

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: March 11, 2009

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: 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
Frances Gendrano, Broker / Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
Benedyne Stone, Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
David Grupen, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary
Janelle Sarae, Condominium Project Registration Clerk

Others: Myoung Oh, Hawaii Association of REALTORS®
Lloyd Sodetani, Condominium Consultant – via tele conference

Absent: Annette Aiona, Broker / Hilo Commissioner

Call to Order: Chair Chee called the meeting to order at 9:23 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.

Commissioner Aiona was excused from the meeting. Prior notification of her 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) Performance Bonds/Irrevocable Letters of Credit – Requests for Release
 - 8) Real Estate Commission's December 15, 2006 Informal Non-Binding Interpretation of "spatial units"

Minutes:

Upon a motion by Commissioner Abrams, seconded by Commissioner Suiso, it was voted on and unanimously carried to accept the minutes of the February 11, 2009 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Stone reported that as of February 28, 2009, 1,627 AOAOs have successfully registered. Staff is preparing for the upcoming Condominium Association biennial re-registration. Testing is being conducting for the online re-registration and hard copies are currently being printed with a scheduled mailing date of April 1, 2009.

Ad Hoc Committee on Condominium Education and Research

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept Draft 2 of the brochures "Condominium Board Members Powers and Duties" and "Condominium Owners Rights and Responsibilities" subject to any technical and non-substantive changes, submitted by Ekimoto & Morris, LLLC and issue payment of 75% of the negotiated sum of \$22,500. The remaining 25% of the agreed upon compensation shall be paid to the contractor upon completion of the update of the two brochures including the 2009 legislative changes.

Condominium Seminars and Symposium – CAI Hawaii February 17, 2009 request for Condominium Education Fund Subsidy for Propose Seminar "Why Nobody Likes You – How Boards, Managers, & Legal Counsel Can Improve Relations with Owners"

In response to the committee's request of January 14, 2009 that CAI Hawaii provide a brief synopsis and a statement of the learning objectives/scope for the seminar, "Why Nobody Likes You, How Boards, and Managers & Legal Counsel Can Improve Relations with Owners," CAI Hawaii provided a response that the educational objectives of the seminar include tips and information on how directors, property managers and legal counsel can avoid conflicts and litigation with owners. The program will also encourage understanding of owners' issues and disputes.

Upon a motion by Commissioner Ball, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to approve the seminar entitled "Why Nobody Likes You – How Boards, Managers, & Legal Counsel Can Improve Relations with Owners" Condominium Education Trust Fund (CETF) subsidies subject to the terms and conditions of the existing contract and the availability of the CETF funds.

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of February 2009 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNITS	REPT	DATE
6757	1025 AND 1027 3RD AVENUE CONDO	1025 & 1027 3RD AVE HONOLULU HI 96816	132010051	2	B REPT	2/6/2009
6754	1858 & 1860 PAULA DRIVE CONDOMINIUM	1858 & 1860 PAULA DR HONOLULU HI 96816	133021043	2	B REPT	2/18/2009
5532	ALA MOANA HOTEL CONDOMINIUM	410 ATKINSON DR HONOLULU HI 96814	123038002	1177	SUPPL	2/12/2009
6739	FUTARI GARDENS	5-7355 KUHIO HWY HANALEI HI 96714	458009033	2	B REPT	2/20/2009
6772	HAIKU MOANA CONDOMINIUM	860 & 862 KILI PL & 580 W KUIAHA RD HAIKU HI 96708	227009090	3	B REPT	2/23/2009
3052	HALE KOLOLIA	73-1149 AHULANI ST KAILUA-KONA HI 96740	373022084	2	SUPPL	2/12/2009
6761	HILLS CONDOMINIUM	75 & 307 AINAKULA RD KULA HI 96790	223022005	2	B REPT	2/23/2009
6751	HOLOMUA	1315 KALAKAUA AVE HONOLULU HI 96826	124006017	176	B REPT	2/26/2009
6403	HONOKAHUA BEACH HOTEL	ONE RITZ CARLTON DR LAHAINA HI 96761	242004015	135	B AMD 2	2/27/2009
6410	JUAREZ CONDOMINIUM	10 WAILAU PL LAHAINA HI 96761	247009047	2	B AMD 2	2/23/2009
6740	KAHA KAI CONDOMINIUM	2080 HOONE RD KOLOA HI 96756	428017016	3	B REPT	2/5/2009
6658	KALAEPOHAKU PLACE CONDOMINIUM RESIDENCE	1503 & 1505 KALAEPOHAKU PL HONOLULU HI 96816	133061093	2	B AMD	2/23/2009
6756	KULAPOMAIIKA`I PLACE	5533 KAWAIHAU RD KAPAA HI 96746	446037064	2	B REPT	2/2/2009
6706	KULU CONDOMINIUM	108 PUA NIU WAY LAHAINA HI 96761	247009080	2	B REPT	2/18/2009
2713	LUNAPULE PROFESSIONAL PLAZA	75-127 LUNAPULE RD KAILUA-KONA HI 96740	375018030	24	SUPPL	2/5/2009
6773	MALA ALOPEKE CONDOMINIUM	837 & 841 KAI HELE KU ST LAHAINA HI 96761	247010012	2	B REPT	2/23/2009
5366	MAUNAWILI ACRES	1011A MAUNAWILI RD KAILUA HI 96734	142012011	2	SUPPL	2/5/2009
6367	NANALA AT MEHANA	MANAWAI ST KAPOLEI HI 96707	191016131	100	B AMD 2	2/2/2009
6512	RS ESTATES I	4077-P KOLOA RD KOLOA HI 96756	425005092	2	B AMD	2/12/2009
6207	TOWN HOMES AT FAIRWAY'S EDGE INCR 5 THE	KEONEULA BLVD EWA BEACH HI 96706	191012070	16	B AMD 2	2/18/2009
6315	TOWN HOMES AT FAIRWAY'S EDGE INCR 8 THE	KEONEULA BLVD EWA BEACH HI 96706	191012070	12	B AMD 2	2/18/2009
6324	TOWN HOMES AT FAIRWAY'S EDGE INCR 9 THE	KEONEULA BLVD EWA BEACH HI 96706	191012070	29	B AMD 2	2/18/2009
6305	WAIPIO BUSINESS CENTER	94-1363 MOANIANI ST WAIPAHI HI 96797	194128005	99	B AMD 4	2/6/2009
6744	WELLS CONDOMINIUM	37 & 41 KUMU NIU PL LAHAINA HI 96761	247010027	2	B REPT	2/23/2009
0	Preliminary Reports					
0	Contingent Final Reports					
0	Final Reports					
4	Supplementary Reports					
11	B Reports					
9	B Amendment Reports					
24	TOTAL REPORTS					

Performance Bonds/Irrevocable Letters of Credit – Requests for Release

Public Requests for Copies of Developer's Submitted Statement Showing All Costs Involved in Completing the Project; Satisfactory Evidence of Sufficient Funds to Cover the Total Project Costs from Purchasers' Funds, Equity Funds, etc.

Executive Session: Upon a motion by Commissioner Abrams, seconded by Commissioner Suiso, 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."

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

The issue of requests for release of performance bonds/irrevocable letters of credit was deferred for further study.

Public Requests for Copies of Developer's Submitted Statement Showing All Costs Involved in Completing the Project; Satisfactory Evidence of Sufficient Funds to Cover the Total Project Costs from Purchasers' Funds, Equity Funds, etc.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to request from the Office of Information Practices guidelines which the Commission can follow and make determinations on a case by case basis for public requests for copies of developer's submitted statement showing all costs involved in completing the project; satisfactory evidence of sufficient funds to cover the total project costs from purchasers' funds, equity funds, etc.

"Twelve buyers at Honua Kai sue for refund" *The Maui News* January 24, 2009

A copy of the letter dated February 10, 2009 staff received from the developer's attorney in response to its request on whether circumstances reported in the January 24, 2009 Maui News article require that the developer update the public report was distributed for informational purposes.

Real Estate Commission's December 15, 2006 Informal Non-Binding Interpretation of "spatial units"

Lloyd Sodetani, Condominium Consultant from Maui, provided comments via tele conference. Mr. Sodetani reported that the Commission's non-binding interpretation on spatial units should not be interpreted in that manner and that the intent of spatial units was to use metes and bounds of the limited common element and compliance with county codes for structure height requirements. He further reported that buyers of the adjoining properties would be led to believe that if the spatial unit is restricted to 100 square feet and 10 feet in height that their view would not be obstructed. Subsequently the spatial unit owner builds a 1000 square foot home that is 25 feet in height and now obstructs the neighbors view.

Commissioner Kuriyama questioned Mr. Sodetani on how this matter was handled in the old days when people would use tool sheds and describe it as a condominium unit. Everyone was aware at that time that the tool shed would eventually be replaced by a structure and that the neighbor would be unaware as to the size of the structure.

Mr. Sodetani replied that the recodification efforts were to eliminate these types of problems. Staff's memorandum sent out to developers and attorneys is being read that there is a need to put in a fictitious unit.

Commissioner Kuriyama responded that the statute says that boundaries may be defined by a physical structure or spatial coordinates.

Mr. Sodetani requested a clarification to staff's February 20, 2009 memo which is causing confusion among the attorneys. There are many spatial projects that he is reviewing that are pending a clarification of staff's memo.

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Nishihara, it was voted on and unanimously carried to take this matter under advisement.

Program of Work:

Rulemaking, Chapter 107 - Condominium Consultant Lloyd Sodetani's February 13, 2009 Proposal to Draft Chapter 107 Rules to Implement Chapter 514B, HRS

Mr. Sodetani informed the committee that he had previously emailed staff regarding Chapter 107, Hawaii Administrative Rules, which are applicable to Chapter 514A, but not applicable to Chapter 514B. Rulemaking needs to be done. Mr. Sodetani volunteered to lead the rulemaking committee to prepare a draft of the rules to present to the Real Estate Commission by mid May with a goal to have the draft in final form, after review by all parties and public hearings, to be presented to the Governor by the end of 2009.

Mr. Sodetani further reported that project filings are getting larger and that developers should be allowed to provide copies of the public reports to purchasers, agencies, etc., by electronic means. Storage and securing of documents on disks or flash drives would prove to be simpler and cheaper.

Executive Session:

Upon a motion by Commissioner Nishihara, seconded by Commissioner Gendrano, 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."

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

Real Estate Commission's December 15, 2006 Informal Non-Binding Interpretation of "spatial units"

Upon a motion by Commissioner Nishihara, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to direct staff to issue a

clarifying memorandum to include information that spatial units are not limited to fictional sheds that comply with Chapter 514B, HRS, and that Commissioners Loudermilk and Abrams to work with staff and the condominium consultants to further address the spatial units issue.

Rulemaking, Chapter 107 - Condominium Consultant Lloyd Sodetani's February 13, 2009 Proposal To Draft Chapter 107 Rules to Implement Chapter 514B, HRS

The committee agreed that rulemaking is necessary and thanks Condominium Consultant Lloyd Sodetani for volunteering to take the lead on this project. It was noted that the Commission's non-binding interpretations should be included when drafting the rules.

Interactive Participation with Organizations

Specialists Yee and Stone reported that a presentation was made about the basics of how condominiums are created, operated, managed and governed under Chapter 514B at the Kailua Neighborhood Board meeting on March 5, 2009 by request of the board. Specialist Yee also reported on some of the board members concerns that the governance provisions are weighted in favor of developers.

Rulemaking, Chapter 53, Fees – Proposed Increase in Developers and Condominium Owners Contributions to the Condominium Education Fund

Upon a motion by Commissioner Abrams, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to increase the Chapter 53 Fees for the condominium unit/apartment owners contribution to the Condominium Education Trust Fund from \$4 to \$7; and increase the developer's contribution to the Condominium Education Trust Fund from \$5 to \$10.

Condominium Reference Library

Staff provided a sampling of the materials received through the CAI Adopt-a-Library program. Each set includes approximately 60 publications. The sets will be delivered to the libraries shortly. CAI Hawaii has requested to do a public presentation of the library materials.

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:

No discussion presented.

CEF Budget &
Finance Report:

No report presented.

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Next Meeting: April 8, 2009
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
10:55 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

March 17, 2009

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____

CY/tn/090317