

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

April 25, 2007

State Office Tower – Conference Room 405

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:30 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Lynne Woods
- Michael Yee
- Donald Dymond
- George Handgis
- Richard Schnitzler
- Peter Yukimura

**ABSENT MEMBERS:**

- Sharon L. Pang
- Dorvin Leis
- Charles Au
- Bruce Bucky

**STAFF:**      DBEDT                              Office of the Attorney General  
Dori Palcovich                              Margaret Ahn  
Steven Bretschneider  
Sonda Mullen

**GUESTS:**

Jeri Kahana, Manager, Commodities Branch, Quality Assurance Division, Department of Agriculture (DOA)  
Edward Botelho, Owner, Cloverleaf Dairy  
Kayleen Polichetti, Hastings & Pleadwell  
Tammy Chang, Ward Research, Inc.  
Major Jay N. Enanoria, Hawaii Police Department  
John Stewart, Chairman, State of Hawaii Organization of Police Officers – Hawaii Chapter (SHOPO)  
Domingo Cravalho, Plant Quarantine Branch, DOA  
Lauren Willson, Environmental Health Specialist, Solid and Hazardous Waste Branch, Department of Health (DOH)  
Karl Motoyama, Manager, Solid and Hazardous Waste Branch, DOH  
John Ishihara, Chief Counsel, Hawaii Civil Rights Commission  
Charlene Tamanaha, Executive Officer, Board of Electricians and Plumbers, Department of Commerce and Consumer Affairs  
Johnnel Nakamura, Rules Officer, Department of Taxation (DoTax)  
Joseph B. Tichy, Administrative Rules Specialist, DoTax  
Stephen Miyamoto, Project Engineer, Hawaii Community Development Authority (HCDA)  
Gloria Chong, Asset Management Specialist, HCDA  
Richard Kuitunen, Asset Manager, HCDA  
Carolyn Crandell, Private Citizen  
Michelle Matson, Co-Coordinator, Kakaako Shoreline Park Association

**WORKING LUNCH AS THE MEETING PROGRESSED**

II. **APPROVAL OF MINUTES:** Minutes of the March 21, 2007 Board meeting were approved as presented.

**III. OLD BUSINESS**

A. Re-review and discussion of proposed amendments to the Hawaii Police Department Special Off-Duty Employment, General Order No. 413 – Major Jay Enanoria from the Hawaii Police Department and Mr. John Stewart, Chairman of Hawaii’s Chapter of SHOPO, discussed the purpose of the proposed rule amendments. The proposed changes will increase the rates currently being charged for hiring off-duty police officers to perform police service work which includes security, traffic control and escorts. The increases are the result of consultations between SHOPO and the collective bargaining unit for police officers on the Big Island to be commensurate with those being assessed by other police departments throughout the State. The proposed rate equates to an average of \$35 per hour, with fees assessed by private security firms providing similar services ranging from \$20 to \$50 per hour. It was indicated that

the proposed amendments may have short-range impacts on small businesses that utilize services for special duty enforcement. After much discussion, Mr. Handgis recommended that the proposed amendments proceed to public hearing; the Board members unanimously agreed.

**B. Review and discussion of post public hearing statement of HAR Chapter 4-60-10, “Minimum Prices in the Hawaii Milk Shed” (DOA)** – Ms. Jeri Kahana, Manager of the Commodities Branch at DOA, indicated that the public hearing was held on April 17, 2007; there were four oral and two written testimonies. Final approval from the Board of Agriculture has not yet been provided but is expected. The proposed amendments will increase the minimum price of class 1 milk paid to the Big Island milk producers to \$29.53 per hundredweight. Mr. Ed Boteilho, owner of Cloverleaf Dairy in Upolu, Hawaii, provided the members with a gallon of Big Island fresh whole milk; the milk represents 3.5% butterfat. He indicated that with the rule amendments, a gallon of milk will cost \$2.55, and if this price increase does not occur, Cloverleaf Dairy could only survive for a while. Upon review, Mr. Schnitzler stated that he wants to see the Hawaii dairy industry survive and thrive, and recommended that the rule amendments proceed to the Governor for adoption; the Board members unanimously agreed.

**C. Review and discussion of post public hearing statement of HAR Chapter 15-210, Rules, Regulations, Charges, and Fees for Public Parks” (HCDA)** – Ms. Gloria Chong, Asset Management Specialist and Mr. Richard Kuitunen, Asset Manager at HCDA, explained that the purpose of the proposed rules is to update the regulations, charges and fees for public parks under HCDA’s jurisdiction. The parks include Kakaako Waterfront, Makai Gateway and Kewalo Basin Parks. The subject amendments include defining abandoned property, prohibiting washing and drying of clothing, parking outside of market areas, stalking, wading pools, dunking tanks, inflatable pools, portable hot tubs, and establishing a park usage fee schedule for commercial activity. Ms. Chong indicated that three people attended the public hearing, held on March 7, 2007; one person orally testified but there were no suggestions for changes. As a result, no changes were made to the final proposed rule amendments. She stated that the proposed fee changes were for commercial usage only and not for recreational use such as soccer practices and joggers; non-profit organizations are exempt from these fees as long as the use will be used for that non-profit’s activities and no parking fees are being charged. The Executive Director of HCDA has the ability to waive the commercial fees. Overall, the changes are largely for undesirable activities in the parks.

Mr. Kimo Kockelman, a small business owner who conducts fitness training at the park, testified that he has been paying a right of entry fee of \$50 per month. He believes that there should be exceptions made such as activities related to health and fitness, particularly in public parks; thus, he suggested that the fees at the parks should be waived for his type of business. Ms. Carolyn Crandell testified that she was concerned as to how many permits would be issued and questioned where the “line would be drawn” as to what types of activity can reasonably be performed in the parks. Ms. Michelle Matson, a co-coordinator of the Kakaako Shoreline Park Plan, stated that she has been working with HCDA, but there is general concern with the commercialization of the State’s public parks; she mentioned that to some people this is an exploitation of public land. There is particular concern with grandfathering in expansive, commercial and private uses at the expense of public use. She stated that the parks are not for commercial use as the parks are not zoned for mixed use, and believes that each activity should be reviewed on a case by case basis, with the magnitude of the commercial event considered.

Mr. Dymond indicated that charging a fee for commercial activity in the parks is not unreasonable. Mr. Kuitunen stated that there are no guidelines, per se, as to how many permits would be granted on a given day but that HCDA has not been inundated with entry fees. In regards to the enforcement of the parks, he indicated that there are paid special duty police officers and regular employees policing the grounds. After much review and discussion, Mr. Yee recommended that the rules proceed to the Governor for adoption; the board members unanimously agreed. After the vote, Chair Woods indicated that it is important to mention a number of items in the memorandum to the Governor regarding the adoption of these rules. She stated that there needs to be acknowledged a level playing field, and so the Board’s recommendation is incumbent upon appropriate enforcement. Because enforcement costs money, there must be appropriate funding in this rule so that there can in fact be enforcement. Because it is recognized that these are small geographic parks, if there isn’t diversity within the park activities, it may deprive others of the parks’ usage. Thus, because a business impact exists within these rule amendments, there needs to be a sense of balance regarding the usage of the parks.

**D. Review and presentation of post public hearing statement of HAR 4-71, “Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules” (DOA)** – Mr. Domingo Cravalho from DOA’s Plant

Quarantine Branch, explained that on May 24, 2005, the proposed rules were preliminarily approved by the Board of Agriculture; the proposal included the definitions of "primate sanctuary" and "private use." There were also general housekeeping measures and a provision that prohibited the commercial and private use of non-domestic primates. The rule amendments do not stop entities from having exhibitions such as the Honolulu Zoo or for medical research if the primates are used for that particular use. Public hearings were conducted statewide in July 2006 with a total of 47 attendees; fifteen provided oral testimony and six provided written testimony. Based on these testimonies, some modifications were made and approved by the Board of Agriculture. Mr. Yukimura recommended that the proposed rules proceed to the Governor's office for adoption; the Board members unanimously concurred.

- E. Review and discussion of post public hearing statement of HAR 18-245, "Relating to Cigarette Tax Stamping" (DoTax) – Mr. Joseph Tichy, Administrative Rules Specialist at DoTax, explained that a representative from the Attorney General's Office attended the public hearing to essentially answer any concerns of the testifiers and provide a consent to search form. Prior to the public hearing, nine trade groups were contacted about the hearing. The hearing was held on March 19, 2007 and four testifiers attended, all from UH's law school; two were in support and two had reservations. A discussion regarding a conflict of interest with Mr. Dymond voting on these rules ensued and Mr. Handgis suggested that the Board err on the side of conservatism and not open the Board to any criticism. Chair Woods concurred and recommended that these rules be deferred until the next Board meeting for review and vote. In the meantime, Ms. Palcovich will provide the members with Ms. Margaret Ahn's legal opinion regarding board meetings and potential conflicts of interest.

Ms. Johnnel Nakamura, Rules Officer at DoTax, questioned the process of when the rules come to this Board for approval. Chair Woods explained that the Board reviews the rules for business impact, and will then send a memo to the Governor either recommending or not recommending the rules proceed to public hearing. There may be occasions where the impact is so huge and not justified that the Board will submit a memo to the Governor expressing that the rules do not proceed to public hearing until they are re-reviewed by the rule-drafting agency. Both pre- and post-public hearing statements are to be presented to this Board. Ms. Nakamura explained that the agency submitted the post-public hearing statements directly to the Governor's Office before they came to this Board and because Governor signed off on them, the rules have been adopted prior to coming back to this Board for approval.

- F. Review and discussion of post public hearing statement of HAR Chapter 11-282 "Deposit Beverage Container Recycling" (DOH) – Ms. Lauren Willson, Environmental Health Specialist and Mr. Karl Motoyama, Manager from DOH's Solid and Hazardous Waste Branch, discussed the proposed rules Ms. Willson indicated that the public hearings were held statewide with four people attending, three in support and one in opposition, however, no changes were made the department to final proposed rules. After a series of questions and answers, Mr. Yee recommended that the rules proceed to the Governor's office for adoption; the Board members unanimously concurred. However, Ms. Willson indicated that the post public hearing rules had already been sent to the Governor's Office for adoption. Chair Woods stated that a letter will be sent to the Governor's office regarding the adoption of these rules as well as the rules in Section E. regarding the Board receiving post-public hearing after they have been adopted.
- G. Update and discussion on legislation – including licensing of Certified Public Accountants and Bicycle Guide Companies – Chair Woods indicated that she spoke with a Maui public accountant who indicated that there is current legislation regarding off-shore accounting work relating to state licensing issues that would potentially hurt the accountants, and requested that this Board testify against it. Chair Woods spoke to board member Mr. Au about this issue and it was determined that because of the many variables involved, the Board would not intervene at this point in time. In regards to the bicycle guide company bills, Chair Woods is still working on this project and is not yet ready to make any comments. The Regulatory Flexibility Act bill is currently in conference and the only issue in question is whether to have a two-year or five-year existing rule review; she reiterated to the members that the Board prefers a two-year review. The bill relating to procurement regarding the duty to defend the State is in conference. The bill relating to the appropriation of a regulatory boards and commissions administrative assistant did not pass but one position was in fact appropriated.
- H. Update on the Small Business "Bill of Rights" brochure – Chair Woods stated that the Board's task force was handing over responsibility of finishing the Bill of Rights brochure to Mr. Bretschneider. She thanked Mr. Dymond for his hard work up to this point on the brochure. Mr. Bretschneider indicated that he

thought it would be best to wait until the survey was performed by Ward Research before he completed the brochure.

#### **IV. NEW BUSINESS**

- A. Review and discussion of HAR Chapter 15-10, Chapter 20 “Relating to Improvement District 11” (HCDA) – Mr. Stephen Miyamoto, Project Engineer at HCDA, explained that HCDA cancelled the subject contract prior to the start of its construction because funds were not available to pay for an increase in construction costs as a result of necessary design changes. Therefore, Mr. Miyamoto has requested that these rules be repealed. Mr. Handgis recommended that the rules proceed to public hearing; the Board members unanimously concurred.
- B. Review and discussion of HAR Chapter 16-80, “Relating to Electricians and Plumbers” (DCCA) – Ms. Charlene Tamanaha, Executive Officer of the Board of Electricians and Plumbers at DCCA, indicated that along with non-substantive changes, the major change to the rules relates to a provision that specifically describes and clarifies what the degree of supervision should be in regards to licensed electricians and plumbers versus unlicensed electricians and plumbers. Specifically, the proposed amendments clarify that electrical work can be performed by any of the licensed journey workers or supervising electrician categories. Current language only specifies “journeyman electrical” or “supervising electrician” and does not recognize the other electrician categories of industrial, specialty, and maintenance that are equally qualified to do electrical work. Additionally, the amendments clarify that not only an apprentice and electrician’s helper, but also any unlicensed person who performs electrical work must be under the supervision of a licensee in any one of the journey worker electrician or supervision electrician categories. Further, the unlicensed person may only do electrical work that is within the scope of the practice of the supervising licensee. Upon review, Mr. Handgis recommended that the proposed rule amendments proceed to public hearing; the Board members unanimously agreed.
- C. Review and discussion of HAR Chapter 12-46, “Sexual Harassment” (DLIR) – Mr. John Ishihara, Chief Counsel of the Hawaii Civil Rights Commission explained that the current proposed amendments are intended to change the regulations on employer liability for sexual and ancestry harassment by supervisors. The specific changes include the definition of “tangible employment action” and provisions regarding an affirmative defense for employers as well as conduct that constitutes ancestry harassment. Mr. Handgis recommended that the proposed rules proceed to public hearing; the Board members unanimously agreed.
- D. Review of the SBA Office of Advocacy’s “Building a Better Small Business Climate: State Regulatory Flexibility Best Practices Conference” – Chair Woods reminded the members that Ms. Palcovich represented Hawaii at a recent SBA Regulatory Flexibility Act (RFA) conference in Kansas City, Missouri. Upon learning how some of the other states work with their own RFA programs, Ms. Palcovich made the following recommendations, encourage all members to take the SBA’s RFA online training course, encourage regularly scheduled speaker forums throughout the State to educate the small business community about the Board, create a catchy slogan for the Board, and consider developing a small business scorecard where the agencies are rated.
- E. Discussion of upcoming strategic planning session – Chair Woods indicated that she wanted to reschedule the Board’s annual session in July. After much discussion, it was determined that July 18<sup>th</sup>, the date of the regularly scheduled Board meeting would be the best date for most of the members to attend the Board’s annual planning session.

#### **V. DISCUSSION OF RESEARCH SURVEY PROJECT**

Ms. Kayleen Polichetti from Hastings & Pleadwell distributed the company’s work plan for the Board that included parameters on various projects. Ms. Polichetti introduced Tammy Chang from Ward Research, Inc., and explained that Hastings & Pleadwell has done quite a bit of research projects with Ward Research and believes there is great value in doing surveys. Ms. Chang explained that the key objectives of a pre- and post-campaign survey are to measure the effectiveness of a marketing communications campaign and to help guide the planning of the marketing communications campaign. She shared some of the questions that were to be asked in the telephone survey, and the methodology of the work such as the number and length of interviews. Chair Woods explained that the overall objective of this program was to promote public awareness.

**VI. REPORT FROM CHAIR AND BOARD MEMBERS** – Nothing was reported.

**VII. REPORT FROM COMMITTEES** – Nothing was reported.

**VIII. ANNOUNCEMENTS** – Chair Woods introduced and welcomed Mr. Steve Bretschneider back to DBEDT, indicating that he is a very successful marketing executive. Mr. Bretschneider stated that he was delighted to be back and working in public service at the State. Chair Woods also introduced Ms. Sonda Mullen and announced that she is the Board's newest assistant; she thanked Ms. Mullen for her hard work.

**IX. NEXT MEETING** – Wednesday, May 16, 2007, 250 South Hotel Street, Conference Room 410

**X. ADJOURNMENT** – Chair Woods adjourned the meeting at 1:30 p.m.