

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

MEETING NO. 349
Wednesday, January 6, 2010

- Members Present: Barbara Annis
C. Scott Bradley
Amanda Chang
Joseph Dwight, IV
Michael Formby
Paul Kimura
Christopher Kobayashi (9:17 a.m.)
Jonathan Lai (11:20 a.m.)
Theodore Liu
Kay Mukaigawa
Dexter Okada
Russ Saito
- Kalaeloa Members: Linda Chinn
Evelyn Souza (9:28 a.m.)
Maeda Timson (9:22 am.)
- Members Absent: Grady Chun
Stanton Enomoto
David Tanoue
- Others Present: Anthony Ching, Executive Director
John Wong, Deputy Attorney General
Deepak Neupane, Director of Planning and Development for Kakaako
Tessa Malama, Kalaeloa Director of Planning and Development
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. C. Scott Bradley, Chairperson of the Authority, at 9:07 a.m. on Wednesday, January 6, 2010, at the Authority’s principal executive offices at

461 Cooke Street, Honolulu, Hawaii 96813, pursuant to Article IV, Section 1 of the Authority's Bylaws.

MATERIALS DISTRIBUTED

1. Report of the Executive Director;
2. Summary Minutes of Authority Meeting of December 2, 2009;
3. Information: Kalaeloa Status Report;
4. Action: Shall the Authority: (1) Approve Pre-Final Financial Statements for Fiscal Year Ended June 30, 2009; and (2) Authorize the Executive Director to Approve Minor Modifications If Necessary to the Pre-Final Financial Statements;
5. Action: Shall the Authority Waive its Buy-Back Provision and Exercise its Shared Appreciation Rights for Apartment Unit #807 at Keola Lai Condominium Project;
6. Action: Shall the Authority Rescind Its Previous Approval to Expend \$50,000 of Hawaii Community Development Revolving Funds for Plumbing, Site work and Relocation Costs to Move the Triple Wide Trailer from the CFS3 Building to Mother Waldron Park for the Benefit of Friends of the Library of Hawaii and Now Authorize the Executive Director to Execute a Term Lease Agreement with Friends of the Library of Hawaii for the Triple Wide Trailer and Portion of the CFS3 Warehouse;
7. Action: Shall the Authority Authorize the Executive Director to Execute an Amended and Restated Lease Between the Hawaii Community Development Authority and Ocean Investments, LLC for the John Dominis Restaurant Site.

II. APPROVAL OF MINUTES

1. Minutes of the Regular Meeting of December 2, 2009

Chairperson Bradley stated that Member Timson had provided corrections to the minutes. Member Timson clarified her hope that Kalaeloa would not serve as an encore to the Villages of Kapolei which were not built to City and County of Honolulu ("City") standards, and her suggestion that a meeting of the Authority should be convened in the Kalaeloa Area within the next few months.

Chairperson Bradley asked whether Members had any other comments or corrections to the minutes. There being none, the minutes were approved with the amendments offered by Member Timson.

Chairperson Bradley complimented Hawaii Community Development Authority ("HCDA") staff on its efficient move to the new office.

Chairperson Bradley noted that the Authority had begun the process of developing a master plan for the Kakaako Makai area. The Authority had discussed the Makai master planning process at length at its last meeting and had received email suggestions from Member Okada through the Executive Director. To coordinate the

master planning process, the Authority had established a master plan project team consisting of HCDA staff, planning consultants and members of the Kakaako Makai Community Planning Advisory Council (“CPAC”). CPAC members were invited to join the project team to provide them with direct participation in the planning process. Upon completion of the master planning process, the project team will present the Authority with its recommendations for its action. Given the scope of the planning process and to enhance the Authority’s orientation to this effort, Chairperson Bradley stated he was establishing an investigative task force comprised of no more than 6 Kakaako Members who would be charged with attending the community meetings and monitoring the planning process with the ultimate purpose of providing a report to the Authority upon completion of the master planning process.

At the last Authority meeting, a question had been raised on how Members could participate at the public workshops and meetings without violating the Sunshine Law. The investigative task force would become a part of the process and would afford the opportunity for members of the task force to participate. The task force would be led by Vice Chair Dwight and be comprised of Members Chun, Okada, and Saito. Chairperson Bradley also entertained the prospect that if 2 other Members wanted to participate, they should contact him directly.

The chair of the investigative task force could also choose to provide any interim report to the Authority if he deemed appropriate, and at that time the Authority also would entertain hearing from any other member of the task force. To further enhance the Authority’s orientation on the master planning process, and at the suggestion of Member Okada, Chairperson Bradley instructed the Executive Director to forward to the Members via email, summaries of all the meetings and accomplishments, any documents that the project team deemed important enough to be transmitted to the Authority, and other communications the team might assemble in response to questions from the Members. He also asked the Executive Director to reserve a section of his monthly report for this subject and invite questions and comments from the Authority. He thanked Member Okada for his suggestions and underscored the importance of good communication and the Authority’s understanding of this process.

Chairperson Bradley advised any other Members desiring to serve on the task force to contact him after the meeting. He thanked Vice Chair Dwight for volunteering for the position and looked forward to his report on this matter.

III. REPORT OF THE EXECUTIVE DIRECTOR

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

Mr. Ching indicated that Kakaako Makai master planning information would be available on the HCDA website. The project team was working on a project web page

via the Limehouse contractor to offer an efficient vehicle for the community to monitor and comment on the process. The master plan process would be included as a regular section of his monthly report. He noted that all correspondence and work products produced by the project team and investigative task force would be distributed regularly to the Authority to keep them apprised of what was going on.

Chairperson Bradley invited Mr. Ron Iwami, interim chair for CPAC, to provide comments on the Kakaako Makai master planning process.

Mr. Iwami thanked the Authority for opening communications and inviting the CPAC to serve on the project team. The CPAC would make it a point to have a representative present at the Authority's monthly meetings to supplement Mr. Ching's update of the master planning process. He expressed his appreciation to the Authority for creating the task force to attend the community meetings and be part of the process. He felt it was very important since the Authority was the ultimate decision maker on the whole process, and would be opening up communication to get everyone involved. He commented that the CPAC was moving forward with the master planning process with the HCDA and MVE Pacific and would be trying to work collaboratively all the way. He had one concern that if any developments or plans for Kakaako Makai should come to the Authority, he would like the Authority to include the CPAC in the discussions so that it can prevent problems in the future. An example is the Ocean Investments, LLC ("OI") project. The CPAC was trying to meet directly with OI to see if they can come up with a win-win situation. The CPAC wanted to be included in the discussion of any development plans and work together to avoid future problems.

Mr. Ching stated that the project consultant would be present at future meetings to provide updates if the Authority, the CPAC or any member of the project team had questions.

Mr. Ching noted that his written report contained a section in the Authority packet that included correspondence submitted to the HCDA. Copies of any correspondence received by staff for the Authority would be included in the packet to make sure that the Authority was privy to all public correspondence.

Member Okada asked whether the HCDA was going to introduce or push any new legislation, or would it be the same proposals (e.g., allow HCDA to sell real estate) introduced last year.

Mr. Ching responded that selling public lands now require ratification of both Houses of the Legislature. However, there is a holdover legislative proposal which seeks to give the ability to the HCDA to sell particular items such as a reserved housing unit that might come back into our possession. That is important because we have an action item where a reserved unit at Keola Lai is coming back to us. While we could buy it and tie up our money, we could not sell it and put it back into the reserved housing pool.

Mr. Ching expected that the major issue will be a repeat of House Bill 1350. This reserved housing topic will come up again and there will be intensive legislative discussions. We have also introduced at the suggestion the Governor's office a proposal to reestablish the cash-in-lieu program. The last legislature eliminated the cash-in-lieu program. Reestablishing the program would afford the HCDA more flexibility.

Chairperson Bradley asked whether any members of the public wished to comment on the Executive Director's report.

Public Testimony:

Ms. Michelle Matson asked for clarification of page 2 of the Executive Director's report.

Mr. Ching responded that in the written report is a comprehensive report. In his oral presentation, he summarized important topics. Staff is still working towards a resolution to the Makai remediation project, the Queen Street parks is an ongoing project, and the Queen and Kamakee intersection project will soon be underway.

Ms. Matson asked for status on the AAFES building.

Mr. Ching responded that the AAFES building has been covered in past reports to the Authority. The project involves necessary repairs to the air conditioning system that has been posed as a health and safety issue. The building is sealed, so if the air conditioning goes down, the building would have to be closed. The project is proceeding to effect the needed repairs to the building.

Ms. Matson asked if the bid for the Fisherman's Wharf was extended to January 15 and if there had been any interest.

Mr. Ching responded in the affirmative on the bid date. There was interest in seeking a longer term tenant, since the present tenant is month to month. He indicated that there had been interest but the process had not reached the point where bids are submitted, so he is unable to say whether there is interest.

Chairperson Bradley stated for the record that Members Kobayashi, Souza and Timson were now present.

IV. ITEMS FOR INFORMATION - KALAELOA

Mr. Ching stated that at recent meetings, the City Managing Director had indicated clearly that the City Department of Environmental Services ("DES") would not be entertaining acceptance of the wastewater system at Kalaeloa from the U.S. Navy ("Navy"). Notwithstanding the offer from the Navy to provide the water source,

reservoirs and distribution systems, the Board of Water Supply (“BWS”) had also indicated they would not be taking over that utility system.

Mr. Ching indicated that the Navy was exploring an option of issuing an RFP for a consolidated utility that might offer both the wastewater and drinking water, individually or together, to willing operators as a utility. The HCDA has been working with the Navy on how to move forward efficiently and address this particular issue. He invited Mr. Michael Fitzgerald from Navy Public Facilities to provide comments with respect to conveyances from the Navy.

Mr. Fitzgerald stated that he wanted to reassure the Authority that the Navy had met diligently with City managing officials at the field level up through the Managing Director with their Chief Executive Officer Captain Muilenburg. They are trying to work different angles to get a feel for their ability to take the utility systems. It comes down to money. The City Managing Director and managers of the BWS and the DES had indicated that the finances just aren’t there. They look at the Navy system as a recapitalization project more than an asset. Under that guise, they are unwilling to take the systems but will entertain taking it if it is recapitalized to their standards.

The Navy understands that the HCDA rules require that anything built within the Kalaeloa district must meet City standards. For the Navy’s part, they have asked that the HCDA engineering staff review any proposal for infrastructure improvements as to whether the project meets City standards before they allow connection to the Navy’s system which the Navy still owns. The Navy is working together with HCDA staff and others to make sure that the water and wastewater systems meet City standards and hopefully someday the City will accept and administer the systems. He thanked the Authority for its support.

Ms. Tesha Malama, Kalaeloa director of planning and development, stated that Member Timson had requested a stakeholder’s meeting. She has been working with Navy staff to put together a meeting targeted for February 19. More information would be available at the February 3 Authority meeting. The Department of Hawaiian Home Lands (“DHHL”) would be hosting the meeting at their conference room.

There were no questions from Members or the public on the Kalaeloa status report.

Mr. Ching stated that Mr. Fitzgerald had indicated that the utilities would be a recapitalization project. For the City or a private operator to come in, they would have to make their own assessments as to what revenues could be generated and then determine what particular initial cost would be necessary to interest them. That cost might be millions of dollars, or they could just take conveyance and the facilities. The Navy needs to find out whether there is any interest and will have to investigate whether or not there are federal resources that can be applied to support the initial recapitalization. At this point, the HCDA effort will be to assess that interest, figure out the numbers as to the need and where they might happen, and facilitate that

discussion and work towards understanding what the solution is and what the price tag will be. HCDA's role is to function as a facilitator and work towards a solution.

Member Timson stated there was historical data put together 5 or 6 years ago as to how much it would take to bring the utilities up to standard. It was in the millions of dollars and is probably more now than what it was then because both the water and the electricity are at such substandard levels. A number of tours with the BWS and with the Hawaiian Electric Co. had been conducted to determine the cost of the Navy to divest itself of the utilities. The numbers were staggering. The Navy has not done anything since the closure to maintain the systems or advance it. The numbers were large and she could not imagine that the City would want to even begin to entertain it. She felt the Navy had to step up to the plate because that's where most of the money will have to come from to bring it up to standard, especially in these economic times. They were not going to get the local government to do it.

Mr. Ching responded that the infrastructure master plan that is being done was important because it would give a different perspective as to what you needed to build the system to.

Mr. Craig McGinnis from Hunt Development Group stated that the infrastructure master plan initial draft would be completed by the end of January.

A recess was taken at 9:53 a.m.

Members Chinn, Souza and Timson exited the meeting.

The meeting was reconvened at 10:06 a.m.

V. ITEMS FOR ACTION - KAKAAKO

2. Shall the Authority:

- (1) Approve Pre-Final Financial Statements for Fiscal Year Ended June 30, 2009; and,
- (2) Authorize the Executive Director to Approve Minor Modifications If Necessary to the Pre-Final Financial Statements?

Chairperson Bradley stated that the external auditor had not yet completed its report and submitted its findings, so the action item would be deferred to the next meeting. There were no objections from Members or comments from the public.

3. Shall the Authority Waive its Buy-Back Provision and Exercise its Shared Appreciation Rights for Apartment Unit #807 at Keola Lai Condominium Project?

Executive Director Anthony Ching summarized the written report included in the packet distributed to Members.

Chairperson Bradley asked whether Members had any questions for Mr. Ching.

Member Saito stated there were 3 options in the staff report. He asked which would be Mr. Ching's recommendation.

Mr. Ching responded that he would recommend the second option which would be to allow the unit to be placed on the market for sale and the HCDA take the shared appreciation formula value.

Member Saito asked whether the options were being combined because it seemed that a third option was being described by Mr. Ching. He asked if the HCDA was trying to find a substitute buyer.

Mr. Ching responded that the HCDA was not obliged to physically produce a substitute buyer, but placing the unit on the market would do so. The HCDA would waive its purchase option and allow the market to produce a substitute buyer. The HCDA would take back a share of the profit that would be made. The reserved housing unit owner would be made whole but would not profit from the transaction.

Member Liu asked how many units in the building would make up the 20% reserved housing requirement.

Mr. Matt Akamu, HCDA planner, responded that it was 70 units. The developer had provided 63 units and paid cash-in-lieu to make up the additional 7 units.

Member Liu asked how many units have had the purchase option waived.

Mr. Ching responded that this was the second unit that has come up.

Member Okada asked how the shared appreciation program worked and whether the owner was required to sell at market value even if there was an emergency. He asked if the owner could sell it at lower than market value just to get the cash.

Mr. Richard Kuitunen, HCDA asset manager, responded that the owner was free to market the unit. The other unit that the HCDA had waived buy-back was still on the market, so the market would dictate the price. Any proceeds over purchase price over the fair market value of the original sale would go to the HCDA. If the

sale was less than the original market value, HCDA would get less, but the seller would have to meet all the closing costs and other transactions.

Member Mukaigawa asked what would prevent the owner from selling the unit just to get out and have no real interest in providing any funds to the HCDA. She asked if a caveat could be put in so there would be some funds; otherwise, the HCDA could end up with nothing. The mortgage, realtor commissions, and escrow would all have to be paid first. She asked what would happen if the owner simply calculated that amount and then sold it for that amount.

Mr. Kuitunen responded that it would be defrauding the HCDA.

Member Mukaigawa stated it did not have to be fraud but a very simple “just get me out of this thing; I’ll take whatever.”

Mr. Ching responded that the owner could set a price and the HCDA would have little recourse.

Member Kimura asked whether the unit could be marketed as a reserved housing unit at the same price and kept as a reserved housing unit. Otherwise, once the unit is sold, it would cease to be a reserved housing unit.

Mr. Kuitunen stated that the HCDA is precluded from selling. However, the HCDA could designate it to another State agency such as the Hawaii Housing Finance and Development Corporation (“HHFDC”) to purchase it. The HHFDC would have to be interested in owning only one unit in the building and would have to come up with money for the purchase.

Member Mukaigawa stated it was unfortunate that the rule was set up that way now. She wondered if there was any way to prevent the owner from selling it at a fire sale price which would affect the real estate market for the whole building in general and bring down values.

Mr. Ching responded that there was no good answer. The HCDA was reluctant to give up the unit, since it was contrary to our effort to produce or cause to be built reserved housing in the district. The HCDA could purchase the unit at the reserved housing price and the owner could get out without making a profit. The HCDA would then sit on the unit and hope for a legislative remedy that would allow the unit to be resold and put back on the market as reserved housing.

Member Mukaigawa stated that it was unknown when the legislative remedy would happen. She suggested that verbiage be put into the sale to encourage the owner not to just sell at a low price. Otherwise, someone else could do the same thing once a precedent had been set.

Member Liu stated that the HCDA would have to exercise a buy-back to prevent it. However, the only reason for not doing a buy-back was because the agency cannot put it back on the market. These examples increasingly make the case to the Legislature that the attempt to restrict the HCDA from selling fee simple in the Makai area has a flaw. The HCDA has a mandate to perpetuate affordable housing, but the agency will lose another unit. This situation would make the case that the statute needed to be changed to allow sales of this type.

Member Kimura asked whether a minimum sales price could be set. He agreed with Member Liu that reserved housing units should be maintained.

Member Chang stated the whole reason for buying the reserved housing unit was to provide affordable housing for the gap income group. Given the flawed rules and the current market, she asked if it would be possible to buy it back and have a company manage it as a rental unit until the law can be changed to allow the agency to sell it to another gap income person. Waiving the buy-back would be undoing the whole purpose of reserved housing.

Member Dwight asked what the carrying costs would be if the agency repurchased the unit.

Mr. Ching stated that there would be fees for building maintenance and management service to rent it. There were a number of requirements that would have to be maintained to qualify people to rent any reserved housing unit.

Member Chang stated it was an important policy making moment for the Authority to set a standard procedure. The issue could come up again with 63 total units and 61 to go.

Mr. Ching stated the issue would only come up during the 2-year buy-back period. Thereafter, the shared appreciation formula would be involved. Most owners waited until after the buy-back period before selling.

Member Mukaigawa stated there probably weren't any other buildings in Kakaako that were still in the buy-back period. The next building to come up would be the new Moana Vista that would have the buy-back restriction.

Mr. Ching noted that the Moana Vista project was now called the Pacifica.

Mr. Ching stated that the agency could start with the HHFDC program in trying to establish a more effective reserved housing program. The buy-back periods are 2 to 10 years, with 10 years for the low end units. It was infrequent that an owner sold before the buy-back period was up. The shared appreciation was there but applied only to the first transfer. If the objective was to maintain reserved housing to perpetuity, a lot more would be involved.

Member Mukaigawa asked whether it was worth tying up \$350,000 and managing the unit as a rental. She wondered if holding the unit would give the agency ammunition to change the law or the rules.

Member Formby stated that it might cost more to carry the unit as a rental if the market for the building was not there. The homeowner association fees and property management would have to be carried if the unit could not be rented out.

Mr. Ching agreed that it was possible not to get the management and maintenance costs back because the unit would have to be rented at a particular rate and not a market rate.

Mr. Akamu stated that the rental scale was based on 100 percent median affordable and was different than for a purchase. It would translate to about \$1,700 per month depending on the median income. The owners cannot rent out the units and are required to live there.

Member Mukaigawa stated that the agency would fall into the developer category and would have to rent it for \$1700. The management company would take 10 percent, with maintenance fees, the carrying costs would be around \$700.

Mr. Ching stated that the agency might even have to conduct a lottery if there was pool of renters.

Member Kobayashi asked if the agency were to buy it back and be given permission to sell it at a later date, whether it would still be a reserved housing unit and for how long.

Mr. Ching replied that it would have to remain a reserved housing unit for at least 2 years. The shared appreciation program would apply only to the first transfer, whenever that might occur.

Member Dwight stated that the 2-year buy-back window was close to expiring. If the owner had waited, the Authority would not be having this discussion about holding on to its reserved housing unit and instead would be dealing with the shared appreciation. He felt that the real issue was with the program itself and the length of time on the buy-back. He asked if it was a fair statement that the agency wanted to keep the reserved units available within the system for a longer period of time than just 2 years.

Member Saito stated that he was thinking the same thing. He asked what would happen if the agency decided not to act on any of the 3 options.

Mr. Ching stated that the agency was obliged to act upon the owner's notice and to respond within 60 days whether we were going to buy-back the unit. Otherwise a market sale would be initiated.

Chairperson Bradley stated his recollection that with Unit 610 the amount of money due to the HCDA was formula driven and not based on actual sales price.

Mr. Ching responded that it was based on the shared appreciation formula and certain assumptions were made in terms of what the selling price would be.

Member Mukaigawa asked whether any money had been received for that unit.

Mr. Ching responded that the unit was still on the market so no receipts have yet been received.

Member Saito asked how many months were left until the owner would get to the 2 year point.

Mr. Ching responded it was about one month. The original purchase date was February 25, 2008.

Member Liu stated that the owner had given notice, and once notice was given, the agency needed to respond. The Authority could decide not to buy it back and let the unit be sold with shared appreciation.

Member Kimura stated he felt a policy needed to be set because there was a lot of room for abuse. He was not saying that it was happening in this case. However, it was possible for the owner to sell to a friend at a low price.

Mr. Ching stated that having the first transfer trigger the shared appreciation was troubling because the subsequent transfers could technically reap the benefit of the unit originally being sold at a reduced price. He noted that the buy-back was only going to occur when there is a new unit or new development coming online. While there weren't many at this point, ultimately there would be. In terms of moving forward, the Authority could focus on a policy change on how it would maintain reserved housing for General Growth Properties and Kamehameha Schools or other developments subsequent to this.

Member Mukaigawa asked whether any rules changes would affect Pacifica.

Mr. Ching stated that a development permit had already been issued and they were vested under the existing rules.

Member Chang suggested that in the future, there should be a condition when there was an waiver to buy-back that the selling price would have to be set at the assessed value or fair market value so there would be no way for abuse to happen.

Member Okada suggested that the Authority should divide the action into two motions. The first would be the motion before the Authority. The second would be to look into it and come up with possible alternatives.

Chairperson Bradley stated it was a positive approach for future projects. The bigger issue was that none of the units will be reserved housing after two years. The units were all destined to go to market and it was a lot of work to undertake for no long term benefit.

Mr. Ching stated that it was on the agenda for the Authority to take action to either waive the buy-back or participate in shared appreciation. A second motion was not needed since staff would take it as advice to explore policy recommendations and changes.

Chairperson Bradley asked whether any members of the public wished to testify. There were no comments from the public on this agenda item.

Member Saito asked for clarification on what would happen if the Authority decided to waive the option to purchase.

Deputy Attorney General John Wong stated that within the agenda posted to the public, the Authority could make a motion regarding the disposition of this particular property in relation to the buy-back. In other words, the Authority should not feel the constrained if it took no action. By default, the buy-back would automatically be waived come February 25. Within that context, the Members could make whatever motion was necessary.

Member Dwight stated that it seemed that the third option assumed that the HCDA was going to find a person who qualified for the reserved housing guidelines. If the unit was allowed to go to market, he asked if a market buyer or a substitute buyer would have to qualify in the reserved housing program.

Mr. Ching responded that the bullets in the staff recommendation were verbatim from the rules. He did not believe that a substitute buyer could be produced and the mechanism would be to let it go to market. Mr. Ching suggested the Authority defer their discussion to Executive Session so Counsel could provide his advice to the Authority.

Member Saito moved that the Authority convene in Executive Session after the remaining action items were addressed. Member Dwight seconded the motion.

By a show of hands vote, the Authority voted unanimously to defer Item #3 until after the Executive Session.

4. Shall the Authority Rescind Its Previous Approval to Expend \$50,000 of Hawaii Community Development Revolving Funds for Plumbing, Site work and

Relocation Costs to Move the Triple Wide Trailer from the CFS3 Building to Mother Waldron Park for the Benefit of Friends of the Library of Hawaii and Now Authorize the Executive Director to Execute a Term Lease Agreement with Friends of the Library of Hawaii for the Triple Wide Trailer and Portion of the CFS3 Warehouse?

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

Chairperson Bradley asked whether Members had any questions for Mr. Ching.

Member Saito stated that the Friends of the Library (“FOL”) was located next to Mother Waldron Park. The Next Step Shelter and the warehouse were next door to the triple wide trailer. He asked if physically there would be a change at the warehouse.

Mr. Ching responded that there would be no change. The HCDA would realize 67 cents a square foot times \$3,000 square feet in rent from the tenant (FOL).

Member Saito asked how much of the space currently occupied by FOL at Mother Waldron was used for storage.

Mr. Ching responded that FOL did not have any space at Mother Waldron Park. They operated out of the 10,000 square foot library book processing center and occupied about one-third of the space. The library would like to move them and recover the space for their operations. FOL currently paid no rent.

Member Saito asked if they would physically be moving to the warehouse or the triple wide trailer.

Mr. Ching responded that they would be moving into the triple wide trailer and using the warehouse space as storage. The HCDA would save \$50,000 by not moving the trailer and would receive rent for the warehouse space. The FOL would have a community center and administrative space in the triple wide trailer at no cost.

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

Chairperson Bradley entertained a motion for the Authority to rescind its previous approval to expend \$50,000 of Hawaii Community Development Revolving Funds for plumbing, site work and relocation costs to move the triple wide trailer from the CFS3 Building to Mother Waldron Park for the benefit of Friends of the Library of Hawaii and now authorize the Executive Director to execute a term lease agreement with Friends of the Library of Hawaii for the triple wide trailer and portion of the CFS3 Warehouse.

A motion was made by Member Chang and seconded by Member Mukaigawa.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Kimura, Kobayashi, Liu, Mukaigawa, Okada and Saito.

Nays: None.

The motion passed 11 to 0 with 2 excused (Members Chun and Lai).

5. Shall the Authority Authorize the Executive Director to Execute an Amended and Restated Lease Between the Hawaii Community Development Authority and Ocean Investments, LLC for the John Dominis Restaurant Site?

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

Chairperson Bradley asked whether Mr. Scott MacKinnon, counsel for OI, had any comments.

Mr. MacKinnon responded he had no comments at that time.

Member Formby asked for clarification about the cancellation clause. In the staff report summary box, it stated that “the landlord may cancel lease if tenant does not have minimum sales of \$14.5 million.” However, in his reading of the lease, he did not find that there was unilateral right to cancel if the tenant did not achieve the \$14.5 million.

Mr. Kuitunen stated there were two different sections that talked about the potential cancellation. After the 4-year period, the agency would participate in percentage rental. A separate paragraph not having to do with any investment from them allows us to cancel that lease.

Member Okada stated his concern that there was an ongoing master planning process on the makai side. In essence, this project was like the first development in area since there were 30 years left on the lease. At a meeting, the OI architect presented a rendering that was not in line with the Vision and Guiding Principles developed by the CPAC. The rendering he saw was an iconic structure that seemed to go against the whole idea of the area being a gathering place. Maybe the only thing that could be changed was the coloring, but it just didn't seem to fit in. He asked whether the HCDA could put more weight into having OI work with the community in terms of the design since they were planning for the future of that area.

Mr. Ching responded that the tenant held a 65-year lease with a substantial term left and their use in general was vested. The ability to change the land use from commercial to park at this point given their tenancy rights was non-existent.

Whenever he has received comments, he has forwarded them to OI and encouraged them to work with the CPAC. OI's intention was to reproduce a facility with the same footprint and uses. There was a potential opportunity to redevelop the shoreline which OI was acknowledging. From a regulatory perspective, OI was clear that they had to be compliant with HCDA design and height guidelines. The HCDA would administer the rules consistently as they are presented.

Member Dwight stated he was following up on Member Formby's question. He asked for the exact language that gives the HCDA the right to cancel.

Chairperson Bradley stated they would come back to the question after Mr. Kuitunen looked it up.

Member Okada and Chairperson Bradley asked Mr. McKinnon to comment on what steps had been taken by OI to respond to concerns raised by the community.

Mr. MacKinnon stated that reaction from the meeting and subsequent comments have been referred to OI's architect and design team to review. The design was an evolving process. A number of steps were still needed in terms of obtaining a development permit from the HCDA and a Special Management Area permit. Input from the community and others would be addressed, but at the end of the day, aesthetics is in the eye of the beholder. OI was firmly committed to comply with all applicable rules and regulations relating to its design and planned redevelopment of the property. He also stated his agreement with Member Formby's interpretation that there was no cancellation clause in the lease if the tenant failed to achieve the \$14 million.

Member Chang stated it sounded like staff and OI had been meeting and discussing the proposed amendment. If it was agreeable to OI, there was no harm with the lessor having an option. The lease says "may" not "shall". Regarding Member Okada's comment, she saw an improvement where the CPAC's presentation was not mentioned in the existing lease. Now there was an opportunity to present it.

Member Kimura asked what the ramifications would be if the Authority did not approve restatement of lease.

Mr. Ching stated that OI would stay in place with the existing facility. The restated lease was an opportunity to renegotiate and give OI clarity if they were going to make an investment in the property.

Member Kimura asked if the amendment were rejected, whether it meant that the building could not be torn down and the State would not get access to the beach.

Mr. Ching responded that OI had rights to continue under the current terms of the lease which included operating the existing facility and renovating it.

Member Saito suggested that the building was not likely to be torn down. However, if left as is, it would be subject to the current lease. He asked whether OI was willing to sign the lease with the cancellation clause.

Mr. Ching responded that the staff matrix was intended to be a summary and something had been lost in the interpretation.

Mr. Kuitunen stated that Mr. MacKinnon had reminded him that the cancellation clause was originally in the lease, but the HCDA had agreed to remove it.

Chairperson Bradley asked whether any members of the public wished to comment.

Public Testimony:

Ms. Matson stated she was secretary of the CPAC. She stated that there was a statutory obligation of collaboration under Act 144 with the CPAC for any plans for Kakaako Makai. She felt the summary table was helpful and she was able to identify CPAC's involvement right away. She requested the addition of the action of collaboration be added to restated lease if it is approved. Member Okada's comments were important and there was a need to honor the master plan process and work with any newcomer in the area to educate them as to the values of the area. At the meeting with the architect's presentation, the use of the site was not questioned as much as the density and visual impact.

Mr. Jack Hamada stated he was a concerned citizen and felt the committee was going too fast in authorizing the Executive Director to finish up the agreement with OI. He wanted to know the height of the present permit for the building and the square footage under the existing building, and the height and square footage of the proposed building.

Mr. Ching responded that the square footage was not changing substantially. Both buildings would be under the height restriction of 65 feet.

Mr. Akamu stated that the existing property was 19,000 square feet and the proposed was 18,300 square feet. The existing height was about 51 feet.

Mr. Hamada asked about the coverage of the building.

Mr. Akamu responded that the building was the same in footprint, but set back farther from the ocean.

There were no other comments from the public.

Chairperson Bradley entertained a motion for the Authority to authorize the Executive Director to execute an amended and restated lease between the HCDA and Ocean Investments, LLC for the John Dominis Restaurant Site.

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

Member Okada asked if it was possible to send a letter to OI requesting more collaboration with the CPAC.

Mr. Ching responded that an amendment to the motion would have to be proposed and accepted. He suggested that the proposal should be specific on what the term “collaboration” means.

Member Okada stated it did not have to be part of the lease, but a letter of understanding that there was agreement for more collaboration.

Mr. Ching responded that he would take direction from the Authority and encourage OI to participate in forums and be responsive to comments.

Member Saito stated that he had a problem with asking that something be done without first defining what the expectation was of the Authority and the CPAC on what is meant by collaboration. It sounded as though the CPAC wanted authority to approve something, which is different from collaboration.

Member Formby stated he shared Member Saito’s concerns on collaboration since the CPAC and OI might have different definitions. The Authority should go ahead with the motion that had been made.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Kimura, Kobayashi, Lai, Liu, Mukaigawa, Okada and Saito.

Nays: None.

The motion passed 12 to 0 with 1 excused (Member Chun).

Public Testimony:

Ms. Matson commented that she was concerned about the word “collaboration”. It was good enough for the Legislature and was in Act 144. The CPAC was making an effort by coming forward and hoped others would meet them halfway. This was a unique situation because of the master planning process. The HCDA, the CPAC and any potential

developer would need confidence in each other to move forward with the master planning process because all elements need to be compatible within the public interest.

Chairperson Bradley thanked Ms. Matson for her comments. He hoped the CPAC realized that the Authority was under the obligation of a lease and under the rules, the HCDA must respond to the request within 100 days. If no Members objected, Mr. Ching would be sending a letter to encourage OI to receive input from the CPAC.

VI. ITEM FOR INFORMATION - KAKAAKO

Chairperson Bradley stated that Professor William Paluch from the University of Hawaii School of Architecture was unable to attend the meeting. However, Mr. Ching would provide a summary of the class design project.

Mr. Ching gave a summary of the project via PowerPoint presentation.

There were no comments from Members or the public on this agenda item.

Chairperson Bradley stated that the Authority would be convening in Executive Session to consult with its attorney on Action Item #3 and to discuss acquisition of property in Kakaako. After the Executive Session, the Authority would reconvene for the sole purpose of adjourning the regular meeting. Chairperson Bradley requested that Counsel John Wong, Executive Director Anthony Ching, Director of Planning and Development for Kakaako Deepak Neupane, and Secretary Patti Yoshino join the Executive Session.

There were no objections by Members, and the Authority voted to enter into Executive Session by unanimous consent of Members.

A recess was taken at 11:45 a.m. while the public exited the regular meeting.

VII. EXECUTIVE SESSION*

6. Acquisition of Property – Kakaako

The Authority convened in Executive Meeting at 12:07 p.m. pursuant to Section 92-5(a)(3) and 92-5(a)(4), Hawaii Revised Statutes, to negotiate the acquisition of public property, and to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

*Meals were served as an integral part of the meeting during the Executive Session.

Chairperson Bradley reconvened the regular meeting at 12:38 p.m.

V. ITEMS FOR ACTION - KAKAAKO - CONTINUED

3. Shall the Authority Waive its Buy-Back Provision and Exercise its Shared Appreciation Rights for Apartment Unit #807 at Keola Lai Condominium Project?

Chairperson Bradley entertained a motion for the Authority to waive its buy-back provision and exercise its shared appreciation rights for apartment unit #807 at Keola Lai condominium project.

A motion was made by Member Dwight and seconded by Member Lai.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Kimura, Kobayashi, Lai, Liu, Mukaigawa, Okada and Saito.

Nays: None.

The motion passed 12 to 0 with 1 excused (Member Chun).

VIII. ADJOURNMENT

There being no further business, a motion was made by Member Kimura and seconded by Member Chang to adjourn the meeting. The motion carried 12 to 0 with 1 excused (Member Chun).

The meeting adjourned at 12:40 p.m.

Respectfully submitted,

/s/

C. Scott Bradley
Chairperson

Attachment: Exhibit A - Report of the Executive Director

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