

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: January 12, 2001

Time: 11:00 a.m.

Place: Maui Board of Realtors
Conference Room
441 Ala Makani Place
Kahului, Maui

Present: Peter Rice, Vice Chair
Charles Aki, Member
Michael Ching, Member
John Ohama, Member
Iris Okawa, Member
Patricia Choi, Member
Casey Choi, Member

Calvin Kimura, Supervising Executive Officer
Alan Taniguchi, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Shari Wong, Deputy Attorney General
Karyn Takahashi, Recording Secretary

Nicki Ann Thompson, Hawaii Association of REALTORS®
Marsha Shimizu, Hawaii Association of REALTORS®
James Chisholm
Betty Miller
Eric C. Ong, Napili Realty, Inc.
Harris D. LeVine
George Morris
Bonnie Baxter
Marian Ringius
Dan Vasquez
Kristy Higbee
Gene Baxter
Nancy Price
David Weiss
Bert Sugimoto

Excused: Mitchell Imanaka, Chair
Alfredo Evangelista, Member

Call to Order: Vice Chair Rice called the meeting to order at 11:01 a.m., at which time quorum was established.

Chair's Report: No report was presented; however, Vice Chair Rice thanked everyone for participating at today's meeting.

Condominium
Specialist's
Report:

Additions to the Agenda

Upon a motion by Commissioner Aki, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend to accept the additions to the agenda as follows:

- 4. Condominium Governance and Management
 - f. Condominium Seminars
 - 2) "Proposal to Assist the Real Estate Commission in Broadening its Programs in the Area of Condominium Education" – Hawaii Association of REALTORS® (CEF Subsidy)

Minutes: Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the minutes of the December 14, 2000 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO / CMA / CHO Registrations

Senior Condominium Specialist Yee reported that as of December 31, 2000, 1,420 AOAO registrations have been received and 1,408 AOAOs have successfully registered.

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

Nihi Gardens 12/20/2000 Punahale Professional Bldg. 12/12/2000

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

Condominium Seminars – CEF Subsidy Request "How to Conduct Successful Annual and Special Association Meetings" January 20, 2001

Upon a motion by Commissioner Ching, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend approval of CAI's seminar "How to Conduct Successful Annual and Special Association Meetings" January 20, 2001, as a CEF subsidized seminar, subject to the terms and conditions of the current contract.

Condominium Seminars – “Proposal to Assist the Real Estate Commission in Broadening its Programs in the Area of Condominium Education” – Hawaii Association of REALTORS® (CEF Subsidy)

Ms. Marsha Shimizu, Director of Products and Services, Hawaii Association of REALTORS®, reported that they are planning to offer an ARELLO Fair Housing Seminar “Fair Housing Beyond 2000.” This is a three hour seminar focusing on fair housing laws and current issues. The course centers on issues involving discrimination, fair housing laws, and an introduction to the Americans with Disabilities Act.

Vice Chair Rice noted that the cost seems high. Ms. Shimizu responded that the cost breakdown is just an approximation and noted that the instructor, Tony Duncanson, will be coming from Virginia.

Commissioner Okawa inquired what the projected attendance would be. Ms. Shimizu responded a possible attendance of 500 individuals for the Oahu session.

Commissioner P. Choi inquired on the attendance cost. Ms. Shimizu responded individuals would be charged \$10 - \$15 to attend.

Commissioner Ching inquired on the capacity for the seminar. Ms. Shimizu responded that they are looking into rooms with a large capacity as they wish to attract as many people as possible.

Upon a motion by Commissioner Ohama, seconded by Commissioner Okawa, it was voted on and unanimously carried to recommend approval to accept the proposal dated January 5, 2001 to provide condominium education for fiscal year 2001 to condominium apartment owners of registered associations, and to enter a contract for the same for the initial period terminating June 30, 2001, with a REC's option to automatically renew the contract for subsequent fiscal years, subject to the availability of condominium education funds (CEF) and the budgeted allotment for condominium seminars for FY 2001. It was further recommended that HAR's initial request for subsidy of the “ARELLO's Fair Housing Seminar” (Oahu, Maui and Hawaii seminars), be subsidized in the amount not to exceed \$9,300 plus an additional subsidized amount per pre-registered condominium apartment owner of a registered association of apartment owners of \$10, subject to the availability of condominium education funds (CEF) and the budgeted allotment for condominium seminars for FY 2001.

Condominium Related Articles

The articles entitled “Investigative Reports” and “Howdy, Neighbor” from the November/December 2000 issue of *Common Ground* were distributed for informational purposes along with the article entitled “Measure For Measure” from the Special Bonus Issue of *Common Ground*.

Condominium Project Registration - Public Reports Issued

Condominium Project Registration: Upon a motion by Commissioner Ching, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend approval to ratify issuance of effective dates for public reports for the month of December 2000 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4526	2009 & 2009-A MAKIKI ST	2009 MAKIKI ST HONOLULU HI 96822	(1)2-05-003:066	Final	12/22/00
4537	2040 ALEWA DRIVE	2040 ALEWA DR HONOLULU HI 96817	(1)1-08-027:033	Final	12/22/00
4394	726 WAIANUENUE AVENUE	726 WAIANUENUE AVE HILO HI 96720	(3)2-03-026:018	Final	12/26/00
4439	ALII LANI PHASE 1F	75-6081 ALII DR KAILUA-KONA HI 96740	(3)7-05-020:074	Final	12/22/00
4525	ALII LANI PHASE 1G	75-6081 ALII DRIVE KAILUA-KONA HI 96740	(3)7-05-020:074	Prelim	12/12/00
4446	C & D HEIGHTS	LOT 1 KALOKO RD KAILUA-KONA HI	(3)7-03-017:030	Final	12/01/00
4533	CORTEBELLA PHASE 5	MAKALAUNA PL EWA BEACH HI 96706	(1)9-01-010:057	Prelim	12/13/00
4531	DEAL'S CONDOMINIUM	4685 KULI RD KALAHEO HI 96756	(4)2-04-001:064	Final	12/27/00
4496	HONO CONDOMINIUM PROJECT	HONOMAKAU/PUEHUEHU KOHALA HI	(3)5-04-002:011	Final	12/13/00
4514	KAMANU PLAZA	LOT 35 MAIAU & KAMANU ST KONA HI	(3)7-03-051:096	Prelim	12/06/00
4510	LOKAHI GARDEN SANCTUARY	KAUHUHU N. KOHALA HI	(3)5-05-007:010	Final	12/08/00
4535	MAKAHUENA LIGHT LOOKOUT CONDO	1630 PEE RD KOLOA HI 96756	(4)2-08-020:019	Final	12/27/00
4519	MANGO HILLS	2506 N SCHOOL ST HONOLULU HI 96819	(1)1-03-011:078	Prelim	12/05/00
4393	MAUI KAMAOLE PH III-CLSTR F	2777 S KIHEI RD KIHEI HI 96753	(2)3-09-004:082	Final	12/27/00
4468	NA HALE O MAKENA	MAKENA KEONEOIO RD MAKENA HI 96753	(2)2-01-007:101	Cont. Final	12/20/00
3475	PRINCEVILLE LOT 6	KAPA'KA RD HANAIEI HI 96714	(4)5-03-008:006	Suppl 1	12/18/00
3540	PUALANI TERRACE - COMMERCIAL INCR	MAMALAHOA HWY KEALAKEKUA HI 96750	(3)8-01-013:017	Suppl 1	12/15/00
2195	ROLLING MEADOWS CONDO	KINI ST KAPAA HI 96746	(4)4-06-007:061	Suppl 3	12/28/00
4540	TERRAZA, PHASE 5	MAKALE'A ST EWA BEACH HI 96706	(1)9-01-010:054	Prelim	12/29/00
4491	TERRAZZA PHASE 4	91-133 MAKALE'A CIRCLE EWA BEACH HI 96706	(1)9-01-010:048	Final	12/07/00

Preliminary Reports: 5
 Contingent Final Reports: 1
 Final Reports: 11
 Supplementary Reports: 3

Total: 20

Project Statistics

Project statistics for the period covering October 1 – December 29, 2000 was distributed for informational purposes. Commissioner Ching noted that the average time for review has substantially improved.

Lakeside Villas II, CPR # 4506

Senior Condominium Specialist Yee reported that the developer of Lakeside Villas II is requesting that the Commission issue an effective date for the developer's final public report for the condominium project where the following exists:

1. The land is subject to a deed restriction that no structure will be permitted on the property except a single-family dwelling and, if permitted, a detached guest house or servant's quarters;
2. The restriction will expire on June 30, 2001;
3. The developer has constructed two storage sheds on the property;
4. Proposed disclosure that the present improvements (storage sheds) appear to violate the deed restrictions;
5. Proposed indemnity agreement for any costs associated with the removal of the shed and agreement to rescind the transaction if the restriction prevents a buyer from building; and
6. Representation that seems unlikely that anyone would be enforcing the restrictive covenant.

Senior Condominium Specialist Yee reported that the Chair of the Condominium Review Committee, SEO and herself arrived at an initial consensus about the non-issuance of an effective date based on a policy of adhering to the deed restrictions.

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

Program of Work:

Recodification of Chapter 514A

SEO Kimura reported that Gordon Arakaki has been hired as the recodification attorney.

Interactive Participation with Organizations – Report on the 49th National Conference of CAI

A written report submitted by Senior Condominium Specialist Yee was distributed for informational purposes. Commissioner P. Choi will provide a separate report about the sessions she attended.

Senior Condominium Specialist Yee reported that Commissioner P. Choi and herself attended the 49th National Conference of the Community Associations Institute in Nashville, TN. About 423 individuals registered for this conference. However, participants did not fill the seminar rooms like they did earlier at the 48th National Conference in Anaheim, CA, held in May 2000. Nevertheless, the level of participation did not detract from the invaluable information and practical insights

gleaned from the various presentations. As always the "attorney shop talk," other "shop talk" sessions, and networking opportunities provided the most practical and beneficial updates.

Senior Condominium Specialist Yee reported that the sessions she attended included a legislative and regulatory issues briefing, the electronic signatures in global and national commerce act update, summary of amicus curiae activity, new trends in fair housing and premises liability update, trends in legislation for community associations report, policy governance, sick building syndrome and many other informative sessions. The committee acknowledged receipt of the submitted report.

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 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:

At this time, Harris D. LeVine, member of the Board of Directors for AOA Papakea, requested that the Commission consider legislation to modify Section 514A-92.1, HRS.

Mr. LeVine reported that in 1975 the first part of the Papakea project was completed and within two years they lost 15 feet of shoreline frontage. They subsequently built a retaining wall and was assured by the architect that the sand would not wash away. However, in about ten years the sand disappeared and the foundation of the sea wall was exposed.

It was also discovered that the wall was built on State of Hawaii land. That matter has been corrected by an easement. However, the State has stipulated that if the cost of a wall repair exceeds \$500,000 the easement will become invalid.

Mr. LeVine informed the committee that should the wall be breached by wave action, Papakea would face land erosion that could reach its three beachfront buildings and cause extensive building damage. He added that they are not able to obtain erosion insurance coverage.

Mr. LeVine reported that Papakea can afford to pay to protect the sea wall; however, the expenditure would be to build outside the common area and the law states that they need 90% of the condominium owners approval for such an expenditure.

Mr. LeVine requested that legislation be created to add the following statement to the aforementioned section: "The expenditure of funds to assure the physical integrity of shoreline areas by construction and maintenance of approved offshore structures and sand or rock fill shall require only a majority voted approval of Homeowners."

Vice Chair Rice informed Mr. LeVine that the Commission is mandated by the Legislature to conduct a review of Chapter 514A and formulate recommendations for recodification. The Committee will take his suggestions under advisement and refer the issues for consideration as part of the review of Chapter 514A.

Mr. LeVine inquired how soon this change could take place. Vice Chair Rice responded that there is no telling how long it would take, the Commission does have the mechanism to recommend modification of the condominium law, but it will take time to make any changes.

SEO Kimura informed Mr. LeVine that this legislative session's deadline for the introduction of administration bills has passed and individuals stand a better chance working with their legislator to introduce bills. It was recommended that Mr. LeVine seek legal advice. Section 514-92 may not be applicable to this situation and may fall under section 514A-83.6 as an emergency situation.

Deputy Attorney General Wong noted for Mr. LeVine that the Commission has identified his problem and is currently undergoing recodification of Chapter 514A. They will be consulting with the recodification attorney about the issues discussed.

At this time, Mr. Dan Vasquez, Destination Maui, inquired if owners are allowed to view ballots. Senior Condominium Specialist Yee replied yes, they have 30 days to inspect ballots as per Section 514A-83.5(4)(d).

At this time, Mr. Gene Baxter informed the committee that he owns a unit in Haleakala Shores, which is zoned for long-term rental only; and that he purchased his unit in 1991 and has had his unit in the vacation rental pool. He reported that he recently had a complaint lodged against him. He received an extension to continue to do business until January 2, 2001; and subsequently, received a verbal approval to continue business until mid-march. Mr. Baxter added that it appears at the time of purchase the realtor may not have disclosed any rental restrictions.

Mr. Baxter requested the Commission introduce a bill to allow private owners do whatever they wish with their private property. SEO Kimura replied that the Commission does not have authority over zoning issues and does not participate in zoning issues unless asked by the county. He added that Mr. Baxter should consider contacting and working with their legislators.

Vice Chair Rice informed Mr. Baxter that he should seek legal counsel if he feels that he had a problem with representation made at the time of his purchase.

At this time, Mr. George Morris stated that last weekend he observed an open house at the Maui Park Shores condominium being conducted by a realtor and that it appears that the realtor may have incorrectly shown and represented the condominium. Vice Chair Rice replied that it is every licensed person's responsibility to make appropriate disclosures.

SEO Kimura added that enforcement of real estate licensing law is delegated by law to the Regulated Industries Complaints Office ("RICO"). Any possible licensing violations should be reported directly to RICO.

Commissioner P. Choi stated that one way to educate individuals is to contact the Maui Board of REALTORS®, speak with the president and have them create some type of education.

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

Condominium Project Registration: **Lakeside Villas II, CPR # 4506**

Upon a motion by Commissioner Ohama, seconded by Commission Aki, it was voted on and carried to recommend denial of the developer's request for an informal non binding decision for the issuance of an effective date for the developer's public report. Commissioner Ching abstained from voting.

CMEF Budget & Finance Report: No report presented.

Next Meeting: February 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, Vice Chair Rice adjourned the meeting at 12:14 p.m.

Respectfully submitted:

Cynthia M. L. Yee
Senior Condominium Specialist

Date

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