

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

May 17, 2006

Leiopapa A. Kamehameha Building 235 South Beretania Street – 6th Floor Conference Room

I. **CALL TO ORDER:** Second Vice Chair Pang called the meeting to order at 10:37 a.m., with a quorum present.

MEMBERS PRESENT:

- Sharon L. Pang
- Jeanette O. Chang
- Michael Yee
- Dorvin Leis
- Donald Dymond
- Charles Au

ABSENT MEMBERS:

- Lynne Woods
- George Handgis

STAFF:

DBEDT

Dori Palcovich
Mike Norris

Office of the Attorney General

Margaret Ahn

GUESTS:

Edward Cruickshank, Director, Office of Veterans' Services, Department of Defense (DOD)
Jeri Kahana, Acting Administrator, Quality Assurance Division, Department of Agriculture (DOA)
Jeff Conners, Director, Norwegian Cruise Line
Ross Smith, Property Manager, Airports Division, Department of Transportation (DOT)
Patrick Shaw, Consultant, Northwest Cruise Ship Association
Scott Cunningham, Honolulu Harbor Master, Harbors Division, DOT
Francis Oishi, Program Manager, Department of Aquatic Resources, Department of Land and Natural Resources (DLNR)
Edward McCain, Manager, Marine Operations, Hawaiian Tug & Barge, Young Brothers
Ed Enos, Captain, Hawaii Pilots Association
Tom Heberle, Captain, Hawaii Pilots Association
Linda Rosehill, Owner, Rosehill & Associates
Scott Moncrief, Private Citizen
Tony Costa, Private Citizen, Hawaii Near Shore Fisheries
Lisa Kikuta, Researcher, Public Utilities Commission (PUC)
Richard VanDrunen, Engineer, PUC
Violetta Arnobit, Owner, Ace Medical
Dale Evans, CEO and President, Charley's Taxi

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the April 18, 2006 Board meeting were approved as presented.

III. **INTRODUCTION OF NEW BOARD MEMBER AND AGENCY ASSIGNMENT:** Second Vice Chair Pang explained that Mr. Richard Schnitzler, the Board's newest member, was unable to attend the meeting. He comes highly recommended by former Board member, Ms. Noelani Whittington, and brings a significant amount of business experience. He has been president of Big Island-based Hamakua Macadamia Nut Company since 1992. He will be assigned as the Board's discussion leader to DOA and DLNR.

IV. **PUBLIC TESTIMONY:** Public testimony is included with each agenda topic discussed.

V. **OLD BUSINESS**

A. Review and discussion of HAR Chapter 19-42, "Vessel and Harbor Controls" (DOT) – Mr. Scott Cunningham, Honolulu Harbor Master, Harbors Division, discussed the history of these rules, but explained they were currently being re-drafted. Since their initial development, a number of

meetings were held with Northwest Cruise Association and the Pilot's Association which resulted in several modifications to the initial draft rules. While the amendments are mostly intended to mandate safe requirements within all the ports, the issues currently being discussed and needing resolution relate to the large cruise ships and the Port of Hilo; that there appears to be a "meeting of the minds" with the Ports of Honolulu, Nawiliwili, and Kahului. Because Hilo is somewhat of a benign port, it has one of the tightest turning basins, so there are some concerns that address the maneuverability of the larger vessels. He explained that one measure, as a possible exemption for the Port of Hilo, would be a "no tug" option. Much discussion ensued.

Mr. Edward McCain, Manager, Marine Operations, Hawaiian Tug & Barge, Young Brothers, clarified some of the questions posed by the members, explaining that a tug boat is utilized for three or four calls during the week; the tariff rate on the neighbor islands is \$5,600 for the first hour and includes "positioning costs" (i.e., crew costs). The actual cost of a tug boat is between \$4 to \$7 million, depending on the horse power and the type of technology employed. He was very informative and discussed the utilization of tug boats in Hawaii.

Captain Tom Heberle of the Hawaii Pilots Association indicated that there are additional points in the rules that need to be discussed and ironed out. He explained that when evaluating tug requirements for vessel movement, there are only two reasons for utilizing a tug boat - safe placement of the ship to the dock, and safeguards in the event of an emergency. He also explained the difference in cargo ships versus cruise lines.

Captain Ed Enos, testifying as a pilot, explained that he was part of the formulation of these rules in 1996. One of the concerns discussed at that time was spreading the cost of utilizing a tug boat in any particular port; thus - if one sector of the industry is given a waiver then the few people that come into port will have to bear the whole cost of that tug, which ultimately reverts back onto the consumer. He explained that this was precisely the problem that was foreseen in 1996.

Captain Jeff Conners, Director of Norwegian Cruise Line, expressed that Mr. Cunningham fairly presented the concerns between the tugboat industry and the pilots association, and that they will continue to negotiate with DOT for a reasonable and agreeable outcome regarding the issue of a tugboat in Hilo. He noted that these issues at hand are marine safety issues and not small business issues.

Second Vice Chair Pang indicated there is significant depth in the issues presented that do not appear to have an "easy fix" for compromise. Upon hearing all the testimony, the rules were deferred until the June board meeting when Mr. Cunningham will present modifications to the rules.

VI. NEW BUSINESS

- A.** Review and discussion of HAR Chapter 13-75, "Rules Regulating the Possession and Use of Certain Fishing Gear" (DLNR) – Mr. Francis Oishi, Program Manager at the Department of Aquatic Resources, explained that the proposed rule amendments would add requirements and restrictions to fishing by using lay gill nets. Specifically, the amendments will require the registration of all lay gill nets, limit the maximum dimensions of lay gill nets, restrict the fishing times, and require attendance and inspection of nets when fished. Other amendments include allowing no more than four hours of fishing time in a 24-hour period of one net per person per day, limit the use of lay gill nets to one net at any time, prohibit the use of lay gill nets in streams, and prohibit gill net use at night. Additional amendments define affected species, specify penalty provisions, and also ban the use of lay gill nets in certain waters around the State. Questions and answers ensued.

Mr. Tony Costa explained that he was testifying on behalf of the Hawaii Near Shore Fisheries, a loosely organized yet tight knit group of inner shore fishers. He is director of foreign sales for Pacific Ocean Producers which sells fishing supplies, and was also a fisherman for several years. He discussed the history of the proposed amendments which began several years ago; stating that there is absolutely no support of a net ban except within a small group of people or within a few scattered environmental groups. He further explained that in 1997 to 1998 he was a member of the gill net task force that consisted of fifty percent net fishers and fifty percent lay

people who were opposed to net fishing. After two years, the task force provided several suggestions that included regulating the number of nets and the time period when net fishing should be performed. Since that time, the task force had received no feedback to their suggestions until now where the current amendments are being proposed. However, he explained that the task force's suggestions have been so severely modified, that the rules, as presented, will result in a 100% gill net ban.

Second Vice Chair Pang juxtaposed that even if DLNR tightened the restrictions on these rules, the rules redirect people to fish in other various ways. Ms. Chang explained the process to Mr. Costa where those who are impacted by rule changes should gather in force and voice their opinion at the public hearing, and when DLNR returns after the public hearing, the Board will have an opportunity to hear the testimony and make a final recommendation to the Governor and to the department. Ms. Chang recommended that the proposed rules proceed to public hearing with all those licensees and non-licensees be notified of the upcoming hearing; the Board unanimously agreed.

- B.** Review and discussion of the HAR Chapter 7-32, "Hawaii State Veterans Cemetery Rules of Practice and Procedure" (DOD) – Mr. Edward Cruickshank, Director of Veterans' Services, explained that the purpose of the rule amendments include furnishing burial vaults to qualified veterans free of charge as well as increasing the cost to the veterans' dependents, which is contingent on any increase in the federal plot allowance or an increase in the direct cost of the vault from the supplier. Other changes include adding language that prohibits recreational activity at the cemetery to safeguard individuals from injury, restricting personalization of gravesites to preserve uniform appearance, designating the disinterment labor operation as the sole responsibility of the burial contractor, and assigning financial liability to the person requesting disinterment for any and all incidental costs, including damage or disruption to adjacent property. He also discussed the sinking grave problem which is attributable to both climate changes and the "fill" that was used rather than proper dirt. Mr. Dymond recommended that the rules proceed to public hearing; the Board unanimously agreed.
- C.** Review and discussion of HAR Chapter 4-60-9, "Milk Control Rules" (DOA) – Ms. Jeri Kahana, Acting Administrator of the Quality Assurance Division, explained that the amendments pertain to the minimum price of class I milk per hundredweight which include a provision that the minimum price will not be less than \$27.50 or more than \$31.50. The current rate, adopted in 1998, was calculated on a formula based on the Northern California price of class I milk plus an additional \$12.20 price differential. She stated that there are only five dairy farms in the State, located on the Big Island and Oahu, and only one milk processor, Meadow Gold. She also claimed that milk is a dying industry in Hawaii, however, the Big Island dairies are doing quite well, as they are able to exceed 100% or more of their sales quota. After much discussion, Ms. Chang recommended that the rules proceed to public hearing; the Board unanimously agreed.
- D.** Review and discussion of HAR Chapter 6-73, "Installation, Operations, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines" (PUC) – Ms. Lisa Kikuta, Researcher at PUC, introduced engineer Mr. Richard VanDrunen and indicated that the purpose of the rule amendments is to update its standards for the installation, operation, and maintenance of overhead and underground electrical supply and communication lines. The rules will replace/repeal PUC's existing General Order No. 6 rules for overhead electric line construction, adopted in 1967, and General Order No. 10, rules for construction of underground electric and communications systems, adopted in 1968.

Ms. Kikuta explained that the businesses that will be directly affected by the proposed rules do not appear to qualify as "small businesses" within the definitions of Chapter 201M, HRS. The companies being impacted are all public utilities currently regulated by the PUC under Chapter 269, HRS, that have invested a considerable amount of capital to deploy electric or telecommunication networks throughout their respective service areas. However, she further explained that there are three businesses that have fewer than one hundred employees, Time Warner Telecom of Hawaii d/b/a Oceanic Communications, Pacific LightNet, Inc., and Sandwich Isles Communications. After much discussion, Ms. Chang suggested that the Board generate a letter to these three businesses requesting input to ascertain what if any impact these rule changes would have on their businesses. Mr. Au recommended that the Board

support the proposed rules proceed to public hearing and that the Board waive its jurisdiction to approve the rule amendments until the June meeting, subject to written and favorable feedback from these three small businesses; the Board unanimously agreed.

VII. UPDATE AND OUTCOME OF STRATEGIC PLAN

- A. Discussion and voting of new board member(s) and Board Officers – Second Vice Chair Pang introduced Ms. Violetta Arnobit, owner of Ace Medical, as a prospective board member. Ms. Arnobit has had several professional positions in New York and Hawaii as well as in various nursing organizations. In 2003, she was awarded the Small Business Administration’s State of Hawaii Home-Based Business Advocate of the year. Ms. Pang believes Ms. Arnobit would be an excellent candidate as a member of this Board due to her medical experience and exposure in the small business community. Ms. Chang also concurred with Ms. Pang, as she was very impressed with Ms. Arnobit as an entrepreneur starting her own business and finding a niche in the market. Ms. Chang recommended that the Board present Ms. Arnobit to Governor Lingle as a nominee; the Board unanimously agreed.

The Board reviewed the application of Mr. Lee A. Evslin, M.D., a pediatrician, as a prospective board member who would represent the Island of Kauai. Ms. Chang indicated that she doesn’t know Dr. Evslin but met with the administrative assistant to the Governor on Kauai who indicated that the Governor had recommended him for this Board. Ms. Chang recommended that the Board present Dr. Evslin to Governor Lingle as a nominee; the Board unanimously agreed.

VIII. 201M-7 RULE REVIEW

- A. Department of Transportation – HAR Chapter 19-38.1, “On-Demand Taxi Service at Public Airports” (DOT) – Second Vice Chair Pang explained that Chair Woods observed that some of the standards set forth in these rules were not being met by the industry, questioned what benchmarks, if any, were being used in monitoring these standards, and what DOT was doing about the inability to meet these standards.

Ms. Dale Evans, CEO and President of Charley’s Taxi, stated that her attending the meeting today was precipitated by her noticing that this particular rule was posted on the agenda. As a result, she provided testimony to the Board regarding her concerns about the public safety at the airport, stating that Hawaii has the only airport that is consistently closed down by taxi drivers, that there is no protection in terms of terrorist threats, and that there seems to be a high tolerance for harassment. She believes the rules have been diminished or ignored regarding qualifications, inspections and the standards of inspections. It appears to her that DOT officials have been in “behind closed door” meetings, making agreements and setting procedures that affect all of the users and providers without consulting the industry. She explained there is a procedure by which grievances can be submitted but that certain grievances are not on record because they are not filed. She also expressed concern with the immigration laws, and that the airport rules do not require a military security clearance and lacks prohibitions against disturbances and terrorist threats.

Mr. Smith, Property Manager at the Airport Division, explained that it appeared that the existing taxi management operator may not be fulfilling their responsibilities. He explained that the taxi manager is a separate entity working under the auspices of managing the taxi operations at the airport to ensure consistency and stability within the airport’s taxi cab’s operation. If there are illegal aliens, it is the taxi manager’s responsibility to assure that all participants in the “open” taxi system are appropriately licensed. If they are not licensed, it is the taxi manager’s responsibility to remove them; it is not the airport’s responsibility. The taxi manager is a separate entity that came into business solely to perform the taxi operations at the airport. Since it is an “open” taxi system, any taxi driver who is licensed on this island may register with DOT and provide “on-demand” service, as these rules apply only to “on-demand” service.

Mr. Smith further acknowledged that there have been allegations that certain employees of the management company have been conducting illegal, unauthorized activities, such as favoring certain drivers and attempting to “sell rides.” He agreed that there seemed to be a small cadre of taxi drivers who were attempting to force the taxi manager to do things a certain way. A boycott was staged at one point where threats were made to Charley’s taxi drivers, although no arrests were made; at times, the drivers believed they were being victimized by the taxi manager.

As a result of these allegations, DOT requested that the taxi manager institute rules and policies outlined in a published document to be distributed to the drivers, with formal follow through of those policies. Mr. Smith agreed that DOT should have a closer supervision on the taxi manager. Because the taxi manager is not a taxi company, it presents the system with a "built-in handicap." Periodically, the taxi manager is unable to provide taxi sufficient service as there are no taxis available; i.e., at certain times of the day or during unexplained delays in a flight. DOT is currently researching where the best taxi service should be provided, and then attempt to expand upon that to include not only service to travelers but to the taxi manager as well.

Second Vice Chair Pang indicated that it is clear that the standards are not being met within the regulations of these rules. Much discussion ensued and several questions were posed as to what rules and regulations the management company was required to follow. Suggestions were made by the members such as requiring DOT to perform a full re-examination of the existing rules, the need to clearly outline violations, fines and penalties, and for DOT to revisit the enforcement of the rules; however, none of these were voted into formal recommendations.

Additionally, Mr. Dymond suggested that DOT management be invited to a board meeting to discuss the existing rules and provide insight as to how they are addressing them, why it appears difficult to abide by the standards, and justify why the State should be in the taxi management business. Mr. Au suggested that DOT submit a response to Ms. Evans regarding her concerns and specifically outline the actions DOT is planning to take to rectify these specific concerns. Mr. Leis' interpretation was that the rules are fine, but they are not being enforced not do they protect the orderly conduct and business of the provider and the users.

Mr. Yee indicated that the problem isn't the rules or the revision of the rules, but a few minor issues regarding the enforcement of the rules, and suggested that the Board submit a letter to DOT requesting that they speak with Ms. Evans specifically about her issues. Ms. Chang explained that the rules should entail all the necessary management and enforcement procedures in order to make the standards stronger so that a small business will have a clear understanding outlined in writing as to what recourse, if any, there is for violation of the procedures.

As there was no consensus from the members, Second Vice Pang recommended to Ms. Evans that, as a collective group, she put forth her concerns in writing to DOT and to specifically sight the issues she wants the department to address. In conclusion, Ms. Evans explained that the existing rules may be sufficient if they were properly enforced; she will continue to work with DOT and she thanked the Board for its consideration.

IX. REPORT FROM THE CHAIR

A. Discussion of April 26, 2006 memorandum from Governor Lingle – No comments were made.

X. REPORT FROM COMMITTEES – Nothing was discussed.

XI. REPORT AND UPDATE FROM BOARD MEMBERS – Nothing was discussed.

XII. ANNOUNCEMENTS – Second Vice Chair Pang announced that member Mr. Leis received another distinguishable citizen award and congratulated him for such an honor.

XIII. NEXT MEETING - Wednesday, June 21, 2006, No. 1 Capitol Building, Conference Room 410.

XIV. ADJOURNMENT – Second Vice Chair Pang adjourned the meeting at 2:20 p.m.