

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO BUSINESS MEETING

Wednesday, March 6, 2019

MINUTES

I. CALL TO ORDER/ROLL CALL

A regular business meeting of the Kakaako Members, Hawaii Community Development Authority (“Authority” or “Board”), a body corporate and a public instrumentality of the State of Hawaii, was called to order by, John Whalen Chair of the Authority at 9:32 AM, March 6, 2019 at Authority’s principal offices at 547 Queen Street in Honolulu, Hawaii, 96813.

Members Present: Beau Bassett
David Rodriguez (DOT Ex-Officio)
Mark Anderson (B&F Ex-Officio)
Phillip Hasha
Mary Pat Waterhouse
Wei Fang
John Whalen, Chair

Members Excused: William Oh
Jason Okuhama
Kathy Sokugawa (DPP)

HCDA Staff Present: Aedward Los Banos, Executive Director
Garett Kamemoto, Interim Kakaako Planning and Development
Director
Lindsey Doi, Asset Manager
Francine Murray, HCDA Program Specialist
Alison Miyasaki, Administrative Services Officer
Tommilyn Soares, HCDA Secretary to the Executive Director

Legal Counsel: Max Levins, Deputy Attorney General
Lori Sunakoda, Deputy Attorney General

II. APPROVAL OF MINUTES

Regular Meeting Minutes of January 9, 2019

Member Waterhouse consulted with Deputy Attorney General Lori Sunakoda regarding a specific question Member Waterhouse raised during the KUPU discussion. Member Waterhouse stated that she recalls asking a question regarding KUPU’s contract (lease) as it pertains to restricting exclusive use of the facility.

Deputy Attorney General Lori Sunakoda stated that the meeting minutes are the official record of a board meeting and although not required to be verbatim, the minutes should reflect an accurate record of discussions. An audio recording would also be a second source of the board's record.

From discussion among Deputy Attorney General Sunakoda, Members Waterhouse and Bassett, corrections were made to page two of the February 6, 2019 minutes to include the board's concern regarding restricting exclusive use of the "Net Shed" facility. Specifically, the following statement was added to the minutes:

"Members consulted with counsel to ensure there is a fair process for the community as well and members also clarified that exclusive use of their property by families does not count toward community use."

Chair Whalen added that a reminder may be sent to KUPU of its stipulations in its lease.

The meeting minutes for February 6, 2019 were approved with those corrections.

III. ACTION ITEMS

Shall the Authority Authorize the Executive Director to Execute All Necessary Documents to Complete the Transfer of the Kakaako Makai Properties and Remnant Roadways to the City and County of Honolulu?

Ms. Lindsey Doi presented the report provided in the board packet and added that the action item is being brought to the board as an effort to increase "efficiency" for any unforeseen documents that may arise to assist with completing the transfer of the Kakaako Makai properties and remnant roadways to the City. HCDA staff did not want to delay the transfer process due to possible time constraints and is asking for a blanket approval from the board for the Executive Director to execute all necessary documents that may arise.

Public Testimony

Councilmember Carol Fukunaga distributed a copy of her written testimony and added that area councilmembers have been working to ensure a strong partnership between City and State agencies as homeless encampments have caused disrepair to some great assets in Honolulu and across the state. The City would like to urge HCDA to do a thorough accounting of areas where there is damage and deterioration that may not be reflected in some of the transfer documents and added that during these transfers sometimes the smaller issues that have not been tended to get over looked. Councilmember Fukunaga further added that the City will be reviewing its budget to make recommendations on repairs accordingly and encourages working cooperatively to restore the area to its original intended purposes and recreational use.

Member Anderson commented that when the initial discussion on transferring the Kakaako Makai properties and remnant roads began, one of the ideas he raised was that HCDA explore and request a grant-in-aid or CIP funds to help bring the park back to how it looked when it was originally developed; however, there was no clear path on how the state could do that and asked

Member Fukunaga if she had ideas on how to move forward with that suggestion.

Member Fukunaga responded that former Governor John Waihee and Mr. Bruce Coppa have been recruited to help Lieutenant Governor Green in his efforts and they are exploring on how to work cooperatively with the State, City and potential private sector partners on how to achieve the goal while ensuring all stakeholders in the process are completely engaged in a responsible manner.

Chair Whalen added that when the Kakaako Waterfront was closed for the substantial damages, many repairs were not really completed in the rehabilitation of the park and per Councilmember Fukunaga's request for an accurate record or inventory in her testimony, Chair Whalen asked if HCDA staff keeps a record of the issues in the parks?

Ms. Lindsey Doi responded that HCDA staff keeps a basic record that include infrastructure type of repairs like broken light poles, broken water fountains, etc., however some of the photos that are included in Councilmember Fukunaga's testimony include homeless encampments or debris and because that changes on a day-to-day basis, HCDA does not keep a running record but if that is the desire, HCDA could certainly keep a running record and work with the City to come to a mutually acceptable arrangement.

Member Bassett asked what the private sector involvement would be?

Councilmember Fukunaga responded that there is an indication some City agencies are looking to the adjacent Kakaako property owners to consider its investments, but she does not know the status of those discussions. Councilmember Fukunaga further added, there have been discussions regarding areas owned by Howard Hughes Corporation and the City Council has adopted a resolution supporting Howard Hughes properties entering in to some type of Community Facilities District program where Howard Hughes would fund infrastructure and supportive requirements through its property taxes; however, the City Council has never done something like that before so that is not confirmed.

Member Bassett asked Mr. Los Banos what Howard Hughes property Councilmember Fukunaga is referring to?

Mr. Los Banos responded that he is not aware of the Howard Hughes partnership.

Member Bassett asked if its an HCDA-Howard Hughes partnership, that property would be around Kewalo Basin?

Mr. Los Banos replied and highlighted those public areas where HCDA-Howard Hughes have a partnership in.

There was no further questions, discussion or public testimony.

Member Anderson motioned for the board to authorize the Executive Director to execute all necessary documents to complete the transfer of the Kakaako Makai properties and remnant

roadways to the City and County of Honolulu.

Member Hasha seconded.

Member Bassett for clarification asked, if the reason transfer documents not return for board approval is inconvenient?

Mr. Los Banos responded that there may be a time constraint with items being brought for board approval by the May 31, 2019 deadline to complete the transfer to the City and County of Honolulu.

Member Waterhouse asked if there is a specific reason for the May 31, 2019 deadline?

Mr. Los Banos replied that the administration is striving for a marked deadline.

Member Bassett stated that the board is being asked to allow the Executive Director to spend above the delegated \$25,000.00 threshold for the Park Transfer and asked how much more does staff anticipate spending between now and May or how much resources does HCDA think it will spend?

Mr. Los Banos responded that he does not hope to spend more than the \$25,000.00 that was approved by the board and added that staff will provide the board updates in the Executive Director's report on the status of the transfer that will include any additional funds that may be necessary.

Member Bassett noted Mr. Los Banos' response and added that he is okay with the safeguard that a retroactive report will be provided to the board and asked that he can expect to see a report at the April and May board meetings?

Mr. Los Banos confirmed that retroactive reports will be given at the board's April and May board meetings.

There was no public testimony.

Ms. Lindsey Doi conducted the roll call vote. Motion passed with seven yes votes and two excused.

Shall the Authority Authorize the Executive Director to Expend up to \$152,125.60 to Make Repairs to Two Passenger Elevators at the Kauhale Kakaako Parking Garage?

Ms. Doi presented the report provided in the board packet and added that the cost of repairs to the Kauhale Kakaako Parking Garage elevators far exceeds the allowance in the contract which is \$10,000.00. The board is being asked to approve the increase in cost for the repairs.

Member Fang asked where the funds will be drawn from for the repairs to the Kauhale Kakaako Parking Garage.

Ms. Doi responded the funds will be from the public facilities funds as the garage is a public parking garage.

Member Hasha commented that he assumes this is a necessary repair and expense.

Ms. Doi responded that these repairs are for the public's safety and necessary for it to operate.

Member Rodriguez asked what fund the revenue of the parking garage goes to?

Mr. Los Banos responded that the revenue goes into the leasing and management subaccount.

Member Waterhouse stated that the staff report is unclear whether staff will be going with the overtime labor which increases costs, and asked if it was possible to keep it to ½ the cost?

Ms. Doi explained the costs listed on the Proposal sheet is the estimated cost if completed at the regular repair time and not an increased/rushed overtime cost.

There was no further discussion and no public testimony.

Member Hasha motioned for the authority to authorize the Executive Director to expend up to \$152,125.60 to make repairs to two passenger elevators at the Kauhale Kakaako Parking Garage.

Member Fang seconded.

Ms. Doi conducted the roll call vote. Motion passed with seven votes and two excused.

Member Mark Anderson excused himself from the meeting.

Shall the Authority Adopt Hearing Officer Wayne Nasser's Recommended Findings of Fact, Conclusions of Law and Decision and Order in the Following Consolidated Contested Case Hearing Matters:

1. Docket No. ACC-2017-01, In Re the Petition of Golden Eagle Marine Charter Services Corp.;
2. Docket No. DR-PET-2017-01, In Re the Petition of Golden Eagle Marine Charter Services Corp.;
3. Docket No. ACC-2017-02, In Re the Petition of S.O.M. LLC; and
4. Docket No. DR-PET-2017-02, In Re the Petition of S.O.M LLC.

Mr. Wayne Nasser, Hearing Officer for the contested cases introduced himself and explained that the following three petitions were dismissed:

1. Docket No. DR-PET-2017-01, In re the Petition of Golden Eagle Marine Charter Services Corp.;

2. Docket No. ACC-2017-02, In re the Petition of S.O.M. LLC; and
3. Docket No. DR-PET-2017-02, in re the Petition of S.O.M. LLC.

Therefore, the board's decision will be in the case of Docket No. ACC-2017-01, in re the Petition of Golden Eagle Marine Charter Services Corp. (Golden Eagle) and noted that Golden Eagle amended its original petition. Mr. Nasser explained that Golden Eagle owns a sailing vessel berthed in a commercial slip at the Kewalo Basin.

Golden Eagle has maintained that the harbor master and authority unlawfully terminated its commercial mooring permit or had not lawfully renewed it. One of the issues in this case was whether this is a termination or a non-renewal. Mr. Nasser further explained that a commercial mooring permit is valid for no longer than one year and in Golden Eagle's case the most recent written permit was issued in 2009 and thereafter nothing further in writing.

Hearings for the case were held in August 2018 for two days, witnesses and attorneys were present, and parties argued its case. Mr. Nasser determined that the permit was not terminated properly, expired as of February 2018 and was not renewed justifiably. Mr. Nasser's recommendation in the petition of Golden Eagle Marine Charter Services Corp. be denied.

Mr. Nasser explained that he can clarify or answer any questions that the board may have regarding the Proposed Findings of Fact, Conclusions of Law, Decision and Order.

Member Rodriguez for clarification asked if the issue is regarding a mooring site and a slip?

Mr. Nasser responded that is correct, the commercial slip is adjacent to Ala Moana Boulevard so it's a front slip at Kewalo Basin Harbor.

Member Rodriguez asked if the mooring site is being contested or the commercial slip, as the mooring site (permit) was issued in 2009 and expired in 2010.

Mr. Nasser clarified that the paperwork in this case is inefficient and that neither the operator nor the DOT or the HCDA Authority (as there were two different jurisdictions overtime) bothered to sign a new permit, therefore, by action of the parties "defecto," the permit was renewed annually. Mr. Nasser explained that his findings ruled the expiration of the permit was properly processed and not the termination of the commercial slip.

Member Bassett asked if there is any indication by either party that there may be an appeal?

Mr. Nasser responded that he is unaware if either party will appeal the decision and stated that he believes the administrative appeal decision goes to the circuit court first. He reminded the board that they will be making a decision on his recommendation.

Mr. Los Banos reminded the board that for the record the evidentiary record is closed.

Member Waterhouse asked what it meant when Mr. Nasser mentioned the three other petitions were dismissed.

Mr. Nasser explained for Member Waterhouse that S.O.M. decided they did not want to pursue its petition and voluntarily dismissed both cases. As a result of a motion and hearings for Golden

Eagle's Declaratory Relief petition, the case was dismissed and all arguments that Golden Eagle wanted to make in the Declaratory Relief petition were amended into the initial ACC action. All actions were done voluntarily by each party.

Public Testimony:

Christopher Muzzi, Attorney for Golden Eagle Marine Charter Services Corp. stated their objection to Mr. Nasser's comments that were made in his presentation to the board and reminded the board that it is limited to making a decision based on Mr. Nasser's proposed Decision and Order and that any additional information provided by Mr. Nasser in his presentation to the board should not factor into the board's decision. Mr. Muzzi noted Golden Eagle's Exceptions to the Proposed Findings of Fact, Conclusions of Law Decision and Order dated November 14, 2018 that have been submitted for the Board's review and approval and highlighted some points of concern that were not addressed adequately by Mr. Nasser's Decision and Order. Mr. Muzzi asked if there were any questions from the board members.

Member Hasha said that as Mr. Muzzi made a statement that this decision could be the death of the business; however, Mr. Nasser stated that the boat had not moved in over two years, and asked what business did Golden Eagle have?

Mr. Muzzi explained that the evidence provides a bareboat charter and that the boat had been chartered to another party. He also explained that the fact that the boat did not leave the slip is a requirement that is not in the harbor rules that the harbor tried imposing; however, the boat can be rented at the slip and still be a viable business.

Member Bassett motioned for the board to enter into executive session to discuss legal matters with counsel.

Before entering into executive session, the board took final public testimony.

Mr. Bryan Ho, attorney for Kewalo Harbor, LLC and Kewalo Harbor Management Co., LLC (the two companies that were respondents for this contested case) stated he submitted written testimony because the administrative rules for HCDA does not allow submission of written objections to the exceptions filed by the petitioner. Mr. Ho stated that Mr. Nasser's findings of fact and conclusions of law are complete and don't require any modification and requested the board to adopt Mr. Nasser's recommendation and move on to the next step.

Member Waterhouse stated she did not recall receiving any written testimony from Mr. Ho.

Deputy Attorney General Levins responded that he is unaware why members would not have received the written testimony.

There was no further public testimony.

Chair Whalen asked if there is a motion for the Authority to convene in executive session pursuant to HRS Section 92-5(a)(4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities?

Member Bassett motioned. Member Waterhouse seconded.

Chair Whalen conducted a voice vote, all members unanimously approved.

Deputy Attorney General Max Levins and HCDA Executive Director Aedward Los Banos, joined the board in executive session.

Pursuant to Section 92-5 (a) (2), Hawaii Revised Statutes, the Authority convened in Executive Session at 10:49 am

Board Members met in an executive meeting from 10:49 am until 11:32 am.

Chair Whalen reconvened the meeting at 11:32 am

Chair Whalen said that based on the board's consultation with its attorney, the board would like to defer this matter until the next meeting, April 3, 2019 and asked staff to coordinate with Mr. Nasser to be sure staff and the board has reviewed the full record.

IV. REPORT OF THE EXECUTIVE DIRECTOR

Monthly Reports and Other Status Reports

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

Mr. Los Banos deferred to the report provided in the board packet and highlighted for the board the repairs needed to the Keawe Street Box Culvert; updates regarding the renovation to the Ala Moana pump Station Screen House and 1940 Pump House; and the scheduled blessing ceremony for the Entrepreneur's Sandbox.

There was no public testimony.

V. ADJOURNMENT

Chair Whalen adjourned the regular meeting at 11:37 am.

Approved and Submitted by,

 /s/ John Whalen
John Whalen, Chairperson

 APR 03 2019
Date Approved by HCDA Board