

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

February 12, 2015

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Vice Chair Tanaka called the meeting to order at 1:06 a.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Wayne Tanaka
- Kyoko Kimura
- Harris Nakamoto
- Ashley Takatani Leahey
- Mark Ritchie

ABSENT MEMBERS:

- Barbara Bennett

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF JANUARY 28, 2015 MINUTES

Ms. Kimura made a motion to accept the January 28, 2015 minutes, as amended. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 85, Medical Examiners, Section 8, Examination and Reexamination, and the Small Business Statement After Public Hearing, promulgated by DCCA

As no one from DCCA was in attendance at the meeting, Mr. Kimura explained that the proposed changes came to this Board before the public hearing. No one attended the hearing, no testimonies were received, and no changes were made since the Board last reviewed the amendments. Overall, the changes are beneficial to small business as the rules will be less restrictive and are expected to encourage more, qualified physicians to practice in Hawaii.

Ms. Kimura made a motion to support the approval of the adoption of the rule amendments. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 99, Real Estate Brokers and Salespersons, and the Small Business Statement After Public Hearing, promulgated by DCCA

Ms. Kimura explained that these rule changes were presented to this Board last year. At that time, due to two board members needing to recuse themselves from voting, the Board lacked a sufficient voting quorum and therefore took no action on the amendments prior to the public hearing. Most of the amendments relate to updating and clarifying the existing rules. Also, the class hours for pre-license education requirement is increased from 45 to 60 hours for salespersons and from 46 to 80 hours for brokers; it was noted that these hours are actually the current practice within the real estate industry.

Mr. Miles Ino, Executive Officer of the Real Estate Branch of the Professional and Vocational Licensing Division at DCCA, added that a public hearing was held on December 1, 2014. However, upon the advice of DCCA's deputy attorney general, a second public hearing is scheduled for February 13, 2015, due to the originally scheduled hearing room needing to be changed at the time the public hearing was to take place, in an attempt to ensure the rule changes would not be challenged in the future. He confirmed that the rules are currently obsolete and the proposed changes will bring them in line with the statute as well as the current practices and procedures.

Representatives from the Hawaii Association of Realtors, in attendance at the meeting, stated they assisted DCCA in updating and promulgating the proposed amended rules. They concurred with DCCA that there is no significant impact expected on small businesses. The 60 and 80 hours are for instructional purposes and considered no different than instruction classes required for other professions. It was noted that the real estate industry is a tough industry to get into, and it is not for everyone. Currently, there are 18,000 real estate members licensed with Hawaii; 12,000 are active, 6,000 are inactive.

Mr. Ritchie made a motion for the proposed amendments to go to the second scheduled public hearing; after the public hearing, if no substantive changes to the rules have been made, DCCA need not physically return to this Board but proceed to the Governor for adoption of the rules subject to this Board's receipt of the small business statement after public hearing. Ms. Leahey seconded the motion, Ms. Kimura abstained from voting, and the remaining five members voted in favor of the motion; the motion passed.

B. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 256, Section 152, Kahaluu Bay Swimming Zone, promulgated by DLNR

Discussion leader, Ms. Ashley Leahey, explained that the proposed rule amendments will separate Kahaluu Bay into two separate zones, one for swimming and non-surfing activity, and another for surfing activity. The proposal also places a restriction on the number of permits for surf instruction to four due to overcrowding and security reasons.

Mr. Edward Underwood, Administrator at DLNR's Division of Boating and Recreation, explained that the community along with the county approached DLNR to create a separate area in the Bay where only commercial activity can take place. For this to occur, there must be a county permit for the park and a state permit for the near-shore waters. There is clearly an impact on business; however, DLNR is unclear as to exactly how many businesses are presently providing surf lessons in the Bay. He confirmed that the amendments will limit four permits, with no more than four people in the water at one time, which equates to a total of sixteen people in the Bay who can receive surfing instruction. In regards to the issue of safety, Mr. Underwood stated that the Bay is currently very congested, although DLNR has not heard of any accidents that may have occurred.

Overall, the restrictions are considered stringent as the commercial instructors must be in compliant with all rules and regulations before an instructor may be granted a permit. The annual State permit does not limit the hours and allows usage of the Bay seven days a week, and the County will provide the initial screening process and decide who will receive the permits. It was clarified that the County will have a public hearing regarding the beach park rules, and the State will have a public hearing regarding the water rules.

Ms. Leahey made a motion to recommend that the proposed amendments proceed to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to Special Management Area Rules, Relating to Application Fees, Section 8.0, Application Procedure, promulgated by the Kauai Planning Commission, County of Kauai

Discussion leader, Vice Chair Tanaka, explained that the proposed changes to the rules reflect a fee of \$150 for minor projects that are less than \$500,000, (where there was no fee prior), and a fee of \$150 to \$300 for major projects over \$500,000. The amendments also reflect increased regulations in regards to special management areas such as the coastline areas. The businesses impacted would be resorts and developers, and with the expansion of the regulation, the time to review the permits has increased significantly.

Mr. Ian Jung, Deputy County Attorney for the County of Kauai, explained that in order to understand these rules, it is important to understand the special management area (SMA) use permits. SMA is based on the federal Coast Zone Management (CZM) Act that requires shoreline protections in the near-shoreline; of which, the County of Kauai is required to create and enforce rules and where federal funds would be received directly by the County. While all of Kauai is located in a CZM, there are special areas that trigger additional county permit requirements aside from DLNR or State-issued permits.

In regards to the fees, Mr. Jung discussed and distributed the proposed permitting fee schedule, which includes permit types, special fees and required fees for each. While these fees are not as high as the other counties' fees, there still may be an impact to Kauai small businesses; however, Mr. Jung noted that the amount of return that a small business may receive may balance the initial financial impact. The County of Kauai is required by law to review and approve permits within a certain period of time; thus, it is expected that with the increase in fees, more staff will be hired to assist in the permitting process.

Eleven major SMA permits and thirty-six minor SMA permits were granted this past year. A minor SMA permit is an over-the-counter permit, which may take two to three weeks to process depending on whether or not it triggers an environmental assessment requirement. A major SMA permit is more complex because a full report must be submitted to the Planning Commission and a public hearing, which may take three to nine months. It was also noted that no out-sourcing of the permitting process is performed; but overall, the fee increase is considered nominal in comparison to the service being accomplished.

Mr. Ritchie made a motion that the proposed amendments proceed to public hearing. Vice Chair Tanaka seconded the motion, and the Board members unanimously agreed.

V. LEGISLATIVE MATTERS

A. Update, Discussion and Action on Senate Bill 12, and companion House Bill 266, "Relating to the Small Business Regulatory Flexibility Act"

Chair Borge discussed the current status of Senate Bill 12 and House Bill 266, which provides for this Board a separate line item within DBEDT's budget. Senate Bill 12 passed without amendments to Ways and Means; House Bill 266 passed the second reading to the Finance Committee. The chair encouraged the members to provide individual testimonies to these committees. Also, if members have an opportunity to speak with legislators on these committees, please let them know what this Board does and what it is asking for in terms of its budget request; i.e., the bare minimum of \$50,000 would assist this Board's work more effectively and efficiently.

After providing testimony last week at the hearings, Chair Borge realized that some of the legislators do not know what this Board does and what its mission is. Clearly, if the legislators do not know what this Board is about, it will be difficult for them to approve funds, particularly with the State's budget outlook. When asked at one of the hearings specifically what this Board needs, Chair Borge had stated that \$140,000 to \$150,000 would ultimately assist with this Board's travel, outreach, and personnel expenses.

B. Update, Discussion and Action on Senate Bill 1188, and companion House Bill 774, "Relating to Small Business"

These bills make an appropriation to DBEDT for this Board to hire additional staff. Chair Borge provided testimony, as an "individual," in support of House Bill 774, as the bill and hearing date were scheduled after the last board meeting; Senate Bill 1188 has not yet been heard.

Mr. Nakamoto made a motion for this Board to provide testimony in support of Senate Bill 1188 and House Bill 774, Relating to Small Business, for sufficient funding. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

VI. ADMINISTRATIVE MATTERS

- A. Discussion on this Board's Past, Continuing, and Future Outreach Opportunities and Efforts to Hawaii Small Businesses to Promote this Board's Mission, in accordance with Chapter 201M, Hawaii Revised Statutes

Chair Borge stressed this Board's advocacy for small business. He explained that several years ago, the Board distributed the newsletters included in the agenda packets, which were intended to keep the business associations apprised of this Board. Overall, the biggest problem for this Board is getting in touch and communicating with the business community about the Board's mission. Mr. Ritchie stated that a website is a good communication vehicle as a website reader can zero in exactly what he/she is searching.

Chair Borge also discussed this Board's RegAlert service, an electronic email alert system announcing proposed and amended administrative rules that impact small business to Hawaii's business organizations, such as the chambers; the organizations would, in turn, submit the information to its members. As RegAlert has not been activated for several years, it was requested that DBEDT staff send to the board members the RegAlert history packet, which dates back to 2008/2009.

- VII. NEXT MEETING** – The next meeting is scheduled for Wednesday, March 18, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.
- VIII. ADJOURNMENT** – Ms. Kimura made a motion to adjourn the meeting, and Ms. Leahey seconded the motion; the meeting adjourned at 2:34 p.m.