

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

Wednesday, August 04, 2021

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 August 04, 2021.

Board Chairperson, Jason Okuhama, called the meeting to order at 9:03 a.m.
Those present were as follows:

Members Present:

Jason Okuhama, Chairperson
Kevin Sakoda
Philip Hasha
Wei Fang
Chason Ishii
David Rodriguez, DOT (Ex-Officio)
Craig Hirai, B&F (Ex-Officio)

Members Excused:

Dean Uchida, DPP (non-voting)
Cultural Specialist (VACANT)
At-Large (VACANT)

Legal Counsel:

Kelly Suzuka, Deputy Attorney General

Staff Present:

Deepak Neupane, Executive Director
Lindsey Doi Leaverton, Asset Manager
Craig Nakamoto, Compliance Assurance & Community Outreach Officer
Francine Murray, HCDA Program Specialist
Tommilyn Soares, HCDA Secretary

A quorum was present.

Acknowledgement that the Meeting is Being Convened Virtually

Chair Okuhama 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 Okuhama reiterated wording contained in the Meeting Agenda noting that HCDA welcomes public attendance via the Zoom link and HCDA's 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 Okuhama stated that individuals, if any, 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 July 7, 2021

Minutes were approved as presented.

III. ACTION ITEM

2. Shall the Authority Adopt Hearings Officer Wayne Nasser's Recommended Findings of Fact, Conclusions of Law and Decision and Order in the Following Consolidated Contested Case Hearing Matter: Docket No. ACC-2017-01 In Re Petition of the Golden Eagle Marine Charter Services Corp?

The Authority anticipates convening an executive meeting pursuant to HRS §92-5(a)(4), to consult with the Board's attorneys on questions and issues pertaining to the Board's power, duties, privileges, immunities, and liabilities and HRS §92-5(a)(8), to deliberate or make a decision upon a matter than requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order for the subject agenda item.

Chair Okuhama noted that the agenda item for decision involves a matter that was on the Board's May 1, 2019 agenda and that the sitting board members voted to accept the Hearing Officer's recommended Findings of Fact, Conclusions of Law and Decision and Order in the contested case hearing involving Docket No. ACC-2017-01 in re the petition of Golden Eagle Marine Charter Services Corp.

The Petitioner filed an appeal of the Board's May 2019 Decision and Order to the State Circuit Court. On appeal the court issued an Order vacating the Board's Order due to procedural errors and remanded the matter to the HCDA "for further proceedings" to correct the procedural errors identified by the court.

Chair Okuhama stated that each board member received a copy of Hearing Officer, Wayne Nasser's recommended Findings of Fact, Conclusions of Law and Decision and Order. Pursuant to the Circuit Court's remand order Chair Okuhama asked that each member verbally affirm they have personally reviewed and considered a copy of the entire record or such portions thereof as cited by the parties, as well as copies of the contested case hearing transcripts, exhibits and written submissions by the parties.

Member Ishii, affirmed.
Member Fang affirmed.
Member Sakoda affirmed.
Member Rodriguez affirmed.
Member Hirai affirmed.
Chair Okuhama affirmed.

Mr. Deepak Neupane, HCDA Executive Director, asked Deputy Attorney General Suzuka to confirm that it was okay to ask Hearings Officer Wayne Nasser to present his Findings of Fact, Conclusions of Law and Decision and Order.

As a procedural matter Mr. Christopher Muzzi, counsel for the Petitioner, Golden Eagle Marine Charter Services Corporation, asserted an objection and stated that everything he (Wayne Nasser) has to say should be contained in his proposed decision and order.

Hearings Officer Wayne Nasser noted that he was invited to present his proposed Findings of Fact, Conclusions of Law and Decision and Order and understands that everyone who is present received it. Mr. Nasser added that he agrees with Mr. Muzzi. Mr. Nasser further added that it is acceptable to ask questions, however, the board should decide on the record that they have the Findings of Fact, Conclusions of Law and Decision and Order.

Deputy Attorney General Suzuka asked Mr. Nasser, for the record, if he would like to stand on his proposed Findings of Fact, Conclusions of Law and Decision and Order?

Mr. Nasser confirmed that he stands on his proposed Findings of Fact, Conclusions of Law and Decision and Order, and also noted that he is available for any questions.

There were no questions.

Chair Okuhama proceeded with the petitioner's presentation of arguments on exceptions to the Hearings Officer's recommended Findings of Fact, Conclusions of Law and Decision and order. Mr. Christopher Muzzi reintroduced himself along with his co-counsel, Ms. Leila Rothwell Sullivan. Mr. Muzzi made a presentation on behalf of the petitioner and presented its arguments. Mr. Muzzi noted that there is an extensive record, and pursuant to the statutes, HCDA is charged with reviewing that record and making a decision on whether to adopt the Hearings Officer's proposed Decision and Order. Mr. Muzzi noted that Golden Eagle will appeal today's decision if it is unfavorable.

Mr. Neupane noted that Member Hasha joined the meeting.

Chair Okuhama asked Member Hasha to affirm, pursuant to the Circuit Court's remand order, that he personally reviewed and considered a copy of the entire record or such portions thereof as cited by the parties, as well as copies of the contested case hearing transcripts, exhibits and written submissions by the parties.

Member Hasha affirmed.

Chair Okuhama proceeded with the respondent’s presentation of responsive arguments to the petitioner’s arguments on exceptions. Mr. Bryan Ho on behalf of respondents, Kewalo Harbor LLC and Kewalo Harbor Management Co LLC provided its presentation and noted that Kewalo Harbor LLC and Kewalo Harbor Management Co LLC provided a written response on March 1, 2019 to Golden Eagle’s written exceptions and stands on that response and comments. He requested that the HCDA board reject every point of objection raised by Golden Eagle in their November 26, 2018 submission as well as its submission to the board sent in on August 3, 2021. He added that the Hearings Officer’s proposed Findings of Fact, Conclusions of Law and Decision and Order addressed all issues included in Golden Eagle’s amended petition. Mr. Ho further added that Golden Eagle’s August 3, 2021 submission cannot be adopted and cannot be considered because it is untimely as a matter of law, under HRS §91-1 and HCDA Administrative Rule 13219-53(b), the deadline for Golden Eagle to submit all written exceptions to the Hearing’s Officers Findings was November 26, 2018. To the extent of Golden Eagle’s Findings submitted yesterday, it contains changes, modifications not contained in its original November 26, 2018 exceptions and it is procedurally and substantively defective.

Mr. Muzzi asked to reply to Mr. Ho’s comments.

HCDA Deputy Attorney General Suzuka stated that both parties have stated their arguments and advised against continued responses to arguments. She advised the board to move forward with any questions they may have for the Hearings Officer.

Mr. Muzzi made an objection in not being able to reply and said normally, the party with the burden has the last opportunity to respond.

There were no further questions or comments from board members.

Public Testimony

Chair Okuhama called for public testimony. There was no request to provide verbal testimony.

Member Fang motioned to enter Executive Session. Member Sakoda seconded.

Chair Okuhama called for a voice vote; all members unanimously affirmed. Chair Okuhama requested the following people to participate in the Executive Session: HCDA Deputy Attorney General, Ms. Kelly Suzuka, HCDA Executive Director, Mr. Deepak Neupane, HCDA Secretary, Ms. Tommilyn Soares, and HCDA Program Specialist, Ms. Francine Murray.

Pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, the Authority convened in Executive Session at 9:41 a.m.

The Authority met in Executive Session until 9:53 a.m.

Chair Okuhama reconvened the meeting in public session at 9:53 a.m.

Motion

Member Fang motioned for the Authority to adopt Hearings Officer Wayne Nasser's recommended Findings of Fact, Conclusions of Law and Decision and Order in the following consolidated contested case hearing matter: Docket No. ACC-2017-01 in Re Petition of the Golden Eagle Marine Charter Services Corp.

Member Hasha seconded the motion.

Mr. Neupane conducted the roll call vote. Motion passed with 7 Yes votes and 2 excused.

3. Request to Authorize the Executive Director to Expend up to \$50,000.00 From the Hawaii Community Development Revolving Funds, Leasing and Management Subaccount to Retain Structural Engineering Services to Repair the Elevator Curtainwall at Kauhale Kakaako Parking Garage, Located at 860 Halekauwila Street, Honolulu, Hawaii and Identified as Tax Map Key Numbers: (1) 2-1-050:13, 14, 15, 53, 63, 64 and 65.

HCDA Asset Manager, Ms. Lindsey Leaverton Doi, provided a summary of the staff report for this item.

Member Sakoda asked for clarification on the separation of responsibility between HCDA and the owner of the building. Ms. Leaverton Doi stated while the lease specifies that the structure is the responsibility of the building owner, the building owner determined that the necessary repairs are within the elevator, which is HCDA's responsibility. She noted that HCDA has gone back and forth with the building owner on multiple matters including the one at hand. Mr. Neupane stated that HCDA wants to be proactive with this matter to ensure the structural integrity of the curtainwall is not compromised.

Mr. Neupane added that the building owner is eventually hoping to purchase the parking garage, but negotiations are still happening between HCDA and the owner.

Member Sakoda asked if Kauhale Kakaako is worth it as an asset for the HCDA in terms of the costs to maintain. Ms. Leaverton Doi stated it is an asset for the time being because of the revenue it generates for HCDA. She added that a thorough financial analysis will be completed if and when the building owner makes an offer to purchase.

Chair Okuhama asked if the analysis will take into consideration all aspects of the building. Ms. Leaverton Doi clarified that the distinction between HCDA and the building owner will remain the same; she put simply that the owner is responsible for the outside, structural matters and HCDA is responsible for inside the parking garage. Chair Okuhama asked if HCDA is limited to what its responsible for. Ms. Leaverton Doi affirmed and explained

what improvement work HCDA has done in the past that has resulted in more revenue received.

Member Ishii asked if there was a determination as to what caused the water infiltration. Mr. Neupane explained that the building owner hired a consultant to conduct water testing and it was determined that there was a leak in the elevator curtainwall. He added saying HCDA had initially looked into making repairs, but there was uncertainty about how much of the welding had already been corroded, which posed the question of the structural integrity. Member Ishii asked if the damaged was caused from the structure or interior, in relation to the responsibility of the matter. Ms. Leaverton Doi stated possibly the structural engineer could assess that, but there was no prior determination. Member Ishii stated it may be beneficial to determine where the damage came from to determine which party is truly responsible for the repairs. Mr. Neupane stated that can be included in the structural engineer's investigation.

There were no further questions or comments from board members.

Public Testimony

Chair Okuhama called for public testimony. There was no public testimony.

Motion

Member Sakoda motioned for the board to authorize the Executive Director to expend up to \$50,000.00 from the Hawaii Community Development Revolving Funds, Leasing and Management Subaccount to retain Structural Engineering Services to repair the elevator curtainwall at the Kauhale Kakaako Parking Garage, located at 860 Halekauwila Street, Honolulu, Hawaii, and identified as Tax Map Key Number: (1) 2-1-050: 13, 14, 15, 53, 63, 64 and 65.

Member Hasha seconded the motion.

Ms. Leaverton Doi conducted the roll call vote. The motion passed with 7 Yes votes and 2 excused.

4. Request to Authorize the Executive Director to Award and Execute a Three-Year Contract with Two One-Year Options to Extend with Arekat Pacific Security, Inc. for Security Guard and Outreach Services for the Kewalo Basin Harbor Diamond Head Parking Area and Kolowalu Park, located in Honolulu, Hawaii and Identified as Tax Map Key Nos. (1) 2-1-058:134, (1) 2-3-004-080 (portion), (1) 2-3-006-015 and (1) 2-3-006-016 (portion).

HCDA Asset Manager, Ms. Lindsey Leaverton Doi, provided a summary of the staff report for this item.

Member Sakoda asked for clarification regarding the split between how much of the overall costs would be used for the parking area versus for Kolowalu Park. Ms. Leaverton Doi stated there were no separate cost allocation in the solicitation HCDA posted, but based on footprint, she explained that the parking area is much smaller than Kolowalu Park, which also has more need for security.

Member Sakoda asked if this security would work in conjunction with the existing Howard Hughes security in the areas surrounding Kolowalu Park. Ms. Leaverton Doi stated she suspects there will not be overlapping issues and that HCDA can work with its security contractor to ensure there is open communication with Howard Hughes' security.

There were no further questions or comments from board members.

Public Testimony

Chair Okuhama called for public testimony. There was no public testimony.

Motion

Member Fang moved for the board to authorize the Executive Director to award and execute a three-year contract with two one-year options to extend with Arekat Pacific Security, Inc. for security guard and outreach services for the Kewalo Basin Harbor Diamond Head Parking Area and Kolowalu Park, located in Honolulu, Hawaii and identified as Tax Map Key Nos. (1) 2-1-058:134, (1) 2-3-004-080 (portion), (1) 2-3-006-015 and (1) 2-3-006-016 (portion).

Member Sakoda seconded the motion.

Ms. Leaverton Doi conducted the roll call vote. The motion passed with 7 votes and 2 excused.

5. Request to Approve Subordination of the HCDA's Equity Sharing Payment for Reserved Housing Units to Allow Unit Owners to Obtain a Second Mortgage Under the following Conditions:
 - a. The Maximum Allowable Second Mortgage Amount is Limited to the Original Sales Contract Price Plus Any Partial Shared Equity Payments Minus the Remaining Mortgage, and
 - b. The Total Allowable First Mortgage Plus Second Mortgage Does Not Exceed the Current City and County of Honolulu Property Tax Assessed Value, if the Current Property Tax Assessed Value is Less than the Original Sales Contract Price.

Ms. Leaverton Doi provided a summary of the staff report for this item.

There were no questions or comments from board members.

Public Testimony

Chair Okuhama called for public testimony. There were 12 written testimonies received in support.

Mr. Kyle Shelly, owner of a reserved housing unit, was present to provide verbal testimony in support. Mr. Shelly included a recommendation to allow for first mortgages. Ms. Leaverton Doi clarified that HCDA already allows for refinancing of primary mortgages with a different set of conditions.

Speaker of the House of Representatives, Scott K. Saiki was present to summarize the written testimony in support he submitted.

Member Fang noted the increase in financial instruments coming in to HCD for review, which may put a burden on HCDA staff to administer. She explained she wants board members and HCDA staff to keep this in mind. Mr. Neupane stated in this instance, HCDA will be using the existing template that HHFDC uses for their units, which releases that burden from staff. Member Fang confirmed that it gives her confidence knowing that HCDA will be using a successful model and that there will be cohesion between HCDA and HHFDC.

Motion

Member Ishii motioned for the board to approve subordination of the HCDA's equity sharing payment for reserved housing units to allow unit owners to obtain a second mortgage under the following conditions:

- a. The maximum allowable second mortgage amount is limited to the original sales contract price plus any partial share equity payments minus the remaining mortgage, and
- b. The total allowable first mortgage plus second mortgage does not exceed the current City and County of Honolulu property tax assessed value, if the current property tax assessed value is less than the original sales contract price.

Member Sakoda seconded the motion.

Ms. Leaverton Doi conducted the roll call vote. The motion passed with 7 votes and 2 excused.

IV. REPORT OF THE EXECUTIVE DIRECTOR

6. Monthly Report and Other Status Reports
 - a. Approved permit applications that did not require HRS 206E-5.6 public hearings

Mr. Neupane chose to stand on the written report as presented.

There were no questions or comments from board members.

Public Testimony

Chair Okuhama called for public testimony. There was no public testimony.

V. ADJOURNMENT

There being no further comment or questions on the Report of the Executive Director, Chair Okuhama thanked those who joined the meeting on Zoom and adjourned the meeting at 10:35 a.m.

Wei Fang, Secretary

Date

DRAFT