

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: November 10, 2004

Time: Upon adjournment of the Education Review Committee meeting which follows the Laws and Rules Review Committee meeting scheduled to convene at 9:30 a.m.

Place: Realtors Association of Maui
441 Ala Makani Place
Kahului, Maui

Present: Mitchell Imanaka, Chair, Broker / Honolulu Commissioner
Kathleen Kagawa, Vice Chair, Broker / Honolulu Commissioner
Louis Abrams, Broker / Kauai Commissioner
John Ohama, Broker, Honolulu Commissioner
Iris Okawa, Public / Honolulu Commissioner
Vern Yamanaka, Broker / Hilo Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner
Carol Mae Ball, Broker / Maui Commissioner
Michele Sunahara Loudermilk, Public / Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Bernice Littman, Cades Schutte
Nikki Senter, Imanaka Kudo & Fujimoto
Christine Holguin, Centex Homes
Michael Kosmin, Centex Homes
Mike Grossi, Atlas Construction Insurance
Julia Kane, Bays Deaver Lung Rose Baba
Peter Rice, Classic Resorts
John Dunning, Papakea AOAO
John Stevens, Realtors Association of Maui President

Call to Order: Chair Imanaka called the meeting to order at 11:07 a.m., at which time quorum was established.

Chair's Report: No report was presented.

Condominium
Specialist's
Report:

Additions to the Agenda

Upon a motion by Commissioner Kagawa, seconded by Commissioner Okawa, it was voted on and unanimously carried to recommend accepting the additions to the agenda as follows:

5.a.7) 909 Kapiolani

At this time the committee took the agenda out of order to accommodate those that were present.

CPR Registration
And Developer's
Public Reports:

Elevations for Kauai Beach Resort Condo Conversion

Commissioner Loudermilk recused herself from discussion and decision making on the issue as she is also an attorney with the same law firm Cades Schutte appearing before the committee today.

Bernice Littman, Esq. of Cades Schutte was present representing Kabara, LLC. Kabara, LLC made a request for an informal non-binding opinion from the Commission in connection with an existing property being converted to a condominium, where the original elevation plans are no longer available and the elevations proposed be based on photographic representations. Ms. Littman reported that her client intends to apply for an effective date for a developer's final public report for the condominium conversion of the Kauai Beach Resort. She further reported that the Kauai Beach Resort was constructed in the mid 1980s and due to Hurricane Iniki, the County no longer has a copy of the original building plans. The current architects who are preparing the condominium map have access to the floor plans but not elevations plans and have informed Ms. Littman that it would be very time consuming and expensive to draw elevations which will not provide as much detail as the photographs would provide.

Chair Imanaka questioned whether the photos were digitized and able to indicate height.

Ms. Littman replied that the photos are digitized and could include the scaled heights along side of the building.

Commissioner Abrams questioned whether the County is requiring an elevation plan.

Ms. Littman said that at this time the County is not objecting.

Upon a motion by Commissioner Ohama, seconded by Commissioner Kagawa, it was voted on and carried to recommend approval in situations where the county has no copies of plans for existing structures that are being converted to condominium apartments to permit as part of the condominium map information relating to showing the elevations of the building or buildings required by §514A-12(a), HRS, by means of photographs with scaled heights along side of the buildings together with the "as built" certified statement of a registered architect or professional engineer. Commissioner Loudermilk recused herself from voting on the issue due to her declared conflict of interest.

Ko Olina Kai Golf Estates and Villas #5284

Chair Imanaka declared himself as having a conflict with the request submitted by Imanaka Kudo and Fujimoto and the following issue relating to 909 Kapiolani. He then recused himself and left the meeting room. Vice Chair Kagawa then chaired the meeting.

Vice Chair Kagawa disclosed her potential affiliations and Commissioner Yamanaka disclosed his prior affiliations with Centex and respectively declared that they did not feel that it would in any way have an impact on their decision making.

Nikki Senter, attorney with Imanaka Kudo & Fujimoto legal counsel to Centex Homes was present along with Christine Holguin, Controller, and Michael Kosmin, Vice President of Sales and Marketing with Centex Homes and Michael Grossi, Executive Vice President of Atlas Construction Services.

Ms. Senter reported that CPR Ko Olina Kai Golf Estates and Villas has received a contingent final public report and intends to seek the issuance of an effective date for a developer's final public report which requires a performance bond for not less than 100% of the construction costs. Ms. Senter noted that §514A-40 also gives the Commission the authority to approve "such other substantially equivalent or similar instrument or security" and is therefore requesting the Commission accept a corporate guarantee in lieu of a bond to secure the construction of the project.

Ms. Senter further noted that a performance bond requires that the developer and contractor complete the construction whereas a completion guarantee requires that the construction be completed and the cost of the construction paid for.

Ms. Senter informed the committee that Centex Homes' parent company, Centex Corporation is financially stable and that the completion guarantee will allow the Commission to enforce the guarantee and ensure consumer protection.

Mr. Grossi, Executive Vice President of Atlas Construction Services, informed the committee that the top financial size rating by A.M. Best is a XV, which is \$2 billion or more in surplus. If Centex Homes were an insurance company, based on its assets and financial statements, it would be rated at XV. He further reported that a performance bond states that the contractor will complete the job per the contract, but the only person that can make a claim on the bond is the obligee.

Mr. Grossi further noted that the Commission has, in the past, accepted bonds from Hawaii based captives. In this case, the parent company is required to provide a corporate guarantee that backs up the captive. If the parent company is not financially sound, the State will not allow the captive to be formed. The State requires a captive to have a certain capitalization structure, they are actually relying on the guarantee of the corporate guarantee of the parent company. Mr. Grossi does not see a material difference in allowing a corporate guarantee from Centex Homes versus taking a bond from a Hawaii based captive.

Ms. Senter reported that the corporate guarantee would come from Centex Homes' parent company, Centex Corporation.

Specialist Yee questioned the interchangeable use of "corporate guarantee" and "completion guarantee."

Mr. Grossi replied that the terms are used interchangeably with the same meaning.

Specialist Yee questioned the relationship of the parties in a corporate guarantee.

Mr. Grossi replied that the parent company would own the entity.

Vice Chair Kagawa questioned whether the Commission was provided a copy of the financial statements.

Ms. Senter replied that the financial statements for the project have been submitted but not the financial statements of Centex Homes, which can be provided.

Mr. Grossi informed the committee that Centex Corporation has 3.2 billion in equity and that the A.M. Best rating of XV was arrived at using Centex Corporation's March 31, 2004 financial reports.

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

909 Kapiolani

Ms. Julia Kane of Bays Deaver Lung Rose and Baba representing Posec Hawaii, Inc. was present.

Commissioner Loudermilk disclosed her prior dealings with the Musicians Association of Hawaii, who is in a joint development agreement with Posec Hawaii Inc. on this project and declared that it will not cause a problem with her decision making on the issue.

Ms. Kane reported that the issue at hand is access, specifically whether ingress and/or egress at Waimanu Street, a private road, meets the requirements of section 514A-3, HRS, which defines apartments in a condominium project as property with an "exit to a public street or highway." She is requesting an informal non-binding opinion from the Commission on this issue.

Ms. Kane informed the committee that the project is located in the Kaka'ako district and falls under the jurisdiction of the Hawaii Community Development Authority (HDCA) and that Posec must first obtain a planned development permit from HDCA in order to build the Project. She further stated that they are working with Mr. Dinnel of the HDCA and that concerns have been raised about the ingress and egress on Kapiolani Boulevard, requesting elimination of access to Kapiolani Boulevard, with all access from Waimanu Street.

Ms. Kane said that she has reviewed the legislative history which initially required exit to a thorough way and along the way the law was changed to an exit to a public street. A public road is defined in section 264-1, HRS, and requires that a private road or street be surrendered, with no act of ownership for five years and expressly adopted by a county resolution. This has not been done in the case of Waimanu Street. Although Waimanu Street has been maintained by the City, Waimanu Street has not been dedicated for public use.

Ms. Kane further noted that they have asked the City and HCDA if they plan to condemn the street and were informed that it is in the plans but low on priority at this time. Until then, Waimanu Street remains a private street.

Specialist Yee informed Ms. Kane that HCDA has submitted written testimony which noted that the City is requesting "full frontage improvements" which would require the developer to make improvements on Waimanu Street.

Ms. Kane replied that the improvements to Waimanu Street is not an issue at this time and that the developer is planning on making some improvements, although the improvements planned will not bring the street up to County standards.

Commissioner Yamanaka commented that the use of private roads is a major concern due to liability issues.

Ms. Kane reported that in this particular case, the fee simple owner of record for the particular section of Waimanu Street are the heirs of Charles S. Densky, Trustee, who died in September 1924. No party, since Mr. Densky's death, has claimed ownership. Waimanu Street has been used by the public as a public street since 1924.

Commissioner Ohama commented that he is familiar with Waimanu Street and is aware that there is often flooding in the area. He questioned if using Waimanu Street as an exit is a resolution to a practical matter?

Ms. Kane replied that to obtain Mr. Dinnels support of the project, exit would need to be made at Waimanu Street.

Commissioner Loudermilk replied that the use of Waimanu Street, being a non-public street, would then render the project to not be in compliance with Chapter 514A.

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

Chair Imanaka returned to the meeting.

Minutes: Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the minutes of the October 13, 2004 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Yee reported that as of October 31, 2004, 1,486 AOAOs have successfully registered.

Upon a motion by Commissioner Abrams, 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 October 31, 2004 for the 2003-2005 registration. The associations are as follows:

Alakea Corporate Tower	10/07/2004
Hualalai Village	09/24/2004
Ocean Resort Villas	10/13/2004
Pokai Bay Marina	10/15/2004
The Terrace at Kona Vistas	10/27/2004

Request for Approval of 2005 CAI Hawaii Chapter Seminars

It was reported that the number of participants subsidized by the condominium education fund has increased from 428 in fiscal year 2002 to 750 in fiscal year 2004.

Upon a motion by Commissioner Abrams, seconded by Commissioner Yamanaka, it was voted on and unanimously carried to recommend approval of the 2005 seminars and events as proposed by CAI Hawaii in its October 13, 2004 request as CEF subsidized seminars subject to the existing contract terms and conditions.

CAI Hawaii Chapter "Owners' Rights and Wrongs" October 21, 2004 Evaluations

Staff evaluations of the Commission subsidized seminar "Owners' Rights and Wrongs" were distributed for informational purposes.

HSBA-CLE "Emerging Environmental and Land Use Issues for Project Development and Property Management" October 14, 2004

A written report of staff's attendance of the HSBE-CLE seminar "Emerging Environmental and Land Use Issues for Project Development and Property Management" were distributed for informational purposes.

Specialist Yee suggested that a copy of the memo and attachments be made available to the condominium consultants. Chair Imanaka remarked that the issues should also be discussed at the next condominium consultant forum.

Case Law Review Program

The following were distributed for informational purposes: "Megan's Law and Owner Associations" *Hawaii Community Associations* (October 2004) and "Condo Rage" *Common Ground* (September/October 2004).

Condominium
Project
Registration:

Condominium Project Registration - Public Reports Issued

Chair Imanaka recused himself from discussion and voting on CPR Number 4521. Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and carried to recommend approval to ratify issuance of effective dates for developer's public reports for the month of October 2004 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4659	'IE'IE CONDOMINIUM	LOT 5 NAMAHAHA FARMS SUBDIV HANALEI	(4)5-02-024:005	Suppl 2	10/21/04
2344	10 GRANDVIEW PLACE CONDOMINIUM PROJECT	10 GRANDVIEW PLACE WAHIAWA HI 96786	(1)7-05-026:009	Suppl 1	10/06/04
5463	1306 & 1306A ARTESIAN STREET	1306/1306A ARTESIAN STREET HONOLULU HI 96826	(1)2-08-010:032	Final	10/14/04
5465	1911 & 1913 MAKIKI COURT	1911 MAKIKI ST HONOLULU HI 96822	(1)2-05-001:011	Final	10/19/04
5467	3362 UNAHE STREET CONDOMINIM	3362 UNAHE STREET LIHUE HI 96766	(4)3-06-017:049	Final	10/28/04
5488	735 MAKALEKA	735 MAKALEKA AVE HONOLULU HI 96816	(1)2-07-034:016	Final	10/13/04
5057	ALII COVE	75-5919 ALII DRIVE KAILUA-KONA HI 96740	(3)7-05-018:008	Final	10/07/04
5452	ANON ESTATES	LOT 6 NONAKA SUBDIV PHASE II WAILUA HI	(4)4-02-022:048	Final	10/28/04
5249	ANUHEA AT MAKAKILO	PUEONANI ST KAPOLEI HI 96707	(1)9-02-003:075	Final	10/22/04
4781	APOPO STREAM AGRICULTURAL CONDOMINIUM	4664 APOPO RD KAPAA HI 96746	(4)4-06-034:048	Final	10/22/04
5069	BEACH VILLAS AT KAHALU'U THE	78-6721 ALII DR KAILUA KONA HI 96740	(3)7-08-014:086	Suppl 1	10/22/04
5466	BILLIE	5170 & 5180 KIKALA ROAD KALAHEO HI 96741	(4)2-04-003:022	Final	10/07/04
5454	CLAIRMONT THE	909 KAHUNA LN HONOLULU HI 96826	(1)2-07-017:022	Suppl 1	10/06/04
5382	GOLF VILLAS AT MAUNA LANI RESORT	NA ALA HELE RD MAUNA LANI HI	(3)6-08-022:052	Cont Final	10/26/04
5482	HALE MOA KANE CONDOMINIUM	4377 AHOPUEO DRIVE KALAHEO HI 96741	(4)2-03-022:004	Final	10/26/04
5317	HAVENS OF I'I VISTAS II - PHASE VI	KO'OLANI DRIVE MILILANI HI 96789	(1)9-05-049:072	Final	10/25/04
4577	HOOMAKA O MANA	64-640 MANA RD KAMUELA H 96743	(3)6-04-018:084	Final	10/06/04
5295	ISLAND CLASSICS AT KAPANOE-PH II	HAULELAU ST MILILANI HI 96789	(1)9-05-002:049	Final	10/19/04
5460	KA'ALAWAI CONDOMINIUMS	3711 DIAMOND HEAD ROAD HONOLULU HI 96816	(1)3-01-038:031	Final	10/11/04
5436	KALAHEO MOUNTAIN VIEW ESTATES AG CONDO	PASTURE RESERVE A KALAHEO HMST KALAHEO HI 96741	(4)2-03-002:018	Final	10/04/04
4093	KAUAIANA	4873 KAPA'KA ST HANALEI HI 96714	(4)5-03-008:014	Suppl 1	10/21/04
5484	KAWIKA PUUOPAE ESTATES	444 PUUOPAE RD KAPAA HI 96746	(4)4-02-021:015	Final	10/29/04
5240	KOLEA CONDOMINIUM VILLAS BLDG NO 12	69-289 WAIKOLOA BEACH DR WAIKOLOA HI 96738	(3)6-9-011:019	Final	10/11/04
5241	KOLEA CONDOMINIUM VILLAS BLDG NO 13	69-289 WAIKOLOA BEACH DR WAIKOLOA HI 96738	(3)6-09-011:019	Final	10/11/04
5419	LUNA LILO HEIGHTS CONDOMINIUM	LOT 3 KUAWIWI IKI SUBD KALAHEO HI	(4)2-03-018:062	Final	10/01/04
4316	NANI O KALALEA RANCH	ALLOTMT 24-E-2 MOLOAA HUI KAWAIHAU HI 96754	(4)4-09-005:001	Suppl 1	10/08/04
5444	NANILOA ESTATES	55-691 WAHINEPEE ST LAIE HI 96762	(1)5-05-009:038	Prelim	10/26/04
5459	OLOHENA RISE	LOT 38 OLOHENA RD KAWAIHAU HI	(4)4-04-005:001	Final	10/29/04
5383	PALM VILLAS AT MAUNA LANI RESORT	PAUOA RD MAUNA LANI HI	(3)6-08-022:018	Cont Final	10/28/04
5462	PALMS AT MANELE - PHASE I THE	MAUNA LEI DRIVE	(2)4-09-017:008	Prelim	10/21/04

5373	PALMS AT WAIKIKI	LANAI HI 96763 1850 ALA MOANA BLVD HONOLULU HI 96815	(1)2-06-012:003	Final	10/21/04
5192	TERRACES MANELE BAY PHASE V	POLIHUA WAY LANAI HI 96763	(2)4-09-022:014	Final	10/22/04
4521	WAIHAI BEACH CLUB	2249 POIPU RD KOLOA HI 96756	(4)2-08-017:012	Suppl 3	10/01/04
Preliminary Reports:		2			
Contingent Final Reports:		2			
Final Reports:		22			
Supplementary Reports:		7			
Total:		33			

Request for Exemption of Owner-Occupant Law – Jane Echevarria

Upon a motion by Commissioner Kagawa, seconded by Commissioner Okawa, it was voted on and unanimously carried to recommend approval to issue a "no action" letter subject to the receipt of verification from Mr. Echevarria's physicians attesting to his medical condition.

Program of Work: No discussion presented.

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: John Stevens, President of the Realtors Association of Maui, informed the committee that most states are certifying national courses for continuing education credit. He requested that the Commission find ways in which to approve nationally recognized courses for CE credit as it would improve the education of Hawaii real estate licensees. He also offered the assistance of the Realtors Association of Maui.

Executive Session: Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to enter into executive session pursuant to Section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities". Chair Imanaka recused and excused himself from the room due to his prior declared conflict on the issues to be discussed.

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

Ko Olina Kai Golf Estates and Villas #5284, Nikki Senter, Esq.

Upon a motion by Commissioner Abrams, seconded by Commissioner Okawa, it was voted on and carried to recommend approval to defer making a recommendation to such time after the developer submits for the committee's consideration a proposed "corporate/completion guaranty.

909 Kapiolani

Upon a motion by Commissioner Okawa, seconded by Commissioner Ohama, it was voted on and carried to recommend approval to not issue an informal non-binding interpretation of the definition of "apartment – with an exit to a public street or highway..." as set forth in §514A-3, HRS.

Chair Imanaka returned to the meeting.

CMEF Budget &
Finance Report:

No report presented.

Next Meeting:

Thursday, December 9, 2004 (subject to change)
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 Imanaka adjourned the meeting at
12:18 p.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

December 8, 2004

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____