

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

September 17, 2008

Conference Room 410 - No. 1 Capitol Building, Honolulu, HI

- I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:29 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Donald Dymond
- Richard Schnitzler
- Charles Au
- Peter Yukimura
- Bruce Bucky
- David S. De Luz, Jr.

ABSENT MEMBERS:

- Sharon L. Pang
- Michael Yee
- Dorvin Leis

STAFF: DBEDT Office of the Attorney General
Dori Palcovich Margaret Ahn
Steve Bretschneider
Alicia Cinense

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES**

Approval of the August 20, 2008 board meeting minutes and August 20, 2008 presentation meeting minutes were approved as presented.

III. **OLD BUSINESS**

A. Follow-up, discussion and recommendation of the following:

Memorandum of Agreement between DOA and DLNR regarding non-agricultural park lands program
Chair Woods explained that this item was initiated when this Board first reviewed the Department of Agriculture's (DOA's) Milk rules and was approached by the dairy farmers who testified in front of this Board with problems relating to leasing land for grazing. Because of this testimony, the Board requested the Memorandum of Agreement and the Administrative Rules to review. Mr. De Luz, Jr., disclosed that his family-run company has leases with both the Department of Land and Natural Resources (DLNR) and DOA; Ms. Ahn stated that there did not appear to be a specific and direct financial impact regarding the issues to be discussed. Mr. Schnitzler explained that the Board's interest in requesting these documents is to understand how the rules relate to the availability of Hawaii land for the dairy industry. He began with an overview and background of his assessment and understanding of the rules and the leases, and then posed several questions to the individuals representing the two agencies, Ms. Charlene Unoki, Assistant Administrator in DLNR's Land Division, and Mr. Brian Kau, Administrator in DOA's Agricultural Resource Management Division.

Currently, there are no leases with any of the Hawaii dairy farmers and the process of how one would attempt to lease state Hawaii land was explained. Mr. Schnitzler stated that the rules which established this program are quite reasonable, well written, and the leases are reasonably priced and allow protection for the state and at the same time give flexibility to transfer leases under a variety of conditions, including joint partnerships and individual farmers. Mr. De Luz, Jr. expressed concerns and questions regarding land and its accessibility as it relates to whether there are potential inventories of land to be identified to attract the industry. The difference between conversion and extension of the land leases was explained. Upon discussion, Chair Woods thanked Ms. Unoki and Mr. Kau for attending the meeting and providing the members with the requested information. Ms. Jeri Kahana, Manager of DOA's Commodities Branch in the Quality Assurance Division, will pass along the information to the dairy farmers.

1. HAR Chapter 4-158, "Non-Agricultural Lands Program Rules" – This item is incorporation in Section 1.

- B.** Review of post public hearing statement of HAR Chapter 4-60-10, "Minimum Prices in the Hawaii Milk Shed" (DOA) – Ms. Jeri Kahana explained that she approached the Hawaii dairy farmers and producers regarding the establishment of a formula by which they may get paid. Once a formula has been developed, the Board of Agriculture must review and approve it. If approved, a monthly change would be possible. Mr. Schnitzler recommended that the proposed rule amendments proceed to the Governor for adoption; the Board unanimously agreed.

IV. NEW BUSINESS

- A.** Review and discussion of HAR Chapter 16-114, "Relating to Real Estate Appraisers" (DCCA) – Mr. Alan Taniguchi, Executive Officer at DCCA's Professional and Vocational Licensing Division, indicated that the proposed changes were approved by Congress and precipitated by the real estate problems that surfaced in the 1980's. One of the major rule changes is that an applicant for a real estate appraisal license must possess and provide proof of a college degree from an accredited college, university or its equivalent. Mr. Taniguchi noted that there are currently over 520 licensed real estate appraisers in Hawaii, although some are inactive. In addition, that number goes up and down as this industry is very cyclical. Mr. Yukimura recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.
- B.** Review and discussion of proposed amendments to HAR Chapter 16-170, "Disclosure of Material Transactions" (DCCA) – Mr. Mark Morita, Staff Attorney from DCCA's Insurance Division, explained that the proposed rule amendments are meant to create parity. The rules create reporting requirements for life insurance companies when undertaking significant reinsurance transactions that affect in-force policies. The changes are mainly housekeeping measures and will allow DCCA to comply with the National Association of Insurance Commissioner's accreditation standards because life insurance business are now included in the rules. If this is not done, the life insurance companies' accreditation may be in jeopardy. Each quarter every life insurance company is required to report any material transactions. Mr. De Luz, Jr., recommended that the rules proceed to public hearing; the Board unanimously concurred.
- C.** Review and discussion of proposed amendments, "Relating to the Annotations Table 100-19A of the Kauai Water System Standards 2002" (County of Kauai) – Mr. Yukimura stated that the Kauai Department of Water's proposed rule amendments merely substitute an affirmative action for a negative action by the Fire Chief in reviewing the sufficiency of the applicants' fire mitigation measures. Mr. Yukimura recommended that the proposed rule amendment proceed to public hearing; the Board unanimously agreed.
- D.** Review and discussion of proposed amendments to HAR Chapter 12-10, "Workers' Compensation," HAR Chapter 12-14, "Vocational Rehabilitation," HAR Chapter 12-15, "Workers' Compensation Medical Fee Schedule" & Exhibit A "Workers' Compensation Supplemental Medical Fee Schedule" (DLIR) - Mr. Gary Hamada, Administrator at DLIR's Disability Compensation Division, explained that many of the proposed changes are due to the legislature requiring that DLIR codify many of the department's existing rules pursuant to Act 11, SLH. Another change will modify the provision to expedite the processing of workers' compensation claims; the latter involves temporary disability benefits. He explained that his division has found that parties in a workers' compensation claim currently do not move to resolve the issues as quickly as they should. Therefore, the rules will incorporate timelines so that the process for resolving a claim is done more efficiently. Currently, 10,000 decisions are heard each year, of which, 7,000 are settlements. Even so, Mr. Hamada explained that about 2,500 hearings are conducted, which is too many and becomes ineffective. Another proposed change to the rules adds codes to the medical fee schedule, which are tied into the Medicare fee schedule. DLIR has the ability to adjust a fee if the present charges in the community are higher than those offered via Medicare; this was determined by surveys that were sent throughout the industry.

Mr. De Luz, Jr., noted that the proposal reflects a lot of changes whereby many new codes are added. Mr. Hamada explained that the physicians are familiar with the codes as they are not new codes and common to the industry. He also explained the process for when there is a disputed claim regarding the amount of the billing and how DLIR will intervene in the process; sometimes a physician may in fact use an incorrect code. After a series of questions and answers, Mr. De Luz, Jr., recommended that the proposed amendments proceed to public hearing; the Board unanimously agreed.

- E. Review, discussion and recommendation of the Board's Yearly Annual Plan proposed to DBEDT – Chair Woods explained that the yearly annual plan is an internal governmental process that is required by all DBEDT program managers. It was noted that the Board is short one Kauai representative and although there have been diligent efforts to recruit two individuals from Kauai as board members neither have submitted the required applications to the Governor's Office. Upon review, Mr. De Luz, Jr., recommended that the yearly annual plan be approved as presented; the Board unanimously agreed.

V. **Discussion and Update on the Board's 2009 Goals:**

- A. RegAlert Project – Chair Woods officially announced the release of this Board's RegAlert project, and thanked Mr. Bretschneider for his assistance with the Media Advisor. She explained the RegAlert process and noted that the following organizations will receive the Board's alerts – Hawaii Chamber of Commerce, Small Business Hawaii, National Federation of Independent Business, Maui Chamber of Commerce, Kauai Chamber of Commerce, Hawaii Island Chamber of Commerce, and Kona-Kohala Chamber of Commerce. She believes that this project will help the Board achieve its goal of support and advocacy within the small business community.

Mr. Bretschneider congratulated the Board members and noted that both the Administration and DBEDT view this project as another step in making Hawaii a friendlier place to do business. The Administration is very pleased that over the last six years the reputation of Hawaii has improved dramatically in this area and this Board has been a very important part of that. He added that from the early stages of the Lingle Administration, this Board was encouraged along with the State agencies to bring rules to this Board while complying with the law. Further, he stated that this Board has taken a very active role in making sure that businesses are given their fair share. Mr. Curtis Lum, staff writer at the Honolulu Advertiser, asked questions regarding the Board's overall purview, its goals, and the RegAlert process.

It was discussed that because HAR Chapter 11-81, "Smoking in the Workplace" will be re-presented to this Board from the Department of Health, this will be the first RegAlert to be sent to the small business organizations.

- B. Public Outreach Project – Chair Woods updated the board members on the presentations made and are expected to be made for the National Federation of Independent Business as well as other organizations. The Howard Dicus shows, both radio and television, and Small Business Hawaii are two venues that the Board members discussed as to future outreach projects.
- C. Working Group for Act 230 – Bill of Rights/Impact Statement – Mr. Dymond explained that the first meeting of this group went well. It was broken into two groups, one that concentrated on section 201M-7 and the other group that concentrated on the remaining sections of the statute. He believes the statute is well-written, and although he read the statute over a number of times, he is only proposing at this point in time to make minor changes to a few sections. Mr. De Luz, Jr., shared with the members some of the changes to the statute that the group that he was on will be proposing. It was noted that legislation would be required for any changes to be made. The next meeting of the working group is scheduled for October 1st. It was suggested by Chair Woods and concurred with the members that any final proposal made by the working group would be presented to this Board for review.

VI. **REPORT FROM CHAIR**

- A. Discussion of Act 228, "Relating to Historic Preservation" – Chair Woods was approached by a number of individuals displeased with this new Act. She reviewed a portion of the requirements in the Act that required that if one is working on a historic building, a permit will not be granted unless original black and white pictures of the building are submitted. She explained that In Maui, an inspector is required to inspect the building before the permitting process, which causes a long delay. Ultimately, this Act is impacting upon small businesses so she has a call into the Governor's Relations Representative on the State Board of Realtors to see what its position is. In any event, Chair Woods is preliminarily looking into this Act, and if necessary, will bring it back to this Board for review.

- B. Discussion of holiday social – It was suggested that a holiday social will likely occur on December 2, 2008, the night before the regularly scheduled Board meeting. Mr. Dymond will determine if this date fits in his schedule; if so, the social could potentially take place at his house.

VII. REPORT FROM BOARD MEMBERS AND COMMITTEES:

VIII. ANNOUNCEMENTS: Nothing was discussed.

IX. NEXT MEETING – Wednesday, October 15, 2008, 250 South Hotel Street, Honolulu, HI, Conference Room 410, 10:30 a.m.

X. ADJOURNMENT – Chair Woods adjourned the meeting at 12:45 p.m.