

Minutes of a Regular Meeting
of the Members of the
Hawaii Community Development Authority
State of Hawaii

Wednesday, August 2, 2017

KAKAAKO BUSINESS

I. CALL TO ORDER/ROLL CALL

A regular business meeting of the Kakaako Members of the Hawaii Community Development Authority (“Authority” or “HCDA”), a body corporate and a public instrumentality of the State of Hawaii, was called to order by Chair Whalen at 10:44 AM August 2, 2017, at the Authority’s principal offices at 547 Queen Street in Honolulu, Hawaii, 96813, pursuant to Article IV, Section 1 of the Authority’s Bylaws.

Members Present:

1. John Whalen
2. Steven Scott
3. Beau Bassett
4. Wei Fang
5. William Oh
6. Jason Okuhama
7. Laurel Johnston
8. David Rodriguez
9. Kathy Sokugawa, DPP (non-voting)

Absent Members: Mary Pat Waterhouse

Others Present: Jesse Souki, Executive Director
Mike Wong, Deputy Attorney General
Deepak Neupane, Kakaako Planning Director
Lindsey Doi, Asset Manager
Aedward Los Banos, Administrative Services Officer
Garett Kamemoto, Communications and Community Outreach Officer
Francine Murray, Communications and Community Assistant
Ku’ulei Moses, Secretary
Lori Sunakoda, Deputy Attorney General

II. APPROVAL OF MINUTES

1. Kakaako Regular Meeting of July 5, 2017

The minutes were approved as presented.

III. ACTION ITEMS*

2. Shall the Authority Authorize the Executive Director to Execute a Final Form of the 35-Year Lease of the Net Shed Building at Kewalo Basin with Kupu?

The Authority may convene an executive meeting pursuant to HRS § 92-5 (a) (4), for the purpose of consulting with the Authority's legal counsel on questions and issues relating to the Authority's powers, duties, privileges, immunities, and liabilities relating to the above items.

Ms. Lindsey Doi noted that the staff report is under tab 2 of the Board packet and the lease were emailed to the Board yesterday. Ms. Doi highlighted key points from the April 5, 2017 meeting, in which the Authority directed staff to incorporate the following provisions into the lease:

- 1) Initial term of 15 years with two 10-year options to extend-Section 1.2
- 2) No increase in floor area of the existing Net Shed building- Section 6.11
- 3) All uses should be consistent with the Makai Area Rules-Section 7.16D/E
- 4) Public use shall be accommodated at Net Shed-Section 6.13
- 5) The approval of the lease is contingent upon acceptance of a development permit; if the development permit is denied, then the lease would be terminated-Section 6.2
- 6) The lease shall come back before the Authority for final approval.

Ms. Doi reviewed the Authority action at the April 5, 2017 meeting, noting the uses the Authority approved as being consistent with the purpose and intent of the Makai Area Plan and Rules. Ms. Doi outlined several lease terms, including prohibitions on commercial activity at Net Shed and net cash flow generated from non-program uses.

Mr. John Leong, Kupu CEO, was present for questions.

Member Bassett expressed concern over HCDA's lack of revenue-generating properties. He stated that he hoped the Net Shed lease would generate income for HCDA and questioned the decision to remove HCDA's share of net cash flow from the lease.

Mr. Jesse Souki explained the sense staff received from the Board was the Board did not want commercial activity or additional floor area for development at the Net Shed, and that the lease would require Kupu to maintain the area so that it is clean and presentable.

Ms. Doi added that a nominal charge will still be collected from the third parties who should want to use the facility through park permit fees, and that Kupu would provide in-kind services to the HCDA. Ms. Doi asked Mr. Leong to elaborate further.

Mr. John Leong noted that Kupu has a partnership with the HCDA to care for the surrounding area, clean up, pick up trash, etc.

Member Bassett asked if Kupu only maintained the area around Net Shed, or if they maintained a larger portion of the park.

Ms. Doi explained that there were cultural sites outside of the park that require caretaking, and Kupu has stepped in to take care of that. Kupu is HCDA's partner in fulfilling that role.

Chair Whalen asked if the park area, fronting the Net Shed was included in the right of entry. Ms. Doi said it would be; however, that is a separate matter from the lease. Exhibit A outlines the premises of this lease (in red) and it is essentially the building and the small area around it. The lease does not include the small park next to it, that area would be covered under a separate Right of Entry agreement.

Chair Whalen reminded the Board of the presentation Kupu made at the April 5, 2017 meeting, and asked if there were material changes to how KUPU is proposing to use the facility.

Mr. Leong stated that the uses are what they proposed in the April 5, 2017 presentation, both in the PowerPoint and the submission to the Board. Mr. Leong stated those uses were found to be consistent with the purpose and intent of the plan and rules by the Board and were incorporated into the staff report and lease.

Member Bassett referred to his previous question, saying it sounded like there was no potential for HCDA to receive any financial revenue.

ED Souki explained Kupu offers in-kind services and also noted the cost savings of not having to manage the area outweigh the revenue that could be received from rentals.

Mr. Leong noted that Kupu originally proposed the sharing of net cash flow from non-program uses and was still open to it; however, staff concluded that the prohibition on all commercial activity would be in the public's best interest.

Member Bassett mentioned the idea of a surfboard rental facility within the Net Shed to help replenish HCDA's leasing and management fund.

Ms. Doi commented that the prohibition on commercial uses make it clear that the facility could not be rented out for such commercial use. However, such rental facilities were contemplated in the Park EIS for adjacent lots like the NOAA Lot.

PUBLIC TESTIMONY

Michelle Matson, President of the Oahu Island Parks Conservancy, suggested deferring this lease entirely and shortening the lease term to five years.

Wayne Takamine, Chair of the Kakaako Makai Community Advisory Council, noted his support for Kupu's programs; however, expressed concern about Kupu utilizing this location at Net Shed.

Member Fang made a motion to enter into executive secession, Member Oh seconded the motion.

11:37 AM EXECUTIVE SESSION

Pursuant to Section 92-5 (a) (4), Hawaii Revised Statutes, the Authority convened in Executive Session at 11:37 a.m.

12:19 PM RECONVENE

Chair Whalen called for a motion for the Authority to authorize the Executive Director to execute a final form of the 35-year lease of the net shed building at Kewalo Basin with Kupu. Member Johnston made a motion to approve.

Member Fang stated she has concerns on the current draft lease that centers around community events and issuing permits. She is concerned HCDA does not have adequate staff to manage the number of requests that may come through. Member Fang also believed the Board may have made a mistake on approving the acceptable uses of the facility at the April 5, 2017 meeting. She noted the Board may be having trouble agreeing on lease terms because Kupu's use of Net Shed does not fit within a park setting.

ED Souki stated that HCDA would not be processing every park permit request, but rather agreeing to a policy on how those requests are made. Ms. Doi added that only certain events would trigger the issuance of an HCDA Park Permit, for example, events that serve alcohol.

Member Scott asked Kupu what the definition of a community event was. He stated that he supports Kupu, but not private events and parties held at the Net Shed.

Mr. Leong stated there will be Kupu activities for youth, but the facility would also be open for community groups and family events.

Cal Chipchase, legal counsel for Kupu, explained that the definition of a community event include those "that are open to the public." He noted the exact terms would be approved by the Executive Director, and any use would be consistent with all Park and Mauka Area Rules.

Member Sokugawa commented that the term "open to the public" could be clarified.

ED Souki added that staff will be guided by what is currently allowed in the park, the capacity of the building once it is completed, and how the parking will be addressed.

Member Sokugawa asked if catering for events at Net Shed would be done through Kupu.

Mr. Chipchase said that would be something that would need to be discussed with staff.

ED Souki said that since Kupu has a job training program, catering through Kupu could be an option.

Member Sokugawa asked if the promenade was included in Kupu's leased premises. Mr. Deepak Neupane said the promenade was not included in the lease area, and the distance from the building is about 20 feet.

Member Bassett commented that this draft lease seems to miss the mark. He envisioned Kupu creating programming that would be opened to the public; however, he stated that what he sees instead seems more like a rental facility. Member Bassett asked Kupu to incorporate their mission to the public into the lease.

ED Souki suggested including a reporting provision in the lease so that the Board can provide feedback annually and Kupu can make changes as necessary.

12:45 PM Member Sokugawa left the meeting.

Member Bassett said he wanted it to be clear in the lease how Kupu's mission relates to what this public use is.

Ms. Doi confirmed that the following will be amended in the draft lease:

- reporting annually; report before operations begin
- community events defined as public informational events
- recitals would include Kupu's public mission
- clarify Kupu's programming in permitted uses

Member Johnston said she had to leave and would either withdraw her motion or postpone this until the details are worked out. She did not feel comfortable voting on this with members having so many concerns.

Mr. Leong said that the concerns that have been discussed can be addressed, but if this is postponed, it will kill the project. Kupu received a grant from the State that lapsed in January, 2018.

Member Johnston asked Kupu to confirm receiving 2 State grants. Kupu confirmed.

Member Johnston withdrew her motion.

1:12 PM Member Johnston left the meeting.

Member Scott made a motion to approve this lease based on changes that were mentioned. Member Oh seconded.

Member Bassett said he wanted to see the lease again before it is approved. Ms. Doi said the amendments could be made and a redrafted lease could be circulated within one month.

1:16 PM Member Okuhama left the meeting.

MOTION:

Member Scott made a motion for the Authority to Authorize the Executive Director to Execute a Final Form of the 35-Year Lease of the Net Shed Building at Kewalo Basin with KUPU as amended 1) Kupu reports annually to the Board and the programming be amended accordingly 2) Community events would be defined as public informational events 3) recitals would be amended to include reference to the public element of KUPU's mission. Member Oh seconded.

Ms. Doi conducted the roll call vote. The motion failed. Member Fang and Member Bassett voted no, Members Oh, Scott, Rodriguez and Chair Whalen voted yes.

3. Shall the Authority Authorize the Executive Director to Enter Into an Agreement with the Hawaii Housing Finance and Development Corporation (HHFDC) to 1) Serve as the HCDA's Designated Buyback Authority to Repurchase and Resell Any Rycroft Terrace Reserved Housing Units Sold During the Regulated Term, in Accordance with HHFDC's Affordable Housing Program and Subject to HHFDC's Acceptance of the Condition of the Unit, and 2) If HHFDC determines that buyback is not feasible, HCDA's Executive Director may waive HCDA's first right to buyback?

Ms. Doi presented the item under tab 3, explaining that she would like to broaden the scope of the Authority's previous approval to buyback two units at Rycroft Terrace in cooperation with HHFDC. She stated that there is now a third unit that may soon be up for sale and it would expedite the buyback process if the Board gave blanket approval for all Reserved Housing Units in Rycroft Terrace. The second part of the request would allow HCDA to waive its right to buyback if HHFDC determines the buyback is not financially feasible.

There was no public testimony.

MOTION:

Member Scott made a motion for the authority authorize the Executive Director to enter into an agreement with the Hawaii Housing Finance and Development

Corporation (HHFDC) to 1) serve as the HCDA's Designated Buyback Authority to repurchase and resell any Rycroft Terrace Reserved Housing units sold during the regulated term, in accordance with HHFDC's affordable housing program and subject to HHFDC's acceptance of the condition of the unit, and 2) If HHFDC determines that buyback is not feasible, HCDA's Executive Director may waive HCDA's first right to buyback. Member Fang seconded. All were in favor, motion passed.

IV. ACTIONS CONCERNING PETITIONS

4. DOCKET NOS. ACC-2017-01 and DR-PET-2017-01 IN RE THE PETITION OF GOLDEN EAGLE MARINE CHARTER SERVICES CORP. and DOCKET NOS. ACC-2017-02 and DR-PET-2017-02 IN RE THE PETITION OF S.O.M. LLC.
 - a. Pursuant to HAR § 15-219-48, shall the Authority assign the petitions requesting an appeal and contested case hearing for further proceedings before the Authority or a hearings officer?
 - b. Pursuant to HAR § 15-219-84, shall the Authority act on the petitions for declaratory relief?
 - c. If the Authority authorizes the petitions for declaratory rulings be set for hearings, shall the hearings be presided over by the Authority or a hearings officer?
 - d. Pursuant to HRS § 91-8.5, shall the Authority encourage the parties of the contested cases to participate in mediation prior to any hearing?

The Authority may convene an executive meeting pursuant to HRS § 92-5 (a) (4), for the purpose of consulting with the Authority's legal counsel on questions and issues relating to the Authority's powers, duties, privileges, immunities, and liabilities relating to the above items.

ED Souki said there was no staff report for this, and Deputy AG Mike Wong will provide information to the Board, in executive session.

The Board decided to take up other authority matters before going into executive session.

There were no comments or no public testimony.

V. AUTHORITY MATTERS

5. Presentation by City & County of Honolulu (City), Department of Transportation Services on proposed bike lane projects within the Kakaako Community Development District.

Mike Packard representing the City & County of Honolulu gave a presentation on the concept of the Oahu Bike Plan. He explained that there is an opportunity in the future that before developers start construction that if HCDA saw it as a community benefit, he believed HCDA could create a contract to start restriping efforts to install bike facilities for the network they are proposing to develop.

Mr. Neupane explained what the City is proposing HCDA participate in would mean HCDA managing the construction, and the City would provide the planning.

PUBLIC TESTIMONY

Sophia Pieridis testified offering comments on this item.

6. Information Item: Kolowalu Bikeshare Petition.

ED Souki explained that a petition regarding the Kolowalu Bikeshare station was sent to the Board.

Ms. Doi noted a Right of Entry was approved at the June 7, 2017 meeting to allow Bikeshare Hawaii to install and operate a bikeshare station at Kolowalu Park for a 3-year initial term with two one-year options to extend. The station was supposed to be installed in June, however, work has been put on hold due to this petition. Staff wanted to give Bikeshare and the petitioners the opportunity to discuss.

ED Souki said Bikeshare was asked to attend because they outreach and staff asked them to inform the Board what type of outreach was done.

Member Fang asked to hear from Howard Hughes since some of the Bikeshare sites are on their property.

Mr. Todd Apo with Howard Hughes testified that Ward Village has two Bikeshare stations on their property and were in an agreement with Bikeshare. Apo agreed to work with both Bikeshare and the petitioners.

Justine Espiritu representing Bikeshare Hawaii provided a timeline for the Kolowalu Bikeshare station. Espiritu detailed the planning in and the outreach that was done prior to finalizing this location site.

2:51 PM Member Scott left.

PUBLIC TESTIMONY

Sophia Pieridis, Ed Hampton and Michelle Matson testified expressing their comments and concerns. Pieridis and Hampton said they were not notified and were extremely upset that they had no voice.

No board action was taken, as Chair Whalen noted this item appeared on the agenda as an informational item only.

VI. REPORT OF THE EXECUTIVE DIRECTOR

7. Monthly and Status reports on the following:

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

b. HCDA Parks Update.

ED Souki was available for questions.

PUBLIC TESTIMONY

Michelle Matson testified offering suggestions on how to handle the homeless in the parks.

There were no further comments or discussion.

4. DOCKET NOS. ACC-2017-01 and DR-PET-2017-01 IN RE THE PETITION OF GOLDEN EAGLE MARINE CHARTER SERVICES CORP. and DOCKET NOS. ACC-2017-02 and DR-PET-2017-02 IN RE THE PETITION OF S.O.M. LLC.

- a. Pursuant to HAR § 15-219-48, shall the Authority assign the petitions requesting an appeal and contested case hearing for further proceedings before the Authority or a hearings officer?
- b. Pursuant to HAR § 15-219-84, shall the Authority act on the petitions for declaratory relief?
- c. If the Authority authorizes the petitions for declaratory rulings be set for hearings, shall the hearings be presided over by the Authority or a hearings officer?
- d. Pursuant to HRS § 91-8.5, shall the Authority encourage the parties of the contested cases to participate in mediation prior to any hearing?

The Authority may convene an executive meeting pursuant to HRS § 92-5 (a) (4), for the purpose of consulting with the Authority’s legal counsel on questions and issues relating to the Authority’s powers, duties, privileges, immunities, and liabilities relating to the above items.

Member Fang made a motion to go into executive session, Member Oh seconded.

3:19 PM EXECUTIVE SESSION

Pursuant to Section 92-5 (a) (4), Hawaii Revised Statutes, the Authority convened in Executive Session at 3:19 a.m.

3:27 PM RECONVENE

MOTION:

- a. Pursuant to HAR § 15-219-48, shall the Authority assign the petitions requesting an appeal and contested case hearing for further proceedings before the Authority or a hearings officer?

Member Bassett made a motion to assign the petitions requesting an appeal and contested case hearing for further proceedings before a hearings officer. Member Fang seconded. All were in favor, motion passed.

- b. Pursuant to HAR § 15-219-84, shall the Authority act on the petitions for declaratory relief?

Member Bassett made a motion to act on petitions for declaratory relief be set for hearing. Member Oh second. All were in favor, motion passed.

- c. If the Authority authorizes the petitions for declaratory rulings be set for hearings, shall the hearings be presided over by the Authority or a hearings officer?

Member Bassett made a motion that the petitions for declaratory rulings be set before a hearings officer. Member Fang seconded. All were in favor, motion passed.

- d. Pursuant to HRS § 91-8.5, shall the Authority encourage the parties of the contested cases to participate in mediation prior to any hearing?

Member Bassett made a motion for the Authority to encourage other parties of the contested cases to participate in mediation prior to any hearing. Member Fang second. All were in favor, motion passed.

VII. ADJOURNMENT

Chairperson Whalen adjourned the regular meeting at 3:30 p.m.

Respectfully submitted,

/s/

John Whalen,
Chair