

**STATE OF HAWAII  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
KAKAAKO MEETING**

**Wednesday, December 09, 2020**

**MINUTES**

**I. CALL TO ORDER/ROLL CALL**

The Hawaii Community Development Authority (“Authority” or “Board”), a body corporate and a public instrumentality of the State of Hawaii met virtually (utilizing the state-supported Zoom Meeting platform) for a meeting on December 09, 2020.

Board Chairperson, John Whalen, called the meeting to order at 12:32 p.m.  
Those present were as follows:

**Members Present:** John Whalen, Chairperson  
Kevin Sakoda  
Phillip Hasha  
Jason Okuhama  
Daniel Ikaika Ito  
Lynn Araki-Regan, DOT (Ex-Officio)  
Craig Hirai, B&F (Ex-Officio)  
Wei Fang

**Members Excused:** Kathy Sokugawa, DPP (non-voting)  
Chason Ishii

**Legal Counsel:** Kelly Suzuka, Deputy Attorney General

**Staff Present:** Deepak Neupane, Executive Director  
Garet Sasaki, Administrative Services Officer  
Lindsey Doi, Asset Manager  
Tessa Malama, Kalaeloa Planning Director  
Francine Murray, HCDA Program Specialist  
Tommilyn Soares, HCDA Secretary

A quorum was present.

**Acknowledgement that the Meeting is Being Convened Virtually**

Chair Whalen reiterated the wording contained in the Meeting Agenda regarding the state’s response to the COVID-19 pandemic, the state’s efforts to slow the community spread of the virus and Governor David Y. Ige’s issuance of Supplementary Emergency Proclamations which suspended Chapter 92 of the Hawaii Revised Statutes to the extent necessary to enable public boards and commissions to conduct business without holding meetings open to the public.

With regard to the foregoing, Chair Whalen reiterated wording contained in the Meeting Agenda noting that HCDA welcomes public attendance via the Zoom link, HCDA's Facebook page and YouTube Channel contained in the meeting agenda, HCDA also welcomes public comment and public participation via submission of written and or verbal testimony (consistent with the social distancing guidelines and Emergency Proclamation directives in effect).

Chair Whalen stated that individuals from the public who have requested to provide testimony are on standby and will be permitted to speak during the public testimony session of the specific agenda item.

## **II. APPROVAL OF MINUTES**

### **1. Regular Meeting minutes of November 04, 2020**

Minutes of the November 04, 2020 Kakaako meeting were approved as presented.

## **III. ACTION ITEM**

### **2. Approve the Proposed Draft Kakaako Reserved Housing Rules Amendments, Dated December 9, 2020, to Allow for Payment of Equity Sharing Without Sale or Transfer of a Reserved Housing Unit and Direct the Executive Director to Hold Public Hearings for the Rule Amendment.**

Mr. Deepak Neupane provided an update for board members.

Mr. Neupane summarized the staff report regarding this action item. He drew attention to the recommendations provided by the Permitted Action Group, specifically recommendation number three listed in the staff report, which considered implementing a policy similar to that of this action item.

Mr. Neupane read a direct passage from page 218-25 of the draft rules; this passage in a newly written paragraph that states that reserved housing unit owners may pay all or a portion of the shared equity on their unit. He summarized that this added paragraph would govern all reserved housing units, whether previously built or will be developed in the future. He stated that this rule would be similar to that of Hawaii Housing Finance and Development Corporation (HHFDC).

Mr. Neupane pointed out that if the Authority were to approve, moving forward the next steps would be to inform stakeholders and provide them the opportunity to comment, preparing a report and presentation to be seen by the Small Business Regulatory Review Board (SBRRB), and finally, making a request to the Governor to allow for public hearings. He explained that the current HCDA statute regarding public hearings requires that HCDA holds two public hearings before implementing any rule amendments. After completing that process, he would like to combine the public hearing with a board meeting in order to bring the matter to the board for adoption, before transmitting it to the Governor's office for final approval.

Mr. Neupane closed his opening statement by saying that the board has been provided with basic information on how many reserved housing units there are and how much equity shared is currently outstanding.

Member Fang asked Mr. Neupane to go over the estimated timeline for the full process that he described. Mr. Neupane stated that it would probably be completed by the end of June 2021. Member Fang stated that she had two concerns with the timeline; first, being that the agency is short a staff member and will have to continue their other work as assigned in addition to this, and second, how this amendment to the rules will be perceived by the public. Member Fang shared that she thinks there will need to be careful communication with the public and extra effort to get public participation. She stated that she thinks it is an interesting idea, but that she has personal pros and cons. She said she would not want it to seem like HCDA is ramming through a new idea during this time of uncertainty due to COVID and that it would be great to get a lot of public engagement around it. Finally, she stated that this would signal an important shift for HCDA.

Mr. Neupane stated that this was a recommendation that was presented by the Permitted Interaction Group back in 2018 and later adopted by the board, so moving forward, it would just be implementing the recommendation. He acknowledged that there would be substantial outreach with the various stakeholders. He stated that he has checked with the Deputy Attorney Generals to ensure that public hearings can be held remotely in order to be able to take into consideration the public's opinion while adhering to the current safety guidelines. He pointed out that participation in this virtual board meeting exceeds that of previous, in-person board meetings. He acknowledged the staff constraints at HCDA but stated that he feels that things should continue to move forward. He also pointed out that in the language of the rule, it states that reserved housing unit owners "may" take this action, but that it is not obligatory in nature.

Chair Whalen stated that he hopes that an amendment like this will not take three years as it had in a past situation. He said that he understood the concern that Member Fang raised, particularly that the people who have reserved housing units are able to understand the situation. Mr. Neupane said that if the board were to approve this motion during this meeting, his plan would be to immediately notify all of the reserved housing unit owners that this amendment is being proposed, as well as, solicit comments from the owners and the general public.

Member Hirai asked for clarification that the topic at hand is shared appreciation; he then asked when the shared appreciation is due under the current rules. Mr. Neupane pointed out that currently the rule says it is due at the sale or transfer of the unit. Member Hirai asked if it is a one-time thing, to which Mr. Neupane agreed. They established that currently, a reserved housing unit owner is unable to buyout their shared equity up front. Member Hirai asked if HHFDC currently allows this, to which Mr. Neupane confirmed to be correct. Member Hirai stated that he can see why people would want to pay their shared equity right now due to the current low interest rates. Mr. Neupane stated that he had also thought of that point to support the opportune timing of the matter.

Member Sakoda asked Mr. Neupane to put a big picture view on why someone would want to buyout their shared equity. Mr. Neupane stated that people tend to see shared equity as an obligation that stays with the property, and if they were able to pay the shared equity, they would be free and clear. Member Sakoda asked if paying off the shared equity removed the regulatory overhead that the unit owners would typically take on. Mr. Neupane says that it does, but that the reserved housing units are regulated over set periods of time, and that regulated term period would remain intact, even with the shared equity payment. This means

that if they wanted to sell their unit, they would have to wait for the term to end in order to sell at the market price or if they wanted to sell their unit within the regulated term, it would have to be sold at the price that is established by HCDA's formula. Member Sakoda asked if the shared equity amount remains the same. Mr. Neupane answered that yes, the shared equity is calculated at the time of the unit's creation, and this amount will never change. Member Sakoda said that he felt that there is no true economic benefit for someone to pay their shared equity, so he was wondering if he may have missed any incentives or reasons that someone may have for wanting to pay off the shared equity.

Ms. Lindsey Doi Leaverton, HCDA Asset Manager, asked to jump into the conversation to offer input. Ms. Doi Leaverton stated that she has previously received numerous requests from people who had been looking to prepay their shared equity. She pointed out that their biggest desire in doing so is to forgo the back and forth interaction with HCDA. She mentioned the example of refinancing, as that process typically takes weeks of back and forth between unit owners and the agency to go through the proper paperwork and necessary steps; she pointed out that HCDA slows down the different processes that unit owners typically go through, and paying the shared equity removes HCDA from that side of unit ownership.

Member Sakoda asked Ms. Doi Leaverton if, in her view, that would be the only reason that unit owners would be interested in paying off their shared equity. Ms. Doi Leaverton shared that in her practice, that is the key item that has continuously come up. Mr. Neupane also chimed in that he understands the point that Member Sakoda made, but pointed out that the amendment to this rule does not make unit owners required to pay the shared equity, but rather gives them the opportunity to do so. He added that HCDA currently has roughly \$90 million of equity out there, and that implementing this policy could bring in money that could be used to invest in other projects in the future. Member Sakoda clarified that the original idea was to relieve the buyer of need for cash to which Mr. Neupane agreed.

Member Sakoda asked for a gauge on how much of the \$90 million does Mr. Neupane anticipate being paid. Mr. Neupane said maybe 10 to 25 percent; he added that due to the varying amounts of shared equity, giving owners the option to pay a partial amount will also be useful especially for those unit owners whose shared equity is of greater dollar value. Member Sakoda asked if Mr. Neupane has thought of any type of incentive to motivate people to pay their shared equity. Mr. Neupane answered that giving them an avenue to do so will be an incentive.

Member Fang asked if once the policy is approved and ready to be implemented, how the workload will be on HCDA. Ms. Doi Leaverton acknowledged that it may be difficult at the start due to the possible volume of requests, but she feels that it will be better for HCDA in the long run because HCDA will no longer be involved in the aspects that she mentioned before like refinancing, which she stated is a large portion of their current workload.

Member Okuhama asked if HCDA gets a big chunk of money in the future, will there possibly be a move to take the funds from HCDA. Mr. Neupane stated that the money can be used to implement other recommendations that the board has proposed and to invest in other opportunities within the district. He stated that he is cognizant that it would be unwise to sit on a large sum of money for an extended period of time.

Member Hirai asked what fund the money will be going to. Mr. Neupane stated that it will be going to the revolving fund. Member Hirai suggested having a plan for what to do with the money. Mr. Neupane acknowledged that the money will not come in a large sum, but rather smaller quantities. Chair Whalen stated that the Deputy Attorney Generals could assess how the draft amendment is formulated to designate where the money goes and what purpose it should serve.

Member Sakoda asked where the liability goes when someone purchases a unit. Mr. Neupane stated that shared equity is the difference between the market value of a unit and the affordable price that is set by HCDA. Member Hirai clarified that it is a purchase price reduction.

There were no further questions and no public testimony.

**MOTION:**

Member Okuhama motioned for the board to approve the proposed draft Kakaako reserved housing rule amendments, dated December 9, 2020, to allow for payment of equity sharing without sale or transfer of a reserved housing unit and direct the Executive Director to hold public hearings on the rule amendment and authorize the Executive Director to undertake all tasks necessary to effectuate the purpose for this Action Item.

Member Hasha seconded the motion.

Executive Director Neupane conducted the roll call vote. Motion passed with 8 yes votes and 1 excused.

3. Authorize the Executive Director to Waive HCDA's First Option to Purchase Ke Kilohana Unit 3002 and Defer the Payment of Shared Equity to Allow the Unit Owner to Rent the Unit.

Ms. Lindsey Doi Leaverton, Asset Manager presented the staff report.

Ms. Doi Leaverton explained the situation of the owner of Ke Kilohana Unit 3002. Due to the pandemic, the unit owner will have to move to the continental U.S. in order to retain her employment. Therefore, the unit owner would be having to pay for her unit in Ke Kilohana, along with her living expenses on the mainland, which will create a large financial hardship. The unit owner requested the ability to rent out her unit at Ke Kilohana while she will live on the mainland. Ms. Doi Leaverton noted that the unit owner's regulated term is set to expire in April 2021, at which time the unit owner would be allowed to rent out her unit anyway; this request would allow her to be renting out her unit prior to the regulated term finishing. Ms. Doi Leaverton pointed out that this request is a temporary measure for the period that the unit owner will be living on the mainland, as the unit owner has stated that she intends to move back to Hawaii when she is able to find work.

**Public Testimony:**

Ms. Sora Yi, unit owner thanked the board for their time and shared her personal testimony regarding her situation. In her testimony, she stated that her regulatory term ends in June 2021, rather than April 2021 as Ms. Doi Leaverton had stated.

Member Sakoda asked for clarification on the current rules in terms of the rent charge that a unit owner can set once their regulated term has ended. Mr. Neupane confirmed that once the regulated term has ended, the unit can be rented out at market price, or the price that the unit owner chooses.

Member Fang asked if a unit owner will be able to rent out their unit at a chosen price if they have paid off their shared equity but are still within the regulated term. Mr. Neupane clarified that for the time of the regulatory term, the unit must be sold or rented at the reserved housing sales price that is calculated by HCDA.

Member Hirai asked Mr. Neupane if the Attorney Generals were okay with this. Mr. Neupane stated that they have already reviewed it and are fine with the rule language.

There was no other public testimony, and no additional comments or questions from Board members.

**MOTION:**

Member Ito motioned for the board to authorize the Executive Director to waive HCDA's first option to purchase Ke Kilohana unit 3002 and defer the payment of shared equity to allow the unit owner to rent the unit.

Member Fang seconded the motion.

Ms. Doi Leaverton conducted the roll call vote. Motion passed with 8 yes votes and 1 excused.

4. Authorize the Executive Director to Expend Up to \$82,427.00 from the Hawaii Community Development Revolving Funds, to Retain a Consultant to Assist the Hawaii Community Development Authority in Complying with the State Department of Health, National Pollutant Discharge Elimination Systems General Permit Requirements for the Kakaako Community Development District and Kewalo Basin Harbor Small Municipal Separate Storm Sewer Systems.

Mr. Neupane presented the staff report.

Mr. Neupane stated that HCDA has been handling this for a number of years, as it is a requirement of the Department of Health and Environmental Protection Agency. He added that the City and County handles it for all of the municipal storm water, and that within Kakaako, there are several storm water inlets that are within HCDA property. He has previously asked the City and County in the past if HCDA could be included in their program, but they declined his request.

Member Fang asked if the consultant mentioned in the action item is the same one that they have used in the years past and if HCDA will have to do this every year if the City and County chooses not to work with the agency. Mr. Neupane confirms that it is the same consultant and that HCDA will have to do this every year if the agency does not come to an agreement with the City and County. Member Fang suggested to possibly amending the language to either automatically approve this transaction or move the ability to approve to a staff level at HCDA.

Chair Whalen pointed out that this action is not discretionary, but rather, noncompliance would result in consequences. Mr. Neupane recalled a meeting with the DOH years prior in which they were looking to expand their programs, but he steered them in the direction of having the responsibility remain with the City and County.

Member Sakoda asked Mr. Neupane what the range of the storm water that is collected is; through his reading he deduced that there is one exit at the end of Keawe St. Mr. Neupane stated that water is collected from Makiki through Honolulu and that flow of water comes to the storm drainage on Keawe St.

Mr. Neupane suggested changing the motion to say “expend funds” rather than expend a certain amount. Member Hirai asked if a cap should be set, and gives the example of “up to \$100,000,” because he is unsure if the amount should be left open ended. Member Fang asked if a bid must occur every year. Mr. Neupane stated that this service is considered a professional service so HCDA must go through the procurement process every year. He also stated that taking into consideration Member Hirai’s suggestion, it can be worded to state that the contract must not exceed \$100,000.

Member Sakoda asked why the amount would be set to \$100,000. Mr. Neupane stated that HCDA has used the same consultant for the last few years and that the cost has been between \$75,000 and \$100,000 so it would be based on that. Member Sakoda stated that he is concerned that the proposals would be near the limit. Mr. Neupane stated that that is always the challenge. Member Hirai stated that he does not think it should be left open ended. Chair Whalen recalled an exception in which the board had authorized up to \$1,000,000 on a project that ended up costing close to half of that amount.

Member Sakoda asked if the board was changing the action item to be approved perpetually to mitigate administrative issues and if approving the item as is would be an issue. Member Fang confirmed that that was the intent behind her suggestion. However, she said that when she initially shared her suggestion, she had failed to acknowledge the procurement piece of the matter.

Member Sakoda stated that in contrast, he would like the matter to come up annually due to its strange nature, as it is outside of the scope of HCDA’s operations. Mr. Neupane stated that he has no preference between the original motion or the suggested amended motion. Member Fang stated that she does not wish to overcomplicate things and would be fine leaving the motion as presented.

There was no comments or questions and no public testimony.

**MOTION:**

Member Fang motioned for the board to authorize the Executive Director to expend funds to retain a consultant to assist the HCDA in complying with the DOH and Permit requirements relating to the stormwater drainage systems belonging to HCDA, from the Hawaii Community Development revolving funds, and undertake all tasks necessary to effectuate the purpose(s) for this For Action Item.

Member Sakoda seconded the motion.

Mr. Neupane conducted the roll call vote. Motion passed with 8 votes and 1 excused.

**5. Authorize the Executive Director to Waive Lease Rent Due from Volunteer Legal Services Hawaii for the Months of January through December 2021 Due to the COVID-19 Pandemic.**

Ms. Doi Leaverton explained that Volunteer Legal Services Hawaii (VLSH) submitted a letter to HCDA asking for a waiver for the calendar year of 2021 in response to the financial hardships they are experiencing due to the pandemic. Ms. Doi Leaverton reminded the board of the previous rent waiver that was granted to VLSH for the same reasons.

Ms. Angela Minn of Volunteer Legal Services provided comments.

Ms. Minn explained that typically, one third of VLSH's budget is provided through state funding, however, due to the pandemic, the budget was eliminated. She noted that one third of their budget comes on a fiscal year basis, and that VLSH is anticipating getting \$0 again. Ms. Minn stated that she has been trying to cut expenses when possible. She acknowledged that she understands VLSH is making a big ask with this request, but also noted that they have been good tenants in terms of timely payments and being helpful members in the community.

Ms. Minn stated that VLSH, although facing hardships, is still doing their best to continue to offer their services to the community. She then explained the monetary details of her proposal; those being to waive the rent portion of their agreement and also to pay a portion of their parking fees.

Member Hirai asked Ms. Doi Leaverton if there is Common Area Maintenance (CAM) on VLSH's rent. Ms. Doi Leaverton confirmed that there is indeed CAM on their rent and went into detail regarding the specific monetary values being discussed. She stated that the rent payment that VLSH is requesting to be fully waived equates to \$1,825 per month. In addition, she noted that VLSH did not request to waive any part of their \$841 CAM payment. Lastly, she stated that they are also requesting reduced parking fees, specifically a \$675 per month reduction on their typical payment of \$880, which would make their monthly payment for parking come down to \$205.

Ms. Doi Leaverton explained to the board that in the discussion and analysis of her staff report, she offered the option of waiving the lease rent portion but maintaining the full parking fees of VLSH because the stalls leased could generate revenue for HCDA.

Member Hirai asked Ms. Doi Leaverton if the stalls could be sublet to someone else in the case that VLSH was not using them. Ms. Doi Leaverton explained that she had previously discussed that with Ms. Minn, and that it was determined that VLSH would indeed need all their stalls; she then asked Ms. Minn if VLSH would consider Member Hirai's suggestion. Ms. Minn stated that currently, VLSH is mostly working remotely, but that they plan to be back in their office with the new year. Ms. Minn explained that she has a staff of seven and that their extra stalls are used for the volunteer attorneys who come to their office to assist clients. Therefore, she would like to retain the full number of stalls listed in their lease agreement.



Member Sakoda asked Ms. Minn to give an idea of the volume of people that VLSH assists. Ms. Minn stated that the number of people they assist has remained constant. She explained that VLSH takes between 3,000 to 4,000 calls per year, and of that number, 2,000 to 3,000 qualify for their services. She stated that because VLSH is funded by certain state grants, they have income and asset thresholds that they use to assess who qualifies for their services. In addition, VLSH only covers certain areas of law, therefore they are not able to assist people in legal matters that are outside of their scope. In these cases, VLSH provides a referral to the appropriate agency for those clients.

Ms. Minn explained that for those who do qualify for their services, they are able to talk to an attorney to get customized help with their specific case, rather than general legal information. She stated that her staff prepares the necessary information prior to the client's meeting with an attorney, in order to make their meeting effective and favorable to the client; if a client needs further services, VLSH will find an attorney to go to court with the client. Ms. Minn explained that in the last year alone, VLSH had over 3,200 hours logged from volunteer attorneys; she stated that at a base rate of \$2 to \$3 per hour, that equates to over \$800,000 of legal services that are being provided to the community at no cost. She also explained that the attorneys who volunteer are doing so purely because they want to, as the Hawaii State Bar does not mandate pro bono work.

Member Sakoda asked for clarification on the number of people that VLSH assists per year. Ms. Minn stated that VLSH helps about 3,000 per year. She further notes that VLSH also counts the people that they provide legal education to through their outreach into the community.

Member Sakoda asked if VLSH has materials that explain who they are and what their services are. Ms. Minn confirmed that they do. Member Sakoda asked Ms. Minn if she could send that information to the HCDA staff because he believes the work of VLSH is honorable and useful to the community and would like to spread the word. Ms. Minn stated that she will send over the necessary documents to Ms. Doi Leaverton.

Ms. Doi Leaverton stated that the given recommendation is a smaller portion of the full request that was submitted by VLSH. She explained that the recommendation is for the first quarter of 2021, but that it is the board's decision on what the period should be.

Chair Whalen asked the board if a member would like to move on the item as presented or as amended to change the period and/or inclusion of a reduced parking payment. Member Sakoda asked for clarification on the parking situation. Ms. Doi Leaverton reminded the board that Ms. Minn does foresee needing all of their agreed stalls. Member Hirai asked if VLSH could sublease the stalls. Ms. Doi Leaverton confirmed this to be true. Member Hirai suggested a timeframe of six months based on the current legislative session.

**MOTION:**

Member Sakoda motioned for the board to authorize the Executive Director to waive lease rent due from Volunteer Legal Services Hawaii for the months of January through June 2021 in the amount of \$1,825 a month and undertake all tasks necessary to effectuate the purpose of this for action item.

Member Okuhama seconded.

Motion passed with 8 yes votes and 1 excused.

**IV. MONTHLY REPORT OF THE EXECUTIVE DIRECTOR**

**Monthly Report and Other Status Reports**

**Approved permit applications that did not require HRS 206E-5.6 public hearings.**

Mr. Neupane noted the monthly report provided in the board packet and stated if any there are any questions, Garet Sasaki, HCDA Administrative Services Officer will be happy to answer any questions.

There were no questions and no public testimony.

**V. ADJOURNMENT**

There being no further comment or questions on the Report of the Executive Director, Chair Whalen thanked those who joined the meeting on Zoom and adjourned the meeting at 1:41 p.m.

*John P Whalen*

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John Whalen, Chairperson

*February 3, 2021*

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Date