

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

February 10, 2004

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

CALL TO ORDER: Vice Chair Rietow called the meeting to order at 11:18 a.m., with a quorum present.

MEMBERS PRESENT:

- David Rietow
- Edward MacDowell
- Brian Zinn
- Dorvin Leis
- Robert Speers, Ph.D.
- Denise Walker
- Joyce Edwards

ABSENT MEMBERS:

- Lynne Woods
- Phyllis Shea
- Jeanette Chang
- Al Inoue

STAFF:

DBEDT:

Thomas Smyth
Dori Palcovich
Shawn Pelley

Office of the Attorney General

John Chang

GUESTS: Peter Young, Chairperson, Board of Land and Natural Resources (BLNR)
Mark Willman, Owner, Planet Ocean Watersports
Sean Hao, Reporter, The Honolulu Advertiser
Aileen Hiramatsu, Administrator, Med-QUEST Division, Department of Human Services (DHS)
Helene Jo, Performance Management Coordinator, Adult Mental Health Division, Department of Health (DOH)
Dale Evans, President, Charlie's Taxi
Darci Evans, Assistant General Manager, Charlie's Taxi
Katsumi Tanaka, CEO, E Noa Corporation

WORKING LUNCH AS THE MEETING PROGRESSED

II. APPROVAL OF MINUTES: Minutes of the January 28, 2004 meeting were amended and approved.

III. PUBLIC COMMENTARY: Public commentary is included with each agenda topic discussed.

Mr. Peter Young, Chairperson, BLNR, discussed his professional background, the divisions that he oversees within the Department of Land and Natural Resources (DLNR), DLNR's commercial activity policies regarding State owned and managed lands and waters, and new projects DLNR is currently working on. Also briefly mentioned was the newly adopted HAR Chapter 13-38, "Wai'Opae Tidepools Marine Life Conservation District (MLCD)." Mr. Young indicated that he recused himself from voting on these rules since he previously worked for Hawaii County where the MLCD is located. He added that with BLNR's and DLNR's responsibilities to the State's environment, he is comfortable with any decisions that are made.

Mr. Zinn discussed the small business impact statement completed by DLNR's Aquatic Resources Division for HAR Chapter 13-34, "Pupukea Marine Life Conservation District, Oahu." He indicated that there appears to be a discrepancy in the information provided on DLNR's main website, which indicates there is a small business impact statement, and the information provided by DLNR to the Board indicating that there is no small business impact. He further stated concern when small business impact statements are submitted by DLNR for this Board's review that the statements do not include divisions within DLNR that may or may not show a small business impact. For this reason, he has some reservations about supporting the rules.

Mr. Young discussed the rule making process, indicating that DLNR wants to make rules that are easy to understand. He also appreciates the work that this Board is doing and has done, and will continue to work with this Board. Prior to his leaving, Ms. Walker requested a copy of the studies related to the "Wai'Opae Tidepools Marine Life Conservation District." Mr. Young said he would provide them to the Board for review at a later date.

Ms. Walker recommended that the Board send a letter to Mr. Young requesting the following: 1) the scientific data acquired from the study on the Wai'Opae Tidepools Marine Life Conservation District; 2) how the claim was weighed and determined to protect a resource during an evaluation process; and 3) exactly where, in the rule-making process, Mr. Young believes this Board needs to be involved. The Board unanimously agreed.

After Mr. Young left the meeting, Mr. Willman, Owner, Planet Ocean Watersports, thanked the Board for its support. Among other concerns, he expressed his concern with the letter received from DLNR regarding the studies conducted on the Wai'Opae Tidepools Marine Life Conservation District.

IV. OLD BUSINESS:

- A.** Review and discussion of post public hearing statement on HAR Chapter 13-232-43, "Construction or Improvements of Structures" (DLNR) – Mr. Zinn indicated that it appears DLNR previously ignored the recommendation from the Board. He also noted that the notification process DLNR adopted is very inefficient. Mr. Zinn recommended that the Board not support adoption of the administrative rules in their present form as the views and proposed recommendations previously made by the Board and the Ocean Tourism Coalition for methods of reducing the impact on small business were not endorsed by DLNR, and that the Board not concur with the fee increase of 50%. The Board unanimously agreed.
- B.** Review and discussion of post public hearing statement on HAR Chapter 11-62, "Wastewater Systems" (DOH) – Ms. Walker recommended that the Board support the rules as presented for adoption and that the Board send a letter to DOH suggesting that they begin review and implementation of the Agency's water reclamation programs.
- C.** Review and discussion of post public hearing statement on HAR Chapter 17-1737 and 17-1739.1, under Subtitle 12, Med-QUEST Division (DHS) – Ms. Aileen Hiramatsu, Administrator, Med-QUEST Division, DHS, discussed and answered questions regarding the amendments to the preferred drug list, the preauthorization process, the classification of drugs, and the impact on small business. The changes would encourage clinical effectiveness and save the State an estimated \$8 million once the drugs are classified. Dr. Speers indicated that the amendments not only add a longer processing time but also cause additional paperwork. Ms. Hiramatsu stated that the budget consists of a fee for service and the QUEST programs (HMSA, Kaiser, and Aloha Care). Ms. Walker recommended supporting adoption of the rules, with reservations, stipulating that DHS keep an open line of communication with all those physicians and pharmacists that will be affected by the rules, and further, that DHS take into consideration any negative comments and feedback provided by these small businesses. The Board unanimously agreed.
- C.** Review and discussion of HAR Chapter 17-1705, 17-1737, 17-1739.1, and 17-1740.1, under Subtitle 12, Med-QUEST Division (DHS) – Ms. Helene Jo, Performance Management Coordinator, Adult Mental Health Division, DOH, discussed the Agency's claims and prior authorization processes, and explained that the changes will expedite the claims for providers. Since June 2003, numerous meetings were held with stakeholders. Their primary concern was with staffing issues. Much discussion ensued. Dr. Speers indicated that there will be a substantial negative impact on the affected businesses regarding additional costs and added paperwork. He recommended that the Board support the amended rules, with reservations, and that notice of public hearing be provided to all those businesses directly affected by the amendments. The Board unanimously agreed.

Within the discussion, Ms. Dale Evans, President, Charlie's Taxi, explained that taxicab companies will not participate as a transport provider for DHS because the agency is insensitive to the small business providers. This largely stems from DHS's refusal to assist in compensating

or reimbursing the taxi companies for cleaning services when, in the past, some passengers who are unable to control their body fluids cause a mess inside the vehicles.

- E. Review and discussion of HAR Chapter 19-133.2, "Periodic Inspection of Vehicles" (DOT) – Ms. Walker did not recommend supporting these rules until the agency submits testimony from small businesses impacted by the rules. Deferred until the March board meeting.
- F. Review and discussion of HAR Chapter 19-133.5, "Suspension or Revocation of an Official Inspection Station or Inspectors Certification" (DOT) – Ms. Walker did not recommend supporting these rules until the agency submits testimony from small businesses impacted by the rules. Deferred until the March board meeting.
- G. Report from Denise Walker on transportation issues: limousines and taxicabs – Ms. Dale Evans discussed her concerns with City, State and Federal transportation laws. Because these laws were adopted 50 to 60 years ago, they are antiquated in relation to today's standards, thus, preventing taxi companies from performing adequate service to their customers. She requested that the Board provide taxi companies with assistance with the over-regulated federal and state policies and laws, as it is time for taxi customers to be provided proper customer service.

Mr. Tanaka spoke about private transportation companies, stating the following issues: 1) Parts of the City bus program constitute tour operations that assault the realm of private tour operations; 2) The only busses that are permitted into Hanauma Bay are city busses; those belonging to private companies have been ostracized; 3) During the recent strike, due to the existence of private sector ground transportation, inconveniences were greatly reduced reminding people that private sector is capable of carrying local residents as well as visitors; 4) Much of the city's plans for the Waikiki BRT services are likely to result in providing subsidized services for visitors, thus, once again harming private operators; 5) While "The Bus" may receive accolades, it is important to realize the amount of ever-rising tax burdens placed on local residents; and 6) Private operators believe that a subsidized municipal bus program should devote more attention and resources for local residents and curb the attraction of tourists as an expanding customer base.

Ms. Walker recommended that the Board send letters to DOT, the Public Utilities Commission and the City and County of Honolulu requesting implementation of new administrative rules and for DOT to provide reasons if the request is denied. She also recommended that the Board request small business impact statements from all those agencies involved.

- H. Update of Legislative Items – Dr. Speers informed the members that the "Small Business Bill of Rights" bills, HB 2653, SB 3058 and SB 2687, are still alive but with no hearings scheduled. Mr. Smyth discussed the status of each bill and indicated that the hearings may be scheduled in the next week or two. He also distributed a list of bills in the Governor's bill package and made reference to some of those bills that specifically relate to small business.
- I. Update of presentations to Small Business Groups – Nothing was reported.

V. NEW BUSINESS:

- A. Review and discussion of proposed amendments to HAR Chapter 19-132, "Approval and Revocation of Approval for the Display, Sale, and Use of Vehicle Equipment (DOT) – Ms. Walker reviewed and recommended supporting the proposed amendments. The Board unanimously agreed.

VI. REPORTS FROM COMMITTEES – Nothing was reported.

VII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES

1. HAR Chapter 13-34, "Pupukea Marine Life Conservation District, Oahu" (DLNR) – After review, Mr. Zinn was in support of the rules.
2. HAR Chapter 3-20, "Rules Governing the Public Use of the State Archives and Records Center and Schedule of Fees" (DAGS) – Mr. Leis supported the rules, indicating that they were not burdensome to small business.

3. HAR Chapter 19-132, "Approval and Revocation of Approval for the Display, Sale, and Use of Vehicle Equipment" (DOT) – Deferred until the March board meeting.
4. HAR Chapter 19-133.2, "Periodic Inspection of Vehicles" (DOT) – Deferred until the March board meeting.
5. Chapter 19-133.5, "Suspension or Revocation of an Official Inspection Station or Inspectors Certification" (DOT) – Deferred until the March board meeting.

VIII. REPORTS FROM THE CHAIR – Nothing was reported.

IX. REPORTS AND UPDATES FROM BOARD MEMBERS - Nothing was reported.

X. POLICIES AND PROCEDURES: Nothing was reported.

XI. ANNOUNCEMENTS: Nothing was reported.

XII. NEXT MEETING: Tuesday, March 9, 2004; No. 1 Capitol District Building, room 410.

XIII. ADJOURNMENT: Vice Chair Rietow adjourned the meeting at 2:33 p.m.