

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: March 13, 2002

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
Michael Ching, Member
Alfredo Evangelista, Member
Patricia Choi, Member

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

Others: Mr. & Mrs. Rodelio A. Tejada

Excused: Iris Okawa, Member
John Ohama, Member

Absent: Casey Choi, Member

Call to Order: Chair Imanaka called the meeting to order at 11:15 a.m., at which time quorum was established.

Chair's Report: No report was presented.

Minutes: Upon a motion by Commissioner Rice, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the minutes of the February 13, 2002 Condominium Review Committee meeting as circulated.

Chair Imanaka took the agenda out of order.

Condominium
Project
Registration:

Owner-Occupant Affidavit – No Action Request Letter, Mr. & Mrs. Tejada

Mr. & Mrs. Rodelio Tejada were present. Mr. Tejada reported to the committee that he and his wife purchased their condominium home in December 2001. Due to Mr. Tejada's father's illness and the state of his family affairs in San Francisco, the Tejada's are requesting a waiver to the owner-occupant affidavit. Mr. Tejada further reported that currently his mother is caring for his father's physical problems, but more assistance is needed. He also expressed that his family is in shambles and requires his guidance. He further reported that his father is dealing with prostate and kidney problems. If it were a possibility, Mr. Tejada reported that he would have his parents move to Hawaii to care for them, but that his father is unable to fly to Hawaii. Mrs. Tejada noted that her father-in-law was unable to attend their wedding because he was unable to fly to Hawaii due to his illness.

Mr. Tejada also reported that Gentry has issued them a letter stating that they are willing to issue them a waiver but that they would first need to receive the approval of the Real Estate Commission.

Mr. Tejada informed the committee that he has no intention of leasing, renting or selling his home. His intentions are to care for his family and eventually return to Hawaii. During their absence, Mrs. Tejada's brother will be taking care of the upkeep of the home.

Chair Imanaka questioned whether the Tejada's would be able to get a verification of their father's illness/medical condition from a licensed medical doctor.

Mr. Tejada replied that he would contact his parents to get a doctor's letter.

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

Condominium
Specialist's
Report:

Additional Distribution

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

6.c. Hawaii Condominium Bulletin – March 2002 Issue

Additions to the Agenda

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ching, it was voted on and unanimously carried to recommend accepting the additions to the agenda as follows:

5.a.1) Condominium Property Regime Projects: Copies of Project Documents – County of Hawaii Planning Department Request

6.i.1) Report on the CAI Community Leadership Forum

Condominium
Governance and
Management:

AOAO / CMA / CHO Registrations

Specialist Leong reported that as of February 28, 2002, 1,430 AOAOs have successfully registered. Specialist Leong further reported that 109 CMAs are also currently registered.

Upon a motion by Commissioner Ching, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend approval to ratify issuance of effective registration dates for Association of Apartment Owners through February 28, 2002 for the 2001-2003 registration. The association is as follows: Palani Estates – 2/19/2002.

Condominium Seminars – CAI Seminar “Effective One Hour Board Meeting” February 16, 2002 – Evaluation

Specialist Yee reported that both she and Specialist Leong monitored the seminar that presented many good tips on building “community,” which in turn results in effective board meetings. Approximately 90% of those in attendance were board members. Due to the seminar topic, registration numbers were high. The seminar costs and expenses subsidized from the CMEF were reviewed.

Case Law Review Program

The following articles relating to the case law review program were distributed for informational purposes: “Altering a Face Without Prior Association Approval Puts Homeowners in Violation of Covenants” (*Community Association Law Reporter* January 2002) and “\$32 Million verdict in Mold Case” (*The Environmental Consultant* Fall/Winter 2001 Vol. 10, No. 3).

Education Calendar - Updated calendar of condominium events circulated for information. This information is also provided on the Commission's web site at www.state.hi.us/hirec. Chair Imanaka noted that the seminar topics “Legislative Update” and “Almost Free Legal Advice” have been very popular in the past and he anticipates high attendance at both upcoming seminars.

Request for Informal Non Binding Opinion §514A-3; §514A-83(a)(12), HRS – Apartment Owner and Board of Directors – Frank D. Slocum

Specialist Leong reported that Mr. Slocum had submitted a request for clarification regarding whether a trustee for a condominium owner may serve on a board of directors. Staff had previously provided Mr. Slocum with a response to his inquiry informing him to review the AOAO's bylaws together with §514A-3, HRS, the definition of “apartment owner,” the applicable provisions of §514A-82, HRS, to consult with an attorney familiar with condominium governance, and informed that arbitration is a consideration.

Mr. Slocum is now requesting an informal non-binding opinion from the Commission.

Specialist Leong informed the committee of Black's Law Dictionary, Sixth Edition, 1990 definition of “trustee.” She further reported that in initial discussions with the Deputy AG, Specialist Leong raised three concerns: §514A, HRS, Does not specifically address or prohibit a “trustee” for an apartment owner from serving as a board of director; according to §514A-82.4, HRS, a director “owes” the AOAO a “fiduciary duty in the performance of the director's responsibilities” and Black's Law Dictionary reference to a trustee owes a fiduciary duty to the beneficiary.

Upon a motion by Commissioner Rice, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend issuance of an informal non-binding opinion that §514A-82(a)(12) does not specifically prohibit a trustee for an apartment owner to serve on the board. Further, suggest that the AOA consider amending the bylaws to specifically allow or disallow a trustee for an apartment owner to serve on the board and that the AOA consider seeking the advice of a licensed attorney familiar with condominium law.

Condominium Related Articles

The following articles were distributed for informational purposes: "An Objective View: Preventing Embezzlement," "Changing Horses Midstream: Developer-Transition Engagements" (*Ledger Quarterly* Winter 2002, Vol. 13); "Condo Dreams," "Condos come Back" (*Honolulu Magazine* February 2002); "The Gloom 'n Doom Gadfly" (*Common Ground* January/February 2002).

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

Upon a motion by Commissioner Evangelista, seconded by Commissioner P. Choi, it was voted on and unanimously carried to recommend approval to ratify issuance of effective dates for public reports for the month of February 2002 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4804	1240 ULUNI CONDOMINIUM	1240 ULUNI ROAD KIHEI HI 96753	(2)3-09-008:008	Final	02/14/02
4805	1555 PIIKOI	1555 PIIKOI ST HONOLULU HI 96822	(1)2-04-020:067	Final	02/12/02
4796	2760 ROOKE AVENUE	2760 ROOKE AVE HONOLULU HI 96817	(1)1-08-026:027	Final	02/14/02
4801	5304 HALEILIO ROAD	5304 HALEILIO RD KAPAA HI 96746	(4)4-01-012:016	Final	02/06/02
4778	54-151/54-153 PUUOWAA	54-151 & 54-153 PUUOWAA ST HAUULA HI 96717	(1)5-04-015:033	Final	02/08/02
4794	BLAIR ESTATES	LOT 6 KAPAA HI	(4)4-06-032:038	Final	02/19/02
4754	CORTEBELLA PHASE 11	91-1921 LUAHOANA ST EWA BEACH HI 96706	(1)9-01-010:048	Final	02/20/02
4812	CORTEBELLA PHASE 13	91-1881 LUAHOANA ST EWA BEACH HI 96706	(1)9-01-010:048	Prelim	02/20/02
4800	EMERALD PLAZA CONDOMINIUM	LAHAINA BUSINESS PARK LAHAINA HI 96761	(2)4-05-010:007	Final	02/14/02
4816	EXPRESSIONS III AT ROYAL KUNIA PH I	POLINA PLACE WAIPAHU HI	(1)9-04-146:017	Prelim	02/25/02
4635	FAIRWAY VILLAS AT WAIKOLOA BEACH RESOR T	WAIKOLOA BEACH DR WAIKOLOA HI	(3)6-09-008:003	Final	02/08/02
4738	HALAKAHIKI CONDOMINIUM	5820 HALAKAHIKI PLACE KAPAA HI 96746	(4)4-06-009:079	Final	02/14/02
4810	HU'ELANI PHASE 3	91-231 LUKINI PLACE EWA BEACH HI 96796	(1)9-01-116:008	Prelim	02/13/02
4746	HU'ELANI PHASE 6	91-209 LUKINI PL EWA BEACH HI 96706	(1)9-01-069:018	Final	02/04/02
4728	KAI LANI	ALIINUI DR KO OLINA HI	(1)9-01-056:002	Cont Final	02/20/02
4745	KAWAIHAU MEADOWS CONDO	ALLOTMENT O KAAPUNA HUI MOLOAA KAWAIHAU HI	(4)4-09-009:030	Final	02/11/02
4779	LINDELL CONDOMINIUM	KAI HELE KU ST LAHAINA HI 96761	(2)4-07-009:040	Final	02/04/02
4770	NINOLE BLUFFS CONDOMINIUM PROJ	PARCEL A KAIAAKEA N HILO HI	(3)3-04-003:043	Final	02/14/02
4798	PU'U PANE 9 CONDOMINIUM	LOT 9 PU'U PANE SUBDIV HANAIEI HI	(4)5-01-058:108	Final	02/22/02
4802	PUAKU CONDOMINIUM	1136 CROSSLEY RD KAWAIHAU HI 96746	(4)4-04-005:082	Final	02/14/02
4772	PUKA KA MUA	KOOLAU RD MOLOAA HI	(4)4-09-011:034	Final	02/14/02

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4773	PUKA KA MUA AKAU	KOOLAU RD MOLOAA HI	(4)4-09-011:033	Final	02/15/02
4807	QUEEN EMMA GARDENS - PRINCE TWR	1511 NUUANU AVE HONOLULU HI 96813	(1)2-01-005:004	Cont Final	02/13/02
4695	SUMMIT AT KAA NAPALI - PHASE II	UALAPA LOOP KAA NAPALI HI 96761	(2)4-04-006:054	Cont Final	02/14/02
4792	TERRAZZA, PHASE 13	LU AHOANA ST EWA BEACH HI 96706	(1)9-01-010:049	Suppl 1	02/14/02
4808	ULU MAIKA CONDOMINIUM	LOT 5 KAPAA HMSTDS 4TH SERIES KAPAA HI	(4)4-06-023:010	Final	02/19/02

Preliminary Reports: 3
 Contingent Final Reports: 3
 Final Reports: 19
 Supplementary Reports: 1

Total: 26

Condominium Property Regime Projects: Copies of Project Documents – County of Hawaii Planning Department Request

Via letter dated March 4, 2002, the County of Hawaii Planning Department, through its Director, Christopher Yuen, requested that the Commission provide the Hawaii County Planning Department with a copy of the Notification of Intention, Questionnaire, all Public Reports, and Condominium Map for all new CPR projects in Hawaii County.

Specialist Yee informed the committee that currently developers are instructed to provide this information to the county but the Commission does not regulate or track whether or not a developer does this. Providing the requested copies would be a huge burden on Commission time and resources. There would also be a significant expense to attempt to provide this information. Furthermore, the Commission has no resources to duplicate maps.

Upon a motion by Commissioner Rice, seconded by Commissioner Evangelista, it was voted on and unanimously carried to recommend approval to reply to the Planning Director that the Commission seeks his guidance on the manner it could honor its request since the request places an undue burden on the personnel and resources of the Commission and the Commission has no capabilities to duplicate condominium maps.

Commissioner Aki reported that Condominium Projects are a big issue in Hawaii County. There seems to be a lot of misconception as to what the Commission's role and responsibilities are regarding condominium project development.

Chair Imanaka responded that possibly more education on the Commission's role in condominium project development is necessary.

Specialist Watumull reported that staff receives many referrals from all island county offices informing the consumer to contact the Commission regarding zoning and density issues.

Chair Imanaka requested that Recodification Attorney Arakaki organize workshops for key local officials to discuss issues and roles with the Commission. Mr. Arakaki responded that he has had conversations with the Office of Planning, DBEDT.

Specialist Yee reported that she has had discussions with Mr. Yuen regarding the proposed revised ordinance.

Program of Work: **Recodification of Chapter 514A**

Chair Imanaka reported that the Blue Ribbon advisory committee has held two working meetings so far. Meetings are held the last Thursday of each month and commissioners are welcomed to attend and participate.

Mr. Arakaki reported that based on concerns raised by various stakeholders regarding Draft #1 of the Recodification plan, the recodification for the most part will now be based on HRS Chapter 514A rather than on the Uniform Condominium Act-Uniform Common Interest Ownership Act. It appears that the recodification's general provisions and the administration and registration of condominiums will be based on Chapter 514A and the provisions for the management of condominiums will be based on the uniform laws and other suggestions reflected in Recodification Draft #1.

Government and Legislative Participation Report

SEO Kimura reported that the biggest issue at this time for condo is the money bill. The Department is also being tapped for 34.4 million, part of which helps pay for staff salaries, overhead and other services.

Interactive Participation with Organizations – CAI Community Leadership Forum

Vice Chair Rice reported that a detailed report of the CAI Community Leadership Forum that he attended along with Specialist Yee and Mr. Arakaki has been submitted. Vice Chair Rice provided a brief summary of the written report and acknowledged that it was a very productive conference.

Upon a motion by Commissioner P. Choi, seconded by Commissioner Aki it was voted on and unanimously carried to acknowledge receipt of the report.

CAI's 51st National Conference, May 1-4, 2002 – Palm Springs, California

Upon a motion by Commissioner Evangelista, seconded by Commissioner Ching, it was voted on and unanimously carried to recommend approval to send one Commissioner and one staff person to participate in the upcoming CAI National Conference, May 1-4, 2002, to be determined by the Chair and the SEO, and subject to budgetary considerations and departmental approval.

Neighbor Island Outreach

June committee meetings to be scheduled for the island of Kauai on June 14, 2002.

Condominium
Project
Registration:

Owner-Occupant Affidavit – No Action Request Letter, Mr. & Mrs. Tejada

Upon a motion by Commissioner Evangelista, seconded by Commissioner P. Choi, it was voted on and unanimously carried that based on their representations that they are not selling, renting or leasing their home, that they will be moving back to San Francisco to care for Mr. Tejada's father, and their letter of February 27, 2002,

recommend approval to issue an informal non-binding opinion that the circumstances described by Mr. & Mrs. Tejada in their letter of February 27, 2002 appear to fall within §514A-107(b)(3), issue no action letter subject to Mr. & Mrs. Tejada's submission to the Commission of a verification of serious illness/medical condition of Mr. Tejada's father.

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 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.

Next Meeting:

Tuesday, April 9, 2002; 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 11:56 a.m.

Respectfully submitted:

/s/Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

April 9, 2002

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____