condo may not require registration and a public report.

Mr. Byrns replied that presently no sales are intended, but if the conversion is done without a public report issuance and someone decides to sell or refinance at a later date, without a public report, the lender may not allow it.

Upon a motion by Commissioner Okawa, seconded by Commissioner Ohama, it was voted on and unanimously carried to take the matter under advisement.

#### **AOAO Registrations**

Specialist Grupen reported that as of January 31, 2003, 1,452 AOAOs have successfully registered.

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

Mariners Place Townhomes Increment 1	01/02/2003
Niumalu Paradise Condominium	01/21/2003

He further reported that staff is looking into the feasibility of creating an online application for the 2003-2005 biennial AOAO registration. The current registration expires June 30, 2003. Although there should be no upfront development costs, the cost of the project will be based on participation. The process will allow AOAOs to complete the registration process and pay applicable fees by credit card or e-check via the internet.

#### **Education Advisory Group**

An excerpt from the upcoming Condominium Bulletin regarding the Condominium Review Committee's Educational Advisory Group's first meeting was distributed for informational purposes.

Chair Imanaka reported that the first meeting of the CRC Educational Advisory Group was held in January, was well attended and provided great input. The meetings will continue throughout the year and focus on condominium education efforts and issues.

#### **Condominium Seminars and Symposium**

Staff evaluation forms of the January 16, 2003 CAI Hawaii seminar "Covering Your Assets – Insurance in the Post 9/11 Era" was distributed for informational purposes.

CAI Hawaii will be offering a CEF subsidized seminar on Saturday, February 22, 2003 entitled "Spore Wars – Mold: A Mushrooming Problem or a Spore-Adic Myth" at the Japanese Cultural Center.

**Education Calendar** - Updated calendar of condominium events circulated for information. This information is also provided on the Commission's webpage.

#### **Case Law Review Program**

The following articles from the December 2002 issue of *Hawaii Community Associations* were distributed for informational purposes: "Court Case Tests the Risks of AOAO Board Members" and "The Liabilities of Holiday Cheer."

#### **Condominium Related Articles**

The article entitled "Using a Handyman vs. A Licensed Contractor" from the December 2002 issue of *Hawaii Community Associations* was distributed for informational purposes.

#### **Condominium Project Registration - Public Reports Issued**

Chair Imanaka recused himself from discussion and voting on project numbered 4935. Upon a motion by Commissioner Ohama, seconded by Commissioner

Okawa, it was voted on and carried to recommend approval to ratify issuance of effective dates for public reports for the month of January 2003 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4989	411-B & 411-B1 OLOMANA STREET	411 B & 411 B1 OLOMANA ST KAILUA HI 96734	(1)4-03-043:062	Final	01/10/03
4982	59-638 KAMEHAMEHA HIGHWAY	59-638 KAMEHAMEHA HWY HALEIWA HI 96712	(1)5-09-010:012	Final	01/27/03
5001	AUWAI ESTATES	620 A&B, 626 A, B,630 AUWAI ST KAILUA HI 96734	(1)4-03-062:063	Final	01/29/03
3330	C T CONDOMINIUM	3198 WAWAE RD KALAHEO HI 96741	(4)2-04-001:077	Suppl 1	01/27/03
4987	CHO	LOT 49 KONA ACRES SUBDIV II N KONA HI	(3)7-03-046:091	Final	01/21/03
4951	EASTMENT CONDOMINIUM	905 MAILE ST MAKAWAO HI 96768	(2)2-05-007:054	Final	01/06/03
4995	ESTATE VILLAS AT HAINOA	HAINOA PLACE KAUPULEHU-KONA HI 96740	(3)7-02-010:012	Prelim	01/15/03
4992	HAVENS OF I'I VISTAS II -PHASE I	KO'OLANI DRIVE MILILANI HI 96789	(1)9-05-049:056	Prelim	01/08/03
4885	KAOPA PARK PLACE	KAHAKO ST KAILUA HI 96734	(1)4-02-101:016	Suppl 1	01/03/03
4875	KUAHIWI MAUKA	WAHA RD KALAHEO HI 96741	(4)2-03-018:001	Final	01/07/03
4942	LAS BRISAS PHASES 1 & 2	91-240 TO 91-296 MAKALEA ST EWA BEACH HI 96706	(1)9-01-010:082	Final	01/23/03
4983	LEAHI CRATER ESTATES	3345 & 3347 HAYDEN ST & 3497 TROUSSEAU ST HONOLULU HI 96815	(1)3-01-008:008	Final	01/13/03
2845	LIHI ESTATES	4580 PUUWAI RD KALAHEO HI 96754	(4)2-04-012:001	Suppl 1	01/27/03
4976	MOLOKOA LOT 34 CONDOMINIUM	3229 UNAHE ST LIHUE HI 96766	(4)3-06-018:046	Prelim	01/29/03
4977	MOLOKOA LOT 98 CONDOMINIUM	3230 UNAHE ST LIHUE HI 96766	(4)3-06-018:069	Prelim	01/29/03
4950	MUIR CONDOMINIUM	LOT 1 JOHNSON SUBDIVISION HAIKU HI 96708	(2)2-09-007:040	Final	01/31/03
2257	NALU LAWAI	LAWAI KOLOA KAUAI KOLOA HI 96765	(4)2-05-007:019	Suppl 1	01/06/03
4527	NANI IKENA CONDOMINIUM	LOT 4 PUU PANE SUB HANALEI HI	(4)5-01-005:103	Suppl 1	01/28/03
4884	NAPILI VILLAS - PHASE III	HANAWAI ST NAPILI HI 96761	(2)4-03-003:122	Final	01/23/03
4994	OTA CAMP	94-066 THRU 94-117 LEOWAENA ST WAIPAHAU HI 96797	(1)9-04-048:001	Final	01/21/03
4918	POIPU BUNGALOWS	2231 KUAI RD KOLOA HI 96756	(4)2-08-018:033	Final	01/13/03
4947	TEN PLUS	LOT 6 KILAUEA GARDENS SUBDIV KILAUEA HI	(4)5-02-004:067	Final	01/16/03
4547	VILLAGES AT MAUNA LANI THE	68-1025 NORTH KANIKU DR KOHALA HI 96743	(3)6-08-022:004	Suppl 5	01/29/03
4935	WAILEA BEACH VILLAS	3800 WAILEA ALANUI WAILEA HI 96753	(2)2-01-008:091	Suppl 1	01/13/03

Preliminary Reports: 4  
 Contingent Final Reports: 0  
 Final Reports: 13  
 Supplementary Reports: 7

Total: 24

**Kalihi Valley Estate, Reg. No. 4900 – Developer's Final Public Report – deferred from REC meeting of January 24, 2003**

Specialist Yee reported that this issue was deferred from the January Real Estate Commission meeting. Initially the developer requested that the Commission issue an effective date for a developer's public report prior to meeting the conditions and terms of the County issued Existing Use Permit (EUP).

Upon a motion by Commissioner Abrams, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend approval to issue an effective

date for the developer's final public report when the developer has met all requirements for issuance of an effective date, including among other requirements, the submission of the required county letter pursuant to section 514A-40(b), HRS, indicating compliance with the county zoning, building ordinances, and codes, and section 514A-1.6, HRS, indicating the condominium project's compliance with underlying county zoning, ordinances, permitting requirements (Including existing use permit 2002 EU-10, and Chapter 514A, HRS).

#### **Developer's Public Report – Page 19 REC Form**

A concern has arisen regarding page 19 of the developer's public report form. Page 19 references that copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. A staff initiated request for clarification is being sought to make clear that it is the developer's responsibility for making available supporting documents. In the early years of condominium project registration, the condominium public reports were signed by the Chair of the Commission. Now a developer's public report is prepared by the developer and signed by the developer and the Commission issues an effective date when the statutory requirements are satisfied.

Upon a motion by Commissioner Ohama, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommending amending page 19 to read as follows: "Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer [and are on file at the Department of Commerce and Consumer Affairs.] or through the developer's sales agent if any."

#### **Informal Non-Binding Interpretation Requests - Section 514A-31(b), HRS, concurrent CPR and time share registration and extensions**

Recommend deferral to March 2003 CRC meeting.

Program of Work:

#### **Recodification of Chapter 514A and Recodification Attorney Report**

Chair Imanaka reported that there is a bill at the Legislature to extend the recodification position for one year to complete the project. Hopefully the bills will crossover. The Commission is cautiously optimistic. During the course of the year public hearings have been planned for each island.

#### **Hawaii Condominium Bulletin**

The end of February is the target date for Associations to receive the February 2003 Issue of the Hawaii Condominium Bulletin.

#### **Government and Legislative Participation Report**

Hawaii Criminal Justice Data Center

Letter dated December 24, 2002 from the Hawaii Criminal Data Center was circulated. The letter informed the Commission about the work of the Criminal History Records Check Working Group in finalizing its report and legislative proposals; and in particular that the criminal history record check language was moved from Section 846-41, HRS, to Section 514A-82.1. The board of directors

and/or managers will continue to be able to receive criminal conviction information on their employees.

#### House Bill No. 75 Testimonies

Testimonies on House Bill No. 75 from the following were distributed for informational purposes: Real Estate Commission, Hawaii Association of Realtors, CAI Hawaii, HICCO – Richard Port, HCAAO – Jane Sugimura, Thomas Berg, Kerry Britanik, H. Hugh Mitchell, Daniel L. O'Leary III, Helen Inasaki, Alice Clay, Manny Diaz and Alberta (Rani) Vargas, and Raelene Tenno.

SEO Kimura reported that he just received word that HB 75, relating to the condominium recodification project, passed with a H.D. 1 requiring the Commission to hold public hearings by December 31, 2003 in each county.

#### Interactive Participation with Organizations

Information regarding CAI's 52<sup>nd</sup> National Conference and Exposition to be held May 1-3, 2003 in Dallas, Texas was distributed. Upon a motion by Commissioner Abrams, seconded by Commissioner Okawa, it was voted on and unanimously carried to recommend approval to send one Commissioner and one staff member to CAI's 52<sup>nd</sup> National Conference and Exposition to be held in Dallas, Texas on May 1 to 3, 2003, participants to be decided by the Chair and Supervising Executive Officer, subject to the Governor's fiscal policy and budgetary approval.

#### Neighbor Island Outreach Condominium Specialist Office for the Day

An excerpt from the upcoming Condominium Bulletin regarding the neighbor island committee meetings held on the island of Maui in January in conjunction with the Condominium Specialist Office of the Day was distributed for informational purposes.

It was further reported that the May 2003 committee meetings are tentatively being scheduled for the island of Hawaii.

#### 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:

Mr. Richard Vial, a real estate and land use attorney from Oregon was present to learn more on the Commission's recodification efforts.

#### CMEF Budget & Finance Report:

Upon a motion by Commissioner Abrams seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend acceptance of the report for fund balances as of November 30, 2002.

#### Executive Session:

Upon a motion by Commissioner Chinen, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to enter into executive session pursuant to Section 92-5(a)(4), "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Commissioner Ohama, seconded by Commissioner Okawa, it was voted on and unanimously carried to move out of executive session.

Condominium  
Project  
Registration:

**Informal Non-Binding Interpretation Request - Delivery of Developer's Preliminary Public Report and Sections 514A-31 and 62, HRS**

Upon a motion by Commissioner Okawa, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend deferral to the March 2003 CRC meeting.

**Diamond Head Terrace**

Upon a motion by Commissioner Okawa, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend deferral pending receipt of further information.

Next Meeting: March 12, 2003; 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 12:30 p.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

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Cynthia M. L. Yee  
Senior Condominium Specialist

March 12, 2003

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Date

Minutes approved as is.

Minutes approved with changes; see minutes of \_\_\_\_\_