

PLANNED COMMUNITY ASSOCIATION OVERSIGHT TASK FORCE

Department of Commerce and Consumer Affairs

State of Hawaii

<https://cca.hawaii.gov/>

MINUTES OF MEETING

Date: October 26, 2023

Time: 11:00 a.m.

In-Person Meeting Location: Queen Liliuokalani Conference Room
HRH King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Virtual Participation: Virtual Videoconference Meeting – Zoom Webinar
<https://dcca-hawaii-gov.zoom.us/j/84416042945>

Present: Laree McGuire, Member (Zoom)
John Morris, Member
Jane Sugimura, Member
Patti Thiele, Member (Zoom)
Dathan Choy, DCCA Member
Kedin Kleinhans, DCCA Member
Shari Wong, Deputy Attorney General
Kyle-Lee Ladao, DCCA Administrative

Excused: Rep. Mark Nakashima
Sen. Angus McKelvey

Zoom Webinar Guest(s):

Agenda: The agenda for this meeting was posted to the State electronic calendar and filed with the Office of the Lieutenant Governor, as required by Hawaii Revised Statutes (“HRS”) section 92-7(b).

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

Kyle-Lee Ladao welcomed everyone to the meeting and proceeded with a roll call of the Task Force members.

Election of Officers: John Morris discussed having one of the DCCA staff members as a Chair for the Task Force but the DCCA feels that there is a conflict of interest elected for a chairmanship.

Jane Sugimura nominated John Morris to be chair. Laree McGuire seconded the motion.

There were four aye votes for Mr. Morris (Kleinhans, McGuire, Thiele, and Sugimura).

Laree McGuire nominated Jane Sugimura as vice chair. John Morris seconded the motion.

There were four aye votes for Mr. Morris (Kleinhans, McGuire, Thiele, and Sugimura).

Overview of
Sunshine Law
Requirements:

Deputy Attorney General (DAG) Wong discussed the permitted interactions between members. Hawaii Revised Statutes chapter 92, commonly known as the Sunshine Law, pertains to open meetings in Hawaii's government. Ms. Wong highlighted that two members of the task force group may discuss between themselves matters relating to task force business so long as no commitment is made nor sought. For any materials or attachments they wish to share with the task force, they shall send these materials to Kyle Ladao to distribute to all members.

Members posed questions to gain more clarity on the permitted types of conversations that can be conducted when not in an open session meeting or what to do should there be possible conflicts with matters outside of the Task Force. Members were instructed to reference subsection b of Chapter 92, HRS. Members can also reach out to the DCCA for assistance or if they have legal counsel questions, members are allowed to reach out to DAG Wong.

New Business:

Overview Act 189, Session Laws of Hawaii 2023 (HB1509, HD2, SD1, CD2) Relating to Common-Interest Developments

The Task Force discussed, among other things, the purpose and objectives of the Task Force as referred to Section 2 of Act 189:

- 1) Examine rights afforded to owners in a condominium property regime governed by chapter 514B, Hawaii Revised Statutes, and determine the feasibility of extending any of those rights to members of planned community associations governed by chapter 421J, Hawaii Revised Statutes;
- 2) Investigate whether additional duties and fiduciary responsibilities should be placed on members of the boards of directors of planned community associations; and
- 3) Develop any legislation necessary to effectuate the purposes of this subsection.

Chair Morris gave a short background on his time working in the Real Estate Commission for the State in the 1980s and history of condominium (associations). He was the first condominium specialist and he learned that many people were not aware there was condominium law and the public was in need of educational materials. Mediation was also

considered an educational process, so this was factored into the condominium educational fund. Every condominium association would register with the commission and the commission would collect to fund educational materials, seminars, and subsidize part of the mediation program. Most condominiums have a managing agent that required registering of associations that fund the condo education fund. Planned communities, unlike condominiums, sometimes do not have a managing agent and they may not be incorporated so there is no clear connection with the DCCA.

Vice Chair Sugimura raised the question of how we would find out where these 421J associations are registered? Registration information can be found if they are incorporated

Dathan Choy noted that the incorporated associations are registered with the DCCA's Business Registration Division (BREG). The unincorporated associations would have a subdivision plans at the County level. The State also has some subdivision jurisdiction, but most have exemptions and they do not register as subdivisions.

Vice Chair Sugimura shared that she holds educational seminars and she has learned that owners that live in 421J communities' question why they cannot have what condominiums have, such as subsidized mediation. Act 189 came from this question and we might have to look at changing the law to include this into 421J. So, things from 514B will have to be piecemealed into 421J.

Laree McGuire suggested that a law for community associations that would go into effect over several years based on the number of units of the community association. An example of this is Lanikuhana, in the city of Mililani with different townhome projects that are technically under 421J.

Dathan Choy presented a general example of a condo building that is no longer a condo that managed to get subdivision of condo units that are 0.04acres.

Vice Chair Sugimura raised a question of drafts this legislation, and can the Task Force promote that legislation? It was suggested that the task force can suggestion legislation and take portions of the condo law and include condo law registration portion.

Dathan Choy posed the question of the condo law that requires new standing in court. Can we take away an entities legal right to legal right to standing corporation that they've had for potentially decades? Unless a association is incorporated, they cannot file a claim but associations that are not incorporated might pose a potential issue. If registration is done through DCCA – BREG and if an entity is not in good standing for not

registering. This process will require a new trust fund and we will have to look at how many condos would have to register fee for 421J.

Deputy Attorney General Wong asked that if regulating a new area, a sunrise analysis review will be required. But if adding more rights to planned communities or adding a registration structure and not put this under state regulation, a sunrise analysis will not be needed. An alternative would be to add protections from parts of 514B into 421J.

Laree McGuire stated that without registering, access to subsidized mediation is not possible. As more owners in community associations get involved in mediation, unregistered associations will not be able to benefit from subsidized mediation and also from education.

Vice Chair Sugimura asked how many claims are being made by homeowners against their association in 421J developments? Chair commented that in 421J, associations have less control than a condominium. They are only concerned with outward appearance. Mililani Town Association would be a good example of this. The Vice Chair is asking for data to quantify if owners are unhappy with their association before changing 421J before trying to change and have associations register. There is some incentive by registering by offering subsidized mediation and stay out of courts.

Laree commented that the community associations, that she represents, are often in mediation and both parties have to pay mediator fees – granted mediation is initiated by the association due to covenant violations. If 421J had subsidized mediation, these associations would be able to participate in the subsidy.

The task force agreed that under subsection d, an interim report will highlight the issues that planned community associations face and point out potential problems: getting associations to register, consequences of failing to register, incentives to register, and who will administer this.

Kedin Kleinahns presented that Florida created a new regulation in 2013, requiring community associations to register with name, address, federal employer identification number, number of parcels, and revenues and expenses to the department for a period of three years. This was used to collect as much information as they could.

The Task Force discussed incentives to register would be that as an HOA, is that a HOA could not bring claims to court unless you are registered. Right now, the non-profit route would not take anything away. The uniform unincorporated association act 429 does not have the same level. Tying in the non-profit corporation law would be a good route to take.

The group discussed that an interim report will be due to the legislature. They will write out the positive and negatives and this will be a starting point for an interim report to the legislature. This will give enough information to give background on the issues the task force foresees with trying to put HOA's in the same position of the condominiums. The task force will also try to suggest possible legislation within the interim report.

The task force group discussed what would trigger a sunrise analysis and if there are clear list of criteria.

The Task Force will review 514B and find any provision that would be beneficial to 421J.

The Task Force discussed dates for the next meeting tentatively set for the second or third week of November.

Next Meeting: November 16, 2023

Adjournment: The meeting adjourned at 12:16 p.m.

Reviewed and approved by:

/s/ John Morris

Taken and recorded by:

/s/ Kyle-Lee Ladao

(Mr.) John Morris
Task Force Chairman

(Mr.) Kyle-Lee Ladao
Administrative Assistant

KNL
11/03/23

- () Minutes approved as is.
- () Minutes approved with changes: