

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: October 10, 2007

Time: 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.

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 – early departure
Michele Sunahara Loudermilk, Public / Honolulu Commissioner – early departure
Frances Gendrano, Broker / Honolulu Commissioner

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Cheryl Leong, Condominium Specialist
David Grupen, Condominium Specialist
Diane Choy Fujimura, Senior Real Estate Specialist
Amy Endo, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Richard Kiefer, Kiefer Merchant & Garneau LLC
Stephanie Thompson
Charlie Loomis

Absent: Annette Aiona, Broker / Hilo Commissioner

Call to Order: Chair Chee called the meeting to order at 10:53 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
 - 3) CPR Project – Informal Non-Binding Interpretations pursuant to §16-201-92, HAR
 - b) Master Association, §514B-3 "Definitions", §514B-46 "Merger of projects or increments", HRS, Part VI, "Management of Condominiums" Chapter 514B, HRS
6. Program of Work, FY 08
 - i. Interactive Participation with Organizations
 - m. Condominium Specialist Office for the Day

Additions to the Agenda

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Ball, it was voted on and unanimously carried to recommend accepting the addition to the agenda as follows:

5. CPR Registration and Developer's Public Reports
 - a. Condominium Projects and Developer's Public Reports
 - 4) Owner-Occupant

Minutes:

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Nishihara, it was voted on and unanimously carried to accept the minutes of the September 12, 2007 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

It was reported that as of September 30, 2007, 1,448 AOAOs have successfully registered.

Condominium Seminars and Symposium – "New Condominium Law Seminar" - Kona and Hilo, September 10 & 11, 2007, Summary of Surveys

It was reported that both the Kona and Hilo seminars were well attended. The seminars were advertised via direct mailout and newspaper advertisements. In Kona there was a total of 50 participants (participants could check more than one status on the survey), 23 indicated they were unit owners (5 of which were board members), 15 managing agents, 23 real estate licensees, 1 developer, 1 attorney, and 2 from the general public. Since the number of real estate licensees were significant, it was necessary to separate the participants into two rooms and

provide two but concurrent separate presentations; one targeted to educate the unit owners and managing agents and another targeted to educate the real estate licensees and developers. In Hilo there was a total of 20 participants; 15 unit owners (4 of which were board members), 5 managing agents, 1 developer, 6 real estate licensees, 1 attorney, 3 from the general public, and 1 other.

The goals of the educational seminars are to illustrate the benefits of the new condominium law, Chapter 514B, HRS; make "opting in" the norm for condominiums operating under the original condominium law, Chapter 514A, HRS; and make developers aware that governing documents of condominiums created after July 1, 2006 must include the new condominium management provisions of Chapter 514B, HRS.

CAI Hawaii Seminars

CAI Hawaii Chapter submitted its request for approval of 2008 CAI Hawaii seminars for seminar subsidy per its contract with the Real Estate Commission, State of Hawaii. The current contract is in effect through June 30, 2008 and the State has the option to renew this contract for up to three (3) successive one (1) fiscal year terms, subject to the availability of the CEF, etc.

Subject to CAI Hawaii satisfying the applicable terms and conditions of the August 24, 2006 contract for the existing contract period, the Commission delegated to staff at its September 22, 2006 Commission meeting to approve CAI Hawaii's requests for CEF subsidy of proposed seminars so long as the seminar's subject and topic is similar to a seminar subject and or topic which the Commission has approved in the past. All other requests shall be submitted to the Condominium Review Committee for prior approval.

Staff has approved the following per the Commission's delegation:
Avoiding Disasters at Annual Meetings – January 26, 2008
Dealing with Hazards Asbestos/Mold, etc. – March 27, 2008
ABC's – April 26, 2008
Disaster Preparedness & Health Issues – June 28, 2008

Should the contract between CAI Hawaii and the Commission be extended, the following seminars are also approved via staff delegation:

Legislative Update – July 24, 2008 (Oahu), July or Aug 2008 (Maui Location)
Covenants Enforcement – August 21, 2008
Top Traits of Boards and Managers – September 25, 2008

Upon a motion by Commissioner Suiso, seconded by Commissioner Ball, it was voted on and unanimously carried to recommend approval for CEF subsidies the CAI Hawaii seminar entitled "Defending & Winning Suits Against the Associations or Boards" October 25, 2008 subject to the terms and conditions of the existing August 24, 2006 contract CAI Hawaii has with the Commission should the contract be extended.

Condominium Related Articles

The following article from the September 2007 issue of *Hawaii Bar Journal* was distributed for informational purposes: "A Report on Consumer Protection in Hawaii", §514B-104(a)(4).

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of September 2007 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNIT TOTAL	REPORT	DATE
6436	66-126 & 66-128 WAIALUA BEACH ROAD	66-126 & 66-128 WAIALUA BCH RD WAIALUA HI 96791	166034074	2	B REPT	9/25/2007
6394	AHUIMANU PLACE ESTATES	47-414 AHUIMANU PL KANEHOE HI 96744	147003005	2	B REPT	9/4/2007
6391	COUNTRY CLUB VILLAGE 6	3009 ALA MAKAHALA PL HONOLULU HI 96818	111065033	514	B REPT	9/10/2007
6132	DACAY PROJECT	6985 POMAIIKAI ST WAIALUA HI 96791	442014060	2	FINAL	9/13/2007
6434	DRAGONFLY'S REST	55-255 & 55-249 KAMEHAMEHA HWY LAIE HI 96762	155001058	2	B REPT	9/21/2007
6285	IOLANI REGENT	2522 DATE ST HONOLULU HI 96826	127022014	82	B AMD	9/27/2007
6389	IOSEPA ESTATES	55-608 IOSEPA ST LAIE HI 96762	155015021	2	FINAL	9/20/2007
6334	ISLAND COURTYARDS AT MILILANI MAUKA (INCR A)	UKUWAI ST MILILANI HI 96789	195049078	48	B AMD	9/25/2007
6234	ISLAND COURTYARDS AT MILILANI MAUKA (INCR B)	UKUWAI ST MILILANI HI 96789	195049078	80	B AMD	9/25/2007
6410	JUAREZ CONDOMINIUM	10 WAILAU PL LAHAINA HI 96761	247009047	2	B REPT	9/6/2007
6428	KAHU' AINA FARMS	7480 KOOLAU RD KILAUEA HI 96754	451003006	10	B REPT	9/26/2007
6160	KAI ANI VILLAGE	1367 S KIHEI ROAD KIHEI HI 96753	239002091	99	B AMD 2	9/14/2007
6366	KALANI CONDOMINIUMS	464 KALANIKOA ST HILO HI 96720	322035026	24	B REPT	9/6/2007
6390	KAUILA APARTMENTS CONDOMINIUM	346 KAUILA ST HILO HI 96720	326005009	18	B REPT	9/28/2007
6409	KEAWE BUSINESS CENTER ULUPONO SHOWROOMS	68 ULUPONO ST LAHAINA HI 96761	245010053	10	B REPT	9/18/2007
6383	LILIKOI PLACE CONDOMINIUM	3577 LILIKOI PL LAWAI HI 96756	425011057	2	B REPT	9/24/2007
6429	MAKAHA VALLEY ESTATES II	84-770 ALAHELE ST WAIANAE HI 96792	184029146	2	B REPT	9/25/2007
6375	MAKANI WAI CONDOMINIUM	46 ILIAHI WAY LAHAINA HI 96761	247010074	2	B REPT	9/26/2007
6415	MAUKA 40 CONDOMINIUM	ILIAHI WAY LAHAINA HI 96761	247001025	2	B REPT	9/6/2007
6418	NAKUINA PARKSIDE	1303 NAKUINA ST HONOLULU HI 96819	113007088	2	B REPT	9/13/2007
6318	OLOHENA GARDENS	6695 OLOHENA RD KAPAA HI 96746	444002099	2	B REPT	9/13/2007
6220	OLOHENA MAUKA	6250 OLOHENA RD KAPAA HI 96746	444003038	2	B REPT	9/10/2007
5906	PIO OCEAN VIEW APARTMENTS THE	509 PIO PL WAILUKU HI 96793	238037043	19	SUPPL	9/28/2007
6405	PUKALANI PLACE ESTATES	3791 PUKALANI PL HONOLULU HI 96816	133016053	2	B REPT	9/27/2007
6352	PUNA`NA ESTATES	4200 OMAO ROAD KOLOA HI 96756	427006134	2	B REPT	9/6/2007
6343	SCHURCH ESTATES CONDOMINIUM	2497 C & 2497 D PUU RD KOLOA HI 96756	423003024	3	B REPT	9/21/2007
6412	SLATER CONDOMINIUM	45 & 55 WAIPIO RD HAIKU HI 96708	229005054	2	B REPT	9/6/2007
6305	WAIPIO BUSINESS CENTER	94-1363 MOANIANI ST	194128005	99	B AMD 2	9/28/2007

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6368	WUEST CONDOMINIUM	WAIPAHU 524 KAI HELE KU ST LAHAINA	HI 96797 HI 96761	247009031	1	B REPT	9/13/2007
6420	WILD WEST CONDOMINIUM	WAILAU PL LAHAINA	HI 96761	247001025	2	B REPT	9/6/2007
0	Preliminary Reports						
0	Contingent Final Reports						
2	Final Reports						
1	Supplementary Reports						
22	B Reports						
5	B Amendment Reports						
30	TOTAL REPORTS						

Informal Non-Binding Interpretations pursuant to §16-201-92, HAR, §514B-92, HRS, Use of Purchaser’s Deposits to Pay Project Costs and “building permit”

The issue was deferred as the developer and the condominium consultant are working on resolving any issues.

Owner Occupant

Upon a motion by Commissioner Suiso, seconded by Commissioner Nishihara, it was voted on and unanimously carried to ratify those Real Estate Branch Staff issued “no action” letters, pursuant to the Commission delegation to staff per the July 28 and September 22, 2006 Real Estate Commission meetings, and pursuant to §514A-107(b) or §514B-98.5, HRS, for the period August 1, 2006 through September 30, 2007:

<u>Date</u>	<u>Owners / Project Name/Unit Number</u>	<u>Extenuating Circumstance</u>
8/22/06	Torigoe, Francis & Bernice Colony at the Peninsula, Unit 5250	Serious illness
12/1/06	Christman, Claudia The Golf Villas at Mauna Lani Resort, Unit L4	Serious illness
4/24/07	Wang, William Kai Malu at Wailea, Unit 17A	Unforeseeable Job or Military Transfer
5/7/07	Coflin, Hugh Kai Malu, Unit 20A	Unforeseeable Job or Military Transfer
5/15/07	Ipaktchi, Farhad Kai Malu at Wailea, Unit 13A	Unforeseeable Job or Military Transfer
5/29/07	Lewis, Sky Kanani Wailea, Unit 5	Serious Illness
6/18/07	Shumard, Michael Kai Malu at Wailea, Unit 30B	Unforeseeable Job or Military Transfer
7/24/07	Shumard, Jerry Kai Malu at Wailea, Unit 34A	Serious Illness
8/27/07	Russell, Scott Kai Malu at Wailea, Unit 36A	Unforeseeable Job or Military Transfer
9/13/07	Honig, Fredrick Kai Malu at Wailea, Unit 55B	Unforeseeable Job or Military Transfer

Consultants

Upon a motion by Commissioner Nishihara, seconded by Commissioner Ball, it was voted on and unanimously carried to issue a Certificate of Appreciation to

Michael T. Tsubata, Condominium Consultant, in appreciation for his many contributions to condominium project reviews since 1977.

Case Law - "Hawaii real estate suit filed over noisy frog" *Honolulu Advertiser.com* September 14, 2007

The article was distributed for informational purposes relating to developer's public report disclosure issues.

Program of Work:

Condominium Laws and Education

Staff will be presenting its three hour free seminar entitled "Condominium Seminars II" on October 19, 2007 in Kauai at the Hilton Kauai Beach Resort and on October 24 in Maui at the J. Walter Cameron Center. The seminar includes a closer examination of the impact of the new condominium law. Admission is free and open to the public.

Government and Legislative Participation and Report

Staff has been providing the Auditor's office with information requested. The Auditor's preliminary report on SCR 160 should be issued shortly.

Interactive Participation with Organizations – Honolulu Board of Realtors, October 15, 2007

Real Estate Branch staff will participate as speakers at the Honolulu Board of Realtors Real Estate Summit to be held on October 15, 2007.

Interactive Participation with Organizations – Community Associations Institute

Upon a motion by Commissioner Gendrano, seconded by Commissioner Suiso, it was voted on and unanimously carried to approve sending two participants, Senior Condominium Specialist Cynthia Yee and Deputy Attorney General Wong, to the CAI Law Seminar, subject to receipt of the necessary approvals and budget.

Neighbor Island Outreach – Maui

The next neighbor island outreach will be held on the island of Maui. Date to be determined.

Condominium Specialist Office for the Day

Condominium Specialist will conduct Specialist Office for the Day in conjunction with the Condominium Seminars II being held on October 19 in Kauai at the Hilton Kauai Beach Resort and on October 24 in Maui at the J. Walter Cameron Center.

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.

Condominium Project Registration: **Master Association, §514B-3 “Definitions”, §514B-46 “Merger of projects or increments”, Part VI, “Management of Condominiums” Chapter 514B, HRS**
Commissioners Loudermilk and Kuriyama recused themselves from discussion and decision making due to a conflict of interest. Upon advice of Deputy Attorney General Wong, Chair Chee allowed Commissioner Loudermilk and Kuriyama to remain during the discussion of these issues.

Rick Kiefer, attorney for the developer, A & B Properties was present to answer committee members questions. Mr. Kiefer stated that A & B Properties would like to use the nested condominium approach in the development of the Kahului Town Center project, 20 acres of urban parcel located in central Kahului. Mr. Kiefer distributed for informational purposes conceptual site plans. The Kahului Town Center is one large block which will be divided into 4 blocks bisected by intersecting roadways which have been SMA approved. The developer is currently working on obtaining the building permits. Mr. Kiefer noted that phased condos eventually merge and have one association. In the case of a mixed use condo consisting of commercial and residential units, this would be a problem. There is a desire and a need to create separate condominiums and minimize the foreseeable problems.

Mr. Kiefer noted that this is a new concept for Hawaii and are working on the following: 1) working with REC staff and the real estate community; 2) ensuring that the buyers are protected, talked to the title companies to ensure that titles will be issued; 3) will issue full and detailed disclosures on how the structures will work; 4) benefit for mixed use projects.

It was reported that A & B’s proposal includes a nested condominium consisting of four separate blocks divided by two intersecting roadways. Each block would be developed for either commercial use or mixed commercial/residential use. The master condominium would only have the intersecting roadways as a common element and would have no responsibility for operations within the subassociations. Each block will set up its own condo within a condo and form its own subassociation. The master association will have 4 board members with each of the board members representing a representative board member from each of the 4 subassociations. The board of the subassociation will elect its representative to the master association.

Mr. Kiefer was questioned as to the registration with the Commission and fidelity bond coverage for the master association which will consist of less than five units.

Mr. Kiefer responded that section 514B-101's general description of the applicability of Part VI states that condominiums consisting of 5 or fewer units can be exempt from Part VI only if they are not subject to any continuing development rights. The Kahului Town Center master condominium will be subject to continuing development rights, including the right to develop the 4 sub-condominiums and the right to add surrounding parcels to the master condominium as development progresses. Therefore, the master condominium will be subject to Part VI, including section 514B-149's restrictions on the handling of funds and the association dispute mediation and arbitration provisions in Section 161 and 162.

Deputy AG Wong questioned how the master association will deal with a two to two tie in decision making or will the master association require a unanimous decision.

Mr. Kiefer responded that the master association would require at minimum a 3 of 4 concurrences.

The committee discussed the issue of board member removal and was informed by Mr. Kiefer that there are two ways in which a board member can be removed, either through your individual subassociation or going directly to the master association board and convincing the other members to go along with them.

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and carried to take the matter under advisement. Commissioners Kuriyama and Loudermilk abstained from voting.

Commissioners Kuriyama and Loudermilk were excused from the meeting at 11:55 a.m.

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

Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and unanimously carried to issue an informal non-binding interpretation that the developer may preliminarily 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 reserves the right to refer the issue to declaratory ruling upon receipt of detailed information.

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Next Meeting: November 19, 2007
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.
King Kalakaua Meeting Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii

Adjournment: With no further business to discuss, Chair Chee adjourned the meeting at
12:10 p.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

November 9, 2007

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____

CY/tn/071031