

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 5, 2011

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

CALL TO ORDER: Chair Pang called the meeting to order at 10:32 a.m. with a quorum present.

MEMBERS PRESENT:

- Sharon L. Pang
- Charles Au
- Richard Schnitzler
- Bruce Bucky
- David De Luz, Jr.
- Howard West
- Roland Sagum III
- Peter Yukimura

ABSENT MEMBERS:

- None

STAFF: DBEDT
Mary Alice Evans
Dori Palcovich

Office of the Attorney General
Margaret Ahn

APPROVAL OF AUGUST 24, 2011 MINUTES

Vice Chair Au made a motion to accept the August 24, 2011 minutes as amended; Mr. Schnitzler seconded the motion and the Board members unanimously affirmed the motion. (Mr. Sagum's vote was not counted pending confirmation of board eligibility.)

OLD BUSINESS

- A. Post public hearing statement on proposed repeal of HAR Chapter 15-22 and adoption of Chapter 15-217, "Relating to the Kakaako Community Development District Mauka Area," which proposes to enhance the public areas, promote economic development and incorporate best practices in energy and environmental sustainability, and Adoption of Chapter 218, "Relating to Kakaako Reserved Housing," which proposes to require new residential projects on lots measuring at least 20,000 square feet to provide reserved housing (Department of Business, Economic Development and Tourism (DBEDT) / Hawaii Community Development Authority (HCDA))

Mr. Deepak Neupane, HCDA's Director of Planning and Development provided the members with a presentation of the Kakaako Community Development District Plan and Rule Amendment, he has been working on the plan since 2005. He explained that in addition to the two formal public hearings, additional meetings within the community were held on the subject rules. The first public hearing was held on May 18, 2011, where fifteen people testified, fourteen provided comments and concerns, and one was a small business owner who testified in support of the proposed rules. The second public hearing was held on

September 14, 2011, where eleven people testified, seven provided comments and concerns, and no small business owners testified. Mr. Neupane summarized the public's comments, the requested revisions, and HCDA's responses. Actual revisions to the rules included adding a new chapter to the reserved housing rules, revising the tower floor ratio, allowing deviation of tower orientation through a variance process, and many others. Upon Mr. Neupane's presentation, the members sought answers to questions specific to these rules; among the questions, Vice Chair Au asked what concerns were made during the public hearings that had not been incorporated into the final rules.

Upon review, Mr. Yukimura made a motion to proceed to the Governor for adoption of the rules; Mr. De Luz, Jr., seconded the motion and the Board members unanimously affirmed the motion. (Mr. Sagum's vote was not counted pending confirmation of board eligibility.)

B. Review and discussion of Ms. Stacie Thorlakson's application to fill Maui Board Position

Ms. Stacie Thorlakson was welcomed to the meeting as a prospective member to fill one of the vacant Maui board member slots. Chair Pang noted that the members previously reviewed Ms. Thorlakson's resume and application at the August meeting but wanted to meet with her as they have done with prior candidates.

Ms. Thorlakson explained she is an entrepreneur and sole employee in her business, Thorlakson Communications, which performs business consulting and public relations. Many of the clients are non-profits. Ms. Thorlakson worked with Lahaina Bypass Now from the beginning stages; it is now a successful business. She works with very small businesses that do not have a website or a marketing plan and assists them in launching their businesses with strategic planning; she explained that volunteers from the business community will assist when working with start-up companies.

Working with the Maui Chamber of Commerce for seven years, Ms. Thorlakson's responsibilities included business advocacy where she had a staff of four. In her capacity as the Maui Chamber President, she held many business seminars, and established both educational committees and a small business development committee. Having a radio show and advocating for small business, Ms. Thorlakson believes she is able to reach out to the Maui business community and bring back concerns to this Board regarding administrative rules, ordinances, etc. She explained that she is a consultant for Akamai Business, which promotes small business on KAO1, 1110 AM and 96.7 FM radio. She also believes that her expertise lies in reaching out to the business community, taking a business issue and then resolving the issue to the business' advantage.

Chair Pang thanked Ms. Thorlakson, and explained that the members will discuss her application at a later time and will then get back to her.

NEW BUSINESS

- A. Repeal of HAR Chapter 15-16 and adoption of Chapter 15-219, "Relating to Rules of Practice and Procedure," which updates the procedures that govern HCDA in order to effectuate the purpose of Chapter 206E, HRS, and secure the just and efficient determination of every proceeding (DBEDT/ HCDA)**

Mr. Deepak Neupane, HCDA's Director of Planning and Development, explained that the rule proposals reflect statutory changes regarding practices and procedures that repeal the existing rule and adopt a new rule. Because certain existing provisions have been deemed outdated, revisions are needed to provide clear procedures for every proceeding administered by HCDA. Both substantive and non-substantive changes are proposed. Substantive changes include not requiring an official public hearing in certain circumstances because the HCDA board is considered a public board and is required to follow Sunshine Law. However, where the statute requires a public hearing, there is no choice in the matter that a public hearing will be required. He also explained that the proposed rules have a subchapter on contested case hearings where previously there were none.

Upon review, Mr. West made a motion to proceed to public hearing; Mr. Bucky seconded the motion and the Board members unanimously affirmed the motion. (Mr. Sagum's vote was not counted pending confirmation of board eligibility.)

- B. HAR Chapter 16-169, "Actuarial Opinion and Memorandum" Subchapter 3, Sections 16-169-10 through 16-169-13, proposes to codify the National Association of Insurance Commissioners requirements for all property and casualty insurance company pertaining the actuarial opinions and actuarial opinion summaries, and Sections 16-169-16 through 16-169-17 uses language pertaining to the insurance companies that is consistent with the terms utilized in the Insurance Code (Department of Commerce and Consumer Affairs (DCCA))**

Ms. Christine Young, Staff Attorney at DCCA's Insurance Division, introduced DCCA's presenters indicating that she would be available for questions from the members. Mr. Lance Hirano, Analyst at DCCA's Insurance Division, stated that the proposed rule amendments create reporting requirements and accountability standards of the State of Hawaii domiciled insurance companies when they undertake actuarial studies to value the liability in their in-force policies and claims. Specifically, the changes, which are not intended to adversely affect small business, include codifying the National Association of Insurance Commissioners requirements for all property and casualty insurance companies that pertain to actuarial opinions and actuarial opinion summaries; another change uses language that pertains to the insurance companies consistent with the terms utilized in the Insurance Code. Several questions ensued among the board members for clarification of the rules.

Upon review, Mr. De Luz, Jr., made a motion to proceed to public hearing, and after public hearing although DCCA need not physically come back to this Board, it was requested that a small business statement after public hearing is submitted to the Board; Vice Chair Au seconded the motion and the Board members unanimously affirmed the motion. (Mr. Sagum's vote was not counted pending confirmation of board eligibility.)

- C. HAR Chapter 16-171, "Miscellaneous Insurance Rules," Sections 16-171-307 and 16-171-308, removes the term "fraternal benefit society producer," Section 16-171-309, seeks to clarify the fulfillment of the continuing education requirement by insurance produces operating as a business entity, Repeal of Section 16-171-313, which is consistent with amendments to Chapter 431, HRS, that eliminated the bond and errors and omission insurance policy as a condition of licensure, Repeal of Section 16-171-315, which is consistent with model code language relating to reinsurance intermediaries that is offered**

by the National Association of Insurance Commissioners, adoption of Section 16-171-318, requires licensees to provide electronic mail addresses at which they shall receive notices and communications from the Insurance Division, Repeal of Subchapter 8, Sections 16-171-801 through 16-171-808, as the enabling statutes relating to Life Settlements Sunset (DCCA)

Ms. Christine Young, Staff Attorney at DCCA's Insurance Division, stated that the rule changes were housekeeping and mechanical in nature; it was not anticipated that small business would be adversely affected by the amendments. In regards to the section that proposes to eliminate the bond and errors and omission insurance policy as a condition of licensure, she explained that it reflects a statutory change, and it is not a condition of licensure but rather a contractual requirement between the insured and the managing general agent.

Upon review, Mr. De Luz, Jr., made a motion to proceed to public hearing, and after public hearing, although DCCA need not physically come back to this Board, a small business statement after public hearing is submitted to the Board; Mr. West seconded the motion and the Board members unanimously affirmed the motion. (Mr. Sagum's vote was not counted pending confirmation of board eligibility.)

- D.** HAR Chapter 16-53, "Relating to Condominium Property Regimes Fees," clarifies fees imposed for registering condominium projects with the Real Estate Commission prior to a developer's sale of units to the public, adopts fees relating to processing of amendments to a developer's public report, annual reports and other documents pursuant to the new condominium law, increases a condominium unit owner's contribution to the statutorily created Condominium Education Trust Fund (CETF), and increases a developer's contribution made to the CETF (DCCA)

Ms. Cynthia Yee, Senior Condominium Specialist at DCCA's Professional and Vocational Licensing Division stated that in her capacity as a condominium specialist she works directly with the Real Estate Commissioner; she explained the history and purpose of the recommended rule changes. Specifically, the proposed amendments are intended to clarify the fees imposed for registering condominium projects with the Real Estate Commission prior to the developer's sale of apartment/units in the project to the public. The rules also adopt fees relating to the processing of amendments to a developer's public report, annual reports, as well as other documents pursuant to the new condominium law. In addition, the amendments increase a developer's and a condominium apartment/unit owner's contribution to the statutorily created condominium education trust fund (CETF). She stated that DCCA has continued to solicit and receive feedback from the stakeholders; to date, responses were received from mostly non-business entities as well as one developer who was in support of the rule changes.

Many questions ensued regarding the increase in fees as well as other clarifications. Mr. De Luz, Jr., questioned the justification of the fee increases versus the impact on the small businesses and the correlation in the budgeted operational services delivered by DCCA; he also questioned how the "reserves" were utilized. Ms. Yee responded that the CETF is audited independently; a recent audit has shown that the funds have been used responsibly. Although initially there were not many expenditures, beginning in 2008, DCCA began cutting

back on expenses. Each year a budget is submitted to DCCA's director as well as the State legislature for review. It was also noted that DCCA is moving towards more paperless operations to cut costs. Chair Pang expressed that the rule changes would have small business impact despite the fact that the fees are economically necessary. Further, this Board anticipates that there will be feedback from both the condominium owners and the developers.

Upon review, Mr. Schnitzler made a motion to proceed to public hearing and to return back to this Board after public hearing; Mr. Yukimura seconded the motion and the Board members unanimously affirmed the motion. (Mr. Sagum's vote was not counted pending confirmation of board eligibility.)

BOARD ADMINISTRATIVE MATTERS

- A. Introduction of Deputy Director Mary Alice Evans** – Chair Pang introduced DBEDT Deputy Director Mary Alice Evans to the board members. Deputy Director Evans stated that she appreciated all the work that the Board members are doing in carrying out the statute and the administrative directive. She hopes that the members understand that as a result of the reduction-in-force two years ago, DBEDT had to make some changes in staffing. Even though there is less staff to go around, Ms. Palcovich will work with this board under the Director's Office.
- B. Re-approval of past Board Minutes** – The members reviewed the following minutes:
- a. July 21, 2010
 - b. January 18, 2011
- Upon review, Mr. Bucky made a motion to approve the January 21, 2010, and January 18, 2011 minutes as amended; Vice Chair seconded the motion and the Board members unanimously affirmed the motion. (Mr. Sagum's vote was not counted pending confirmation of board eligibility.)
- C. Review and approval of 2010 Annual Report Summary** – This agenda item was deferred until the next board meeting.
- D. Review and approval of 201M-7 "Periodic Review; Evaluation Report" for 2010** – This agenda item was deferred until the next board meeting.
- E. 201M-7 "Periodic Review; Evaluation Report" for 2012** – This agenda item was deferred until the next board meeting.
- F. Scheduled 2012 Monthly Board Meetings** – Board members reviewed the tentative 2012 board meeting schedule. Chair Pang requested that the members notify Ms. Palcovich as soon as possible if they are unable to attend a scheduled board meeting as a result of the difficult time the board has had this year in meeting quorum. She expects that more rules impacting small business will be brought forth to this Board now that Ms. Palcovich is on board and will be working with and educating the State agencies.
- G. Administrative Directive 09-01; Review and approval of Board's procedure for evaluation of the rules for small business impact** – Chair Pang explained that a practice has been in existence when a proposed rule is brought forth to this Board; if the chair believes further

review is warranted, the board “discussion leader” will then look at that rule. During the discussion, it was noted that all rules that are directly addressed to this board come to this board and all rules that come to DBEDT are reviewed by DBEDT staff. Much discussion ensued regarding the rule review process based on past practices, current practices, knowledge-base, and relevant adherence to 201M, HRS, and Administrative Directive 09-01. Attendees at the meeting expressed their personal opinions and beliefs as to how the process is perceived. Chair Pang stated that because of past practices over the past two years, she would like to continue to review all rules that go to DBEDT whether there is small business impact or not.

REPORT FROM CHAIR - None

REPORT FROM BOARD MEMBERS – Mr. Sagum indicated that he may be required to resign from this Board due to off-sight matters. Chair Pang explained that because Mr. Sagum has accepted a federal position at Barking Sands in Kauai, according to this Board’s statute, he becomes ineligible to remain as a board member. Mr. Sagum is working with his attorney to explore possible exemptions and will return with the outcome.

ANNOUNCEMENTS - None

NEXT MEETING – Scheduled for Wednesday, December 7, 2011, 250 South Hotel Street, Honolulu, HI, Room 436.

ADJOURNMENT – The meeting adjourned at 1:10 pm.