

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 8, 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
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
Annette Aiona, Broker / Hilo 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

Others: Richard Kiefer, Kiefer & Garneau LLC
Natalie Kiehm, A & B Properties
Lisa Redell, Goodsill Anderson
Jon Uchiyama
Nancy Caires
Jeff Watts, Brooks Tom Porter & Quitiquit LLP
Lloyd Sodetani, Condominium Consultant – via tele conference

Absent: Mark Suiso, Vice Chair, Public / Honolulu Commissioner

Call to Order: Chair Chee called the meeting to order at 10:01 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 Suiso was excused from the meeting. Prior notification of his 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
 - 7) CPR Project Registration Applications of Kahului Town Center LLC, a Hawaii Limited Liability Company for CPR Kahului Town Center Master Condominium Registration No. 6781 and Kahului Town Center Quadrant 1 Registration No. 6632 - Informal non-binding interpretation issued October 10, 2007 that developer may preliminary proceed with submitting the registration application for the proposed nested condominium subject to listed concerns with Committee reserving the rights to refer the issue to declaratory ruling upon receipt of detailed information

Minutes:

Commissioner Kuriyama noted a correction to the draft minutes, specifically the motion under Rulemaking, Chapter 53, Fees, removal of language "subject to biennial adjustments to include increases based on per cent changes in the Consumer Price Index 6 months prior to the associations' biennial reregistration."

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to accept the minutes of the March 11, 2009 Condominium Review Committee meeting with the noted change.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Stone reported that as of March 31, 2009, 1,629 AOAOs have successfully registered. The AOAO re-registration packets were mailed out on April 1, 2009. The AOAO online registration site also went live on April 1, 2009. To date 25 re-registrations have been completed online.

Case Law Review Program

The following articles from the March April 2009 issue of *Common Ground* were distributed for informational purposes:

- 1) "Homefront Law Help!"
- 2) "Difficult Trek"

Condominium Related Articles

The following articles were distributed for informational purposes:

- 1) "What Records to Keep Confidential from Prying Members" *Community Association Management Insider* February 2009
- 2) "Follow 8 Guidelines for Using Reserve Account Funds" *Community Association Management Insider* March 2009
- 3) "Allowing Smoking in Common Areas May Invite Nuisance Claims" *Community Association Management Insider* March 2009.

CDR Pilot Program

A copy of the following was distributed for informational purposes: *In the Matter of Pame Romano and John Dew, Petitioners, vs. Kuhio Village II, AOA Board, C.O. Furuya, Hawaiiiana Management, and Agent Craig Richter, Respondents – CMDR-0809-02 Hearings Officer's Findings of Fact, Conclusions of Law, and Order Granting Respondents' Motion to Dismiss Petitioners' Request For Hearing.*

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

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

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNIT	RPT	DATE
6437	1723 KALAKAUA	1723 KALAKAUA AVE HONOLULU HI 96826	123022009	121	B AMD	3/6/2009
6053	3101 PACIFIC HEIGHTS ROAD	3101 PACIFIC HEIGHTS RD HONOLULU HI 96813	122029016	2	SUPPL	3/24/2009
6768	45-577 KEAAHALA ROAD	45-577 KEAAHALA RD KANEHOE HI 96744	145021084	2	B REPT	3/16/2009
6735	47-381 & 47-381A WAIHEE ROAD	47-381 WAIHEE RD KANEHOE HI 96744	147006024	2	B REPT	3/18/2009
6771	51-316B KAMEHAMEHA HIGHWAY	51-316B KAMEHAMEHA HWY KAAAWA HI 96730	151002014	2	B REPT	3/24/2009
6762	64/56 ALOKELE PLACE CONDO	64 & 56 ALOKELE PL PUKALANI HI 96768	223058034	2	B REPT	3/3/2009
6682	AINAKOA	4184 KAANA RD LIHUE HI 96766	436018059	2	B REPT	3/6/2009
6449	BALI HAI VILLAS PHASE XI (BLDGS 12 & 13, INCR 12 & 13)	4970 PEPELANI LP PRINCEVILLE HI 96722	454005036	26	B AMD 2	3/3/2009
6647	BALI HAI VILLAS PHASE XIV (BUILDING 15)	4970 PEPELANI LP PRINCEVILLE HI 96722	454005036	12	B AMD	3/24/2009
6664	CAMAT ESTATES	6545 KAWAIHAU ROAD KAPAA HI 96746	446007129	2	B REPT	3/3/2009
6391	COUNTRY CLUB VILLAGE 6	3009 ALA MAKAHALA PL HONOLULU HI 96818	111065033	515	B AMD 4	3/17/2009
6160	KAI ANI VILLAGE	1367 S KIHEI ROAD KIHEI HI 96753	239002091	99	B AMD 3	3/3/2009
6438	KAMAKEA ESTATE	LOT 3 KAPAA HI 96746	444005015	2	B AMD	3/6/2009
6742	KIMANA AINA CONDOMINIUM	32 & 34 AWAIKU ST LAHAINA HI 96761	247009027	2	B REPT	3/3/2009
6776	KUALA BUSINESS PARK CONDO	1255 KUALA ST PEARL CITY HI 96782	197024052	5	B REPT	3/30/2009
6722	MAGOUN RESIDENCE CONDO	3781 PAPALINA RD KALAHEO HI 96741	423016039	2	B REPT	3/9/2009
6765	MANU MELE	1244 & 1246 MANU MELE ST KAILUA HI 96734	142051073	2	B REPT	3/9/2009
6769	MIRANDA ESTATES	91-169 & 91-169A EWA BEACH RD EWA BEACH HI 96706	191023009	2	B REPT	3/3/2009
6770	NANI PAKALANA	218 AZORES ST HONOLULU HI 96813	122009060	2	B REPT	3/16/2009
6764	NOHONA AT KAPOLEI - PHASE II	KAI AU AVE KAPOLEI HI 96707	191016146	58	B REPT	3/6/2009
6688	OHANA SHORES	874 NIULANI RD KAPAA HI 96746	443009049	4	B REPT	3/16/2009
6498	OMAO RANCH LANDS	2-3990-B KAUMUALII HWY OMAO HI 96756	427003005	12	B AMD 2	3/30/2009
6306	PAUKAUILA STREAM CONDO	66-039 WAIALUA BEACH RD HALEIWA HI 96712	166018011	9	FINAL	3/9/2009
6758	RAINBOW VALLEY CONDOMINIUM	1051 PUUOPAE RD KAPAA HI 96746	444008012	2	B REPT	3/27/2009
5631	WAI'ULA'ULA AT MAUNA KEA RESORT (1ST INCREMENT)	OULI WAIMEA HI	362013013	53	SUPPL	3/3/2009
5774	WAI'ULA'ULA AT MAUNA KEA RESORT (2ND INCREMENT)	68-3200 `AMAUI PL KAMUELA HI 96743	362013013	49	SUPPL	3/3/2009
6752	WAIALUA BEACH COLONY MAKAI	69-435 WAIALUA BEACH RD WAIALUA HI 96791	167013035	5	B REPT	3/18/2009
6753	WAIALUA BEACH COLONY WAENA	69-435 WAIALUA BEACH RD WAIALUA HI 96791	167013034	3	B REPT	3/18/2009

0	Preliminary Reports
0	Contingent Final Reports
1	Final Reports
3	Supplementary Reports
17	B Reports
7	B Amendment Reports
28	TOTAL REPORTS

Performance Bonds/ Irrevocable Letters of Credit – Requests for Release – deferred from February 11, 2009 CRC meeting

Deputy Attorney General Wong stated that she is still working on the performance bond legislative history requested by the committee at a previous meeting. She noted that she will provide the information requested on this issue at the next Real Estate Commission meeting. The committee deferred this issue to the April 24, 2009 Real Estate Commission meeting.

CPR Project Registration Applications of Kahului Town Center LLC, a Hawaii Limited Liability Company for CPR Kahului Town Center Master Condominium registration no. 6781 and Kahului Town Center Quadrant 1 registration no. 6632 - Informal non-binding interpretation issued October 10, 2007 that developer may preliminary proceed with submitting the registration application for the proposed nested condominium subject to listed concerns with Committee reserving the rights to refer the issue to declaratory ruling upon receipt of detailed information

Commissioners Kuriyama and Loudermilk remained in attendance, declared a conflict of interest, and recused themselves from discussion and decision making on this issue.

Present on behalf of the developer were Rick Kiefer, attorney for the developer, Kahului Town Center LLC, and Natalie Kim, Vice President of A & B Properties. Condominium Consultant Lloyd Sodetani was present via telephone conference as the consultant reviewing the project submission.

Mr. Kiefer noted that in 2007 he came before the committee to brief them on the use of a new structure, which although is common on the mainland for multi-use projects, has not been done in Hawaii before, a condo within a condo. At that time the CRC voted to issue an informal non-binding interpretation that the developer may preliminary proceed with submitting the registration application for the proposed nested condominium project subject to preservation of the residential unit owners interests in such governance matters as board selection and removal, proposed declaration and bylaw amendments from being diluted at the master level; and that the condominium be lawfully created. Further the Committee reserved the right to refer the issue to declaratory ruling upon receipt of detailed information.

Ms. Kim distributed a schematic design of the project and reported that as envisioned, the Kahului Town Center will be a place where Kahului residents can live, work, and shop all within walking distance. The Project will consist of residential and retail/commercial components. The current plan will take approximately 10 years to develop.

Mr. Kiefer reported that the Kahului Town Center is being redeveloped on an existing block in Kahului as part of the Special Management Area use permit issued by the County of Maui as detailed in the County of Maui's Department of planning letter of April 30, 2007. The entire project has been submitted as a master condominium with four quadrants with intersecting roadways, under

Chapter 514B. He further reported that all necessary documents have been properly filed. He has worked with staff and the condominium consultant to ensure the developer's public report included proper disclosures. The condominium consultant has recommended the issuance of an effective date for the developer's two public reports.

Commissioner Abrams questioned what authority, beyond the common element roadways, will the master association have.

Condominium Specialist Yee questioned if the CC&Rs will be delegated to the Master Association.

Mr. Kiefer responded that the master association will have limited authority over common elements which include the roadways and landscaping. Later the Master Association will oversee the enforcement of the CC&Rs. He further noted that the master association cannot regulate uses within the quadrant associations.

Mr. Kiefer responded that under the CC&Rs, certain things such as expansion to the building would be subject to approval by the Master Association. Once built and sold as is, the owners can do what they want without the governance of the master association. He also noted that there is a provision if the association wants to amend documents for material change to the master plan, it would be regulated at the master association level.

Condominium Consultant Lloyd Sodetani, via tele conference, noted that appropriate disclosures have been made in the developer's public reports. He reported that the master community charter was not available at the time of his review; however, the community charter is no different than any declaration for a resort project and is consistent with other projects.

Mr. Kiefer was questioned as to why the developer chose not to subdivide or do a planned community development. Mr. Kiefer informed the committee of the developer's development circumstances unique to Maui County ordinance, codes, rules and regulations.

Condominium Specialist Yee noted that the governing documents appear to allow each sub association to elect its member to the master association, but cannot remove any other board member, only the member they elected.

Mr. Kiefer noted that the developer has followed the statute and it is no different than any other project filing. A majority is required to remove any member from the master association.

SEO Fujitani queried Mr. Kiefer about the requirement of registering associations.

Mr. Kiefer also noted that a project with more than 5 units or that with continuing development rights would have to register as an association. As the KTC project will have continuing development rights, it would have to register as an association.

Condo Specialist Yee questioned if the project could be registered under land court.

Mr. Kiefer replied that the project does not fall under land court, as it is not a land court property; however, he opined that land court probably would be able to register the land.

Condominium Consultant Sodetani informed the committee that Title Guaranty has already said it would have no problem and would issue the title insurance for the project. A letter to that effect is included in the registration application.

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

Condominium Consultant Sodetani was disconnected at this time.
Commissioners Kuriyama and Loudermilk left the meeting.

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

Commissioners Kuriyama and Loudermilk returned to the meeting.

Requesting informal non-binding interpretation -- Letter from Ron Wilson R (B) Received February 24, 2009 relating to §514B-90, HRS, "Sales contracts before completion of construction"

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to include on the "Developer's Public Report" checklist a specific reference to §514B-89, HRS. In this manner the developer is reminded of its compliance with this section and the compliance then could be reviewed later by the Commission's consultant reviewing the condominium project registration application.

As to the remaining issues expressed in Mr. Wilson's letter of February 22, 2009, the committee indicated that Mr. Wilson be informed to consult a Hawaii licensed attorney familiar with condominium matters, who would be in a better position to assist him with any of his legal concerns.

CPR Project Registration Applications of Kahului Town Center LLC, a Hawaii Limited Liability Company for CPR Kahului Town Center Master Condominium registration no. 6781 and Kahului Town Center Quadrant 1 registration no. 6632 - Informal non-binding interpretation issued October 10, 2007 that developer may preliminary proceed with submitting the registration application for the proposed nested condominium subject to listed concerns with Committee reserving the rights to refer the issue to declaratory ruling upon receipt of detailed information

The Committee reviewed all materials submitted, including the registration applications, supporting documents, and responsive information provided to the Committee, its staff, and its Condominium Consultant, Lloyd Sodetani.

Upon a motion by Commissioner Nishihara, seconded by Commissioner Aiona, it was voted on and carried that based on and limited to the specific facts and circumstances of this particular situation to respectively issue effective dates for the two developer's public reports. Commissioners Kuriyama and Loudermilk recused themselves from voting.

Program of Work: **Condominium Laws and Education - March 19, 2009 Letter from G. Stephen Elisha, Esq. regarding distribution of educational brochures**

The committee deferred this issue to the May 6, 2009 Condominium Review Committee meeting due to the unavailability of Commissioner Suiso, the lead Commissioner on this project.

Government Legislative and Participation Report

Report previously provided in the Laws and Rules Review Committee meeting.

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.

Next Meeting: May 6, 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 11:25 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

April 23, 2009

Date

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