

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 13, 2004

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: Mitchell Imanaka, Chair, Broker / Honolulu Commissioner
Kathleen Kagawa, Vice Chair, Broker / Honolulu Commissioner
Louis Abrams, Broker / Kauai Commissioner
Iris Okawa, Public / Honolulu Commissioner
Trudy Nishihara, Broker / Honolulu Commissioner – early departure
Carol Mae Ball, Broker / Maui Commissioner
Michele Sunahara Loudermilk, Public / 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
Lorene Kimura, Real Estate Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Jeffrey Watts, Esq., Brooks Tom Porter & Quitiquit, LLP
George Chatani, condominium owner

Absent: John Ohama, Broker / Honolulu Commissioner
Vern Yamanaka, Broker / Hilo Commissioner

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

At this time the Chair took the agenda out of order.

Chair's Report: No report was presented.

CPR Registration
& Developer's Public
Reports:

Haiku Estates #5481, Jeffrey D. Watts, Esq.

Commissioner Loudermilk disclosed that she and Mr. Jeffrey Watts worked together in the same law firm 4-1/2 years ago.

Specialist Yee informed the committee that Mr. Watts represents the developer of Haiku Estates who is requesting that the Commission revisit its current condominium project registration procedures. The developer is requesting that the Commission allow the registration of Haiku Estates, which is being developed in increments, to register under one registration number.

Specialist Yee summarized the Commission's current procedures for registering projects; separate registration numbers for each "project" including separate registration number assigned for each increment registered.

Mr. Watts reported that his primary issue is whether a developer can register a condominium project under a preliminary public report, then apply for a final public report for less than all of the units, and subsequently have issued one or more supplementary public reports that adds more apartments to the project previously registered; supersede all prior reports and function as a final public report as to all of the identified units in the project for which the final public report requirements have been met and a preliminary public report for those units (if any) for which the final public report requirements have not been met.

Mr. Watts reported that he has registered projects which have been given different registration numbers but the increments in those instances were on separate pieces of land. He further reported that he has submitted for registration and had been granted effective dates for The Villages at Mauna Lani up to the 10th supplementary public report for increments on the same lot. When attempting to follow that same procedure for Haiku Estates he was told this procedure was not permissible.

Mr. Watts reported that Haiku Estates will contain a total of five residential units in five separate buildings on one lot and the buildings will be constructed in increments. The first two units are currently under construction and the remaining three are scheduled to commence within the next five months. The developer has met all requirements for the issuance of a final public report for the first two units, but not for the remaining three. The developer wants to market all five units, enter into binding contracts for the first two units and take reservations for the remaining three units. The developer has legally established the condominium containing all five units by recording the declaration and bylaws with Land Court. The developer subsequently submitted to the Commission the registration of a developer's preliminary public report for the entire condominium project and concurrently submitted a registration for a final public report for the first two units only.

Mr. Watts further explained that the final public report discloses on the first page that the final public report is only for the first increment and that it must be read with the preliminary public report. It is further disclosed on pages 2 and 20 that the final public report only covers the first increment and that as the remaining units meet the final public report requirements, a supplementary public report will be submitted and is to supercede the preliminary and final public report.

Mr. Watts further reported that this is not a phased or merged project. This is one integrated project with a need to build, finance, and bond over a period of time.

Chair Imanaka reported that he is familiar with both procedures and questioned Mr. Watts about the issuance of a preliminary public report followed by a final public report; since the report does not cover all of the units in the project, who does the supplementary public report go to once it is issued?

Mr. Watts responded that every buyer who is not under a binding contract will receive a supplementary public report should one be issued. Those that were under contract during the issuance of the final public report will not receive a supplementary public report and they may have rescission rights under section 514A-63. Should any material changes be made, the purchaser would receive changes under a disclosure statement pursuant to section 514A-63. If a supplementary public report disclosed material changes, all would receive a copy of the supplementary public report.

Chair Imanaka posed the question whether it would be possible that the buyer under a final public report might be identified as a prospective purchaser?

Mr. Watts replied in the negative, unless a material change was made and further noted that "prospective" means "in the future."

Chair Imanaka noted that this problem is an ongoing issue which will hopefully be resolved through recodification.

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

Condominium
Specialist's
Report: Minutes:

Minutes

Upon a motion by Commissioner Kagawa, seconded by Commissioner Okawa, it was voted on and unanimously carried to accept the minutes of the September 8, 2004 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO Registrations

Specialist Grupen reported that as of September 30, 2004, 1,481 AOAOs have successfully registered.

Commissioner Loudermilk recused herself from discussion and voting on Fairway Villas at Waikoloa Beach Resort AOAO. Upon a motion by Commissioner Okawa, seconded by Commissioner Abrams, it was voted on and carried to recommend approval to ratify issuance of effective registration dates for Association of Apartment Owners through September 2004 for the 2003-2005 registration. The associations are as follows:

Fairway Villas at Waikoloa Beach Resort	9/27/2004
Kuakini Physicians Tower	9/16/2004

AOAO Biennial Registration

Specialist Grupen reported that staff is preparing for the upcoming condominium association biennial registration and distributed copies of the last biennium's registration forms for review and update. Specialist Grupen further reported that questions 1 through 5 are mandatory and required by statute. Questions six through 18 are questions included to address the apparent legislative intent to have centralized public access to material information. Specialist Grupen requested the committee to consider whether the questions are sufficient for the 2005-2007 biennial registration and whether additional questions should be considered. He further noted that during the last registration it was brought to the Commission's attention by managing agents that there were too many questions on the reregistration application.

Commissioner Okawa reported that the updates managing agents are required to do for the AOAOs are not extraordinary and that the management companies do need to pay attention to the details of those AOAOs which they manage.

Chair Imanaka requested that the Commission members provide comments, thoughts or suggestions to Specialist Grupen by Monday, October 18. It was further suggested that the CRC Educational Advisory group review the questions.

Upon a motion by Commissioner Okawa, seconded by Commissioner Abrams, it was voted on and unanimously carried to recommend approval to have the Condominium Educational Advisory Group members review and comment on the proposed registration application prior to distribution.

Mediation and Arbitration

The Fall 2004 issue of Peace Talk, published by the Mediation Services of Maui, was distributed for informational purposes.

Condominium Seminars and Symposium – Tom Berg

The committee acknowledged receipt of Mr. Tom Berg's request to withdraw his request to be placed on the October 13, 2004 CRC agenda.

Case Law Review Program

The following articles were distributed for informational purposes: *Kau, et al. v. City and County of Honolulu*, No. 23674, June 22, 2004 *Hawaii Bar Journal*, September 2004; "Owner is Entitled to Attorney's Fees Because Association Did Not Produce Records" *Community Association Law Reporter*, September 2004; "Association Has Authority To Suspend Water Service" *Community Association Law Reporter*, September 2004; "Association Increased Assessments Improperly and Accumulated Unassessed Late Fees" *Community Association Law Reporter*, September 2004.

Condominium
Project
Registration:

Condominium Project Registration - Public Reports Issued

Commissioner Loudermilk recused herself from discussion and voting on project number 5206 and Chair Imanaka recused himself from discussion and voting on

Condominium Review Committee Minutes
Meeting of October 13, 2004
Page 5

project numbers 5469 and 5250. Upon a motion by Commissioner Nishihara, seconded by Commissioner Abrams, it was voted on and carried to recommend approval to ratify issuance of effective dates for developer's public reports for the month of September 2004 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
5432	1322 & 1324 LUNALILO	1322 LUNALILO ST HONOLULU HI 96819	(1)2-04-021:075	Final	09/16/04
5442	140 & 1440-A AUWAIKU STREET	1440 AUWAIKU ST KAILUA HI 96734	(1)4-02-084:030	Final	09/13/04
5438	151 AND 153 HAUOLI STREET	151 HAUOLI ST KAILUA HI 96734	(1)4-03-027:021	Final	09/16/04
5470	1560 & 1560A MURPHY STREET	1560 & 1560A MURPHY ST HONOLULU HI 96819	(1)1-04-001:016	Final	09/27/04
5389	190 ALAMAHA	190 ALAMAHA ST KAHULUI HI 96732	(2)3-07-012:015	Final	09/22/04
5206	215 NORTH KING ST	215 N KING ST HONOLULU HI 96817	(1)1-05-008:001	Cont. Final	09/03/04
5475	3363 HARDING AVENUE	3363 HARDING AVE HONOLULU HI 96816	(1)3-02-012:061	Final	09/30/04
5446	545 AND 545A KAWAINUI STREET	545 KAWAINUI ST KAILUA HI 96734	(1)4-03-059:042	Final	09/27/04
5445	6421 PUUPILO ROAD	6421 PUUPILO RD WAILUA HI 96746	(4)4-02-022:066	Final	09/30/04
5428	AHUIMANU PLACE CONDOMINIUM II	47-396 AHUIMANU PL KANEHOE HI 96744	(1)4-07-003:023	Final	09/14/04
4862	AKANA 'OHANA O KALIHAIWAI	3144 KALIHAIWAI VALLEY RD KALIHAIWAI HI	(4)5-03-003:057	Suppl 1	09/09/04
5453	ARAKAKI LOT 6 CONDOMINIUM	117 KUMU NIU PLACE LAHAINA HI 96761	(2)4-07-010:003	Final	09/22/04
5447	BROOKS CONDOMINIUM	102 KUMU NIU PL LAHAINA HI 96761	(2)4-07-010:003	Final	09/22/04
5455	H&H CONDOMINIUM	125 KUMU NIU PLACE LAHAINA HI 96761	(2)4-07-010:003	Final	09/22/04
3582	HONU LANI KAPAA	6200E & 6204 HELENA LANE KAPAA HI 96746	(4)4-06-007:086	Suppl 2	09/17/04
4387	HOOKEELE 73	73-4599 KUKUIKI ST KAILUA-KONA HI 96740	(3)7-03-024:073	Suppl 1	09/16/04
5464	HULU CONDOMINIUM	1714 HULU ROAD KAPAA HI 96746	(4)4-06-004:032	Final	09/24/04
5337	KAHA STREET CONDOMINIUM	2712 KAHA ST HONOLULU HI 96826	(1)2-07-018:014	Final	09/14/04
5451	KAU ESTATES	3524 & 3528 KAU ST HONOLULU HI 96816	(1)3-03-033:029	Final	09/17/04
5372	KALIHAI STREAMSIDE	2130 N KING ST HONOLULU HI 96819	(1)1-03-003:052	Suppl 1	09/17/04
5441	KONA CONDOMINIUM	6134 KALA KEA PL KAPAA HI 96746	(4)4-04-010:036	Final	09/02/04
5448	KUAU MAKAI CONDOMINIUM	8 ALENUI ST PAIA HI 96779	(2)2-06-012:017	Final	09/22/04
5458	KULA RICE	LOT 1 HAUUALA RD KAPAA HI	(4)4-05-015:022	Final	09/27/04
5449	MCCARTHY CONDOMINIUM	0 PUNAKEA LP LAHAINA HI 96761	(2)4-07-001:002	Final	09/22/04
5418	MOUNTAIN VIEW ESTATES	283 HUIA STREET WAILUA HI	(4)4-02-014:033	Final	09/07/04
4287	NAHELE LIHI	LOT 22 KAPAKA ST PRINCEVILLE HI	(4)5-03-008:022	Suppl 1	09/28/04
5416	NALU KILAUEA CONDOMINIUM	4307 OKA PL KILAUEA HI 96754	(4)5-02-014:030	Final	09/09/04
5461	NOHONA AT MILILANI MAUKA - PHE I	UKUWAI ST MILILANI HI 96789	(1)9-05-049:027	Prelim	09/23/04
5086	ONE MEETING PLACE	4520 AKIA ST KAPAA HI 96746	(4)4-05-005:008	Final	09/13/04
5473	PAUMALU VALLEY VIEWS	59-178C KAMEHAMEHA HWY HALEIWA HI 96712	(1)5-09-006:034	Final	09/24/04
5469	PENINSULA AT HAWAII KAI - PROJ IV	520 LUNALILO HOME RD HONOLULU HI 96825	(1)3-09-008:016	Prelim	09/24/04
5250	PENINSULA AT HAWAII KAI-PROJ III	520 LUNALILO HOME ROAD HONOLULU HI 96825	(1)3-09-008:016	Final	09/29/04
5421	PU'U LOLO 2 CONDOMINIUM	LOT 2 PU'U LOLO SUBDIVISION	(4)2-03-008:064	Final	09/02/04

5422	PU'U LOLO 3 CONDOMINIUM	KALAHEO HI LOT 3 PU'U LOLO SUBDIVISION	(4)2-03-008:065	Final	09/02/04
5472	SPINNAKER PLACE TOWNHOMES INCREMENT 1	KALAHEO HI KEONEULA BLVD/KAPOLEI PKWY EWA BEACH HI 96706	(1)9-01-012:040	Final	09/27/04
5425	SUNSET ACRES	85-1330 WAIANAE VALLEY RD WAIANAE HI 96792	(1)8-05-004:020	Final	09/01/04
5352	WILSON KULA CONDOMINIUM	10877 KULA HIGHWAY KULA HI 96790	(2)2-02-001:050	Final	09/21/04
Preliminary Reports:		2			
Contingent Final Reports:		1			
Final Reports:		29			
Supplementary Reports:		5			
Total:		37			

Project Statistics

Chair Imanaka noted that the registration timeline is getting better in terms of efficiency and in consultants review. He commended the condominium consultants and staff for creating a business friendly environment.

Ko Olina Kai Golf Estates and Villas #5284, Nikki Senter, Esq.

The committee acknowledged receipt of the request to defer this matter to the November 2004 Condominium Review Committee meeting.

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

Specialist Yee reported that RICO recently held an in-house training session for its staff and as part of its program she provided an update on the Commission's recodification efforts.

She further reported that it appears that the recodification has increased the Commission's jurisdiction over more governance areas which might also impact RICO.

SEO Kimura noted that this was not intended and needs to be addressed.

Chair Imanaka replied that the comments are duly noted. Any further changes will be revisited after the total package is adopted.

Post-Bill Passage Activities

It was reported that a request for proposals to assist the Commission with post-bill passage educational activities relating to Act 164 (SLH 2004) was sent to interested vendors on September 17, 2004 with a September 27, 2004 deadline.

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

Commissioner Nishihara was excused at 11:44 a.m. to attend a meeting with the real estate schools.

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

Upon a motion by Commissioner Okawa, seconded by Commissioner Kagawa, it was voted on and unanimously carried to recommend approval to retain the services of Gordon Arakaki, Esq. for post-bill passage educational activities, pursuant to a small purchase contract. Further recommend approval to allow the Chair of the CRC and SEO to negotiate the specifics of the small purchase contract.

CPR Registration
Developers Public
Reports:

Haiku Estates #5481, Jeffrey D. Watts, Esq.

Upon a motion by Commissioner Abrams, seconded by Commissioner Ball, it was voted on and unanimously carried to recommend approval to require the developer to register the condominium project, Haiku Estates #5481, in accordance with the Commission's current procedures, whereby, each increment or phase is registered as a separate project with a separate registration number. Recommend further to continue with the Commission's procedures to register each increment or phase as a separate project with a separate registration number. Additionally recommend approval to allow The Villages at Mauna Lani, CPR #4547, to continue to amend its developer's final public report with a developer's supplementary public report to report the change when adding more apartments to the project based on the unique facts surrounding its initial registration.

Neighbor Island Outreach – Kahului, Maui

The next neighbor island outreach is scheduled for the island of Maui on November 10, 2004. In conjunction with the committee meetings, the Commission will also be holding batch renewal sessions and specialist office of the day.

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:

Mr. George Chatani, owner of a unit at the University Towers condominium distributed copies of his concerns with Act 164 for the committee's review. Mr. Chatani went over his proposed amendments which included amendments to section 514A-3, Definitions and section 514A-39, Limited Common Elements and requested that his proposals be introduced in the 2005 legislative session.

Chair Imanaka thanked Mr. Chatani and noted that his thoughts were equitable, but as expressed earlier in the meeting that many in the community want to see changes made to the existing draft but the Commission is requesting that additional changes be held off until the next legislative session as the addition of more changes this session to the recodification plan would compound an already difficult educational task to accomplish.

Commissioner Loudermilk suggested that Mr. Chatani work with his board of director's on some of the issues which he has brought before the committee.

Commissioner Okawa informed Mr. Chatani that she resides in a condominium and is very supportive of the Commission's recodification effort and that doing the massive changes during the past two years has been very exhaustive. We need to be sure that the efforts of the Commission move forward this session and suggested that Mr. Chatani wait until the recodification is complete before asking the Commission to tweak it more. She further suggested that Mr. Chatani get involved and possibly participate in the CAI Hawaii seminars to meet other owners who may have similar issues.

Mr. Chatani suggested that managing agents be required to take a test every two years.

Chair Imanaka thanked Mr. Chatani for his input and participation in the Condominium Review Committee meeting and informed him that the Commission will add his concerns to its list to consider during the next legislative session.

CMEF Budget &
Finance Report:

No report presented.

Next Meeting:

November 10, 2004

Upon adjournment of the Education Review Committee meeting which follows the Laws and Rules Review Committee meeting scheduled to convene at 9:30 a.m.
Realtors Association of Maui
441 Ala Makani Place
Kahului, Maui 96732

Adjournment:

With no further business to discuss, Chair Imanaka adjourned the meeting at 12:20 p.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

November 10, 2004

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____