

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 11, 2013

Time: Upon adjournment of 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: Scott Sherley, Chair, Broker / Hilo Commissioner
Bruce Faulkner, Vice Chair / Maui Commissioner
Nikki Senter, Public / Honolulu Commissioner
Frances Gendrano, Broker / Honolulu Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Aileen Wada, Broker / Honolulu Commissioner – late arrival
Scott Arakaki, Public / Honolulu Commissioner
Laurie A. Lee, Broker / Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Katherine Linster, 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
Marilyn Antolin, Secretary

Others: Donald Wilson, Esq., Belles Graham Proudfoot Wilson & Chun
Robert White, Developer
Calvin Kimura, Condominium Consultant
Myoung Oh, Hawaii Association of REALTORS®
Dale Bordner, Hawaii Association of REALTORS®
Ralph Foulger, Ralph Foulger School of Real Estate
Jack Sanders, Ralph Foulger School of Real Estate
Leslie Kobata

Absent: None.

Call to Order: Chair Sherley called the meeting to order at 9:05 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.

Condominium
Specialist's
Report:

Additional Distribution

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

4. Condominium Governance and Management
 - d. Condominium Seminars and Symposium—CAI Hawaii "Board Do's and Don'ts" November 21, 2013 -- Evaluation
5. CPR Registration and Developer's Public Reports
 - a. Condominium Projects and Developer's Public Reports
 - 3) CPR Project - Request for Non-Binding Interpretation, Niumalu 2371 Condominium - Registration No. 6845 – Chapter 514B, Part V, Subpart B Sales to Owner-Occupants (Letter dated November 21, 2013 Belles Graham Proudfoot Wilson & Chun, LLP - Donald H. Wilson Esq.)

Minutes: Upon a motion by Commissioner Faulkner, seconded by Commissioner Gendrano, it was voted on and unanimously carried to accept the minutes of the November 13, 2013 Condominium Review Committee meeting as circulated.

Condominium
Project
Registration:

Request for Non-Binding Interpretation, Niumalu 2371 Condominium – Registration No. 6845 – Chapter 514B, Part V, Subpart B Sales to Owner-Occupants (Letter dated November 21, 2013 Belles Graham Proudfoot Wilson & Chun, LLP - Donald H. Wilson Esq.)

Present were Donald H. Wilson, Esq., of Belles Graham Proudfoot Wilson & Chun, LLP and his client Mr. Robert White. Condominium Consultant Calvin Kimura was also present.

Mr. Wilson summarized that his client's primary issue facing the proposed amendments to the Developer's Public Report appears to be the applicability of the owner-occupant requirement.

Mr. Wilson stated that at the time of the original filing of the developers public report the intent was to keep the three units in family ownership. At that time the developers believed that the owner-occupant requirements applied to residential units rather than vacant land. Two of the three units had residences constructed, the third unit was vacant land. Subsequent to the Commission's issuance of an effective date for a developers' public report two of the three units had been sold. The third unit has not yet sold and the developer is willing to run an owner-occupant publication notice.

Commissioner Wada arrives at 9:15 a.m.

The developer, Mr. White, noted that due to life changes, two units were sold to non-family members.

Condominium Consultant Calvin Kimura reviewed the statutes involved and provided what he recalled as the legislative intent of the law as he understood it to be during his tenure as the Supervising Executive Officer of the Real Estate Branch.

Mr. Kimura suggested that the Committee issue an informal non-binding interpretation by tweaking the definition of "residential unit" and including the original intent of the law as follows:

"Residential unit" means "unit" as defined in section 514B-3, only includes residential units whereby the developer conveys to the purchaser a completed residential dwelling or structure, but excludes:

- (1) Any unit intended for commercial use;
- (2) Any unit designed and constructed for hotel or resort use that is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to section 46-4; and
- (3) Any other use pursuant to authority granted by law to a county.

Specialist Yee clarified with Mr. White and Mr. Wilson the original ownership of the units when the project was developed; spatial unit 1 – Christopher Alan White and Niumalu 2371 LLC; converted unit 2 – Christopher Alan White and Niumalu 2371 LLC; and converted unit 3 – Christopher Alan White and Niumalu 2371 LLC.

Discussion followed about the history of the subsequent conveyances.

Mr. White clarified that Niumalu 2371 LLC members were basically family members. However, Alita White, wife of Robert White, was not a member of Niumalu 2371 LLC. Niumalu 2371 LLC was created under the advice of the White's tax attorney.

Deputy Attorney General Wong questioned the date unit 1 was conveyed to the current owners.

Mr. Wilson indicated that unit 1 was conveyed to the McGees on December 16, 2011.

Commissioner Lee questioned when the units were built.

Mr. White indicated that the original house was built in 1940. The home was then reconstructed in 1996. The guest house, unit 2, was built in 2002.

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

Condominium
 Governance and
 Management:

AOUO Registrations

Specialist Stone reported that as of November 30, 2013, 1,439 AOUOs have successfully registered.

Condominium Seminars and Symposium—CAI Hawaii "Board Do's and Don'ts" November 21, 2013 -- Evaluation

Evaluations submitted by Commissioner Lee, Specialist Yee and Specialist Linster were distributed for informational purposes. It was noted that the quality of speakers was very good and provided useful information in the time allotted. It was suggested that fiduciary duty be included as a topic for future seminars.

Case Law Review Program

The following cases from the December 2013 issue of Community Association Management *Insider* were distributed for informational purposes: 1) *Haynes v. Indian Hills Harbor Home Owners Assn.*; 2) *Jafri v. Chandler LLC*; and 3) *Moates v. Plantation Oaks Homeowners' Assn.*

Condominium Related Articles

The following articles were distributed for informational purposes: Community Association Management *Insider* (December 2013): "Follow FHA When Fostering Holiday Spirit in Community" and "Trouble Brewing Over Trick-or-Treat Lawsuit;" and CAI Hawaii (October 2013) - "Fire Code Issues and Safety Tips" and "Utility Submetering."

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of November 2013 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	UNIT	RPT	DATE
7429	1108 AUAHI	1108 AUAHI ST HONOLULU HI 96814	123005013	320	B REPT	11/14/2013
7431	1118 ALA MOANA	1118 ALA MOANA BLVD HONOLULU HI 96814	123001001	178	B REPT	11/14/2013
7296	175 NORTH KALAHEO AVENUE	175 N KALAHEA AVE KAILUA HI 96734	143028077	2	B REPT	11/6/2013
6113	2031/2033 PUNA STREET RESIDENCES	2031 PUNA ST HONOLULU HI 96817	118035015	2	SUPPL	11/20/2013
7438	788 & 790 KAIPII STREET	788 & 790 KAIPII ST KAILUA HI 96734	143081048	2	B REPT	11/6/2013
7312	COSTA ESTATES	3340 PUNI RD KOLOA HI 96756	428011004	3	B REPT	11/22/2013
7425	HALE MAI'A	MAI'A LP KAILUA-KONA HI 96740	373068028	20	B REPT	11/6/2013
7433	KHB MANOR	1552 YOUNG ST HONOLULU HI 96814	124006002	32	B REPT	11/20/2013
7445	KIPUKA AT HOAKALEI INCREMENT 3	END OF KAIKOHOLA ST EWA BEACH HI 96706	191162004	10	B REPT	11/13/2013
7449	KIPUKA AT HOAKALEI INCREMENT 4	END OF KAIKOHOLA ST EWA BEACH HI 96706	191162013	8	B REPT	11/13/2013
7457	LAULANI XXVI PHASE 20	91=1001 KEAUNUI DR EWA BEACH HI 96706	191149029	12	B REPT	11/25/2013
7443	NORMAN & BEVERLY HOLT FAMILY TRUST	6537 KAWAIHAU RD KAPAA HI 96746	446007130	2	B REPT	11/26/2013
7408	PEACE OF PAI	4152 PAI ST	432002031	3	B REPT	11/21/2013

7432	PROSPECT HEIGHTS	KALAHEO HI 96741 132/134/136/138 PROSPECT ST HONOLULU HI 96813	122006051	4	B REPT	11/6/2013
7418	ROCAVALLO ESTATES	1521 KANAIO-KALAMA PARK RD KULA HI 96790	221005049	3	B REPT	11/13/2013
7414	SEARS	6674 WAIAKEA RD KAPAA HI 96746	446006075	2	B REPT	11/6/2013
2937	WAILELE `IKENA	6277 & 6277A PUUOPAE PL KAPAA HI 96746	444009024	2	SUPPL	11/6/2013
0	Preliminary Reports					
0	Contingent Final Reports					
0	Final Reports					
2	Supplementary Reports					
15	B Reports					
0	B Amendment Reports					
17	TOTAL REPORTS					

**CPR Registration and Developer's Public Reports Related Articles -
 "Kakaako Sewage Odors A Problem" – StarAdvertiser.com, 10/31/13**

The StarAdvertiser.com's October 31, 2013 article entitled "Kakaako Sewage Odors A Problem" was distributed for informational purposes only.

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

**Request for Non-Binding Interpretation, Niumalu 2371 Condominium -
 Registration No. 6845 – Chapter 514B, Part V, Subpart B Sales to Owner-
 Occupants (Letter dated November 21, 2013 Belles Graham Proudfoot
 Wilson & Chun, LLP - Donald H. Wilson Esq.)**

Commissioner Cobb recused herself from decision making due to a conflict of interest.

Upon a motion by Commissioner Senter, seconded by Commissioner Gendrano, it was voted on and carried to accept the developer's proposal of publishing for unit 3 the required sales to owner-occupant publication of §514B-95, HRS, based on the specific facts of Niumalu 2371 condominium project registration as detailed by the developers in its letter request of November 21, 2013 and December 11, 2013 presentation; and require the developer to submit to the Commission's Condominium Review Committee the specific date on which Scott Alan Libert and Cynthia Macatombas Libert commenced renting unit 2 from the developers Niumalu 2371 LLC or Christopher Alan White and Niumalu 2371 LLC. Commissioner Cobb abstained from voting due to her declared conflict of interest.

Program of Work: **Neighbor Island Outreach**

The January 8, 2014 committee meetings will be held in conjunction with the Specialists' Office for the Day at the REALTORS® Association of Maui offices located at 441 Ala Makani Place, Kahului, Maui.

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.

CETF Budget & Finance Report: No report presented.

Next Meeting: January 8, 2013
Upon adjournment of 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

Adjournment: With no further business to discuss, Chair Sherley adjourned the meeting at 10:32 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

December 23, 2013

Date

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