

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: November 8, 2017

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: Laurie A. Lee, Chair, Broker / Honolulu Commissioner
Bruce Faulkner, Vice Chair, Broker / Maui Commissioner
Nikki Senter, Public / Honolulu Commissioner
Rowena Cobb, Broker / Kauai Commissioner
Aileen Wada, Broker / Honolulu Commissioner
Scott Arakaki, Public / Honolulu Commissioner
Aleta Klein, Broker / Honolulu Commissioner
Michael Pang, Broker / Honolulu Commissioner – early departure
Sean Ginoza, Broker / Hawaii Island Commissioner

Neil Fujitani, Supervising Executive Officer
Miles Ino, Executive Officer
Carole Richelieu, 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

Others: Lourdes Scheibert, Kokua Council
Andrew Bunn, Chun Kerr LLC
Imran Naeemullah, Chun Kerr LLC
Jean Campbell, Bays Lung Rose & Holma
K. Paine, Condo Maintenance
Will Beaton, Capbridge Pacific
Scott Sherley, Hawaii First Realty LLC
Claire Doi, Asia Real Estate Association
Elisia Flores, Eddie Flores Real Estate School

Absent: None.

Call to Order: The Chair called the meeting to order at 9:16 a.m., at which time quorum was established.

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:

Minutes

Upon a motion by Commissioner Faulkner, seconded by Commissioner Wada, it was voted on and unanimously carried to accept the minutes of the October 11, 2017 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOUO Registrations

Specialist Stone reported that as of October 31, 2017, 1,405 AOUOs have successfully registered.

Case Law Review Program

The following articles were distributed for informational purposes: High Noon at Arlington Ranch Homeowners Association v. The Eighth Judicial District Court of the State of Nevada, et al., Nevada Supreme Court, September 27, 2017; Cooper v. Bernath Village Condo Association, et al., Ohio Court of Appeals, June 16, 2017; and Gill Terrace Retirement Apartments, Inc. v. Marie Johnson, Vermont Supreme Court, April 2017.

Condominium Seminars and Symposium

CAI Hawaii seminar "Why Are They So Angry" October 19, 2017 evaluations – evaluation submitted by Specialist Richelieu who monitored the seminar on behalf of the Commission. Largest attendance at a CAI Hawaii seminar this year, suggests offering this topic in the future.

Specialist Stone reported that the Condorama, a joint effort of the Real Estate Commission and CAI Hawaii Chapter, was held on Saturday, November 4th at the Hawaii State Capitol. Chair Lee opened up the seminar by welcoming those present and introducing the moderator. There were approximately 65 participants in attendance who seemed genuinely interested in being educated. A formal report will be provided at the December meeting.

Condominium Related Articles

The article entitled "Land Court: Demystifying an Enigma" from the September 2017 issue of the Hawaii Bar Journal 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 October 2017 was distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	TOTAL	REPORT DATE
8066	1348 & 1350 ALEWA	1348 & 1350 ALEWA DR HONOLULU HI 96817	118031023	2	B REPT 10/9/2017

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8060	2202 CALIFORNIA AVENUE	2202 & 2202A CALIFORNIA AVE WAHIAWA HI 96786	175024002	2	B REPT	10/16/2017
8014	3945 AND 3947 HARDING AVENUE	3945 AND 3947 HARDING AVE HONOLULU HI 96816	132044014	2	B REPT	10/5/2017
4272	55-141A & 55-141B NAUPAKA STREET	55-141A & B NAUPAKA ST LAIE HI 96762	155011044	2	SUPPL	10/30/2017
8054	66-130 AND 66130A WALIKANAHELE ROAD	66-130 & 66-130A WALIKANAHELE HALEIWA HI 96712	166005013	2	B REPT	10/3/2017
7565	66-158 NIUULA ROAD	66-158 NIUULA RD HALEIWA HI 96712	166003004	4	B AMEND	10/3/2017
8056	85-928 MIDWAY STREET/85-1027 MILL ST	85-928 MIDWAY STREET WAIANAHI HI 96792	185007002	2	B REPT	10/23/2017
8071	87-602 FARRINGTON HIGHWAY	87-602 FARRINGTON HIGHWAY WAIANAHI HI 96792	187024011	3	B REPT	10/13/2017
7942	HALE IHIHI	1249-A & 1249-B IHIHI PL WAHIAWA HI 96786	171005040	2	B AMEND	10/9/2017
8026	KALIANUI RIDGE LOT 1-B CONDOMINIUM	LOT 1-B KALUANUI RIDGE MAKAWAO HI 96768	225004086	2	B AMEND	10/17/2017
8051	KANESHIRO ESTATES	4228A UPA ROAD KOLOA HI 96756	427008051	2	B REPT	10/16/2017
7752	MAKENA BEACH CLUB AND RESIDENCES	5400 MAKENA ALANUI RD WAILEA HI 96753	221005086	12	B AMEND	10/30/2017
3641	NAWILIWILI ESTATES	6171 OLOHENA RD KAPAA HI 96746	432006005	10	SUPPL 2	10/4/2017
8042	OHANA FARM PARCELS CONDOMINIUM	KAMEHAMEHA HIGHWAY WAHIAWA HI 96786	164003017	40	B REPT	10/5/2017
7893	WAIKELE STORAGE PARK	94-990 PAKELA ST WAIKELE HI 96794	194002081	203	B AMEND	10/4/2017
8037	WAIKELE STORAGE PARK (UNIT 5-24 SUBDIVISION PHASE)	94-990 PAKELA STREET WAIPAHU HI 96797	194002081	13	B REPT	10/4/2017
7772	WAILEA GOLF ESTATE II	100 WAILEA IKE DR WAILEA HI 96753	221008156	16	B AMEND	10/30/2017

0	Preliminary Reports
0	Contingent Final Reports
0	Final Reports
2	Supplementary Reports
9	B Reports
6	B Amendment Reports
17	TOTAL REPORTS

Request for Informal Non-Binding Interpretation – Bays Lung Rose & Holma September 28, 2017: Regarding HRS §514B-135 (Termination of Contracts and Leases of Developer)

The request was for an informal non-binding interpretation regarding the effect, if any, of HRS § 514B-135 on a potential contract with a third-party energy system provider. The request asks whether the association's termination option in this section applies to the type of contract in the provided factual situation.

Jean Campbell of Bays Lung Rose & Holma, attorneys at law, representing Kupono Partners LLC, the developer of the Maui Bay Villas condominium and proposed time share project, was present to answer any questions from the committee.

Mr. Will Beaton, president of Capbridge Pacific, provided a visual site plan of the project and informed the committee that the project will consist of 16 buildings, 12 of which will contain guest rooms. No condominium units are being offered for sale and the resort units will be subject to a time share plan.

The developer is looking into entering into a contract with a third-party energy system provider which will provide photo voltaic panels mounted on the rooftops of free-standing canopies covering the parking areas and the operations building, which will be located at the back of the property, with no up front or back end cost to the developer or the association. The parking canopies will be constructed upon either concrete or metal structures, and will be located around the perimeter of the property. The system will also include battery storage so that energy generated during the day can also be used during peak hours.

Energy from the system will first be used for the common elements, and if excess, then the guest units. The system is complementary to the energy provided by Maui Electric Company (MECO). The system will be owned by the energy system provider, and the AOOU will purchase energy from the provider at an agreed upon rate. The cost savings to the AOOU will be over \$16 million dollars. The selected third-party system provider under a 20-25 year contract will handle the design, build, finance, and maintenance of the system. The AOOU at the end of the 20-25 year contract will have an option to extend the contract or purchase the installed system. This would be a bona fide contract with benefit to the unit owners.

Commissioner Klein commented that a 20-25 year contract is a long contract, and questioned whether the rate charged will have elasticity.

Mr. Beaton responded that the rate will be tagged to MECO. If MECO's rate goes down, so will the rate charged by the system provider. This will be a standard provision within the contract.

Commissioner Arakaki questioned, once the vendor is chosen, whether their design would impact the number of parking spaces.

Mr. Beaton responded that there will be x number of parking spaces, none of which will be eliminated due to vendor design. The design will more than likely be precast concrete Ts with horizontal beams and the PV on top. There will be a long-term warranty. The vendors have done many similar projects on Maui.

Commissioner Faulkner questioned the location of the battery storage.

Mr. Beaton responded that the location has not yet been specified. There will be four battery storage locations on site.

Commissioner Klein questioned if a hurricane were to destroy the system, what would be the impact to the association.

Mr. Beaton responded that the only impact will be to the energy system provider which will have to insure the system. The project will be on the grid. If the system is down, energy will be supplied by MECO.

Commissioner Senter informed the committee that at her previous employment over 15 years ago, she did work with Mr. Beaton, but noted that she can be impartial in her decision making on this request.

Commissioner Senter questioned what happens if the AOOU stops paying monthly for the PV system and whether the contract will contain a maintenance schedule.

Mr. Beaton responded that he will need to explore the inquiry on the AOOU's failure to pay and that all maintenance costs will be absorbed by the energy system provider. A license will also be required for the equipment in the common areas with right of entry type language in the contract.

Chair Lee inquired if there were no PV system, would the developer install carport canopies.

Mr. Beaton responded in the negative and commented that all parking would then be open parking spaces. He further commented that the system will be

designed to maximize the operating efficiency of the system to demand and should have no impact to the neighborhood.

Chair Lee further questioned if there is excess energy, would it be sold back to MECO.

Mr. Beaton responded that net metering is no longer allowed and that excess energy will be placed in battery storage for use during peak demand.

Ms. Campbell added that the system will be designed to produce less than 100% energy. Some power will still be purchased from MECO.

Commissioner Arakaki questioned, when the contract ends, what is the downside, what is the buy-out clause, who will maintain the system, is there a contingency and cost plan?

Mr. Beaton responded that most of those issues have not yet been addressed and will be discussed with the vendors. There will be an extension and buy-out clause included in the contract which will need to be negotiated. He did note that one of the downsides may be that panels will eventually need to be replaced, but should last well over 30 years initially.

Commissioner Pang questioned the estimated PCI.

Mr. Beaton responded that the PCI is based on square footage and that the amount will be very small with the 28-acre property. There will be no resort units for sale, only time share interests will be sold

Specialist Choy commented in relation to the definition of the parking area, that the actual design of the free-standing canopies above the parking areas needs to be addressed to ensure there is no impingement on the parking areas.

Ms. Campbell responded that the stalls remain untouched as the foundation for the canopies will be located outside of the parking stalls.

Mr. Beaton responded that each structure will have to support many panels. Every horizontal bar will have a T with a foundation which may be technically in a parking stall.

Commissioner Senter questioned whether the parking stalls will be a common element or a limited common element.

Ms. Campbell responded that the stalls are common elements and encouraged the Real Estate Commission to consider "lease of parking area" and not a "lease of parking or parking usage." The condominium statute is a consumer protection law. The area above the parking will be licensed, and the parking area will be available to all.

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

**Request for Informal Non-Binding Interpretation – Consultants' Request
October 2, 2017: Regarding Cooperative to Chapter 514B Condominium**

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

**Request for Informal Non-Binding Interpretation – Chun Kerr, LLP,
September 26, 2017: Regarding Phases**

Andrew Bunn and Imran Naeemullah of Chun Kerr LLC were present on behalf of their clients, developers SC Development Company LLC and KMC Partners LLC, regarding the Commission's procedures in the situation where a developer wants to divide units in an existing condominium project. The developers feel that the phased registration requirement is not conducive to the project structure and will create unnecessary confusion for purchasers and increasing burden on developers.

Mr. Naeemullah informed the committee that the projects they represent both have current registrations. After receipt of the effective date for the projects, the developers realized that they would like to subdivide units by reconfiguring existing space to create new units within the boundaries of the original larger unit by doing an amendment to the developers' public report. In response to the submission to the Commission, the developer's attorney was informed by staff of the Real Estate Branch that they would need to remove the unit(s) from the existing registration and register a phase two as a separate project. Mr. Naeemullah stated that in addition to the sheer volume of the paperwork originally submitted, this would cause additional confusion as both reports would cross reference each other and look as if it were two separate projects, but in effect, it is just one. The duplicative paperwork could be misleading to the prospective purchaser.

Mr. Bunn informed the committee that under Ch. 514A, all preliminary, final, and supplementary developer's public reports had expiration dates. A 2004 policy required new 514A units to be registered under a new phase of the project. There is a new structure with Ch. 514B reports in that they are evergreen, making it unnecessary to create a new project and instead amend the initial project registration as a single report for the project.

Specialist Richelieu questioned if the units are being "reconfigured" and not "subdivided" as related to "subdivision."

Mr. Bunn responded in the affirmative.

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

Consultants – Consultants' Forum October 2, 2017 Report

The committee acknowledged receipt of the October 2, 2017 Condominium Consultant's Forum report.

Program of Work:

Rulemaking Chapter 119

Staff reported that the deadline for written comments to the proposed rules is November 13, 2017.

Upon a motion by Commissioner Arakaki, seconded by Commissioner Senter, it was voted on and unanimously carried to extend the deadline for written comments to the draft proposed rules to Monday, November 20, 2017.

Condominium Specialist Office for the Day

A written report of the Condominium Specialist Office for the Day held in conjunction with the Neighbor Island Outreach program on October 11, 2017, in Kauai was distributed for informational purposes.

Condominium Organizations Forum: Ms. Lourdes Scheibert, a condominium owner, was present and informed the committee of the issues she faced pertaining to the reporting of an un-permitted structure at her condominium. Ms. Scheibert reported that working through her board of directors and going through mediation failed. Her suggestion is that DCCA include within RICO an Ethics Commission to oversee complaints from condominium owners.

CETF Budget & Finance Report: Upon a motion by Commissioner Cobb, seconded by Commissioner Arakaki, it was voted on and unanimously carried to accept the Condominium Education Trust Fund Financial Report for the period ending June 30, 2017.

Recess: Upon a motion by Commissioner Cobb, seconded by Commissioner Faulkner, it was voted on and unanimously carried to recess the meeting at 10:55 a.m.

Reconvene: The Chair reconvened the meeting at 11:38 a.m.

Executive Session: Upon a motion by Commissioner Faulkner, seconded by Commissioner Arakaki, 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 Pang was excused from the meeting.

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

Condominium Project: Registration: **Request for Informal Non-Binding Interpretation – Bays Lung Rose & Holma September 28, 2017: Regarding HRS §514B-135 (Termination of Contracts and Leases of Developer)**

After a review of the information presented and the letter dated September 28, 2017, based upon the specific facts and questions as presented, Commissioner Senter moved to issue the following informal non-binding interpretation: As verbally presented, the proposed contract with the third-party energy system provider does not appear to fall under Hawaii Revised Statutes, §514B-135; however, any contract shall be bona fide, shall not be unconscionable to the association and unit owners at the time entered into under the circumstances then prevailing, and must be summarized and disclosed. Commissioner Arakaki seconded the motion. The motion was voted on and unanimously carried.

Request for Informal Non-Binding Interpretation – Consultants' Request October 2, 2017: Regarding Cooperative to Chapter 514B Condominium

Upon a motion by Commissioner Arakaki, seconded by Commissioner Klein, it was voted on and unanimously carried to defer the issue for inclusion in draft rules.

**Request for Informal Non-Binding Interpretation – Chun Kerr, LLP,
September 26, 2017: Regarding Phases**

After a review of the information presented and the letters dated September 26 and October 2, 2017, based upon the specific facts and questions as presented, Commissioner Senter moved to issue the following informal non-binding interpretation: that it will permit a developer to file an amended developer's public report or an amendment to a developer's public report if the existing condominium unit under Chapter 514B is divided into multiple units. The Commission also determined that since it has reconsidered its position on the filing requirements, then the second request need not be addressed. Commissioner Arakaki seconded the motion. The motion was voted on and unanimously carried.

Next Meeting: December 6, 2017
Upon adjournment of 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, the Chair adjourned the meeting at 12:23 a.m.

Respectfully submitted:

/s/ Carole R. Richelieu

Carole R. Richelieu
Senior Condominium Specialist

November 17, 2017

Date

Minutes approved as is.

Minutes approved with changes; see minutes of _____

CRR:tn/