

Shall the Authority Exercise Its Option to Buy-Back the Pacifica Honolulu Condominium Reserved Housing Unit 1912?

Staff Report
October 7, 2015

Background: In the fourth quarter of 2011, Oliver McMillan Pacifica, LLC ("OMP") completed development of the Pacifica Honolulu condominium project in the Kakaako Community Development District. Pursuant to the Hawaii Community Development Authority ("HCDA") Mauka Area Rules in effect at the time of the development, OMP was required to provide at least one hundred twenty-four (124) two (2) bedroom reserved housing units within the project. Mr. Bryan S. Yoshida qualified to purchase a reserved housing unit and subsequently acquired Unit #1912 on August 22, 2011.

Mr. Yoshida's original purchase price was THREE HUNDRED NINETY THOUSAND ONE HUNDRED FIFTY DOLLARS (\$390,150.00) and at that time the fair market value of the unit was FOUR HUNDRED TWO THOUSAND FIVE HUNDRED DOLLARS (\$402,500.00). Therefore, the HCDA has a shared equity encumbrance on the unit of at least TWELVE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$12,350.00). The current assessed value of the unit is FIVE HUNDRED SEVENTY THOUSAND EIGHT HUNDRED DOLLARS (\$570,800.00). The reserved housing unit is also subject to a "Buy-Back" provision which provides the HCDA with the first right-of-refusal to purchase the reserved housing unit at a price set by a formula if the purchaser decides to sell the unit during the regulated term, which is the five (5) years immediately following their purchase of the unit.

By a letter dated September 30, 2015, Mr. Yoshida notified the HCDA of his intent to sell Unit #1912 to assist his family with his ill father. He is requesting the HCDA's declaration with respect to its option to Buy-Back this reserved housing unit. A copy of his letter is attached hereto as Exhibit A. §15-22-186(c) (3), Hawaii Administrative Rules, provides that the Authority may:

- waive its option to purchase the unit, whereby the HCDA will receive the shared equity of TWELVE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$12,350.00);
- agree to buy the unit (the estimated HCDA option purchase price for the unit is approximately FOUR HUNDRED FIFTEEN THOUSAND FOUR HUNDRED NINETY DOLLARS AND SIXTY-THREE CENTS (\$415,490.63) based on the formula provided in the rules); or
- provide a substitute buyer for the unit at the price calculated by its rules.

The HCDA's rules further require that the "Authority shall notify the owner of its decision within sixty (60) days of receipt of the owner's notification." Based on Mr. Yoshida's

September 30, 2015, letter, the Authority has until November 29, 2015, to notify him of its position regarding its option to Buy-Back the unit.

Act 61, Session Laws of Hawaii 2014, revised Chapter 206E in two sections with respect to Reserved Housing Units. First, Section 171-64.7, is amended and allows the HCDA to sell Reserved Housing Units without a prior concurrent resolution adopted by each house by at least a two-thirds majority vote of the members. Secondly, Act 61 specifically authorizes the Authority to sell Reserved Housing Units by amending the §206E-31.5 language prohibiting sale of Kakaako lands.

Discussion: With Act 61, SLH 2014, effective July 1, 2014, the HCDA now has the option to buy back Reserved Housing Units from owners who purchased and reside in a Reserved Housing Unit and subsequently request to sell their unit prior to the expiration of their regulated term. Given this tool, the HCDA now has the ability to purchase a Reserved Housing Unit and resell the unit at the current affordable sales price or find a substitute buyer utilizing the formula as stated in the applicable HCDA Mauka Area Rules. The HCDA also has the option to waive its rights to buy back the unit. While the HCDA staff implements revised Mauka Area Plan and Rules, staff believes the Authority should explore purchasing the unit rather than waiving its right to buy back the unit.

On September 24, 2015, a Preliminary Report was issued by Title Guaranty of Hawaii for the Pacifica Honolulu Unit 1912. Item #17 states the mortgage holder for Mr. Yoshida's unit was Mortgage Electronic Registration Systems, Inc., solely as nominee for First Hawaii Bank dated October 17, 2011 in the amount of THREE HUNDRED TWELVE THOUSAND ONE HUNDRED TWENTY DOLLARS (\$312,120.00). Item #18, on January 13, 2014, the above mortgage was assigned to First Hawaiian Bank.

If the HCDA intends to exercise its option to buy-back the unit, the sales price will be calculated pursuant to HAR §15-22-186(c)(1)(A) & (B). See below:

§15-22-186 (c) (1) If an owner wishes to transfer title to the reserved housing unit, the authority or a governmental agency approved by the authority shall have the first option to purchase the unit at a sales price based on the lower of:

- (A) The current fair market value of the reserved housing unit less the authority's share of the equity in the unit as determined by section 15-22-187 of this chapter;*
- or*
- (B) The original sales price of the reserved housing unit adjusted proportionately to the change in median income computed from the date of the purchase to the date of the sale.*

If the HCDA decides to waive its Buy-Back option and the unit is sold at market rate, the HCDA will receive its shared equity payment of at least TWELVE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$12,350.00) upon closing. This money would be deposited into the HCDA's Reserved Housing sub-account and used to support the development of other projects. However, once the sale to any willing market purchaser takes place and the shared equity payment is made, the unit will no longer be a reserved housing unit.

Recommendation: The current balance to date for the Reserved Housing Subaccount is NINE HUNDRED EIGHTY-FIVE THOUSAND THREE HUNDRED SEVENTY-NINE DOLLARS (\$985,379.00). Staff recommends the Authority exercise its right to buy back Pacifica Reserved Housing Unit #1912 in accordance to the Mauka Area Rules Chapter 22 dated June 2005 not to exceed FOUR HUNDRED FIFTEEN THOUSAND FOUR HUNDRED NINETY DOLLARS AND SIXTY-THREE CENTS (\$415,490.63).

Attachments: Exhibit A – September 30, 2015 letter from Jennifer Lee, Principal Broker, Lee International Properties, on behalf of Mr. Bryan S. Yoshida
Exhibit B – September 24, 2015 Title Guaranty of Hawaii, Inc. Preliminary Report