

MINUTES OF A REGULAR MEETING
OF THE MEMBERS OF THE
HAWAII COMMUNITY DEVELOPMENT AUTHORITY,
STATE OF HAWAII

MEETING NO. 342
Wednesday, June 3, 2009

Members Present: Amanda Chang
Grady Chun
Joseph Dwight, IV
Michael Formby
Paul Kimura
Christopher Kobayashi (9:06 a.m.)
Jonathan Lai (9:50 a.m.)
Theodore Liu
Kay Mukaigawa (9:04 a.m.)
Russ Saito

Members Absent: C. Scott Bradley
Dexter Okada
Robert Piper

Others Present: Anthony Ching, Executive Director
Eugene Won, Deputy Attorney General
Deepak Neupane, Director of Planning and Development for
Kakaako
Richard Kuitunen, Asset Manager
Patricia Yoshino, Secretary
Loretta Ho, Secretary
Holly Hackett, Court Reporter

I. ROLL CALL

A regular meeting of the Members of the Hawaii Community Development Authority ("Authority"), a body corporate and public instrumentality of the State of Hawaii, was called to order by Mr. Paul Kimura, Vice-Chairperson of the Authority, at 9:01 a.m. on Wednesday, June 3, 2009, at the Authority's principal executive offices at 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813, pursuant to article IV, section 1 of the Authority's Bylaws.

MATERIALS DISTRIBUTED

1. Report of the Executive Director;
2. Report of the Executive Director's PowerPoint Presentation (distributed at the meeting);
3. Executive Session: Acquisition of Property - Kakaako (confidential material distributed at the meeting);
4. Action: Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds for Improvements and Repairs at the Kakaako Waterfront, Gateway, and Kewalo Basin Parks;
5. Action: Shall the Authority Instruct the Executive Director to Consent to the Extension of the Sublease Between Ocean Investments, LLC and Basin Project, Inc. for the John Dominis Restaurant Site (distributed at the meeting);
6. Action: Shall the Authority Approve the Kewalo Basin Budget and Authorize the Executive Director to Direct Almar Management, Inc. to Enter into Vendor Contracts for Services at Prices Not to Exceed the Budgeted Amounts, Including Cumulative Contingency Amounts;
7. Action: Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds for the Design and Construction of Various Repairs to the Army and Air Force Exchange Services ("AAFES") Building (distributed at the meeting).

II. REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Anthony Ching summarized his report via a PowerPoint presentation (Exhibit A).

There were no questions from Members regarding the Executive Director's report.

Vice-Chairperson Kimura stated that prior to taking up the action items, the Authority would convene in Executive Session to discuss negotiations relative to the acquisition of real estate in Kakaako. He entertained a motion from Members to convene in Executive Session. A motion was made by Member Dwight and seconded by Member Mukaigawa. By a show of hands vote, the motion passed.

Ms. Michelle Matson from the audience asked whether Executive Sessions could be convened at a time different from the regular meetings. It was inconvenient for the public to wait during Executive Session.

Mr. Ching responded that the Sunshine Law provides for the Authority to convene in meetings closed to the public during the course of deliberations for specific purposes. It was essential for Members to have information and discussion during Executive Session prior to making decisions on action items.

Member Liu asked whether there were items on the agenda that could be taken prior to convening in Executive Session.

Member Dwight noted that the Authority had already voted to convene in Executive Session and should proceed.

Vice-Chairperson Kimura asked whether there were any further questions as to the Authority's procedures. There being none, the Authority recessed at 9:40 a.m. to convene in Executive Session.

III. EXECUTIVE SESSION

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The Hawaii Community Development Authority convened in Executive Session at 9:41 a.m. pursuant to Section 92-5(a)(3) Hawaii Revised Statutes, to deliberate concerning the authority of persons designated by the board to negotiate the acquisition of public property.

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Member Chang exited the meeting at 10:21 a.m.

Member Liu exited the meeting at 10:23 a.m.

The regular meeting was called back to order by Mr. Jonathan Lai, Chairperson of the Authority at 10:26 a.m.

IV. ITEMS FOR ACTION – KAKAAKO

1. DEFERRED ACTION FROM MAY 6, 2009 MEETING
Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds for Improvements and Repairs at the Kakaako Waterfront, Gateway, and Kewalo Basin Parks?

Mr. Ching summarized the written report in the packet distributed to Members.

There were no comments offered by the public on this agenda item.

Member Dwight inquired as to whether \$3.5 million would be sufficient to complete all the improvements.

Mr. Ching responded that based on recent experiences and the current economy, he was hopeful the bids might even be lower.

Chairperson Lai entertained a motion for the Authority to authorize the Executive Director to expend Hawaii Community Development Revolving Funds for improvements and repairs at the Kakaako Waterfront, Gateway, and Kewalo Basin Parks. A motion was made by Member Saito and seconded by Member Kimura.

A roll call vote was conducted.

Ayes: Members Chun, Dwight, Formby, Kimura, Kobayashi, Lai, Mukaigawa and Saito.

Nays: None.

The motion carried 8 to 0 with 5 excused (Members Bradley, Chang, Liu, Okada and Piper).

2. DEFERRED ACTION FROM MAY 6, 2009 MEETING
Shall the Authority Instruct the Executive Director to Consent to the Extension of the Sublease Between Ocean Investments, LLC and Basin Project, Inc. for the John Dominis Restaurant Site?

Mr. Ching summarized the written report in the packet distributed to Members.

Chairperson Lai asked if anyone from the audience wished to comment.

Mr. Scott MacKinnon stated he was testifying on behalf of Ocean Investments, LLC ("Ocean") and their request for a 12-month extension of the Basin Project sublease to allow John Dominis Restaurant to remain open for an additional 12 months. They objected to the proposed adjustment in rent during the 12-month extension. After the original arrangement was made to transfer the leases from Basin Project Inc. ("Basin") to Ocean, the understanding was that Basin would be able to enforce an early termination provision within an agreement they had with Watabe Wedding Corporation ("Watabe"). There was a dispute between Basin and Watabe to terminate the agreement on 18 month's notice. To avoid legal claims and civil action being filed by Watabe against both Basin and Ocean, a 3-party settlement arrangement was reached whereby Watabe agreed to vacate by April 2010, instead of March 31, 2009, which was the date Ocean had previously expected. During the extension period, Ocean would not be making any profit. During the first 6 months, it would be a straight pass-through of the increased rent that Ocean agreed to pay to HCDA as part of the assignment of the leases. During the last 6 months of the extension period, the rent was likely to go down by \$10,000 per month because Basin would be winding down its operation and preparing to close the restaurant.

Mr. MacKinnon stated that his client was seeking the extension to accommodate the settlement of the legal dispute between Ocean, Basin and Watabe. There would not be any additional rent being paid to Ocean from Basin during the extension.

Member Chun asked for clarification of the pass through.

Mr. MacKinnon responded that during the first 6 months of the extension period with Basin, the rent Ocean was receiving from Basin was equal to the rent being paid to HCDA, which was \$26,717 a month.

Member Chun asked for an explanation of the sandwich profit of \$185,000.

Mr. Ching responded that the sandwich profit had occurred in the previous term, and he did not dispute Mr. MacKinnon's statements.

Member Dwight asked whether, in Mr. MacKinnon's opinion, it was legal for HCDA to increase rent in the current extension when it was premised on the fact that Watabe had received a sandwich profit during the prior extension.

Mr. MacKinnon stated he did not think it would be appropriate. The other factor to be considered was that the settlement with Watabe, Basin and Ocean was conditioned upon receiving HCDA consent on terms and conditions satisfactory to Ocean. A rent adjustment of the level would be a consideration for Ocean as to whether they would choose to accept that condition or not.

Chairperson Lai entertained a motion to instruct the Executive Director to consent to the extension of the sublease between Ocean Investments, LLC and Basin Project, Inc. for the John Dominis Restaurant Site. A motion was made by Member Chun and seconded by Member Saito.

Chairperson Lai asked whether there was any discussion on the motion.

Member Formby stated he had a concern that the motion was tied to a specific number that may not be achievable because Ocean had stated its objection to the increase. He asked whether it would be preferable to tie the consent to best terms versus using a specific number.

Mr. Richard Kuitunen, Asset Manager, stated that best terms would be ambiguous. The \$7,700 increase and sandwich profit from the 18 months was for illustrative purposes. The desire was to move the transaction along including the extension of the lease plus the restatement of the lease. Ocean had approached HCDA staff after they negotiated and entered a settlement agreement without the benefit of having our input. If Ocean chose to do that, HCDA should not be encumbered with making them whole. As Mr. MacKinnon pointed out, it was a settlement of litigation. The \$7,700 that would be paid monthly to HCDA would be a fair comparison as opposed to possible legal fees and possible damages they might have paid, and the sandwich profit that had already been made.

Member Dwight stated he was concerned that rent was being increased when there was no pass-through profit to Ocean. It would be doing something

punitive to Ocean when they were not reaping any benefit. The \$7,700 fee was conceptual and linked to a sandwich profit generated in a prior period without any previous attempt to share in that profit. While there may be an opportunity to discuss with Ocean the future of their rental payments on their redevelopment, this was not the opportunity to do so.

Member Formby stated he shared Member Dwight's concerns and would find it difficult to vote in favor of the motion when it was not clear what the basis was for the proposed \$7,700 increase.

Member Saito stated he shared the same concerns expressed by Members Dwight and Formby.

Member Kimura asked Mr. MacKinnon whether he felt that Ocean was totally blameless.

Mr. MacKinnon responded that Ocean operated under the presumption that Watabe would be vacating at the end of March 2009. It was approximately 4 months after the lease was assigned to them that Ocean was notified that Basin had no legal right to force Watabe to leave early.

Member Dwight asked Mr. MacKinnon whether Ocean would be receiving any form of remuneration or compensation from either Basin or Watabe in the settlement other than the extension.

Mr. MacKinnon replied they would not.

Member Kimura asked whether the amount of increase in rent during the extension was negotiable.

Mr. MacKinnon stated in context of the 12 month extension, accomplishing the continued operation of John Dominis and an amicable vacating of the premises, Ocean's accommodation was that they were partially subsidizing that arrangement by seeking no increase in rent. As part of the settlement, rent for 6 months would be at the pass-through level. The last 6 months would be subject to readjustment against a floor of \$15,820, which was the rent Basin was paying to HCDA prior to the lease assignment to Ocean. When the lease assigned to Ocean was approved, the rent was increased to \$26,717.

Member Chun asked why there had been no prior negotiations since the sublease was set to expire on March 31.

Mr. MacKinnon stated the settlement discussions were amongst 3 parties with 2 parent companies based in Japan, and they were unable to reach an agreement acceptable to all 3 parties until March of this year.

Chairperson Lai stated that while he shared staff's concerns that HCDA was in essence being forced to consent to a settlement without being part of the negotiations, based on Mr. MacKinnon's comments, having a fourth party involved in discussions would have been problematic.

Member Formby offered an amendment to the motion to authorize the Executive Director to consent to an extension of the sublease on best terms, not less than existing terms. Member Chun seconded the motion.

Mr. Ching stated that a motion had been made and seconded that the Authority instruct the Executive Director to consent to the extension of the sublease between Ocean Investments, LLC and Basin Project, Inc. for the John Dominis Restaurant site on best terms but not less than existing terms.

A roll call vote was conducted.

Ayes: Members Chun, Dwight, Formby, Kimura, Kobayashi, Lai, Mukaigawa and Saito.

Nays: None.

The motion carried 8 to 0 with 5 excused (Members Bradley, Chang, Liu, Okada and Piper).

3. **DEFERRED ACTION FROM MAY 6, 2009 MEETING**
Shall the Authority Approve the Kewalo Basin Budget and Authorize the Executive Director to Direct Almar Management, Inc. to Enter into Vendor Contracts for Services at Prices Not to Exceed the Budgeted Amounts, Including Cumulative Contingency Amounts?

Mr. Ching summarized the written report in the packet distributed to Members.

There were no questions from Members.

There were no comments offered by the public on this agenda item.

Chairperson Lai entertained a motion to authorize the Executive Director to direct Almar Management, Inc. ("Almar") to enter into vendor contracts for services at prices not to exceed the budgeted amounts, including cumulative contingency amounts.

A motion was made by Member Formby and seconded by Member Chun.

Mr. Ching stated that the staff report included a recommendation that authorization be given to Almar to establish checking accounts on behalf of

HCDA. He proposed an amendment to the motion to include authorization for Almar to establish checking accounts on behalf of HCDA to manage the Kewalo Basin Harbor.

There being no objections to the amendment from Members, Chairperson Lai stated there was general consensus and the motion would be amended accordingly.

A roll call vote was conducted.

Ayes: Members Chun, Dwight, Formby, Kimura, Kobayashi, Lai, Mukaigawa and Saito.

Nays: None.

The motion carried 8 to 0 with 5 excused (Members Bradley, Chang, Liu, Okada and Piper).

4. Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds for the Design and Construction of Various Repairs to the Army and Air Force Exchange Services ("AAFES") Building?

Mr. Ching summarized the written report in the packet distributed to Members.

There were no comments offered by the public on this agenda item.

Member Chun asked whether the 3 to 4 year timetable meant a total redevelopment of the building.

Mr. Ching stated that the Request for Proposal ("RFP") for the Forrest Avenue project would provide an alternate location that could accommodate the move of tenants. As part of the Makai Area plan, the AAFES building would be redeveloped, refurbished or other appropriate action taken. The repairs were needed to keep the building operating in the interim.

Member Dwight asked whether the building was being occupied rent free since 1991.

Mr. Ching responded in the affirmative.

Member Dwight asked why the agencies had not made it a budgetary priority to seek funding for the repairs.

Mr. Ching replied that normally facilities maintenance was overseen by the Department of Accounting and General Services (“DAGS”).

Member Saito stated that AAFES started as a State building. In buildings that DAGS operates, no rent is charged. Although \$100 million was needed for repairs, only 10 million was approved, so the money was not available.

Chairperson Lai entertained a motion to authorize the Executive Director to expend Hawaii Community Development Revolving Funds for the design and construction of various repairs to the AAFES Building. A motion was made by Member Saito and seconded by Member Chun.

Member Dwight stated he had serious reservations about spending HCDA funds when the building would eventually be torn down and no rental income was being received. It was unfortunate that DAGS and other agencies could not get the funding that they needed, but the Authority had a mission and responsibility to spend its money in other ways. The agency was being asked to pick up the slack from another side of government that did not do what it was supposed to do. He did not believe they could count on getting a recoupment of \$700,000. He stated he would not be able to vote in favor of the motion.

Member Chun asked what liability HCDA had for the building.

Mr. Ching stated that HCDA held title to the facility and land. The Legislature could have authorized a Capital Improvement Project (“CIP”) authorization, but did not. However, the Legislature could have taken \$14 million away from HCDA and did not.

Member Saito pointed out that as the owner of the building, HCDA had liability for health and safety issues. If something goes wrong with the building, the liability would be with HCDA.

Member Dwight stated that none of the proposed repairs would be a catastrophic failure in the building.

Member Formby asked whether it would be possible to pursue legal assessments against the gratis tenants, the Department of Public Safety (“DPS”) and Department of Health (“DOH”), that would allow HCDA to recoup the maintenance and repair costs.

Member Saito responded that it could be done but it would be difficult.

Member Kimura asked whether the building would need to be condemned if the air conditioning went down.

Member Saito stated that in an emergency, there are things that can be done with budgets.

Chairperson Lai stated he agreed with Member Dwight's concerns, but wondered if they would be letting an emergency develop in the course of time by not spending the money.

Member Kimura commented the recommendation did not state anything about recouping the money.

Mr. Ching stated he had met with DPS and DOH and had notified them that if the action item failed at the meeting, they would be responsible for finding other means to keep their programs going.

Member Kobayashi asked whether approving the motion would preclude the agency from seeking an assessment from these departments at a later date.

Mr. Ching replied that it would not.

Chairperson Lai stated another idea would be to amend the motion to direct the Executive Director to seek a Memorandum of Understanding ("MOU") from the 2 departments. The motion could be approved as is, or the alternative would be to continue with an MOU.

Member Dwight stated the motion was fine as is.

A roll call vote was conducted.

Ayes: Members Chun, Formby, Kimura, Kobayashi, Lai, Mukaigawa and Saito.

Nays: Member Dwight.

The motion carried 7 to 1 with 5 excused (Members Bradley, Chang, Liu, Okada and Piper).

Chairperson Lai stated that other Members shared member Dwight's concerns that this was not part of their core mission. However, as the landlord, they did have liabilities and obligations. He requested that the Executive Director work to get better agreements in place with the various sister agencies.

Mr. Ching stated that the comments were noted and would be pursued.

VIII. ADJOURNMENT

There being no further business, a motion was made by Member Saito and seconded by Member Chun to adjourn the meeting. The motion carried 8 to 0 with 5 excused (Members Bradley, Chang, Liu, Okada and Piper).

The meeting adjourned at 11:18 a.m.

Respectfully submitted,



Jonathan Lai
Chairperson

Note: The transcript of this meeting contains a verbatim record and should be consulted if additional detail is desired.