

KEWALO BASIN TENANT MEETING

Re: HCDA Proposed Rules

Friday, March 9, 2007

10:00a.m.

HCDA Large Conference Room, 677 Ala Moana Boulevard, Suite 1000

Attendance: Richard Kuitunen, Alex Kagawa, Loretta Ho, Frank Mento, Bill Moosman, Reg White, Greg Longnecker, Brian Ho, Thom Hahn, Sol Naluai, Shantel Keuma, Wade Waicccelis

Richard Kuitunen (RK) Opened the meeting at 10:03a.m.

RK: Everyone I put on the list I called and invited. I know that Mike Derego said he wouldn't be here. Steve Martin just called and said he wasn't going to be able to make it. He hurt his shoulder or something. Some people I didn't get them, I just left messages though.

Reg White (RW): Many times in our little businesses earning a living gets in the way of preserving our right to earn a living. This is not the first time.

RK: Steve is on his way to the hospital. Oh and Ray Pendleton left a message too that he won't be able to make it.

Bill Mossman (BM): It's getting pretty close to a little group, down to us huh?

RK: Everybody might be here.

BM: How long has the original group?

RK: Which original group?

BM: The advisory.

RK: The advisory group? What do we have 6 or 7 months?

BM: You've been meeting for awhile huh?

RK: Yeah we have, since August. But we had Paige Thompson usually attended but Greg didn't and she would take notes for Brian and sometimes Mike. And with KBOS, sometimes Steve would there, sometimes he wouldn't be. Kap Gomes was always there.

?? – I thought Brian and Greg were going to come?

RW: Greg's problem is that 7 days a week he runs the boat. So that's what I'm trying to say.

RK: Yeah, he was out when I called. So that's why we want to take minutes, cause we figure a lot of people wouldn't be able to make it.

RW: You know for 18 years, I worked 7 days a week/between 14-16 hours a day.

Frank Mento (FM): Carl did exactly the same with the boat.

RW: I drove the boat, I drove the bus. In the early days I drove the bus as well. I'd go put the boat together, then I'd go drive the bus and pick up the people, park the bus, drive the boat on the trip, come back, drive the people home. Those days we had 150 passenger boats, so then I'd go back around town and pick up another load for the 8:30 trip, and then drive the boat, then drive the bus, and then come back and put the boat away. Then I would sit there with the crew and drink up all the left over Mai Tai's. It was a good life. But we didn't do anything else. Fortunately, my wife was into the whole project too and enjoyed it so she's still here. Otherwise, I'd probably be like the rest of them, single and poor. Because supporting a wife that ain't there.

BM: 50% overhead.

RW: Yes, my brother has one of those. But we were the lucky ones that started with 28 employees and now we have 463.

BM: What was it called then?

RW: Paradise Cruise. 50 years old this month.

FM: But you employ 463 people.

RW: Yup.

FM: Wow! That's amazing.

RW: We're building a new boat right now. It will run out of Waianae and that's 14 more jobs right there, minimum, maybe more.

FM: Hmm, it will be a whale watch kind of thing out there.

RW: We got another boat under design and it would be another 250 jobs.

BM: Another big boat?

RW: Yeah.

****Greg Longnecker and Brian Ho arrived.

RK: Greg I didn't have your e-mail so if you have it, can you put it on the list?

Greg Longnecker (GL): info@xtremeparasail.com

****Thomas Hahn arrived.

GL: Mike's not coming? DeRego?

RK: He's got a charter today so he couldn't make it.

Brian Ho (BH): So, is everybody here or are we waiting for a few more?

RK: We might have a few more that will come in. Yeah, I know you guys as Reg says have livings to earn. But let's get started.

Thank you for coming in. I really appreciate you taking the time in the day. Mike, he really wanted to be here and after he got back to me, I called he said, "Reschedule it for Monday". I told him this is more of an informal get together, talk story. Telling you where we are and see where we can go forward. Because and I'm sure other people that want to know what's going on that can't be here or I didn't call, everybody in the harbor obviously and we are going to take minutes and we'll make them available for everybody that wants copy. And when I say I didn't call everybody, the list of people I called you know I started with the transitional team. Everybody here is familiar with what's been going on and I added people mostly from the testimonies that came out that had different points. People had the same things especially, the oral testimonies I didn't have anything to contact them with. So I didn't mean to exclude anybody and anybody that should be here you guys feel in going forward, by all means let's get them involved. If there's multiple people, like Kap and Steve, we don't need multiple people from the same organization we can pare it down too. I just don't want to suggest that there was any, accept trying to involve everybody _____ who I. I also invited some people like Bill with the pleasure craft boaters that are not represented.

****Sol arrived.

RK: Because we are taking minutes and Loretta doesn't know anybody, those who came in afterwards, this is Loretta Ho our Admin Assistant. If you say something, say your name first so she'll make sure the minutes are correct.

****Shantel and Wad arrived.

First thing, the draft rules that we had are not going to be voted on for action. It was made clear at the Public Hearing meeting that we are quite a ways off of where we have to be to satisfy everybody's concerns. Unfortunately we had to try and rush them. Initially, it sounds like a long time we started in December 2005 but that was rushed to get them ready and passed by July 2006. When A&B didn't happen then we had some more time. But we probably should have gone back and re-drafted and took the time to do that.

We just received this morning otherwise I would have mentioned to you yesterday, the report from the House Finance Committee. If you guys haven't seen it on Olelo, I'll quickly read two paragraphs, Under the Department of Transportation it says: "Consolidation of the Kakaako Makai lands under the Hawaii Community Development Authority's (HCDA) management to facilitate large-scale development projects, including residential development, was the original

reason for the transfer of management of Kewalo Basin from the Department of Transportation (DOT) Harbors to HCDA. Your Committee finds it puzzling that although the Kakaako Makai project was cancelled last year as a result to Confirm to ACT 317, Session Laws of Hawaii 2006, the Administration decided to move ahead with the July 1, 2007 transfer of the Harbor Management responsibility.

This enthusiasm to transfer management and immediately to rehabilitate the harbor has driven HCDA to propose steep increases in the slip fee schedule, institute a common area maintenance charge, and require mandatory insurance coverage for harbor users. These requirements could threaten the livelihood of many existing harbor users. Your Committee finds that DOT has sufficient financial resources to initiate needed improvements without such drastic fee increases. Your Committee hopes that HCDA will work with DOT and harbor users over the next year to develop a better plan for harbor improvements and develop a more appropriate fee schedule.

While the Administration remains enthusiastic regarding its proposed transfer of the management of Kewalo Basin from DOT's Harbors Division to HCDA, your Committee has decided to take a more cautious approach. To this end, your Committee denied the deletion of funds for Kewalo Basin and appropriated funds for a pier repair construction project through DOT's Harbors Division rather than through HCDA."

RK: Alex gave you a copy of that. The distinct budget that was attached transferred back into Kewalo to DOT \$831,738 in their operating account and that's a little bit more than what their operating expenses were last year. That's for each of the next two year too. The investment capital they transferred a \$4.53Mil the first year and \$1Mil in the second year. Those were the funds that we had requested or the Administrative budget put in for the Piers B, C and Herringbone repair. The description of it however, the Governor's memo that I had talked about requesting broadening it in scope, the Finance Committee put in that more broad description. So it says the plans, design, construction and equipment for Kewalo Basin improvements, for utilities, for all piers and facilities, hardscapes, and repair/replacement of Piers B, C and Herringbone. The broader language we used there, because the original language just had B, C and Herringbone. So we couldn't fix the electrical on the Ala Moana slips, we couldn't do anything with the Wastewater pump-out. This will allow DOT if this goes through to do those repairs and I don't believe this is going to be reimbursable bonds now. That problem that we had, DOT doesn't have because they have a different funding mechanism. So the funds if this goes through are available for the repairs. Whether DOT will pursue that is a questionable. You know they're still reading of this is they are postponing the transfer until this 36 acre development which has to go through the Advisory Committee that's being formed and I strongly recommend that since the Kewalo Boaters Association now exist, it has a voice it has a vested interest in what happens with the development in the Makai area.

Has Townsend talk to you Sol?

Sol Naluai (SN): Yes.

RK: Make sure that he knows that your organization now is in existence. As the committee is formed, you should be asked to attend. It's not assured that this is going to happen too. This is

just the House version, it's gotta cross over to the Senate and go to the full Legislative Session. Certainly if this is something that the Kewalo Boaters want to see happen, which from the testimony their language almost took it out of your testimony from a lot of what I saw, you may want to consider going to your Senators and letting them know you are in favor of this if that is your choice.

But ultimately if it doesn't happen for some reason the Senate doesn't approve it, you know we are back trying to get our rules done. If it does happen, you know we have some breathing room. The Advisory Committee probably in my mind is 1 to 2 years away before they come up with a concept for the redevelopment of the whole area. But that gives us plenty of time, knock on wood, if we don't procrastinate to work on getting some rules in place or ready to be in place if it happens 5 years down the road. But if we wait 4 ½ years and say ah we got to do it, you know then we are going to be in the same boat that we are now. So it's really kind of a breathing room, an opportunity provided that it goes through.

Is there any question or comments anyone has on this?

GL: I don't see a date on here, when was this made available.

RK: Just this morning.

RW: It just came down after the hearing the other day.

RK: Yes.

RW: It was yesterday afternoon's finance committee.

GL: And so you got \$4.5Mil in non-refundable bonds that they could repair this.

RW: They are asking for.

GL: They're asking for.

RK: We lost it.

RW: DOT has it.

RK: This transfers it from our budget to their budget.

RL: It changes a lot of what they are doing.

RK: Yeah, well certainly if we would have known this before the hearing it would have been easier.

BM: When you say transfers to their budget in DOT's budget?

RK: HCDA's budget to DOT's budget.

BM: Where in the DOT's budget is it ending up in?

RK: In capital improvements.

RW: 305

BM: Harbor's special fund is that's where it's going to go?

RK: Investment capital. The special fund I think.

BM: That's the fund that all the user's of harbor contribute to with their fees.

RK: I think that's where.

BM: Yeah. Just like the boater's special fund.

RW: It's this one here. The way it's worded and it's not there. They worded all the others, that whatever's left over at the end of the project would go to the harbor's special fund. This one's not listed, 305 is not listed in the ones that handles Kewalo.

RK: So, you mean it stays where it is?

RW: Yeah.

Frank Mento (FM): Richard, I have a question. Do we have a time line for this to happen.

RK: Well the session ends, what beginning of May.

FM: If it doesn't pass, where are we in the length of time? Are we back under the guiding rules for HCDA?

RK: Yeah and we've asked the Deputy AG initially, our Deputy AG the one that works for HCDA indicated that if there's substantial changes after a public hearing to go back for another public hearing. Actually we go to square one, SBRRB, Governor's approval, public hearing which I can't see that happening by July 1, 2007 considering what has happen to this last one. Other people in other departments and some of our Authority Members have said well if the changes are strictly towards the benefit of those people who testified, whose going to come in and testify against those changes so you shouldn't have to have a public hearing. But it's going to be the AG's call as to whether it has to be. If we don't have rules, you know we don't want chaos out there, I think we can do some alternative measures to cover what's in the rules be it, Memorandum of Understanding, write up the leases. Something so that it won't just be you know you come back and someone else is in your slip and we'll have to say well we can't stop them cause there's no rules. So we don't want to see that happen, so we are going to have to figure out how we are going to address it.

FM: So HCDA is supporting this as well, right?

RK: I can't speak for HCDA and I don't know if Dan has talked to the Authority Members on this since we just got it this morning.

FM: Is it possible for us to get a response to that, if HCDA is going to support this?

RK: Yeah.

BM: How about DOT?

RK: My guess is they are not going to support it, since they've been trying to leave.

BM: Well in the past, whenever there's in terms of where DOT is going to have to favor something, Matson, Horizon, Young Brothers and other big whips are awfully upset. All the money that they contribute is going to somebody else.

RW: But this money is appropriated funds so it's not taken from the harbors funds see and that's why it's specifically not in the spill over back to the fund because it's not where that money is going to go.

BM: So it's not going to be in the Harbor's Division?

BH: It's going to be earmarked for Kewalo.

RW: Yeah, it's earmarked for Kewalo and it's not taken out of the Transportation fund and therefore that's why it doesn't spill back over.

BH: It's sort of like found money from the HCDA bucket, earmarked for Kewalo.

RW: So they shouldn't want and they have no choice but to spend it in Kewalo which they haven't been doing. You see all the time we didn't know that HCDA had the harbor, we thought DOT still had it. They haven't been doing the maintenance with the \$350,000 surplus every year because it's not their harbor and we never figured that out. The money was there and all spill over into the Transportation Harbors Division Fund.

Thomas Hahn (TH): Regardless if this bill pass or not HCDA is still going to look for private operator or are you going to wait until what the bill's fate is?

RK: By reading of the Finance Committee Report is they want to delay the transfer until the development that A&B was going to do but obviously it's not going to be A&B. At that time the plan was the developer would take over the management of the harbor so it would probably make sense to go back to that scenario and what that development has the Kewalo Basin would be able to incorporated and they'll take over the management.

RW: Are you going to put something in there when you have a private developer that's operating it that there's a co-operative thing between DOT and this developer so that when the weather closes the entrance channel, we could use Honolulu Harbor without being a foreign visiting vessel?

RK: It's a good idea. I think as members of the Committee that's coming up with the designing that's something that the Committee would want to do it. HCDA I think will support, I don't think we'll have a problem there.

RW: Well it's not original proposal, it's got to be clear because we learn because it's very important. We're apparently reaching the end of a long 20 plus years _____. We get back to year real Hawaiian weathers if 3 -5 sometimes 7 Kona storms a year.

GL: We are already on that path right now.

RW: It sure looks like it to me.

GL: We're in it right now.

RW: If we get back to normal Hawaiian weather, there are slips that are un-tenantable down in Kewalo and certainly operations are filled.

RK: Yeah, I'm sure that will in essence take having and MOU with DOT and having reciprocal.

RW: That needs to be part of that original agreement on something that we have to go do that.

RK: Yeah. We can probably in the redraft of our rules at this time to put it in.

RW: We agree with Honolulu Harbor if space available to berth.

RK: In redrafting our rules, why don't we look at putting that in and then DOT I'm sure they don't have anything comparable so let's say in the MOU that you would share harbors. So they have to amend their rules.

RW: Foreign to them too. Otherwise it cost us \$5 a passenger plus double their fees. That's more than we keep.

FM: Between now and May when this bill may pass, will HCDA continue to work on the rules in case it doesn't pass and you will take it over.

RK: Even if it does pass, that what, we didn't know about this when we set up this meeting but going forward. We still want to work with the Boaters Association group and the process is I didn't want to cherry pick the members. I think Boaters Association should select who the spokesman and participants are going to be and we can go forward with working on the rules immediately. Hopefully, we won't have to have them in effect as of July 1, but if we can within the next year or so have them pretty well finished off. So whenever that development happens

down the road, we'll be able to dust them off and update them and we are good to go and not have to go into crisis mode.

I'll just throw this out as a suggestion and I know in the testimony a lot of people through their books, sharpened pencils and thought of what could and couldn't be afforded. Maybe, and I don't know if you all shared it with each other but maybe having the boater's come up with, okay now that I know where my expenses are and where they come out of, my bottom line is what I could budget the rent. We look at it that way. Because really the way we kind of did the budget is, the cost of improvements, what kind of rental we have to get to do the improvements so if we checked around and what is do able for the boaters there, if this goes through we've got the additional \$5.5Mil to get those piers fixed and out of the way. Now, again say it's not just for the piers you know the slips that you guys occupy needs a lot of work and this money can be used for that.

FM: I don't know if that is the right approach for us to take as users of the harbor to come in and tell what we think we can afford to pay. I think a better approach might be, to know what the operating cost are if HCDA is going to run it. What do you anticipate your expenses would be and are we going to have an outside person running this that's going to be earning a profit? I think those are some of the issues that really concern us. If that's still part of the plan, someone else is going to come in to manage it then I think we would have some objections to that.

RK: With an outside party manager?

FM: Because it creates a situation that this is a public facility that has been under the State and it's now allowing someone else to come in and profit from it.

GL: Well, especially if they get money appropriated to do the repairs. Because basically the fees that you guys threw at us are as if the harbor was completely repaired already and it's not. You comparing to Ko Olina, brand new beautiful harbor. This is is not a brand new beautiful harbor, this harbor needs some serious work. So if the State releases the funds to repair it and then you have a private manager come in to manage what they've already repaired, you know what I'm saying? Then they are going to want more money from us after the repairs are already, you know what I mean, it doesn't make sense.

RW: You need to investigate the financial history of the uses that have tried to run out of Ko Olina and the life span of those businesses. The average life span, you'll see that obviously that something doesn't work because there are businesses with a very short life span.

FM: I think it just creates an adversary kind of position, you got someone managing it's in their profit and that's a motivation to run this harbor. What sort of situation are you looking at? One of the things that is a great concern is this minimum gross sales requirement. That's still going to be there, is it going to be a number that we can achieve and what's the reason for it?

BM: Is it based on public interest and need or is it for profit and gain?

FM: Profit and gain. Because they way I read the rules, that minimum gross sales doesn't say how it's going to be interpreted into than you may not be able to be eligible for renewal. That leaves a big door open. Would we be eligible if we made up the difference of the 4% versus the minimum gross sales, would we have to do that? If it's so high that it's just too huge that we need to be a commercial operation than it should be a lot lower. It should be where the existing numbers are because it won't open the door other types of interpretations. The other side of that is that you know if we go to sell our business there's a premium in there that's not even specified. Transfer premium is _____ but a premium, I've seen that done with tenants in the International Market Place but pretty much everybody's been selling their business.

RK: Well that's the opportunity we may have to look at those thresholds. I don't know if I agree it should be where it is, my recollection of DOT is the annual sales on that first category was \$25,000.

FM: Enough to say that somebody is in business.

RK: It is supposed to make a monthly sale volume. We just have to be reasonable in looking at where it is.

FM: If the reason was to keep the harbor commercial and that was the basic premise of that but you want to also allow the pleasure crafts then it seems that we're being penalized. You are going to have pleasure craft in there, are we going sell um to say that we'll now I'm a pleasure craft?

RK: They could. But then they wouldn't have the slip on Ala Moana probably in their slip. But if they wanted to utilize the pleasure designated slips they wouldn't be allowed to take passengers with them because that will be probably you know be restricted under their lease. But if you have a fishing boat that was strictly the weekend warrior kind, the would be pleasure craft.

FM: I think there actually are some problems, being penalized are the commercial operators. So I think the language in this if somebody could it's just the possibilities to interpretation on some of this.

RK: Sure.

FM: It's very ambiguous.

RK: In addition to your point on making sure that the money goes to commercial purpose, when you have a percentage rent you'll require to minimum sales, best effort sales.

FM: In that situation? That's not the gross rates I mean.

GL: Look at DOBOR, the way DOBOR does it and look at DOT too, right now we are at 2%, DOBOR is 3% gross and that's additional programs. We are sending in our gross receipts every month, so that right there in itself is telling you whether or not your commercial operator because

your report is available to basically to them and the general public. DOBOR gives us the minimum permit fee or 3%, whichever is greater. Now if you have compliance and you have insurance and you follow all the rules than your okay with your permit. When you start setting like what Frank's saying about a minimum.

FM: It changes the bases.

GL: The gross excise or base.

RK: The greater of or the percentage of the base.

FM: But if you say there's a minimum gross, then the base is _____. My minimum gross is \$750,000 and my percentage rate is 4%.

GL: That's not doable.

FM: It could be interpreted to 5 and 4% on \$750,000 and now my base unit is \$30,000.

GL: Which at DOBOR it's 5 to 6 times.

RK: The paragraph we had there, let me back up. You are thinking that it's going to be charged at the minimum sales because we are we going to require a percentage to that and say that's your minimum for permit. That's not being correct that wouldn't be the interpretation of that. The minimum sales in that paragraph is just not renewing with the lease in that case, DOT's case. Your base rent and your percentage rent are different sections. It doesn't need to reflect. Normally the way it had been set up, _____ not much just about how natural a break point to take of your annual rent divided by your percentage and it's that number. But when we lowered it, obviously it's different from that now. So it wouldn't be applied to that. Those numbers again, we had input from the original task force. We had input, I think one of the first staff of the tenant meeting that called me up and gave me some numbers. We certainly don't have access to your general excise tax, your sales reports whatever you give to DOT.

GL: Harbors does. We fill um out every month.

RW: DOT has it.

GL: Every boat that you have in the harbor, you are required to fill out the gross receipts.

RW: Every month.

GL: You're supposed to show that now and multiply it by 2% and if it's great than your slip fee, you pay the greater of the two. The slip fees in there, for instance if you have a 40 foot boat and it's \$10 a foot that's \$400, as far as I know all the slips in there are pretty much 50 feet and it's greater of the two isn't it? A might be 40 I don't know.

RK: It's anywhere from 40-70 feet.

GL: But you're understand what we're are saying I mean DOBOR has been doing this longer than anybody and the permits they establish for parasailing, jet skiing and these other activities, we have a minimum permit fee that we pay or 3% of the gross. So when you fill out your paperwork, you put your gross receipts for that company right there on the paper and they get it every month. So it's real easy for them to take 12 months of Xtreme Parasail and multiply that times 12, that's how much money we make. Okay. And then you have a minimum for your permit. If you are over your permit, then you pay the difference. The things that you guys are trying to bring in even with you lowered it. First you guys were in Pluto, then you came down to the Stratosphere, now you're at the moon at \$750,000 but that's still unachievable. I mean Makani Catamaran, Danny Brennan stand up here and showed you guys with his mass capacity maxed out running as many runs as he can run a day, he still can't achieve the numbers you guys are talking about.

FM: If the purpose of that number is only to establish for a commercial operator. There needs to be some other system.

RK: It's commercial but it's also for the percentage rent.

RW: Why do you think you deserve 4% preferred stock in my business?

RK: It's not preferred stock.

RW: Sure it is. You get your money before anybody else gets there's. Who did the work? Took the risk? Those are preferred shares.

RK: _____ fractual.

RW: It's a shopping center thing.

RK: It's a harbor thing.

RW: Why don't you go back to shopping centers.

AK: May I say something. This meeting really is to not get into details first of all. It's to start the discussion.

RW: But you don't know the details that tripped this up that you can't move forward.

FM: I guess just to reiterate. The fear that I see is that the people that are for profit person to run this business and there's open to interpretation and then the reason for this \$750,000 is there. Who's to say a few years down the road, they don't try to interpret it that way.

AK: That's a good comment.

FM: It's unnecessary. All we're trying to do is to prove that you're commercial operator. Say I'm a lousy operator, but paying my base rent. Should that be a concern to HCDA. Should that really be that big a concern? If some people are doing fantastic and paying the percentage rent. But if you demand the marginal operator and the one's that are interested in on my staff have to achieve a certain number, there is a door that is open possibly for someone to interpret that the same or was it on user's efforts. Even if it's a under the table _____, but you're leaving that door way open for someone.

??? That's a real problem.

BH: Isn't there some other middle figure that can be used instead of the \$750,000.

FM: The other figure that was used by DOT was low enough.

BH: Is there another figure that is within a safe zone of the normal operations even in a bad year? I think what I heard from the comments from HCDA is that there's room for discussion on that and I don't know if today is the day that we are going to resolve that. It's already on the record. It's in the comments that I'm submitting as an issue that needs to be addressed.

BM: The _____ define the purpose of _____

BH: They've already said multiply times that it's to just insure that the harbor is commercial used and they don't have recreational activities.

FM: But there's also the chance to do that Brian. If you mix in pleasure boats.

BH: Right.

BH: Originally that language was there. It's specifically to keep the harbor commercial and HCDA wants to mix that up.

BH: Which is why in my comment I said if that's your intent is to mix use, then it seems like the language becomes unnecessary.

FM: Yes.

GL: I still have one question though.

BH: We just need to make a list of these things when we get down to the nitty gritty.

FM: I'm concern because you know if this doesn't pass for whatever reason, then we go back to this.

BH: And then that's why I think it's important for us to understand the time frame like you were asking originally on when we're going to work on changing these rules and what kind of

procedures are going to be followed. Is it going to be a committee, Public Meetings where we are going to have everybody come in? What are you going to follow?

RK: That's really the purpose. We weren't intending to get into the nitty gritty details as Alex was saying. But you know how do you guys want to proceed? We are all trying to work towards the same goal here to get the rules in place and get the harbor operating, fixed up and everything. There some major cleaning of the rules is what I'm hearing that we have to address. We're more than willing to participate in that. The degree of participation you know we're also open there. If you guys want to meet together as the association and come to us afterwards or if you want us to sit in on the meetings as a participatory or being like a fly on the wall to hear what's going on. We're not prejudice one way or the other to go forward.

RW: I have great difficulty with you continuing to want to run the harbor, when you don't know how and so you're asking us, requiring us to pay for the extra layer because you don't know how to run a harbor. That's an unnecessary expense, it's one we don't really need to bare on our laps.

RK: Well again I don't want to get too far into the details and we have to keep all our meetings civil and respect each other and make sure we don't get into derogatory remarks and get side tracked that way.

I don't think anybody came here with the idea that this was a personal vendetta or someone is out to get. We have a common goal and we have work towards that and if we can all agree to those ground rules, I think we can be much more productive.

Reg response to that, except for the back office stuff that this company would be doing, the on site people – DOT has the on site people now that you are paying for so it's not an extra layer. The back office, I think is a special allocated overhead that DOT comes up with sums a big number in their budget. That's all the back office people they handle the books and accounting and they delegate every thing there, which is the same thing that a private operator is. So I don't think it's an added layer.

RW: So when you look at it now, historically year after year the audit has shown that DOT has run as a surplus out of this harbor of around \$350,000 a year, which they didn't reinvest back in the harbor because it wasn't their harbor, which we didn't know. And that's why it's run down right now.

RK: The finance wasn't in the budget.

RW: But if they were running at a surplus above cost all those years, now you are doubling the income that you're going to take from everybody, where is that going? Because it's been running at a surplus all this time. So if that pays for that operational overhead, it's been there all this time and it still had a surplus, now what is the justification for this giant increase.

RK: Well I think the surplus as you pointed out should have put back into the facility and it wasn't.

RW: That's correct.

RK: So I agree there.

RW: That was there for submission money to have gotten.

RK: Where they put the money, HCDA can't answer. DOT could hopefully answer.

RW: That's not my problem. My problem is how do you then justify doubling what you take in?

GL: Before you answer that, you the Administrative Rules you guys wrote and then you amended them and when this goes to the legislature whether it passes or not, where do you stand on your amended rules right now?

BH: They're working on getting them revised.

GL: So they're not.

BH: They are not going to be using that as the final.

RK: The Authority is not going to adopt the rules.

GL: So regardless which way it goes with the Legislature.

RK: We're revising the rules.

GL: So that's good, so that means you know.

BH: Can I make a couple of suggestions.

Reggie as far as your comment as far as the surplus and what not. There's one thing I saw in the paper that was interesting that I didn't think about which was, I think the reporter mentioned accounting practices. Different accounting practices resulting in different bottom line numbers. So in order for us to talk about surplus and how much money and whether Kewalo is operating profitably, I think it would require us to study those reports. But I think for purposes of what we're talking about today, I think we also have to remember that I think Bill Anonsen was telling that there's also Kewalo Annex properties that generate a revenue and they are actually located in Honolulu Harbor so maybe it some of that revenue. It is just too difficult to ask these questions without having to fully study all of these reports.

So this is my suggestions for purposes of keeping on track for this morning and all of us getting out of here timely. You have the public comments that came from all of us as far as what have heartburn regarding in the rules. I think the balls in HCDA's court to say okay, we've made this list, these seems to be the concerns, this is what we can live with. Or these are the things we can

live with change. If there's anything that you guys just absolutely refuse to talk about, let us know about that too.

As far as the third party operator, I think that's a good point. I think if HCDA says that that's an issue that they're willing to consider other alternatives and will spend some time thinking about alternatives, that would be great and if we can come up with some other alternatives. Sitting here I don't know that any other State agency would agree but if they can do a labor loan maybe contract with DOT Harbors or DOBOR to have them come by and do the day-to-day management or provide some of the services that need to be provided by a more experienced agency. Maybe something like that might work, I don't know but I think we need to try and solve that problem. This morning it's not going to happen. We've already explained what the concern is. Now let's try and come up with a different solution that might work.

FM: So are you saying that we'll wait for HCDA?

BH: I think the ball is in their court don't you think?

FM: I definitely would agree.

BH: Our concerns regarding the actual rules themselves.

RK: As far as the actual rules, I think the only thing that I'm aware of that's really staying in for safety that is the indemnification which I know Greg raised. The Attorney General is not going to let us have the rules that don't have the indemnification safety. Even in our contracts document require it.

GL: Will not indemnify.

BH: No, that has to be in there.

RK: That has to be in there.

GL: They will indemnify.

FM: It could be indemnified now?

BH: Yes, it's in there now. It just seems unfair.

RK: Outside of that I'm not aware of anything that the AG or the Authority would say that we can't change.

FM: The AG said you could adopt the existing guide rules, should we get to this July 1st position.

BH: He backed off of that.

FM: Oh, he did? He said you couldn't adopt those rules afterwards.

RK: I don't think he was following the conversation. Because I looked at him.

BH: Woke up.

FM: I gotta say from my perspective he was the Wizard of Oz behind the curtain. Where ever he was I never saw him, I just heard a voice.

RK: Because the first thing he said was that I think, HCDA can operate under DOT rules. Then why would we be making our own rules. But then he came back during the hearing he said if there's a private operator, they could not operate under DOT rules. But we e-mailed him subsequently and he came back and said, if DOT stays on board they can operate under their rules, if HCDA hires a private manager they can not operate under DOT rules. But if HCDA manages it HCDA has to either adopt enmasse DOT rule or make their own.

BH: That's what I thought.

GL: Richard, haven't you guys been operating under DOT's rules for the last 17 years?

BH: DOT has been operating the harbor under their rules.

GL: And HCDA just owns the property. That's pretty confusing. You guys own the land but DOT is on it.

RK: The misconception there is when the ACT transferred it over to us, what we all think of as owners and that we were making the decisions. The fact of the matter is nothing changed. DOT didn't own it anyway. I think the Board of Land and Natural Resources owned it before and it was transferred from them, it was actually the ACT that transferred it. The paperwork that was recorded didn't happen till 2001. So we were never in a supervisory role with DOT. We couldn't tell them what to do, what improvements to make, what rates to charge, we didn't get the revenue. Fortunately they didn't come to us to ask for money to make any improvements. I didn't understand this, it's like you own it but you don't.

BH: DOT has sort of taken that position now, you try to get anything out of them about the harbor. They are like nope, ask HCDA.

GL: Right and then vice versa.

RK: DOT once the surplus turned into a negative that's when we were told they were going. So you know even at the budget hearings the Director said you know it's not profitable for us to stay in that harbor anymore.

RW: Well that's where the creative bookkeeping came from, it's only one year that shows the loss and that's what the thing that was in the paper they only examined that loss. You know it wasn't the loss it was actually positive.

BH: Yeah.

WV: That was the year they spent all the money on the electrical and all that.

RW: Yeah, I think so and they quickly stopped.

WV: They made money this year. It was a \$300,000 a year profit. Without any change in raising any of the prices.

RW: Over time.

BM: Is there any intention to specify that you know the rules that might come out this, whatever set of rules you want to choose now. Would it be incumbent upon the eventual private owner or operator to adopt? Or would the present operator have a say on what to do on the improvements?

RK: Let me put a scenario, 5 years down the road DOT leaves and comes out with this and that coincides with the development of the Makai lands. The developer who will be given the jurisdiction of the harbor would have to operate under our administrative rules. If we, let's say 3 years from now were able to formulate the Administrative Rules and get them passed, you know the harbor guy coming in as the manager, the rules are already in place. The only way you could get influence as anyone could is to say it's time to Amend the Rules, let's go through the process to amend them. But it would be better to have those rules in place so if there is an outside manager, he knows what's expected of him. Or she knows.

BH: So the eventual private operator still going to be burden with the, not burden but must abide by HCDA rules.

RK: Abide by the rules.

BH: Yeah it's a State Harbor. It's a State Harbor, it won't be privatized, right?

BM: We were once one inch away from privatization.

BH: The other concern seems to be if you guys end up hiring a contractor to run the harbor, they are not running it for profit other than what they get from the contract price? They are not going to get a cut off what the tenants are paying, right?

RK: Well, that's what was in the proposal, in the RFP it was a flat rate.

BH: Fix rate, right?

BM: Let me tell you about the RFP that the State wrote, which is a DOBOR kuleana. It went out of it is way to be worded such a way that a private operator would have a big say, not only

the operational rules, the prices but the configuration of the harbor and only by going to the Ombudsman that we stopped this.

BH: Right it's good to be aware. But that's not the case here.

RK: No, we wouldn't do that because the fast lands. The only way if you saw, it go for a invitation for bids for a lease, then they'd have a private owner. Because they're just taking lease of state land and they could do what ever they want with it. But in our case because that has to be intergrated with the rest of the Makai area, it wouldn't make sense to have this guy playing his own game and not coordinating with the rest of it so this is going to have to be under our rules.

BH: Especially one big guy that has the Makai are and the harbor. It doesn't take a lot of imagination to see that. That's what scares me too. It scares me because there's a lot of unknown. There might be some good at that.

RK: Definitely we are soo far away from having an RFP since the Advisory Committee hasn't even told us what they are going to be using. But when it comes time for that RFP, definitely be involved and let them see what the terms are.

BH: _____ if we don't inadvertently lay the ground work to _____.

FM: I have another question Richard on the Capital Improvements. In this transition period should this all pass through the House and Senate, is DOT obligated to do this to spend this money to fix those piers?

RK: My understanding is no.

FM: So they may not do it.

RK: Yeah, they have the money appropriated. It would be in all of our best interest to make sure they spend it. If they don't spend it lapses back in to the General fund.

FM: And then we'll be right back to where we are right now.

RK: We'll be right back where we are but because ultimately the harbor's coming over to HCDA, you better believe we've been saying we've got the money we've fixed up those piers, we've fixed up the electrical. Because it's not going to get better by itself and they have the money there, it's not coming out of their budget you know what's stopping them from it.

BH: Found money, it's found money. And that's why we've go legs up at the legislature, I mean it's really to us perfect opportunity to multi-task. And it sounds like by reading the bill that they've got to focus, the legislature has a focus on them as well. So, we just need to make sure that stays front and center.

WV: It sounds like its lost money for the last 10 years that this harbor has been profited. It comes out to about that.

BH: It sort of does.

GL: And you would think that they would want to improve the harbor just for the liability sake.

RK: I'm stunned, I don't know how DOT takes a long time to.

RW: The less boats you have in the harbor, the less work you have to do.

BH: Is that how it works.

RW: I gotta ask you, are you still going to insist on the CAM?

RK: Like I say, there's nothing sacred in there. When our vote we come it, we're all ears. We're looking to make this good for everybody. The CAM was a make sure, especially because I think we don't know what's it is going to be until we bid it out.

BH: I think there was a problem.

RW: Part of the problem, if you double the slip rent which is suppose to pay for this intermediate layer to manager the harbor. Then you are going to on top of that, charge us the cost for operating the place.

BM: This is CIP money and the other one wasn't CIP money.

BH: So okay if everything is except with the amendment ____, is fair game and you have basically the list of what the boat owners are concerned about. What are you thoughts on how to move forward from here.

RK: As far as, let me just pull this out. We did have to transcribe the oral testimony. I know there was some people that didn't give written, but gave oral and we just kind of read through the orals and major categories with 12 hits if you want to call it that.

- Base rates are too high. That was number one.
- Bus fees too high, was number 2 with 11 comments there.
- CAM, 7
- Sales requirements too high, 7
- HCDA not the right agency, 6. We don't take offense to any of this.
- Percentage rent too high, 5
- Need more public input on this, 4. Hopefully now with the breathing room we are getting more input on this.
- Fixing the slips, 2
- Insurance, 2
- No on-site management, 1

- Wake speed is too high, 1
- Preserve life style, 1
- Improvement paid for already, 1. I thought that one came up a lot more, but as I read through them it must be the oral testimony where it came up a lot more.

So when we get that oral transcribe, we can add to that because the Authority is going to want to know what were the issues.

But when you say rates are too high. \$8 how's that sound. Tell us what works for you, percentage.

FM: Can I make a comment, could we redo those survey with all those issues included so that we can all respond to those exact issues? People may have included in their testimony an issue that was hot blood for them and not hot blood for others but is concerned about it. But I don't know if that's an accurate measurement.

RK: It's not scientific. I read through it and jotted down on a sheet of paper as I read and I had Alex do it and double check

AK: No I didn't. I kind of ran into the same problem he's bringing up, which was this is an example of and I thought they are not listing everything.

FM: Yes, exactly. The one that concerns me the most may not concern you.

AK: So then I stopped counting.

FM: At least we've identified many of them.

Loretta Ho(LH): Can I make a suggestion because I'm that on that's typing up the minutes. You can't add anything once I transcribe it because that's what was said at the meeting. This would be given to the Authority. You can make suggestions at the next meeting in regards to what was heard, but we cannot add anything that I'm transcribing. Because I'm transcribing straight from what ever was said.

BH: It's the official record.

LH: So we can't touch it.

FM: I wasn't suggesting that, I was suggesting that we do it as these are going to be the issues for developing this Advisory Board.

LH: But that would be separate.

FM: That we should do a survey that includes all these and allows everyone to talk about that.

LH: But that's going to be separate from what I'm giving to the Authority. I just wanted to make that clear for you.

RK: This was not intended to be scientific, just okay what were the major items that seems to be happening.

FM: This would be a good place for us to have something like this to go back to Boards, Association, so here's all the issues to identify let's start to talk about them from our standpoint.

BH: Or supplement the list and

BM: Categorizing

RK: And then that way you can weave them into the rules whatever specific sections had those as hot items.

FM: Maybe Alex if I could get a copy of that?

RK: When will you be done with the minutes?

LH: Hopefully be next week? Which minutes? The PH? That has to be done by next week, that has to go to the Senate President as well as the Speaker of the House. It has to be in there hands by Wednesday.

BH: I going send my written testimony done before today. Can I email it to you or do I have to bring in billions of copies?

LH: He can email it and we add it as late testimony.

BH: I put it in pdf and I'll email it to you.

LH: We can forward it to the Authority.

BH: Email it to you? What's your email

RK: Loretta@hcdaweb.org.

And Wednesday she said she'll transcript from the orals will be done. So we'll update it. Just to give the number of hits and the items and same as Alex. Everytime something was mentioned, I didn't, there was like one written testimony that it didn't seem to object anything it just not clear, I don't like it. I don't have a pigeon hole for that one. There maybe people that have more wave they didn't hit my point. It wasn't because they didn't make it a point, it's just because when we read through it didn't jump out at us the way some of the others. Maybe they were passionate about the rates than they were about the insurance. But yeah come Wednesday, we'll update this just so that you guys know how many reoccurring themes seem to be coming up. And then it's a

good tool because you can sit down with your people and say well I didn't think that was such a big issue, well it only go one hit.

BH: I think once they get that list to the boat owners, I think you guys ought to set a relatively short window to meet, talk about, and get back. And then the other thing we should parallel track is being up at the legislature pressing this thing to making sure DOT spends the money, if they get the money spend it on repairs.

RK: Now, do you guys want to set a meeting to meet collectively here? Do you want to meet amongst yourselves? What works best.

FM: I would say that we would probably want to have our meeting.

BH: And make _____

FM: And meet back here, a week from Monday?

RK: Tentatively do you want to meet here?

RW: The 19th?

FM: The 19th.

RK: Is this convenient for everybody? 10 o'clock. Is that time good? Earlier? Later?

?? I know that mornings is tough for all the boater owners, I know there's a lot of people who wanted to be here but could be here because of the short notice.

How late can we do the meeting?

RK: Uh, depends on how the meeting would go. Probably we don't want to do it if you are looking at an hour, much pass 3 o'clock. So I don't know if that's still too early for everybody. Unless you want to do it earlier, Alex and I normally get in by 6 o'clock, 6:30, so that's before everyone heads out.

?? I think later might be better for some of the guys.

BH: Can we reserve and then the group can meet to talk about the time?

RK: I'll reserve the room for 3 o'clock and I can always change it if that works.

Anything else? Thank everybody for coming, I really appreciate you taking the time.