

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: May 6, 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

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
Amy Endo, Real Estate Specialist
David Grupen, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Aron Espinueva, Hawaii Association of REALTORS®
Myoung Oh, Hawaii Association of REALTORS®
John Morris, Community Associations Institute Hawaii Chapter
Phil Nerney, Community Associations Institute Hawaii Chapter
Tracey Wiltgen, Mediation Center of the Pacific, Inc.
Steve Glanstein
Jane Sugimura, HCAAO

Absent: Michele Sunahara Loudermilk, Public / Honolulu Commissioner

Call to Order: Chair Chee called the meeting to order at 9:10 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 Loudermilk 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
 - 1) April 2009
9. Budget and Finance Report

Minutes:

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Gendrano, it was voted on and unanimously carried to accept the minutes of the April 8, 2009 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOUO Registrations

Specialist Stone reported that as of April 30, 2009, 120 AOUOs have successfully registered for the 2009-2011 biennium.

Mediation and Arbitration – April 13, 2009 letter Request for Approval to Expand Dispute Resolution to Include Evaluative Mediation (HRS 514A-131(a)(3) and HRS 514B-71(a)(3); Hawaii Council of Association of Apt. Owners, Community Associations Institute, Mediation Center of the Pacific, Philip Nerney, Condominium Attorney/Mediator, Hawaii Independent Condominium/Co-op Owners, Steve Glanstein, Professional Registered Parliamentarian)

Tracey Wiltgen of the Mediation Center of the Pacific informed the committee that a group of stake holders in the condominium community have been meeting for the past couple of months to address concerns on available dispute resolution models. Currently the mediation centers use a facilitative model of mediation which in the beginning was successful. The scope/growth of mediation now includes legal issues. An evaluative model of mediation offers additional options and if provided, more than likely more cases will be resolved in mediation. The group of stake holders is seeking the Commission's support and staff's assistance to put together a comprehensive evaluative model of mediation to be subsidized with condominium education trust fund monies.

Ms. Wiltgen noted that an evaluative model of mediation would include a qualified panel with subject matter expertise. The AOUOs possibly may have to pay more due to the expertise of the panel members.

Commissioner Suiso noted that he understood that the lack of using mediation was due in part to the lack of willingness of one of the parties to mediate.

Ms. Wiltgen responded that there is a frustration on the board's side knowing there may be nothing to compromise, therefore the unwillingness to mediate. Someone with subject matter expertise and mediator skills can listen, decompress the individual, garner respect and provide an opinion as to strength of each proponent's position. Family court has a similar program. This would save time and provide greater satisfaction to both parties.

Ms. Sugimura, HCAAO, informed the committee that the major condominium organizations support this evaluative model of mediation and will assist in selling the program. They are willing to work with staff in promoting the program. She further noted that Richard Port and his organization, HICCO, are 100% behind the proposal for evaluative model of mediation.

Ms. Wiltgen explained the differences between the facilitative and evaluative models of mediation. Questions followed.

Ms. Wiltgen informed the committee that with the facilitative model of mediation contact is made, a mediator trained in the particular area is assigned. The mediator has an overview of the condominium laws and understanding in that particular area. The mediator may be a good mediator, but does not have enough specialized knowledge of the subject matter to ask the right questions to move the mediation forward. Facilitative mediators are volunteers assigned to the case. It seems that this process of mediation is not greatly used because the process is voluntary and the parties are not provided any feedback or opinion about their claim or defense.

Evaluative mediators will be qualified persons with subject matter expertise who would be able to add an opinion of the strengths and weaknesses of the respective claims and defenses and the likelihood of success if the party wished to pursue litigation. The parties would be able to choose their mediator based on their subject matter knowledge. The rate of satisfaction and agreement should increase.

Commissioner Abrams questioned whether the parties would be able to choose facilitative or evaluative mediation and how would they make their selection.

Ms. Wiltgen responded in the affirmative.

Deputy Attorney General Wong questioned if the current mediators have acquired expertise in the condominium area.

Ms. Wiltgen responded that the mediators have acquired a lot of knowledge, but not expertise in the condominium area, in part due to the small number of condominium mediations. With evaluative mediation they will be looking at recruiting those with subject matter expertise.

Commissioner Nishihara questioned whether the consumer would be knowledgeable enough to decide between facilitative and evaluative mediation, and questioned why not build the evaluative mediation onto the facilitative mediation process instead of having two choices.

Ms. Wiltgen responded that the mediation centers will need to inform the consumers of the differences between the two processes so that the consumer can make an informed decision.

Specialist Yee questioned what amount of public relations the group was planning on doing to promote the evaluative model of mediation. The use of mediation seems very small.

Ms. Sugimura responded that all those represented today are attorneys that work with AOUOs and will encourage the AOUOs to use the evaluative mediation. Currently the boards feel that mediation is a waste of time, but with the new model, it may be beneficial. She also noted that HCAAO, HICCO and CAI Hawaii will also promote the use of mediation through their organizations.

Commissioner Ball noted that she would like to know more about the specific process.

Ms. Wiltgen responded that they have not worked out the total details, it could either be a 2 track system or a one track system.

Commissioner Aiona shared her experience with facilitative mediation. She reported that although the intent was great, the mediator appeared to have no subject matter expertise and was only looking for a win/win situation.

Commissioner Suiso questioned the existence of any statistics on the number of mediations that go through private rather than through the Commission's subsidized mediation program.

Mr. Morris noted that there are many who feel that the facilitative mediation won't work for them and decide to go to a private mediator. Those numbers won't show up in any report submitted to the Commission.

Commissioner Abrams noted support for the group's efforts and encouraged the group to move forward with the program.

Ms. Wiltgen noted that the group is also looking for staff's assistance.

Chair Chee stated that the committee looks forward to receiving a specific proposal to review in the near future.

Condominium Seminars and Symposium – CAI Hawaii Chapter March 12, 2009 "Challenges of Aging Buildings" - Evaluation

Specialist Leong's written evaluation was distributed for informational purposes. She noted that the non-existence of signage directing seminar attendees to the meeting room. It was difficult to locate the meeting room entrance as there was another program ongoing at the Neil Blaisdell Center at the same time.

Condominium Related Articles

The following articles were distributed for informational purposes:

1. *Community Association Management Insider* April 2009
 - a. "Protect Community from Fair Housing Violations by Outside Contractors"
 - b. "Avoid Pitfalls When Leasing Condo Roof Space to Wireless Providers"
 - c. "Assessing Liability for Water Damage Caused by Leaky Roof"

2. "Problem People" *Common Ground* March April 2009
3. *Wai Halana Hawaii Flood News*, Department of Land and Natural Resources Engineering Division April 2009
 - a. "FEMA Introduces New Preliminary Flood Maps for Big Island"
 - b. "Big "I" Commends President Obama on Signing Temporary Extension of Flood Insurance Program Into Law"
 - c. "Understanding the Power of Grandfathering"

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

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

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNITS	REPORT DATE
6592	AINA O KANE	KANE ST KAHULUI HI	237005003	119	B AMD 4/13/2009
6798	267 AND 267-A AKIOHALA STREET	267 & 267-A AKIOHALA ST KAILUA HI 96734	142090016	2	B REPT 4/24/2009
6734	5138 LAWAI ROAD	5138 LAWAI RD KOLOA HI 96756	426006032	2	B REPT 4/8/2009
6321	54-223 KEALA ROAD	54-223 KEALA RD HAUULA HI 96717	154017010	3	B REPT 4/1/2009
6794	807 20TH AVENUE	807 20TH AVE HONOLULU HI 96816	132053014	2	B REPT 4/29/2009
5599	CAPITOL PLACE	1200 QUEEN EMMA ST HONOLULU HI 96813	121009011	399	SUPPL 4/3/2009
5775	HALE ALOHA CONDOMINIUM	790 HOLOPUNI RD KULA HI 96790	223060049	2	SUPPL 4/15/2009
6760	HOALA ME KA MALUHIA	6780 KAHUNA RD KAPAA HI 96746	446004054	2	B REPT 4/3/2009
6781	KAHULUI TOWN CENTER MASTER CONDOMINIUM	KAHUMANU AVENUE KAHULUI HI 96732	237007009	4	B REPT 4/8/2009
6632	KAHULUI TOWN CENTER QUADRANT ONE	PUUNENE & KAMEHAMEHA AVE KAHULUI HI	237007009	40	B REPT 4/8/2009
6656	KALIHIWAI BLUFFS CONDOMINIUM	05-2998 KUHIO HWY KILAUEA HI 96754	452010016	2	B REPT 4/1/2009
5556	KE ALII OCEAN VILLAS	KE ALII ALANUI KIHEI HI	235020020	144	SUPPL 4/15/2009
6785	LAULANI PHASE 11	91-1001 KEAUNUI DR EWA BEACH HI 96707	191149003	17	B REPT 4/24/2009
6311	MAKAHA OCEANVIEW ESTATES	84-621 ALA MAHIKU ST WAIANAHI HI 96792	184002064	68	B AMD 2 4/24/2009
6236	MALUAKA	KEONEOIO RD MAKENA HI 96753	221006037	14	B AMD 2 4/15/2009
6791	MNHA IV LOT 13A CONDOMINIUM	204 WAILAU PL LAHAINA HI 96761	247010009	2	B REPT 4/15/2009
6749	NANI KAMALI I I	6929 KAWAIHAU RD KAPAA HI 96746	444012022	2	B REPT 4/3/2009
6750	NANI KAMALI I II	6941-C KAWAIHAU RD KAPAA HI 96746	444012009	2	B REPT 4/3/2009
6777	NISHIDA CONDOMINIUM	PUUPIOLO RD KAPAA HI 96746	442022071	2	B REPT 4/21/2009
6790	OMAO RANCH LANDS (UNITS 1B AND 3A)	2-3990-B KAUMUALII HWY OMAO HI 96756	427003005	3	B REPT 4/16/2009
6738	PALOS VERDES CONDOMINIUM 2	87-1304 & 87-1304A FARRINGTON HWY WAIANAHI HI 96792	187006013	2	B REPT 4/8/2009
3668	POHAKULOA	LOT 12 KALOKO MAUKA SUBDI N KONA HI	373026024	2	SUPPL 4/3/2009
2859	RAITHAUS CONDOMINIUM	3215C WAIWAE RD LAWAI HI 96765	424002025	2	SUPPL 4/30/2009
6421	ROYAL NAHAKU VILLAS	2637 NAHAKU PL HONOLULU HI 96816	127023003	5	B AMD 4/1/2009
6792	RUBEN CONDOMINIUM	596, 598 & 600 STABLE RD PAIA HI 96779	238002026	3	B REPT 4/15/2009
6789	TOWN HOMES AT KA MAKANA AT HOAKALEI INCREMENT 1 THE	91-1319 KEONEULA BLVD EWA BEACH HI 96706	191146024	16	B REPT 4/15/2009
6730	WEST HAWAII VENTURES	73-4080 HULIKOA DR KAILUA KONA HI 96740	373058010	9	B REPT 4/29/2009

0	Preliminary Reports
0	Contingent Final Reports
0	Final Reports
5	Supplementary Reports
18	B Reports
4	B Amendment Reports
27	TOTAL REPORTS

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

Commissioner Suiso reported that the Commission and staff will be encouraging the download of the educational brochures via the Commission's website. Copies of the brochures are also intended to be provided to the State Library system.

Government and Legislative Participation & Report

SEO Fujitani reported that the House Resolution No. 128 urging the Real Estate Commission to allow developers and attorneys to submit condominium registration filings in electronic format was adopted. The Commission needs to come up with a plan and present its report to the 2010 legislature. Currently the Branch is governed by the Division and therefore will need to work with the Division on this project. One idea raised was to create a database where developers could submit their registration filings, in turn the assigned consultant would be able to log-in and review the filings.

Chair Chee suggested looking into software to assist with the program.

Commissioner Abrams noted that we may want to look into the software program which ARELLO uses for its timeshare registry.

Commissioner Kuriyama questioned whether the condominium consultants are comfortable reviewing files in an e-file format. He noted that reading, understanding, commenting and critiquing a registration filing is difficult to do in an e-file format.

Specialist Yee responded that four of the twelve condominium consultants were okay with reviewing the files in an e-file format.

SEO Fujitani reported on SCR 95 SD1 and HCR 161 on the subject of encouraging the REC to adopt rules for Chapter 514B, HRS. The SEO indicated that although the resolutions did not pass, the REC is going forward with rule making with condominium consultant Lloyd Sodehani volunteering to assist the Commission.

Neighbor Island Outreach

The next neighbor island outreach meetings are tentatively scheduled for July 8, 2009 in Lihue, Kauai. Staff has reserved the State Office conference room.

Condominium Reference Library

Specialist Leong reported that on April 29, 2009, the Real Estate Commission and the Community Associations Institute Hawaii Chapter made a presentation to the Hawaii State Library of 5 sets of reference publications purchased from the National Community Association Research Adopt-a-Library program. The

libraries selected to receive a set of the reference publications are: Hawaii State Library – Main, McCully-Moiliili Public Library, Waikiki-Kapahulu Public Library, Kihei Public Library (Maui), and Lihue Public Library (Kauai). Making the presentation to the State Library Director were Commissioner Mark Suiso, SEO Fujitani, Al Denys, current CAI Hawaii President, Sue Savio, past CAI Hawaii President, and Steve Glanstein, past CAI Hawaii President.

Commissioner Suiso commented that the librarians are very interested in getting this material and being able to provide the public with the reference material.

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: Upon a motion by Commissioner Ball, seconded by Commissioner Aiona, it was voted on and unanimously carried to accept the Condominium Education Fund Financial Report for the period ending March 31, 2009.

Next Meeting: June 10, 2009
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 Chee adjourned the meeting at 9:55 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

May 7, 2009

Date

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