

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 2, 2015

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, Broker / Maui Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Scott Arakaki, Public / Honolulu Commissioner
Laurie A. Lee, Broker / Honolulu Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Michael Pang, Broker / Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Cynthia Yee, Senior Condominium Specialist
Benedyne Stone, Condominium Specialist
Dathan Choy, 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
Ruth Yamada, Office Assistant

Others: Myoung Oh, Hawaii Association of REALTORS®
Aron Espinueva, Hawaii Association of REALTORS®
Jonathan Chun, Belles Graham Proudfoot Wilson & Chun, LLP
Beth Holiday, Hawaii Business Training

Absent: Nikki Senter, Public / Honolulu Commissioner
Aileen Wada, Broker / Honolulu Commissioner

Call to Order: Chair Sherley called the meeting to order at 9:10 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.

Commissioners Senter and Wada 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
 - 1) November 2015

Minutes:

Upon a motion by Commissioner Faulkner, seconded by Commissioner Lee, it was voted on and unanimously carried to accept the minutes of the November 10, 2015 Condominium Review Committee meeting as circulated.

Condominium
 Governance and
 Management:

AOUO Registrations

Specialist Stone reported that as of November 30, 2015, 1,485 AOUOs have successfully registered.

Condominium
 Project
 Registration:

Condominium Project Registration - Public Reports Issued

A list of those condominium projects issued effective dates during the month of November 2015 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	TOTAL	REPORT	DATE
7717	1242 AND 1242A WILDER	1242 & 1242A WILDER AVE HONOLULU HI 96822	124029012	2	B REPT	11/23/2015
7729	2768 & 2770 LANILOA ROAD	2768 & 2770 LANILOA RD HONOLULU HI 96813	122023133	2	B REPT	11/16/2015
7731	45-509A AND 45-509B KOLOKIO ST CONDOMINIUM	45-509A AND 45-509B KOLOKIO ST KANEHOE HI 96744	145071085	2	B REPT	11/20/2015
7694	45-736 AND 45-738 ANOI RD CONDOMINIUM	45-736 & 45-738 ANOI RD KANEHOE HI 96744	145072015	2	B AMEND	11/18/2015
7715	AULI'I CONDOMINIUM	500 AULI'I DR MAKAWAO HI 96768	223058065	2	B REPT	11/18/2015
7724	BOUNTY HOUSES THE	5281 WEKE RD & 4421 MALOLO RD HANALEI HI 96714	455002003	2	B REPT	11/5/2015
7168	COVE WAIKIKI THE	1800 & 1820 KAIOO DR HONOLULU HI 96815	126012037	117	B AMEND 5	11/18/2015
7702	HARTMAN OHANA CONDOMINIUM	299 AND 303 ALAE RD KULA HI 96790	222009060	2	B REPT	11/25/2015
7735	HIOLANI ESTATES CONDOMINIUM	363 HIOLANI ST PUKALANI HI 96768	223048045	2	B REPT	11/12/2015
7686	HOKUPA`A	MOKUHANO STREET HONOLULU HI 96825	139010049	15	B REPT	11/20/2015
7619	KAHUKU MALUHIA ESTATES	56-1080 KAMEHAMEHA HWY KAHUKU HI 96731	156005002	5	B AMEND	11/27/2015
7728	KAINANI VILLAS - BUILDINGS 1 & 2	ALA PUALEIKUKUI ST KOLOA HI 96756	426020022	8	B REPT	11/25/2015
7691	KAMANI AT KEHALANI	OFF OMA`OMA`O ST WAILUKU HI 96793	235001090	2	B REPT	11/27/2015
7723	KAUHALE GARDENS	1123F KAMEHAMEHA IV RD HONOLULU HI 96819	113009029	21	B REPT	11/12/2015

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7739	KAWENA AT MEHANA	460 KAMA' AHA AVE KAPOLEI HI 96707	191160051	52	B REPT	11/23/2015
7600	KEAUHOU PLACE	555 SOUTH ST HONOLULU HI 96813	121030001	428	B AMEND	11/27/2015
5589	KULALANI AT MAUNA LANI	68-1118 N KANIKU DR KAMUELA HI 96743	368022007	48	SUPPL 3	11/6/2015
7751	KULALANI AT MAUNA LANI (PH 9)	68-1118 N KANIKU DR KAMUELA HI 96743	368022007	4	CONT	11/20/2015
7730	LANIKAI POINT	567 & 567-A KANEAPU PL KAILUA HI 96734	143009023	2	B REPT	11/3/2015
7235	LOT 2 MAKILA PLANTATION PH III CONDOMINIUM	LOT 2 MAKILA PLANTATION LAHAINA HI 96761	247001041	2	B AMEND	11/4/2015
7757	LOT 7 MAKILA RIDGE CONDO	39 & 43 KUMU NIU ST LAHAINA HI 96761	247001050	3	B REPT	11/25/2015
7708	MAKALI'I AT WAILEA	KAUKAHI ST & WAILEA ALANUI DR WAILEA HI 96753	221008120	68	B REPT	11/19/2015
6090	PARK ESTATES	6421 OPAEKAA RD KAPAA HI 96746	442006042	2	SUPPL	11/30/2015
7575	PARK LANE	1388 ALA MOANA BLVD HONOLULU HI 96814	123038013	215	B AMEND 2	11/13/2015
7744	PILI MAI AT PO'IPU (PHASE 2)	2611 KIAHUNA PLANTATION DR KOLOA HI 96756	428014033	13	B REPT	11/25/2015
7704	POHAKU HINA	936 APOKULA ST KAILUA HI 96734	142002041	2	B REPT	11/24/2015
7754	RAINBOW VALLEY CONDOMINIUM	LOT 10 OLOWALU MAUKA LAHAINA HI 96761	248003003	2	B REPT	11/30/2015
7716	SANTOSHA ESTATES	73-4200 HULIKOA DR KAILUA-KONA HI 96740	373058040	10	B REPT	11/9/2015
3860	SUNBURST GARDENS	2638 KAUAPEA RD KILAUEA HI 96754	452004064	3	SUPPL 3	11/16/2015
7671	ULALENA MAKAI CONDOMINIUM	56 & 50 W WAIPIO RD HAIKU HI 96708	229004018	2	B REPT	11/20/2015
7714	WHISPERING PALMS	26 HOONANI ST KIHEI HI 96753	239034013	2	B REPT	11/10/2015
0	Preliminary Reports					
1	Contingent Final Reports					
0	Final Reports					
3	Supplementary Reports					
21	B Reports					
6	B Amendment Reports					
31	TOTAL REPORTS					

Case Law Review Program

The article entitled "Judge Rejects Jury Award in Haseko Marina Fight" posted in the October 28, 2015 issue of the Honolulu Star Advertiser was distributed for informational purposes.

Proposed Condominium Project Registration of Puu Kulana CPR 808 and Goatsdoroam - Developer's Request for Reconsideration of the Hawaii Real Estate Commission's September 11, 2013 Informal Non-Binding Interpretation Relating to Spatial Units for CPR Registration No. 7288 "New Camp At Kahuku Village" - Jonathan J. Chun, Esq., Belles Graham Proudfoot Wilson & Chun LLP, Attorney For Developer

For the Committee's information, Specialist Choy provided a brief summary of the developer's request. Mr. Chun, the developer's attorney, then explained the developer's request that the Commission reconsider its decision of September 11, 2013 in the New Camp at Kahuku Village project for CPR No. 7288, to not allow improvements, including single family dwellings, within the boundaries of a spatial unit.

Mr. Chun noted that in his practice he deals with many small 2-5 unit family condominiums. The cost and burden of changing the maps and descriptions of the developments is a hardship.

Mr. Chun noted that he was under the impression that you could design a condo project where the spatial unit contains a dwelling. The yard is considered the spatial unit, with a house on it. The disclosure in the proposed developer's public report is very clear.

Mr. Chun also noted that three similar projects were previously issued effective dates by the Commission. He was unaware that the Real Estate Commission had inadvertently issued effective dates for those projects. Mr. Chun noted that after submitting the two current projects, Goatsdoroam and Puu Kulana, the developers were informed by Commission Staff that the projects could not be filed as spatial projects and referenced the New Camp at Kahuku Village project informal non-binding interpretation.

Mr. Chun further noted that both projects are being treated as conversions and received the appropriate county certifications. He is focusing on §514B-3, definition of "unit" meaning a physical or spatial portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in the declaration or pursuant to §514B-35, with an exit to a public road or to a common element leading to a public road. §514B-35(3) states "Subject to paragraph (2), all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit." Mr. Chun noted that there seems to be more flexibility in describing the unit in the declaration.

He also noted that he could not find any legislative history that you cannot have a structure within the unit. There should be flexibility by the Commission pursuant to §514B-35(3).

Mr. Chun noted that in the New Camp at Kahuku Village project, there still remains a spatial unit with a structure on it. The unit is the school surrounded by a spatial unit.

Commissioner Faulkner questioned the total additional cost to the developer to amend the declaration and condominium map.

Mr. Chun responded that the yard area would then become a limited common element and the house the unit, thereby requiring a recalculation of the limited common element, the map would need to be redone, amended declaration filed, amended map filed and attorney's fees ranging from \$300-\$400. Total out of pocket for the developer could be approximately \$1,500 - \$2,000. These are small mom and pop projects and not developers making a living off of development.

Chair Arakaki responded that the Committee is dealing with the actual provisions of the statute. The Committee noted that the condominium statute does not distinguish between small and large condominiums. He questioned if Mr. Chun found any legislative history that the legislature intended for spatial units to have no structures.

Mr. Chun replied that §514B-35(3) does not show legislative intent, but shows that there was an understanding of what can be in a unit and that there may be improvements within a unit. Mr. Chun discussed what he understood to be the applicable condominium law. He noted that the traditional condo is an apartment building, that the condo concept has since been expanded to include land condos. Within the land model you can have other improvements. Within the yard, you can have a house, guest house, etc. Buildings and structures are treated differently from units.

Mr. Chun was asked when creating the CPR with an existing structure, how did the developer determine to elect submitting the project as a spatial unit?

Mr. Chun responded that early on he was informed by another party that you could do a spatial project with the unit as the yard and include the building. The trigger in the three previous projects was that they were small projects and the buyer's lender, Fannie Mae, would not make the loan because the limited common element is considered an easement. The loan had to be for the land owned by the owner. The loan would then only be made for the square footage of the home. With the Fannie Mae requirement, only the underlying land under the unit would qualify, which is why the whole yard was then submitted as the unit. The unit is then the yard, owned in fee and not an easement.

Commissioner Lee questioned if the subsequent projects satisfied the Fannie Mae requirements.

Mr. Chun responded that he did not receive any feedback from the lenders. This occurred in 2012-2013 and the broker changed lenders.

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

Program of Work: **Rulemaking, Chapter 107/119**

Specialist Yee reported that a redraft of the draft proposed rules relating to condominium project registration will be sent out to the Blue Ribbon Panel for review by the end of the week.

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:

Upon a motion by Commissioner Pang, seconded by Commissioner Lee, it was voted on and unanimously carried to accept the Condominium Education Trust Fund Financial Report for the period ending September 30, 2015.

Condominium Project

Proposed Condominium Project Registration of Puu Kulana CPR 808 and

Registration **Goatsdoroam - Developer's Request for Reconsideration of the Hawaii Real Estate Commission's September 11, 2013 Informal Non-Binding Interpretation Relating to Spatial Units for CPR Registration No. 7288 "New Camp At Kahuku Village" - Jonathan J. Chun, Esq., Belles Graham Proudfoot Wilson & Chun LLP, Attorney For Developer**

Executive Session: Upon a motion by Commissioner Cobb, seconded by Commissioner Faulkner, 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" relating to owner occupant violations of Chapter 514A, HRS and Chapter 514B, HRS.

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

Upon a motion by Commissioner Pang, seconded by Commissioner Arakaki, it was voted on and unanimously carried to deny the developer's request for reconsideration of the Hawaii Real Estate Commission's September 11, 2013 Informal Non-Binding Interpretation Relating to Spatial Units for CPR Registration No. 7288 "New Camp At Kahuku Village" to allow spatial units to include structures; and to deny the same developer's request for a one time exemption from the Hawaii Real Estate Commission's September 11, 2013 Informal Non-Binding Interpretation Relating to Spatial Units for CPR Registration No. 7288 "New Camp At Kahuku Village" to allow spatial units to include structures.

Next Meeting: January 13, 2016
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 Street
Kahului, Maui

Adjournment: With no further business to discuss, Chair Sherley adjourned the meeting at 10:15 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

Cynthia M. L. Yee
Senior Condominium Specialist

December 9, 2015

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____