

Minutes of a Special Meeting
of the Members of the
Hawaii Community Development Authority,
State of Hawaii

Wednesday, March 19, 2014

KAKAAKO

I. CALL TO ORDER/ROLL CALL

A special meeting of the Kakaako Members of the Hawaii Community Development Authority ("Authority"), a body corporate and public instrumentality of the State of Hawaii, was called to order by Mr. Brian Lee, Chairperson of the Authority, at 8:34 a.m. on Wednesday, March 19, 2014, at the Authority's principal executive offices at 461 Cooke Street, Honolulu, Hawaii, pursuant to Article IV, Section 1 of the Authority's Bylaws.

Members Present: Mary Alice Evans (DBEDT)
Randy Grune (DOT)
Scott Kami (DBF)
Miles Kamimura
Brian Lee
Lois Mitsunaga
Dean Seki (DAGS) (1:19 p.m.)
Brian Tamamoto

Members Absent: None

HCDA Staff: Anthony Ching, Executive Director
Lori Tanigawa, Deputy Attorney General
Lindsey Doi, Compliance Assurance & Community Outreach
Officer
Deepak Neupane, Director of Planning & Development-Kakaako
Shelby Hoota, Program Specialist
Patricia Yoshino, Secretary
Holly Hackett, Court Reporter

MATERIALS DISTRIBUTED:

1. Decision Making on Motions for Intervention Filed by the Honolulu Authority for Rapid Transit and The Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools for Development Permit Number KAK 13-151 (Master Plan Permit No. PL MASP 13.2.8), Submitted by Applicants Keauhou Lane, LP and GE Hawaii Block A2, LLC aka Gerding Edlen, LLC, for a Project Located

at 500 South Street and 500 Keawe Street, Honolulu, Hawaii, Tax Map Key: 2-1-030: 001;

2. Decision Making on Petitioners Association of Apartment Owners of One Waterfront Towers and Kaka'ako United's Petition for Relief from the Hawaii Community Development Authority's August 7, 2013 Approval of Development Permit KAK 13-033, Issued to The Collection, LLC Under Kamehameha Schools' Kaiāulu 'O Kaka'ako Master Plan Permit No.: PL MASP 13.2.8, as amended on October 25, 2013;
3. Decision Making: Shall the Authority Authorize the Chairperson to: (a) Issue an Order to Show Cause to Petitioner Association of Apartment Owners of The Royal Capitol Plaza Regarding the Petition for Relief from Approval of Development Permit for Downtown Capital LLC 801 South St Project, Phase II (Tax Map Key: 2-1-47: 004) Issued by the Hawaii Community Development Authority on December 4, 2013, Development Permit Request No.: KAK 13-057, and (b) Schedule an Order to Show Cause Hearing;
4. Decision Making: Shall the Authority Authorize the Chairperson to: (a) Issue an Order to Show Cause to Petitioner Edwin C. Johnson Regarding the Petition for Relief from Approval of Development Permit for 803 Waimanu (803 Waimanu Street and 764 Kawaiahao Street, Tax Map Keys: 2-1-049: 050, 070, and 072) Issued by the Hawaii Community Development Authority on January 8, 2014, Development Permit Request No.: KAK 13-091, and (b) Schedule an Order to Show Cause Hearing;
5. Decision Making: Shall the Authority Authorize the Executive Director to Amend the Planned Development Permit for 404 Piikoi Project (PD 2-84) as Requested by Kewalo Development LLC, the Developer of Phase IV-A of the Project.

II. KAKAAKO MATTERS*

1. Decision Making on Motions for Intervention Filed by the Honolulu Authority for Rapid Transit and The Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools for Development Permit Number KAK 13-151 (Master Plan Permit No. PL MASP 13.2.8), Submitted by Applicants Keauhou Lane, LP and GE Hawaii Block A2, LLC aka Gerding Edlen, LLC, for a Project Located at 500 South Street and 500 Keawe Street, Honolulu, Hawaii, Tax Map Key: 2-1-030: 001.

Chairperson Lee noted a typographical error in the agenda which listed the motion for intervention as filed by the Honolulu Authority for Rapid Transit. The correct name is the Honolulu Authority for Rapid Transportation ("HART"). He stated that motions for intervention for Development Permit KAK 13-151 were filed by HART and the Trustees of the Estate of Bernice Pauahi Bishop, dba Kamehameha Schools ("KS").

Executive Director Anthony Ching explained that motions for intervention are governed by the Hawaii Community Development Authority's ("HCDA") Rules of Practice and Procedure, Section 15-219-419. He listed the 8 requirements for a motion to intervene.

Chairperson Lee asked if anyone in the audience would like to provide public testimony. There were none.

The meeting was recessed at 8:40 a.m.

The meeting was reconvened at 8:41 a.m.

Ms. Lisa Hirahara, deputy corporation counsel, Mr. Gary Takeuchi, deputy corporation counsel, Mr. Dan Grabauskas, CEO and Executive Director, and Mr. Scott Hansen, project manager, were present for HART.

Mr. Curtis Tabata and Mr. Wyeth Matsubara were present on behalf of Applicant Keauhou Lane LP ("Keauhou").

Mr. Bill Meheula was present to represent proposed intervenor KS and the other Applicant GE Hawaii Block A2, LLC ("GE2").

Chairperson Lee asked HART to make its motion to intervene.

Ms. Hirahara explained that HART is a semi-autonomous city agency in charge of building and constructing the rail and will have a property interest in Lot A1-3, which is adjacent to the two developments being addressed. Other than intervention, HART would have no way to protect its interest. Participation in the proceedings can help in the development of a solid record because of their specialized knowledge about the rail project and its station. HART would not broaden or delay the proceedings. Their list of witnesses and exhibits had been submitted, but did not plan to call any witnesses or introduce any exhibits except to the extent that rebuttal is necessary.

Member Tamamoto asked if HART had met with the developer regarding its interest.

Ms. Hirahara replied that HART was still in talks about the design of the station, but definitely supported the application of the two projects.

Mr. Ching recommended that HART's motion to intervene be granted based on their specific interests that was not otherwise represented in the proceeding.

Member Tamamoto requested a confirmation statement from the developer and corporation counsel.

Mr. Tabata stated the Keauhou had no objection to HART's motion to intervene.

Mr. Meheula stated that KS and GE2 had no objection to HART's motion to intervene.

Chairperson Lee entertained a motion for the Authority to find that HART meets the requirements for intervention and to grant the motion to intervene in the Application for Development Permit KAK 13-151 for Kamehameha Schools.

A motion was made by Member Grune and seconded by Member Tamamoto.

A roll call vote was conducted.

Ayes: Members Evans, Grune, Kami, Kamimura, Lee, Mitsunaga and Tamamoto.

Nays: None.

The motion passed 7 to 0 with 2 excused (Member Seki and 1 vacant position).

Chairperson Lee asked KS to make its motion to intervene.

Mr. Meheula stated that KS was going to withdraw without prejudice the motion to intervene. The reason was that KS had entered into a Letter of Intent to be a partner with GE2.

Chairperson Lee stated that the special meeting would be recessed and the Authority would be conducting a public hearing at 9:00 a.m. The meeting would be reconvened after the public hearing was concluded.

The meeting was recessed at 8:46 a.m.

The meeting was reconvened at 1:19 p.m.

(Member Seki now present.)

2. Decision Making on Petitioners Association of Apartment Owners of One Waterfront Towers and Kaka'ako United's Petition for Relief from the Hawaii Community Development Authority's August 7, 2013 Approval of Development Permit KAK 13-033, Issued to The Collection, LLC Under Kamehameha Schools' Kaiāulu 'O Kaka'ako Master Plan Permit No.: PL MASP 13.2.8, as amended on October 25, 2013.

Chairperson Lee asked counsel to introduce themselves.

Ms. Linda Paul was present to represent One Waterfront Towers and Kakaako United.

Mr. Cal Chipchase was present for The Collection.

Mr. Bill Meheula and Mr. Karl Kobayashi were present for KS.

Member Mitsunaga disclosed that she was a resident of One Waterfront Towers but was not an officer on the AOA board.

Mr. Ching recited the following facts regarding the petition for relief:

1. On September 6, 2013, Petitioners filed a petition for relief from Authority's approval of the permit.
2. On September 11-19, 2013, correspondence was exchanged with counsel for the petitioner.
3. On September 25, 2013, the developer and land owner submitted their respective motions to intervene.
4. On September 26 through October 2, 2013, correspondence was exchanged between HCDA counsel and Ms. Paul as well as from the Chair to Ms. Paul.
5. On February 5, 2014 the Authority issued an Order to Show Cause ("OSC"), pursuant to HAR section 15-219-28-1, in which it was noted that after having received the amended petition, it could not reconcile petitioner's request for declaratory relief sought pursuant to HRS chapter 206E; HRS 91-1, 8, and 9; and HAR section 15-219-34 and 35. The Authority therefore scheduled an OSC hearing and deemed the developer and land owner as necessary parties.
6. On February 14, 2014, petitioners and developer filed their respective position papers regarding the OSC. Land owner filed a joinder to developer's position paper.
7. On February 19, 2014, the Authority held the OSC Hearing.

Given its analysis and recital of events, staff recommended that the Petition be denied because:

- Petitioner failed to satisfy the requirements of HAR Section 15-219-47(a)
- the HRS Section 206E-5.6 public hearings on the planned development permit constitute a contested case hearing
- the Authority is not permitted to grant the Petitioner the relief that they seek
- the Petitioners request for additional relief is not properly before the Authority

Chairperson Lee asked if anyone in the audience wished to provide public testimony.

Ms. Paul asked where in the rules were the public hearings HCDA was holding defined as contested case hearings, and whether the public had been informed that they were contested case hearings.

Chairperson Lee replied that the Authority would be issuing a written Decision and Order on that issue.

Chairperson Lee entertained a motion for the Authority to convene an Executive Meeting pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

A motion was made by Member Tamamoto and seconded by Member Evans. By a voice vote, the motion passed unanimously.

Chairperson Lee asked Deputy Attorney General Lori Tanigawa, Mr. Ching, Mr. Neupane, Ms. Doi and Ms. Yoshino to join the executive session.

Pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, the Authority convened in Executive Session at 1:26 p.m.

The regular meeting was reconvened at 1:46 p.m.

Chairperson Lee entertained a motion for the Authority to issue Findings of Fact, Conclusions of Law, and a Decision and Order denying the amended petition.

A motion was made by Member Seki and seconded by Member Kamimura.

A roll call vote was conducted.

Ayes: Members Evans, Grune, Kami, Kamimura, Lee, Mitsunaga, Seki and Tamamoto.

Nays: None.

The motion passed 8 to 0 with 1 excused (1 vacant position).

3. Decision Making: Shall the Authority Authorize the Chairperson to: (a) Issue an Order to Show Cause to Petitioner Association of Apartment Owners of The Royal Capitol Plaza Regarding the Petition for Relief from Approval of Development Permit for Downtown Capital LLC 801 South St Project, Phase II (Tax Map Key: 2-1-47: 004) Issued by the Hawaii Community Development Authority on December 4, 2013,

Development Permit Request No.: KAK 13-057, and (b) Schedule an Order to Show Cause Hearing?

Mr. Ching stated that on December 31, 2013, Mr. Carl Varady filed a Petition for Relief on behalf of his client, the Association of Apartment Owners (“AOAO”) of the Royal Capital Plaza. On January 2, 2014, Mr. Varady filed a first Amended Petition seeking relief from the Authority’s approval of development permit KAK 13-057 for Downtown Capital LLC. He recommended that the Authority issue an OSC to the petitioner why the Authority is permitted to grant petitioner the relief it seeks and to schedule an OSC hearing for May 7, 2014. He also recommended the developer be deemed a necessary party so that it may also have an opportunity to present its position before the Authority takes a position. He noted that a motion to intervene was received from Downtown Capital LLC.

Chairperson Lee noted for the record that testimony was received from Mr. Varady in support of contested case hearing and declaratory relief.

Mr. Varady stated that he disagreed with any assertion that a public hearing on a permit was equivalent to a contested case and was not a basis for the Authority to making findings or conclusions. The Authority had adopted rules by which contested cases are to be conducted. A contested case is an appropriate procedure before the Authority and must be conducted according to Chapter 91. The enabling statute HRS 206E does not allow the Authority to delegate to the executive director the authority to make decisions without review and approval by the Authority. The HCDA must follow the law by which all agencies are bound, must follow its enabling statute, and must follow its own rules and regulations in conducting contested cases. If no one knows a contested case is being conducted, the Sunshine Act requirements have not been met. If a request for contested case is denied, he would ask that the Authority issue through its declaratory relief authority under HAR 15-219, subsection 83-86, findings and conclusions supporting the basis on which the facts and the law support such a decision.

Mr. Varady acknowledged that Downtown Capital had moved to intervene in this matter. His client had no objection to full and fair participation in any contested case.

Mr. Ben Matsubara was present to represent Downtown Capital. He explained that his Petition to Intervene was for purposes of the OSC or the request for contested case. He would reserve his filing, briefings and arguments for the OSC hearing on May 7, 2014.

There were no questions from Members or comments from the public on the agenda item.

4. Decision Making: Shall the Authority Authorize the Chairperson to: (a) Issue an Order to Show Cause to Petitioner Edwin C. Johnson Regarding the Petition for Relief from Approval of Development Permit for 803 Waimanu (803 Waimanu Street and

764 Kawaihāo Street, Tax Map Keys: 2-1-049: 050, 070, and 072) Issued by the Hawaii Community Development Authority on January 8, 2014, Development Permit Request No.: KAK 13-091, and (b) Schedule an Order to Show Cause Hearing?

Mr. Ching stated that on February 6, 2014, Mr. Edwin Johnson filed a petition for relief from the Authority's approval of Development Permit KAK 13-091 for MJF Development Corporation ("MJF"). On March 18, 2014, Mr. Johnson submitted an Amended Petition.

Mr. Ching recommended that the Authority issue an OSC to the petitioner why the Authority is permitted to grant the petitioner the relief he seeks, and to schedule an OSC hearing for May 7, 2014. He also recommended that the developer be deemed a necessary party so that it may also have an opportunity to present its position before the Authority takes formal action.

There were no questions from Members on the agenda item.

Chairperson Lee asked if anyone in the audience wished to testify on the agenda item.

Mr. Cal Chipchase, attorney for MJF, joined in staff's recommendation that MJF be admitted as a necessary party to the proceedings. He requested that any notices or papers issued by or received by the Authority on the matter also be served on himself as counsel for MJF.

Chairperson Lee entertained a motion for the Authority to convene an Executive Meeting pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

A motion was made by Member Tamamoto and seconded by Member Seki. By a voice vote, the motion passed unanimously.

Chairperson Lee asked Deputy Attorney General Lori Tanigawa, Mr. Ching, Mr. Neupane, Ms. Doi and Ms. Yoshino to join the executive session.

Pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, the Authority convened in Executive Session at 2:04 p.m.

The regular meeting was reconvened at 2:10 p.m.

Decision Making for Agenda Item 3

Chairperson Lee entertained a motion for the Authority to authorize the Chairperson to (A) Issue an Order to Show Cause to Petitioner Association of Apartment Owners of The Royal Capitol Plaza regarding the Petition for Relief from Approval of Development Permit for Downtown Capital LLC, 801 South Street Project Phase II Tax Map Key 2-1-47:004 issued by the HCDA on December 4, 2014, Development Permit KAK 13-057; (B) Schedule an Order to Show Cause Hearing; and (C) Deem the developer a necessary party.

A motion was made by Member Evans and seconded by Member Kamimura.

A roll call vote was conducted.

Ayes: Members Evans, Grune, Kami, Kamimura, Lee, Mitsunaga, Seki and Tamamoto.

Nays: None.

The motion passed 8 to 0 with 1 excused (1 vacant position).

Decision Making for Agenda Item 4

Chairperson Lee entertained a motion for the Authority to authorize the Chairperson to (A) Issue an Order to Show Cause to Petitioner Edwin C. Johnson regarding the Petition for Relief from Approval of Development Permit for 803 Waimanu Street and 764 Kawaihau Street, Tax Map Keys 2-1-049:050, 070 and 072 issued by the HCDA on January 8, 2014 Development Permit KAK 13-091; (B) Schedule an Order to Show Cause Hearing; and (C) Deem the developer a necessary party.

A motion was made by Member Evans and seconded by Member Kami.

A roll call vote was conducted.

Ayes: Members Evans, Grune, Kami, Kamimura, Lee, Mitsunaga, Seki and Tamamoto.

Nays: None.

The motion passed 8 to 0 with 1 excused (1 vacant position).

5. Decision Making: Shall the Authority Authorize the Executive Director to Amend the Planned Development Permit for 404 Piikoi Project (PD 2-84) as Requested by Kewalo Development LLC, the Developer of Phase IV-A of the Project?

Mr. Ching explained that the Authority had authorized the executive director to amend development permit PD-2-84, and to amend the development permit naming Stanford Carr as developer of the reserved housing units. The developer requested approval to convey and transfer the reserved housing site to SDC Piikoi LLC ("SDC"), which is

an affiliate of Stanford Carr Development, LLC. Upon substantial completion of construction of the fourth tower, the HCDA shall approve the issuance by the Department of Planning and Permitting of the temporary and/or permanent certificate of occupancy for the fourth tower. The fourth tower refers to the Waihonua Project located within the 404 Piikoi development. Upon receipt of an award from the Hawaii Housing Finance and Development Corporation for reservation or allocation of federal and/or state low income housing tax credits for the SDC reserved housing project, a Letter of Intent term sheet would be issued from an established lending institution expressing interest in the purchase of federal low income housing tax credits. There would be a plan to finance development of the SDC reserved housing project that demonstrates reasonable prospects for funding showing anticipated costs, expenses, sources of capital, private investor equity, donations and grants from charitable foundations. The developer will convey and deliver to SDC the reserved housing site located just mauka of Waihonua, and the sum of \$1.9 million. SDC will assume all of the developer's rights and obligations under the permit relating to the reserved housing site and the SDC reserved housing project.

At that point, HCDA shall promptly execute and deliver to the developer a consent to the partial assignment and acknowledgment that the developer is no longer responsible for delivering the remaining reserved housing units required by the permit. He noted that if all of the low income housing tax credit conditions are not satisfied, the HCDA shall not be obligated to execute and deliver the consent for partial assignment. If the low income housing tax credit conditions are not satisfied, then by December 31, 2014, the developer may request from HCDA approval of an alternative to and replacement of the low income housing tax credits, of which approval may be granted at HCDA's discretion.

Mr. Ching explained that the plan for and conditions for amending the development plan permit had a terminal date of March 10, 2014. He would request that the parties, the SDC and A&B Properties, to make a representation that the agreement and their obligations are still good even though it was past the date of March 10 2014.

Mr. Rick Stack of A&B Properties stated that they did not intend for the representations to have terminated on March 10, 2014. The agreement was still good.

Mr. Stanford Carr of Stanford Carr Development stated that the agreement was still good even though it was after March 10, 2014.

PUBLIC TESTIMONY:

Mr. Jack Hamada stated that the HCDA should hold the project to their word to provide low income housing.

Chairperson Lee entertained a motion for the Authority to authorize the Executive Director to amend the Planned Development Permit for 404 Piikoi Project (PD 2-84)

as requested by Kewalo Development LLC, the Developer of Phase IV-A of the Project.

A motion was made by Member Evans and seconded by Member Kamimura.

A roll call vote was conducted.

Ayes: Members Evans, Grune, Kami, Kamimura, Lee, Mitsunaga and Seki.

Nays: None.

Recused: Member Tamamoto.

The motion passed 7 to 0 with 1 abstention and 1 excused (1 vacant position).

V. ADJOURNMENT

The meeting was adjourned at 2:28 p.m.

Respectfully submitted,

/s/

Miles Kamimura
Secretary

*Meals were served to Authority members and required staff as an integral part of the Executive Meeting.

Note: The transcript of this meeting contains a verbatim record and should be consulted if additional detail is desired.