

**CONDOMINIUM REVIEW COMMITTEE**  
Real Estate Commission  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii  
www.state.hi.us/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: February 14, 2001

Time: 11:00 a.m.

Place: Kapuaiwa Room  
HRH Princess Victoria Kamamalu Building  
1010 Richards Street, Second Floor  
Honolulu, Hawaii

Present: Mitchell Imanaka, Chair  
Peter Rice, Vice Chair  
Charles Aki, Member  
John Ohama, Member  
Iris Okawa, Member  
Patricia Choi, Member

Calvin Kimura, Supervising Executive Officer  
Alan Taniguchi, Executive Officer  
Cynthia Yee, Senior Condominium Specialist  
Gina Watumull, Condominium Specialist  
Gordon Arakaki, Condominium Specialist  
Lorene Arata, Real Estate Specialist  
Shari Wong, Deputy Attorney General  
Tammy Norton, Recording Secretary

Excused: Michael Ching, Member  
Alfredo Evangelista, Member  
Casey Choi, Member

Call to Order: Chair Imanaka called the meeting to order at 11:00 a.m., at which time quorum was established.

Chair's Report: No report was presented.

Condominium  
Specialist's  
Report:

**Additional Distribution**

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

- 3.b. Minutes of Previous Meetings
- 4.i. Introduction of Bill Amending Chapter 514A-82(b)(6) – Richard Port, Yacht Harbor Towers – Chapter 514A-3
- 5.a.2) Condominium Projects and Developer's Public Reports – Metes and Bounds
- 6.h. Legislative Acts and Resolutions
  - HB No. 17, HD1
  - HB No. 1225
  - HB No. 1231

Minutes: Upon a motion by Commissioner Rice, seconded by Commissioner Okawa, it was voted on and unanimously carried to accept the minutes of the January 12, 2001 Condominium Review Committee meeting as circulated.

Condominium  
Governance and  
Management:

**AOAO / CMA / CHO Registrations**

Upon a motion by Commissioner P. Choi, seconded by Commissioner Aki, it was voted on and unanimously carried to recommend approval to ratify issuance of effective registration dates for Association of Apartment Owners through January 31, 2001 for the 1999-2000 registration. The associations are as follows:

Garden View	1/8/2001	The Gardens Upcountry	12/27/2000
Laniakea Apartments	1/17/2001	Rolling Meadows Condo	12/27/2000

Specialist Watumull reported that as of January 31, 2001, 1,412 AOAO have successfully registered. Specialist Watumull further reported that according to REBs tracking, 89 CMAs and 111 CHOs are currently registered.

**Mediation and Arbitration – Bill Pertaining to Mediation of Chapter 514A Disputes – Richard Port, Yacht Harbor Towers**

Richard Port reported that he has served on the board of directors for the Yacht Harbor Towers for the past 18 years, three times as the president. He is also the legislative chair of HICCO which he helped form approximately 15 to 16 years ago. Mr. Port further reported that in the past, owners were not allowed to attend meetings, only annual meetings. Mr. Port assisted in taking the matter to the legislature, the outcome of which was a law being passed allowing open meetings.

Mr. Port reported that there is a need for an inexpensive method to resolving disputes that arise between owners and Board of Director's in a condominium. The proposed legislation before the committee today makes mediation mandatory. Most boards don't want to go to mediation. The board is normally advised by its legal counsel to have the owner take them to court. The proposed provision will require mediation of disputes involving sections 82, 83 and 84 of Chapter 514A. Mediation is believed to be a valuable tool in getting the board and owners to sit down together and get an idea of where each party stands in the dispute.

The proposed bill has gone through an evolution with changes being proposed by the Commission and the Mediation Center of the Pacific, Inc.

Mr. Port reported that he is looking for the Real Estate Commission's support of the bill at the legislature.

Chair Imanaka stated that mediation is a good alternative to litigation, but has concerns to what degree the Commission should take a stand. Chair Imanaka questioned if the association's bylaws have a dispute mechanism.

Mr. Port responded in the negative.

Chair Imanaka questioned if the issue has been raised with the board and whether the board would consider making mediation mandatory in the governing documents. He

further expressed the concern that if mediation is made mandatory through legislation, it will then be dictating to all AOA's how problems are to be worked out within their own AOA.

Mr. Port responded that most associations don't want to mediate. The proposed language has been distributed to all board members. Mr. Port noted that it is very difficult to get 65% of the owners to pass a bylaw amendment. Owners are allowed at board meetings. Normally the board will take up the owner's issues first. Boards do not want to work through each and every dispute brought before them. If the provision is passed, the board may be able to send one representative to meet with the owner and mediator to resolve the conflict.

Commissioner Okawa addressed Ms. Elizabeth Kent, Director of The Judiciary's Center for Alternative Dispute Resolution and Tracey Wiltgen, Director of The Mediation Center of the Pacific, Inc. and invited comments.

Ms. Kent raised four issues of concern with the proposed language of HB 1231: 1) whether mediation should be legislated or privately contracted, 2) whether if mediation is mandatory, will there be a coercion to settle, 3) good faith effort and 4) attorney fees and cost. Ms. Kent is concerned that there may be coercion, a pressure to settle. Ms. Kent noted that the good faith issue is not used in the court rules or statutes. Getting people to mediate is the answer. Mandatory mediation is a good thing, but there are many cases that shouldn't be mediated.

Ms. Wiltgen stated that she essentially agrees with Ms. Kent. Mediation does get people to the table to discuss the issues. If every owner was mandated to go through mediation, for every issue, it could cause the board large fees and open up a floodgate of cases. If mediation was made mandatory "before filing a lawsuit," this may ensure that no floodgate is opened.

Mr. Port stated that he is not requesting mandatory mediation for anything other than sections 82, 83 and 84 that have to do with the bylaws.

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

#### **Introduction of Bill Amending Chapter 514A-82(b)(6) – Richard Port, Yacht Harbor Towers**

Mr. Port reported that there is a dispute between two owners at Yacht Harbor Towers. One owner has a plumbing problem and the only way to repair the problem is to go through the lower apartment's ceiling. The owner of the lower apartment has refused entry into their apartment to make the repair to the common element. Mr. Port is proposing changes to the language of section 514A-82(b)(6).

Specialist Watumull reported that staff has been informed by the Office of Consumer Protection that proposed amendments to this section may be in conflict with two sections of the Landlord Tenant Code, specifically, section 521-53 and section 521-73.

Mr. Port stated that under the current Landlord Tenant Code, landlords have rights that condominium owners do not have. Mr. Port stated that he is looking at the Commission for either support of a version of the proposed bill or that the Commission

issue an informal opinion that the association already has the right to enter under the present conditions. Mr. Port is looking at improving and clarifying the language in Chapter 514A.

Chair Imanaka questioned whether a resolution could be made via an amendment to the bylaws. If this is an available mechanism, it should be brought to the attention of the board.

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

**Education Calendar** - Updated calendar of condominium events circulated for information. This information is also provided on the Commission's webpage.

#### **Condominium Seminars – CAI Hawaii Request for Subsidy**

Upon a motion by Commissioner Rice, seconded by Commissioner P. Choi, it was voted on and unanimously carried to recommend approval as CEF subsidized seminars the following CAI Hawaii seminars, subject to the availability of the CEF funds, budget allotment for FY01 and FY02; and further subject to the other terms and conditions of the current contract:

- 1) "Ask the Experts" – March 15, 2001
- 2) "Advanced ABC's, Assembling the Professional Team" – slated for April 2001 (one of 7 modules)
- 3) "ABC's, A Basic Course" – May 5, 2001
- 4) "Insurance Claims & Disputes" – February 17, 2001
- 5) "Rules, Development / Design Review" – April 19, 2001
- 6) "Contracts" – May 26, 2001
- 7) "Alternative Dispute Resolution" – June 21, 2001
- 8) "Legislative Update" – July 19, 2001
- 9) "Covenant Enforcement" – August 16, 2001
- 10) "Termites/Ground Maintenance" – September 15, 2001
- 11) "Fair Housing" – October 18, 2001

#### **Condominium Related Articles**

The article entitled "Update on Nonjudicial Foreclosure by Condominiums" from the January 2001 issue of Hawaii Community Associations was distributed for informational purposes.

Condominium  
Project  
Registration:

#### **Condominium Project Registration - Public Reports Issued**

Upon a motion by Commissioner Okawa, seconded by Commissioner P. Choi, it was voted on and carried to recommend approval to ratify issuance of effective dates for public reports for the month of January 2001 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4507	3726 CLAUDINE STREET	3726 & A CLAUDINE ST HONOLULU HI 96816	(1)3-03-015:035	Final	01/04/01
4534	AARON'S CONDOMINIUM LOT 33-G OF LAWAI HMSTDS	LAWAI HI	(4)2-05-005:080	Final	01/30/01

Condominium Review Committee Minutes  
 Meeting of February 14, 2001  
 Page 5

4532	ALOHA ACRES	KAWAIHAU RD KAPAA HI 96752	(4)4-06-011:001	Final	01/23/01
4539	BALI HAI VILLAS PHASE V BLDG 8 INCR 8	4970 PEPELANI LOOP PRINCEVILLE HI 96722	(4)5-04-005:036	Final	01/02/01
4542	ELIMA LANI CONDOMINIUMS	68-3883 LUA KULA ST WAIKOLOA HI 96738	(3)6-08-003:004	Final	01/30/01
2956	ESTATES AT HAIKU	46-247 HAIKU RD KANEOME HI 96744	(1)4-06-026:093	Suppl 1	01/30/01
4121	HOLOHOLO KU AT PARKER RANCH	RFD KAMUELA HI	(3)6-07-002:017	Cont Fin	01/22/01
4517	HOOKOLE 19	73-1472 HOOKOLE ST KAILUA-KONA HI 96740	(3)7-03-025:019	Final	01/08/01
4502	HUAHUA CONDOMINIUM PROJ	LOT 88 KAAUHUU HMSTDS N KOHALA HI	(3)5-05-008:010	Final	01/10/01
4373	KALUANUI	7226-7238 HAWAII KAI DR HONOLULU HI 96825	(1)3-09-008:059	Final	01/03/01
4538	LILIHA COURT	631 WAIPA LANE HONOLULU HI 96817	(1)1-07-033:006	Final	01/02/01
4527	NANI IKENA CONDOMINIUM	LOT 4 PUU PANE SUB HANAIEI HI	(4)5-01-005:103	Final	01/08/01
4523	OK CORRAL ESTATES	87-2765 MAMALAHOA HWY CAPTAIN COOK HI 96704	(3)7-03-023:037	Final	01/05/01
4547	VILLAGES AT MAUNA LANI THE	LOT 4 N KANIKU DR KOHALA HI	(3)6-08-022:004	Prelim	01/30/01
4371	WAIULU VILLAS	WAIULU ST KAPULEHU-KONA HI 96740	(3)7-02-012:001	Final	01/26/01

Preliminary Reports: 1  
 Contingent Final Reports: 1  
 Final Reports: 12  
 Supplementary Reports: 1  
 Total: 15

Commissioner Rice recused himself as he is the condominium managing agent of project no. 4547.

**Metes and Bounds – Hiroshi Sakai Memorandum, November 30, 2000**

Upon a motion by Commissioner Rice, seconded by Commissioner P. Choi, it was voted on and unanimously carried to recommend approval to send a letter to Mr. Sakai explaining the Commission's policy for requiring metes and bounds descriptions of land areas of the project that are designated limited common element areas.

Program of Work: **Legislative Acts and Resolutions** – copies of the following bills and REC testimony were distributed for informational purposes: HB No. 17, HD1, HB No. 1225 and HB No. 1231.

Executive Session: Upon a motion by Commissioner Rice, seconded by Commissioner Aki, 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 Rice, seconded by Commissioner P. Choi, it was voted on and unanimously carried to move out of executive session.

Condominium  
Governance and  
Management:

**Mediation & Arbitration-Bill Pertaining to Mediation of Chapter 514A Disputes-  
Richard Port Yacht Harbor Towers**

Upon a motion by Commissioner Rice, seconded by Commissioner P. Choi, it was voted on and unanimously carried to recommend to not support the "Proposed Revision to HB 1231" submitted to the Condominium Review Committee on February 14, 2001 by Richard Port due to numerous concerns raised by Elizabeth Kent, Director of The Judiciary's Center for Alternative Dispute Resolution and Tracey Wiltgen, Director of The Mediation Center of the Pacific, and because the Commission feels that the appropriate venue for mandating mediation is the governing documents of a condominium association, rather than through amendments to H.R.S. Chapter 514A.

**Introduction of Bill Amending Chapter 514A-82(b)(6)-Richard Port Yacht Harbor  
Towers**

Upon a motion by Commissioner Rice, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend to not support the amendment to H.R.S. section 514A-82(b)(6) submitted to the Condominium Review Committee on 2/14/01 by Richard Port because the Commission feels that the appropriate venue for expanding condominium association access rights beyond those currently contained in H.R.S. section 514A-82(b)(6) is the governing documents of a condominium association, rather than through amendments to H.R.S. section 514A-82(b)(6).

CMEF Budget &  
Finance Report:

No report presented.

Condominium  
Organizations Forum:

There were no comments, recommendations or concerns received from the following: Community Associations Institute Hawaii Chapter, Alakahi Foundation, Hawaii Council of Association of Apartment 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.

Next Meeting:

March 14, 2001; 11:00 a.m.  
Kapuaiwa Room  
HRH Princess Victoria Kamamalu Bldg.  
1010 Richards Street, Second Floor  
Honolulu, Hawaii 96813

Adjournment:

With no further business to discuss, Chair Imanaka adjourned the meeting at 12:15 p.m.

Condominium Review Committee Minutes  
Meeting of February 14, 2001  
Page 7

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee

Senior Condominium Specialist

March 14, 2001

Date

Minutes approved as is.

Minutes approved with changes; see minutes of \_\_\_\_\_

CY/trv