

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: December 12, 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: Mark Suiso, Vice Chair, Public / Honolulu 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

Calvin Kimura, Supervising Executive Officer
Neil Fujitani, Executive Officer
Cynthia Yee, Senior 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: Dennis Lombardi, Esq., Case Lombardi & Pettit
Esther Han, Esq., Case Lombardi & Pettit
Myoung Oh, Hawaii Association of Realtors

Absent: William Chee, Chair, Broker / Honolulu Commissioner
Louis Abrams, Broker / Kauai Commissioner

Call to Order: Vice Chair Suiso called the meeting to order at 9:35 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.

Chair Chee and Commissioner Abrams were excused from the meeting. Prior notification of their 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
4) Owner-Occupant
 - c. Consultants – Report on the December 3, 2007 Consultant's Forum/Workshop
 - e. Request for Informal Non-Binding Interpretation of §514B-31 (Creation), §514B-101 (Applicability; exceptions), §514B-51 (Registration required; exceptions), §514B-81 (Applicability; exceptions), §514B-54(a)(4), HRS – David Andrew, Esq. memorandum dated November 29, 2007
 - f. Request for Informal Non-Binding Interpretation of §514B-92(b)(3)(C)(ii) "Building permit for the Project" – Dennis M. Lombardi, Esq., Esther Han, Esq., Case Lombardi & Pettit

Minutes:

Upon a motion by Commissioner Ball, seconded by Commissioner Loudermilk, it was voted on and unanimously carried to accept the minutes of the November 19, 2007 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Stone reported that as of November 30, 2007, 1,501 AOAOs have successfully registered.

Mediation and Arbitration

Specialist Yee informed the committee that RICO was contacted by an owner regarding mediation. The owner had contacted the Mediation Services of Maui (MSM) to request CMEF-subsidized mediation of disputes with the AOAO's board. When the AOAO board did not respond to MSM's notification of the request for mediation, MSM closed the case. The owner then attempted to request for a hearing through DCCA's Condominium Dispute Resolution (CDR) Program. According to the information provided by RICO, in order to submit a request for hearing, the owner is required to identify the name of the mediator or mediation services and the final date of mediation. The owner requested this information from MSM and was declined by MSM citing its policy not to provide the information.

Specialist Yee informed the committee that the mediation contracts do not specify that they provide the specific information to owners. The reported decisions from OAH indicate that the parties have to participate in mediation as a condition of participation in CDR. The fact that a case was paid through the Condominium Education Trust Fund is public information. Per the contract with the State, the mediation provider is required to provide the Commission, as understood, with the name of the registered association, mediation issue and disposition of the mediation as part of its billing.

Deputy Attorney General Wong noted that the Commission could build into its contract that the name of the owners participating in the mediation be provided for purposes of the hearings office should a request for a CDR be attempted. She also noted that the General Conditions of the State Contract has a provision which states "if not confidential, then public."

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Nishihara, it was voted on and unanimously carried to ask for the names of the individuals of the registered association participating in the mediation under the General Conditions of the contract and should the Commission go out for Contract in the future, require the names of the registered condominium association and owner(s) participating in mediation. Staff to work with the Deputy Attorney General on any contract or general condition terms.

Ad Hoc Committee on Condominium Education and Research

Vice Chair Suiso reported that seminars on Chapters 514A and 514B were offered on Oahu and the neighbor islands. The seminar handouts are available on the web and can be used as a basis for a narrative condominium education product. Procurement for a consultant to write the narrative based on the seminar handouts appears feasible.

Condominium Seminars and Symposium – CAI Hawaii

It was reported that CAI Hawaii has submitted its invoice for the Boards Do's and Don'ts seminars offered on the islands of Oahu and Maui on October 18 and 20, respectively. CAI Hawaii is requesting for reimbursement of speaker fees after the fact.

SEO Kimura noted that this has occurred before and that staff should work on a procedure with CAI Hawaii whereby CAI Hawaii will come in for approval with estimated cost items prior to the seminar occurring. Recommend upon receipt of any notice/flyer of seminar, lead staff member assigned this program of work contact CAI Hawaii as soon as possible and question seminar cost items.

Special Deputy Attorney General Wong noted that, subject to further review, the contract does not specify that the vendor has to receive CRC approval of proposed budget.

Discussion occurred on the State's guideline for reimbursement of travel expenses.

Upon a motion by Commissioner Loudermilk, seconded by Commissioner Nishihara, it was voted on and unanimously carried to reimburse CAI Hawaii up to the amount requested, \$2,286.75, subject to adjustments made pursuant to the provisions of the existing contract relating to airfare, hotel accommodations, and transportation. Reimbursement to be based on the same conditions as used by the State to cover any State employee who travels for the State of Hawaii.

Condominium Related Articles

The following condominium related articles were distributed for informational purposes: CAI Community Associations & Apartment Building Management E-Alert (November 26, 2007) - "Fair Housing Disputes Occur Even in Paradise,"

“Future Vision” - *CAI Common Ground* (November/December 2007), *Hawaii Community Associations* (October 2007), “Identity Theft & the Internet: Part 1,” “Enforcement of the Governing Documents,” “Protecting for Your Association’s Finances,” “Standards for Community Association Managers Pass – The First Step to Enhancing Manager Professionalism” Mark D. Pearlstein, Levenfeld Pearlstein, LLC, and “New Association Architectural Review and Oversight Guidelines” – Paul L. Wean, Wean & Malchow, P.A.

Final REC Response to the Legislative Auditor on SCR 160

A copy of the Commission’s final response to the Legislative Auditor on SCR 160 was distributed for informational purposes.

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

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

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNIT TTL	RPT	DATE
6466	1539 KEALIA DRIVE	1539 KEALIA DR HONOLULU HI	116018019 96817	2	B RPT	11/8/2007
6474	245 HUALANI STREET	245 A & 245 B HUALANI STREET KAILUA HI	143034026 96734	2	B RPT	11/27/2007
6414	61-274 KAMEHAMEHA HIGHWAY	61-274 E, F & G KAMEHAMEHA HWY HALEIWA HI	161011017 96712	3	B RPT	11/20/2007
6332	66-909 LUPENUI PLACE	66-909 LUPENUI PL WAIALUA HI 96791	166019030	2	B RPT	11/19/2007
6457	835 & 837 6TH AVENUE	835 & 837 6TH AVE HONOLULU HI 96816	132020058	2	B RPT	11/8/2007
5552	AINA-NALU	660 WAINEE STREET LAHAINA HI 96761	246011008	190	SUPPL 3	11/27/2007
6456	AINAHAU GARDENS	2442 TUSITALA ST HONOLULU HI 96815	126024092	56	B RPT	11/19/2007
6435	ALA MOANA TOWER	1617 KAPIOLANI BLVD HONOLULU HI 96814	123041011	137	B RPT	11/30/2007
6459	ANACLETO HOMES	1783 LOKO DR WAHIAWA HI 96789	174014001	4	B RPT	11/26/2007
6331	COTTAGES AT KULAMALU THE	KU'INEHE PLACE KULA HI 96790	223008044	40	B AMD	11/1/2007
6391	COUNTRY CLUB VILLAGE 6	3009 ALA MAKAHALA PL HONOLULU HI 96818	111065033	514	B AMD	11/1/2007
6442	DROP DEAD VIEW	3061 KAOHE RD KILAUEA HI 96754	452010007	2	B RPT	11/7/2007
6460	DYNASTY ESTATES CONDOMINIUM	975 KAMALU RD KAPAA HI 96746	444015003	3	B RPT	11/27/2007
6444	ELYSIAN FIELDS	LOT 15 ALA KINIKI RD KOLOA HI 96756	428022015	2	B RPT	11/29/2007
6425	HENRY COURT	2839 HENRY ST HONOLULU HI 96817	122036013	3	B RPT	11/16/2007
6431	JOHNSON HALE CONDOMINIUM	5-5471 KUHIO HWY HANALEI HI 96714	455006029	2	FINAL	11/19/2007
5499	KAI`OLINO	61 OKUPU ST ELEEELE HI 96705	421003005	75	FINAL	11/14/2007
6350	KAIVA AINA CONDOMINIUM	3390 KALUA MOA KOLOA HI 96765	426009024	2	B RPT	11/27/2007
6413	KALAHEO LUNA ESTATES	2993 WAWAE ROAD KALAHEO HI 96741	424005107	2	B RPT	11/27/2007
6454	KEAWE BUSINESS CENTER OFFICES	34 KUPUOHI ST LAHIANA HI 96761	245010015	18	B RPT	11/13/2007
6455	KIINANI MAUKA ESTATES	5930 KIINANI PL KAPAA HI 96746	444005029	2	B RPT	11/2/2007
6398	KILAUEA RIVER FARMS CONDOMINIUM	4685 KUAVA RD KILAUEA HI 96754	452013005	5	B RPT	11/7/2007
4297	KUMULANI AT THE UPLANDS AT MAUNA KEA THE	LOT C UPLANDS @ MAUNA KEE OULI WAIMEA HI	362013022	40	SUPPL	11/13/2007
6147	MAKINI AT KINAU	1050 KINAU ST HONOLULU HI 96814	124013032	97	B AMD	11/6/2007
6426	MAUI OCEAN CLUB (NAPILI TOWER)	100 NOHEA KAI DR	244013001	71	FINAL	11/1/2007

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6376	MENEHUNE LOT 3 ESTATES	LAHAINA HI 96761 5111 MENEHUNE RD WAIMEA HI 96796	416001014	2	B RPT	11/26/2007
6367	NANALA AT MEHANA	MANAWAI ST KAPOLEI HI 96707	191016131	100	B AMD	11/13/2007
6469	PIKAKE TERRACE ESTATES	2933 PIKAKE STREET LIHUE HI 96766	436010083	2	B RPT	11/6/2007
6473	PONG ESTATES	5928 POLANI PL KAPAA HI 96746	444005032	2	B RPT	11/27/2007
6268	RACCA ESTATES	6010 LOKOMAIKAI PL KAPAA HI 96746	444010052	2	B RPT	11/26/2007
6421	ROYAL NAHAKU VILLAS	2637 NAHAKU PL HONOLULU HI 96816	127023003	5	B RPT	11/5/2007
6462	SODERBERG-BLAMEY CONDOMINIUM	3257 & 3529 IOALNI ST PUKALANI HI 96768	223041081	2	B RPT	11/26/2007
6468	SPENCER PLACE	1030 & 1032 SPENCER ST HONOLULU HI 96822	124016025	4	B RPT	11/7/2007
2469	STARTS PLAZA	1953 S BERETANIA ST HONOLULU HI 96826	128002053	41	SUPPL	11/19/2007
5993	VENTURA CONDOMINIUM	568 KAMALU RD KAPAA HI 96746	442003015	2	SUPPL	11/5/2007
6199	VILLAS AT KEHALANI THE	KEHALANI PKWY WAILUKU HI 96793	235001074	103	B AMD	11/5/2007
6430	WAIALUA WAI VILLAS	66-449 WAIALUA BEACH RD HALEIWA HI 96712	166021001	3	B RPT	11/5/2007
6419	WAILUA HALE CONDOMINIUM	6409A OPAEKAA RD KAPAA HI 96746	442006153	2	B RPT	11/28/2007
0	Preliminary Reports					
0	Contingent Final Reports					
3	Final Reports					
4	Supplementary Reports					
26	B Reports					
5	B Amendment Reports					
38	TOTAL REPORTS					

Owner-Occupant

Upon a motion by Commissioner Gendrano, seconded by Commissioner Nishihara, it was voted on and unanimously carried to ratify the Real Estate Branch Staff issuance of "no action" letters, pursuant to the Commission delegation to staff at 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 October 1, 2007 through December 7, 2007:

Date	Owners / Project Name/Unit Number	Extenuating Circumstance
12/7/07	Margaret Moore /Kai Malu at Wailea, Unit 27B	Serious Illness

Owner-Occupant – Request for Informal Non-Binding Interpretation of §514A-107(b), or §514B-98.5, HRS, "no action letter" – Marlon & Luzviminda Gante

Based on the verbal representation made by the requestor to withdraw the request, the Commission will not issue an informal non-binding interpretation. The Commission reserves the right to seek action under the terms of the "affidavit of intent to purchase and reside in an owner-occupant designated condominium residential unit" that was executed on November 7, 2006, as well as other provisions under the condominium laws.

Consultants – Report on the December 3, 2007 Consultant's Forum/Workshop

As part of the Commission's program of work, the consultant's have been attending various seminars. On December 3, 2007 the condominium consultants met with staff to dialogue and exchange information about the registration and

sale of condominium projects pursuant to Chapters 514A and 514B, HRS. The agenda for the workshop was set by the condominium consultants to include a drafting forum. The consultants and staff found the workshop to be beneficial. A report on the areas and issues where there appears to be a consensus will be presented at the next CRC meeting. The next consultant workshop is tentatively scheduled for July 2008.

SEO Kimura reported that Specialist Yee handled the workshop well and provided a good venue for consultants to exchange information, ideas, shortcuts which assists in the providing of a timely report and effective date. SEO Kimura suggested holding consultant meetings quarterly.

Special Deputy Attorney General Wong suggested that staff look into increasing the number of consultants due to the volume of project submissions being received.

It was reported that Specialist Yee has started working on the next RFP for condominium consultants. Specialist Yee will be the lead staff member and Executive Officer Fujitani will coordinate the selection and approval process.

Request for Informal Non-Binding Interpretation of §514B-31 (Creation), §514B-101 (Applicability; exceptions), §514B-51 (Registration required; exceptions), §514B-81 (Applicability; exceptions), §514B-54(a)(4), HRS – David Andrew, Esq. memorandum dated November 29, 2007

Per the memorandum dated December 11, 2007 from Mr. David F. Andrew, the request was withdrawn based on his phone call with staff and the provided explanation.

Request for Informal Non-Binding Interpretation of §514B-92(b)(3)(C)(ii) “Building permit for the Project” – Dennis M. Lombardi, Esq., Esther Han, Esq., Case Lombardi & Pettit

Dennis M. Lombardi and Esther Han of Case Lombardi & Pettit were present.

Mr. Lombardi, representing FRC Waikiki, LLC, the developer of Allure Waikiki informed the committee that his client is seeking an informal non-binding interpretation that the foundation permit for the Project satisfies section 514B-92(b)(3)(C)(ii), HRS. Mr. Lombardi informed the committee that the foundation permit has been obtained and the following are in the process and imminent: a superstructure permit, construction loan financing and construction contract.

Specialist Yee informed Mr. Lombardi that if the developer will be using purchaser's funds to pay project costs, the developer will have to comply with all of the requirements of §514B-92, HRS, not only the building permit requirement.

Mr. Lombardi stated that the developer's intent is to fully comply with section 92. He further reported that they have already obtained the foundation permit. Ms. Han reported that the construction financing should close any day.

Specialist Yee reported that the cost of construction increases as changes are made and questioned whether the performance bond amount takes this into account.

Mr. Lombardi replied that the developer has done many high rise developments and are equipped with sophisticated architects and capable estimators who have planned a contingency budget for changes and increases.

Specialist Yee questioned if the Commissioner required a completion bond versus a performance bond, would the developer be able to provide the completion bond?

Mr. Lombardi replied that he will need to review the performance bond and get a response back to the Committee.

Specialist Yee questioned what is "imminent" in relation to the comments made and in his November 30, 2007 memo stating that the following are "imminent" - "superstructure permit application," "construction loan financing" and "commencement of construction."

Mr. Lombardi responded that imminent is within 60 days. He further noted that the developer is aggressively spending money on the project already.

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

Mr. Lombardi again noted that he will look into the bond issue and get back to staff after the meeting.

Program of Work:

Condominium Laws and Education

Government and Legislative Participation & Report – Rep. Angus McKelvey Proposed Legislation on Proxies and Absentee Ballots

Specialist Yee reported that staff met with Rep. McKelvey who informed staff that his constituents want him to introduce a bill on voting, proxies and absentee ballots. It was requested that if the Commissioners have any strong comments to provide it to staff.

Neighbor Island Outreach – Maui

It was reported that the next Neighbor Island Outreach meetings are tentatively scheduled for the island of Maui on May 7, 2008 at the Realtors Association of Maui offices.

Executive Session:

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

Condominium Project Registration: **Request for Informal Non-Binding Interpretation of §514B-92(b)(3)(C)(ii) “Building permit for the Project” – Dennis M. Lombardi, Esq., Esther Han, Esq., Case Lombardi & Pettit**

Upon a motion by Commissioner Nishihara, seconded by Commissioner Gendrano, it was voted on and unanimously carried to issue an informal non-binding interpretation that the foundation permit issued for the Allure Waikiki condominium project, Permit No. 617391 does not satisfy §514B-92(b)(3)(C)(ii), HRS.

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: January 9, 2008
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 11:10 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

December 20, 2007

Date

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