

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 7, 2010

Time: Upon adjournment of 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: Michele Sunahara Loudermilk, Chair, Public / Honolulu Commissioner
Carol Ball, Broker / Maui Commissioner
Stanley Kuriyama, Broker / Honolulu Commissioner
Annette Aiona, Broker / Hilo Commissioner
Frances Gendrano, Broker / Honolulu Commissioner
Walt Harvey, Broker / Honolulu Commissioner

Jon Ellis Pangilinan, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Benedyne Stone, Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
David Grupen, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Pame Romano, Condominium Owner
Sandra Roberts, Condominium Owner
Deborah Chun, Chun Rair & Yoshimoto

Absent: Mark Suiso, Vice Chair, Public / Honolulu Commissioner
Louis Abrams, Broker / Kauai Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner

Call to Order: Chair Loudermilk called the meeting to order at 9:08 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.

Commissioners Abrams, Nishihara, and Suiso were excused from the meeting. Prior notification of their non-attendance was received.

Condominium
Specialist's
Report:

Additional Distribution

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

5. CPR Registration and Developer's Public Reports
 - a. Condominium Projects and Developer's Public Reports
 - 5) Request for a formal opinion from the Real Estate Commission – SFI Ilikai Property Owner of 203 residential units and one commercial unit in the Ilikai Apartment Building Condominium whether SFI is a "developer" requiring registration in order to sell units – Deborah Macer Chun, Attorney for SFI Property Owner – Letter dated March 15, 2010
6. Program of Work, FY10
 - h. Legislative Acts and Resolutions

Minutes:

Upon a motion by Commissioner Harvey, seconded by Commissioner Gendrano, it was voted on and unanimously carried to accept the minutes of the March 10, 2010 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOUO Registrations

Specialist Stone reported that as of March 31, 2010, 1,604 AOUOs have successfully registered.

Mediation and Arbitration

Email received from Pame Romano dated March 18, 2010 regarding suggested mediation guidelines.

Chair Loudermilk acknowledged receipt of Ms. Romano's email and informed her that staff will follow up with the mediation centers and work with the Mediation Center of the Pacific who provides mediation training. Staff will provide a response to Ms. Romano after its follow up with the mediation centers.

Condominium Seminars and Symposium – CAI Hawaii Chapter "Challenges of Aging Buildings" March 11, 2010 -- Evaluation

Staff's evaluation of the seminar was distributed for informational purposes. Specialist Yee noted that it was a good seminar which included experts in the fields of green energy, spalling, plumbing and electrical. Preventative and follow up tips were also provided to those in attendance.

Case Law Review Program

The following articles were distributed for informational purposes: "Fighting Hawaii condo boards is costly, risky" *Honolulu Advertiser* March 15, 2010;

"Fighting a condo association can be futile" *Honolulu Advertiser* March 15, 2010;
 and "Management Company Not Deemed a Debt Collector" *Community Association Management Insider* (March 2010).

Condominium Related Articles

The following articles were distributed for informational purposes: "Tick Tock" *CAI's Common Ground* (March April 2010); "On Your Own" *CAI's Common Ground* (March April 2010); "Don't Use Members to Perform Reserve Study to Save Money" *Community Association Management Insider* (March 2010) "Do's and Don'ts"; "Offer Assessment Deferral Program to Financially Struggling Active Duty Military Members" *Community Association Management Insider* (March 2010) "Do's and Don'ts."

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of March 2010 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNITS	REPT	DATE
6262	1348 KINAU STREET HONOLULU	1344 KINAU ST HI	124011023 96814	6	B AMD	3/19/2010
6930	54-071 & 54-071A WAIKULAMA STREET HAUULA	54-071 WAIKULAMA ST HI	154016011 96717	2	B REPT	3/9/2010
6834	CASTAWAYS PARADISE CONDOMINIUM MOLOAA	3665 MOLOAA RD HI	449013001 96754	2	B REPT	3/4/2010
6551	HALI'IPUA VILLAS KONA	HALIIPUA PL HI	372029028 96740	12	B AMD 2	3/18/2010
6903	HO'OLE'A TERRACE AT KEHALANI WAILUKU	KEHALANI MAUKA PKWY HI	235001067 96793	174	B REPT	3/19/2010
6278	HO'OMAIKA'I VILLAGE AT MA'ILI BEACH WAIANAE	87-105-1 TO 87-111-2 KULAAUPUNI ST HI	187001012 96792	8	B AMD	3/2/2010
6135	HOKULANI GOLF VILLAS KIHEI	LIPOA PKWY HI	222024035 96753	152	B AMD 3	3/17/2010
6923	IAO AINA CONDOMINIUM LAHAINA	282 LUAWAI ST HI	248003085 96761	2	B REPT	3/19/2010
6526	KALANIPU'U CONDOMINIUM KALAPAKI	HOOLAULEA WAY HI	435001027 96766	79	B AMD 3	3/9/2010
6937	KAPOLEI PROMENADE KAPOLEI	FARRINGTON HWY HI	191016030 96707	9	B REPT	3/2/2010
6950	LAULANI III, PHASE 7 EWA BEACH	91-1001 KEAUNUI DR HI	191149007 96706	9	B REPT	3/18/2010
6956	LAULANI III, PHASE 8 EWA BEACH	91-1001 KEAUNUI DR HI	191149007 96706	9	B REPT	3/19/2010
6946	LOT 11 AKULIKULI SPRINGS KAPAA	LOT 11 HI	446004002 96746	2	B REPT	3/18/2010
6844	MEADOW CONDOMINIUM THE KOLOA	4386 UPA RD HI	427008056 96756	2	B REPT	3/1/2010
6943	PUNALUU VALLEY FARMS HAUULA	53-372 PUNALUU VALLEY RD HI	153007007 96717	3	B REPT	3/29/2010
5112	THE 3661 WOODLAWN DRIVE PROJECT HONOLULU	3661 A,B & C WOODLAWN DR HI	129059078 96822	3	SUPPL	3/11/2010
6935	VIERRA ESTATES KALAHEO	2855 WAWAE ROAD HI	424005134 96741	2	B REPT	3/23/2010
0	Preliminary Reports					
0	Contingent Final Reports					
0	Final Reports					
1	Supplementary Reports					
11	B Reports					
5	B Amendment Reports					
17	TOTAL REPORTS					

Request for a formal opinion from the Real Estate Commission – SFI Ilikai Property Owner of 203 residential units and one commercial unit in the Ilikai Apartment Building Condominium whether SFI is a "developer" requiring registration in order to sell units – Deborah Macer Chun, Attorney for SFI Property Owner – Letter dated March 15, 2010

Specialist Yee noted that Ms. Chun has been informed of the procedures in requesting a formal opinion and has instead opted to request an informal non-binding interpretation from the Commission.

Chair Loudermilk and Commissioner Kuriyama recused themselves from discussion due to a conflict. Commissioner Gendrano led the discussion. It was determined that there was not a quorum to move forward with this issue.

Deputy Attorney General Wong informed Ms. Chun that she could provide the committee with information regarding the issue, but no decision making could be made due to the lack of quorum.

Ms. Chun informed the committee that she represents her client, SFI Ilikai Property Owner LLC which acquired 203 residential and one commercial unit in the Ilikai Apartment Building through foreclosure. She noted that the project has been up and running for many years. SFI has no "controlling interest" owning less than 20% of the units. Based on this particular case they do not feel that SFI would be considered a developer and would not require registration in order to sell the units it owns. SFI would still need to comply with Chapter 508D.

Commissioner Gendrano questioned if the 20% of the units which SFI owns are hotel units.

Ms. Chun responded that most are. Twenty-seven of the units are scattered throughout the building. These are the units that they are initially looking at selling. Would like to keep the hotel operation. SFI would be the fourth owner as the project was sold as bulk sales previously.

Staff and Ms. Chun discussed a July 24, 1992 project registration, Kanaloa at Keauhou Bay Villa which Ms. Chun viewed as being similar to her client's situation and where the Commission decided informally and non bindingly that the foreclosing lender was not a developer; and did not require the foreclosing lender to submit a supplementary public report for the sale of up to 60 units in the Kanaloa at Keauhou condominium project.

Ms. Chun noted that submitting the project registration document to the Commission is very time consuming and expensive. There is no substantial benefit to the purchasers. If the AOA files suit, any other owner can just do a 508D mandatory seller's disclosure. Under Ch. 514A, you would need to stop sales and update the information which is time consuming.

Due to lack of quorum, the matter was deferred to the Commission meeting of April 22, 2010.

Case Law Review Program

The following article was distributed for informational purposes: "Challenging developers over construction defects can be a formidable exercise. Arm yourself with information" *CAI's Common Ground* (March April 2010).

Program of Work:

Condominium Laws and Education

A list of registered associations of unit owners (Chapter 514A, HRS) indicating on its AOJO registration that they amended their governing documents to adopt provisions of the new condominium law, Chapter 514B, HRS, was distributed for informational purposes.

Staff reported that associations re-register every two years. The list indicated that there were 1581 projects created prior to July 1, 2006. Of the 1581, 475 or 30% of those associations answered on their re-registration application that they have amended their governing documents to adopt Chapter 514B provisions.

Advice, Education, and Referral

A draft Q & A of common questions posed by condominium owners and answers to those questions were distributed for information and comment. Staff proposes to post the Q & A's on the Commission's website. All comments should be directed to Specialist Stone.

Hawaii Condominium Bulletin

Specialist Leong reported that staff is in the process of writing to the Bulletin editor regarding a number of issues including issues as to what is "camera ready." Both the Hawaii Condominium Bulletin and the Real Estate Bulletin are experiencing issues with the editor relating to providing a camera ready copy to the printer. Staff tried to arrange a meeting with the editor, but the editor informed staff that he is on vacation for an extended period.

Upon a motion by Commissioner Aiona, seconded by Commissioner Gendrano, it was voted on and unanimously carried to authorize staff that if the terms of the contract cannot be met, to terminate the contract.

Government and Legislative Participation and Report

Specialist Yee reported that Senate Bill 2164 requiring that notice of amendment to project documents be provided to owners and potential purchasers and that amendments that effect a material change trigger a purchaser's right of rescission has been deferred. This bill may be resurrected next session. The Commission provided testimony that the current statute provides adequate notification.

Legislative Acts and Resolutions

Two resolutions, SR 113 and HR 128, passed by the 2009 25th Legislature, urged the Commission to permit developers and attorneys to submit condominium registration filings in electronic format. In response to that request, staff is

conducting a number of surveys. Drafts of the various surveys were distributed to the committee for comments.

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: Ms. Sandra Roberts and Ms. Romano announced their presence for open forum. Ms. Roberts presented her concerns first.

Her concerns included the Real Estate Commission's contract with CAI Hawaii for the delivery of educational seminars for a number of years; Commission's membership in CAI national; Commission's inclusion on its agendas articles and references to CAI national and CAI Hawaii; exploring other views different from CAI and a book entitled "Villa Appalling"; contract awarded to Ekimoto and Morris to update the condominium owners and board booklets; and her association's past two biennial registrations. Ms. Roberts further reported that she would be following up her concerns relating to possible conflicts with the State Ethics Commission.

Discussion followed with Chair Loudermilk providing information about Commission's award of contracts pursuant to the State's public procurement laws and procedures; that the Commission procures for education services once a year and if Ms. Roberts is aware of any organizations interested in providing educational services they should submit a proposal when the next request for proposals is issued; placement of her specific concerns in writing; staff's availability to follow up with Ms. Robert's on her specific concerns; procedures for registering a complaint about real estate licensees; and Commission's policies and conditions for acceptance of the discussed educational products including the receipt of input from and review by varying representative stakeholders.

Deputy Attorney General Wong informed Ms. Roberts that if there are complaints relating to her association's registration or a real estate licensee, she should not taint the Commission's view where they may need to hear the case. She should initiate the complaint process with the Regulated Industries Complaint Office (RICO).

Chair Loudermilk further noted for Ms. Roberts that RICO is the investigatory arm and if needed will bring the issue to the Commission. If the issue comes before the Commission and the Commission has been provided with the information from Ms. Roberts, it will not be able to hear and then decide on the issues.

Chair Loudermilk repeatedly informed Ms. Roberts to please route her concerns through staff for research and possibly placement on the next CRC agenda.

Ms. Roberts was then followed by Ms. Pame Romano. Ms. Romano informed the committee that she was there to express concerns about her recent CDR case. Staff noted for Ms. Romano that her case was included in the February 10, 2010

CRC agenda for information only and not for any action. Ms Romano's concerns included the unfairness of having to seek the advice of an attorney for any follow up information and clarification relating to her CDR case and attorney fees imposed on her. Ms. Romano stated that she specifically had a problem with the word "may" and its use in the law when imposing attorney's fees.

Specialist Yee informed Ms. Romano that she could meet with her after the meeting to provide her some additional information and referral.

Chair Loudermilk noted that the law governs and that should associations be interested in changing the laws, they need to talk to their legislators to make changes, get bills introduced, etc. Chair Loudermilk informed Ms. Romano that the use of the word "may" in the law is a legislative issue, not a Commission issue.

CETF Budget &
Finance Report:

No report presented.

Next Meeting:

May 5, 2010

Upon adjournment of 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 Loudermilk adjourned the meeting at 10:05 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

April 22, 2010

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____