

WALT FLOOD REALTY

FOSTER TOWER: FEE SIMPLE CONVERSION UPDATE

According to Monarch Properties, Inc. "Client's Fee Conversion Update", dated May 9, 2002, there is going to be a hearing testimony: Resolution 02-134, on May 15, 2002, at Honolulu Hale.

Here are the questions which were asked of Michael Pang, President of Monarch Properties, Inc., and his answers and/or opinions about the Fee Simple Conversion at Foster Tower.

Flood: 1. If the Policy Committee of the City Council votes to approve the Resolution 02-134 the next hearing will be before the Honolulu City Council, but what happens if the Policy Committee does NOT approve the resolution?

Pang: If the Policy Committee does not pass the Resolution, it dies there. However,

I do not anticipate any problems with the Policy Committee or Council. They have passed all Resolutions that have thus far come before them. Some take work, but they have all passed.

Flood: 2. Assuming that the Policy Committee votes to approve the resolution, but the full Honolulu City Council rejects the resolution on the first hearing, what happens next?

Pang: Same, the Resolution fails if any of the three readings and votes are not successful.

Update (May 15th): The Policy Committee passed the Resolution, on May 15, 2002, with no opposition from the Lessor (no oral testimony from the Liliuokalani Trust).

Flood: 3. Assuming that the full City Council votes to approve the resolution, on the third hearing (2 hearings in the City Council), in your best judgment, do you think the Lessor (Liliuokalani Trust) will be amiable to negotiate, without going into litigation (judge & jury)?

Pang: Probably. Liliuokalani Trust is the last major trust to continue reluctance to sell. I am hopeful that the recent shift in leadership changes its antiquated thinking about selling to Foster Tower and all its other residential leasehold properties. No Chapter 38 case has yet had to go to trial to obtain a price, all have settled without trial (12 thus far). The difficulty in predicting the Lessor's reactions is in the emotion factor.

Flood: 4. And, if the Trust wants to go all the way, in your best judgment, how long will it take to reach a "fair price" for the fee conversion (months, 1, 2-3 years)?

Pang: It is virtually impossible to estimate because much of it depends on what the Lessors do. However, here is a guess... If it goes all the way, the lawsuit should be filed around August (2002) and it will take about 4 to 5 months to get the lawsuit answered and pre-trial statements filed (that's about January 2003).

A trial date is then scheduled, dependent upon the calendar of the Judge we get assigned to. Assuming it's one year, we may get to trial in early 2004. If the Lessor wants to file motions on side issues (to price) this timeframe will be extended by at least several months for each motion. If the Lessor wants to stall (a tactic of some Lessors' attorneys) there could be several motions, requests for extensions and an appeal of the Judge (or jury) award. Depending on what happens, if this goes all the way, it could take 2 to 5 years to complete.

Flood: 5. Assuming that all the above moves forward, is it fair, or appropriate, to "suggest" that the C&C of Honolulu Real Property Assessment notice on apartment #1701, 2002 assessed valuation on the land at \$134,300.00 is in the "range" (plus or minus 10%) of what could be the "fair price" for the fee on #1701?

Pang: Tax assessment is apples and oranges to the value of the leased fee at the site. If the eventual price comes close to tax assessment, it's purely coincidental.

Flood: 6. Do I understand that an applicant has to be an Owner/occupant for a year, before she/he can submit an application for fee conversion?

Pang: Yes, that's correct. In addition, to be eligible, the owner must have Hawaii as their principal domicile (where do they pay state taxes?), all owners on title must be living in the apartment and they cannot own any fee simple property on Oahu suitable for residential purposes. If the owner of 1701 is already an applicant under Chapter 38, they could pass that to the new owners via "substitution," if the new owners also qualify. In this event, the new owners would not have to wait the one year.

Flood: 8. I understand that there was a special assessment mandated by the

Foster Tower AOA back in March 2002, to continue until March 2003, at something like \$85/month. Does that assessment cover the fees and charges to re-negotiate the ground leasehold rent for the period: Nov. 2001 to Nov. 2011? Does any part of the assessment cover the fees and charges for the application and the ongoing process for the fee conversion?

Should I disclose to the prospects that there may be an additional assessment after March 2003, to cover the fees and charges for the fee simple conversion?

Pang: I think that assessment is to cover the possible costs of "lease issues"....

having to litigate a Chapter 38 action, renegotiate the new lease rent,

purchase the leased fee and carry the unsold leases in a bulk purchase.

However, you should verify this with the AOA's property manager, Bruce Howe of Hawaiiana.

Flood: 9. Is there anything positive about the fee simple conversion that we can

"share" with prospects, which will minimize their concern about the leasehold nature of the project?

Pang: In my opinion, the best chances of a fair-priced fee conversion comes in

projects where the Board is proactively seeking it. The Foster Tower Board is quite proactive and committed to this issue. Although there can't be any

guaranty (nothing in life is 100%), I believe the chances of fee conversion are good.

Flood: 10. Finally, do you have a FAQ document which covers the fee simple

conversion, which I can post on my website? For example: [Leasehold/Fee](#)

Simple document from [Walt Flood Realty.com](#).

Pang: Not really, but I have someone working on my website, which would contain substantial information as well as answers to FAQs. I hope to have it up in a few months. Please feel free to have any buyer's agent or buyer call me if they have additional questions. I'll try my best to help them.

Update: May 17, 2002. A second set of questions to Michael Pang, President of Monarch Properties, Inc.

Flood: 1. Assuming that the fee conversion resolution 02-134 is approved by the City Council, and the Lessor/Lessee arrive at a fair price, is the Lessor going to convey the fee simple to the Foster Tower AOA, in bulk?

Pang: That is one objective of the Board. It is interesting that no one has yet had to go to trial to determine a price under Chapter 38, and all actions led and paid for by the AOA (like Foster Tower's) resulted in the Lessor selling to all owners, not just the occupant applicants. There is no guaranty, but based on the results thus far a reasonable possibility. It seems that the one thing Lessors want to avoid once being through one of these is to do it again.

Flood: 2. If the answer is YES, does that mean only the applicants who qualify under Chapter 38 can purchase their fee simple from the AOA? Or, can other investors purchase the fee, and become Lessors?

Pang: If the AOAOP buys it all, it will immediately sell to all its members.

Flood: 3. If someone were to purchase a condo, now (before the conversion is approved and the parties set a fee price), can that new owner, who is not a resident of Hawaii and/or does not qualify under Chapter 38, offer/sell his condo at a later date (after fee conversion) as FA (Fee Available)?

Pang: Yes. If the AOA buys the entire leased fee and an apartment owner does not purchase theirs from the AOA, the AOA should keep it available on a continuing basis. However, the price will have to increase by at least the AOA's costs, including carrying costs over time (loan payments for the AOA to carry the unsold lease).

Flood: 4. Back to question 1. If the Lessor does not sell in bulk to the AOA, but only to those applicants who qualify, will the Lessor hold back the remaining units, and sell/convey them to applicants, who later qualify under Chapter 38, at a higher price?

Pang: If the Lessor does not sell it all to the AOA, that means we went to court to set a price for these applicants and the AOA would be duty bound to file subsequent actions for additional applicants. The Lessor can try anything they want, but, in my opinion, ultimately the AOA is an equal force to compel fairness and a purchase of all leased fees from the Lessor, as long as the Board stays proactive

End: May 19, 2002, Walt Flood Realty

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