

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 24, 2013

PSF:12HD-104

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Deny Request for Mutual Cancellation and Issuance of New Direct Lease, General Lease No. S-3722, Hawaii Pacific Baptist Convention, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-057:023.

APPLICANT:

Hawaii Pacific Baptist Convention, a Hawaii non-profit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea Cane Lots, portion of Lot C-5, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-057:023, as shown on the attached map labeled Exhibit A.

AREA:

1.00 acre, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RM-1 (multi-residential)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Student Center and Allied purposes.

LEASE TERM:

Fifty-Five (55) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005)

METHOD OF PAYMENT:

Annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th and 50th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states " Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion of change of use beyond that previously existing."

DCCA VERIFICATION:

| | | | |
|---|-----|----------|----|
| Place of business registration confirmed: | YES | <u>X</u> | NO |
| Registered business name confirmed: | YES | <u>X</u> | NO |
| Applicant in good standing confirmed: | YES | <u>X</u> | NO |

REMARKS:

The subject parcel was leased to Hawaii Pacific Baptist Convention (HPBC) by public auction on November 30, 1962, with a term of 55 years and an annual rent of \$780.00 for the first 20 years. The character of use was designated as “student center and allied purposes”. HPBC was required to erect improvements valued at no less than \$15,000.00 within one year of inception of the lease. A building with a value of \$20,100.00 was completed on March 1, 1964. No further improvements have been made to the property.

The first rent reopening was in 1982 when an appraisal at "highest & best use" set the new annual rent at \$15,245. HPBC hired an appraiser who determined an annual rental value of \$10,000. HPBC, unable to afford either amount, appealed and the appraisal method was modified to reflect "specific use" instead of highest & best use. This reduced the annual rental amount to \$5,444.50. The next two rental reopenings utilized the "limited/specific use" method and resulted in \$2,660 in 1992 and \$4,200 in 2002. HPBC is currently due for their third reopening, which has been postponed pending the Board decision on this item.

A site inspection performed on January 15, 2013 revealed partial use of the premises as a full-time residence for the caretaker. The applicant’s answer to question #24 of the pending application (Describe the proposed site development plan) includes the statement “Expand the current living quarters from one unit to 3 units”.

A review of the lease file did not produce prior authorization for residential use. On the contrary, a 1984 request to allow a student dormitory and/or church building was denied (Exhibit B). Additionally, correspondence from HPBC in 1996 provides assurance that the property is used as a “student center” (Exhibit C).

It is evident that the actual use of the property, as a residential unit for the caretaker, is in conflict with the specific use as designated in the lease, which is “student center and allied purposes”. A reduced annual lease rent has been established based on this “limited/specific use”.

Given the circumstances, a Notice of Default will be issued to HPBC for non-compliance with the terms and conditions of the lease regarding the caretaker’s occupancy.

Staff recommends that the Board deny the pending application for mutual cancellation and issuance of new direct lease at nominal rent and proceed immediately with the rental reopening. A review of the application and several conversations with representatives of

HPBC indicates they are unclear with regards to their future plans for the property. This course of action will provide HPBC time to determine what their needs/desires are for the property and solidify a plan to move forward.

The Hawaii Pacific Baptist Convention has provided evidence of IRS 501 (c)(3) status and is an eleemosynary organization whose charter designates the purpose of the organization is to provide an organization through which Baptist Churches in Hawaii and the Pacific areas can cooperate in their efforts to minister throughout the world.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

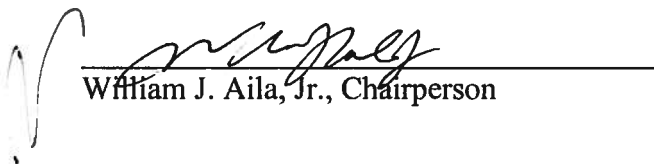
1. Deny the request for mutual cancellation and issuance of new direct lease to Hawaii Pacific Baptist Convention.
2. Authorize Land Division staff to proceed with the rental reopening for General Lease No. S-3722 to Hawaii Pacific Baptist Convention pursuant to the terms and conditions of the lease.

Respectfully Submitted,



Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A

2 - 4 - 57 3RD DIV

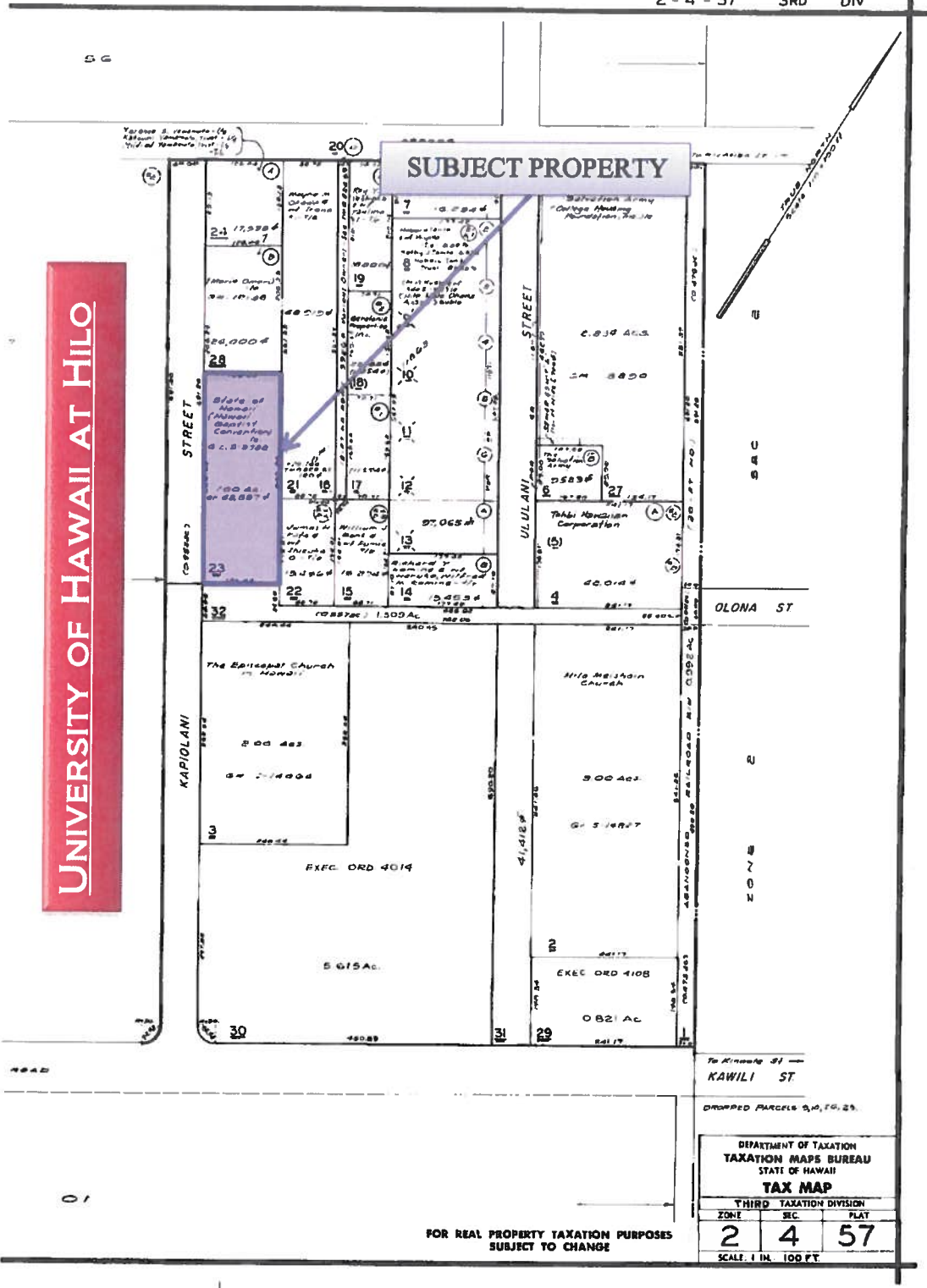


EXHIBIT B



Hawaii Baptist Convention

2042 Vancouver Drive • Honolulu, Hawaii 96822 • (808) 946-9581

October 17, 1984

DAN H. KONG
Executive Director-Treasurer

OCT 25 1984

Mr. Glenn Y. Taguchi
Hawaii District Land Agent
Department of Land and Natural Resources
P. O. Box 936
Hilo, Hawaii 96720

Dear Mr. Taguchi:

Subject: Rental Reopening, General Lease No. S-3722
Waiakea, South Hilo, Hawaii


Thank you for your letter of September 18, 1984, on the new rental rate of \$5,444.50 per annum. We understand that the rate is retroactive to November 10, 1982. Before we sign the lease, we would like to have the following question answered:

Under the lease item B.9. Character of use, can a student dormitory and/or church building meeting the needs of the Univeristy student community be allowed?

The increase is considerable for us in light of our use to provide a ministry to the students on the Hilo campus. Therefore, we are trying to see if a dormitory and church on that site is feasible.

We appreciate your patience in this matter and would like to have a reply as soon as possible.

Sincerely,


Stanley K. Togikawa
Financial Services Administrator

ack
10/25
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EXHIBIT B

November 7, 1984

Mr. Stanley K. Togikawa
Financial Services Administrator

Honolulu, HI 96822

Dear Mr. Togikawa:

Subject: General Lease No. S-3722

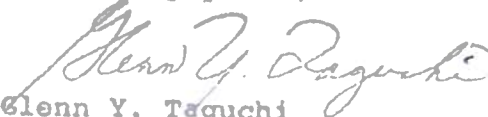
In response to your letter of October 17, 1984, I would have to respond in the negative. The Character of Use as stipulated in General Lease No. S-3722 is as follows:

"That the lessee shall use the demised premises for the specific use of a student center and allied purposes for which the lease was sold."

There are no provisions to allow either a dormitory use and/or a church use of the subject property.

If I may be of further assistance, please feel free to call on me.

Very truly yours,


Glenn Y. Taguchi
Hawaii District Land Agent

CYT/nt

cc: Mr. Roland Higashi
Mr. James J. Detor

Hawaii Baptist Convention

Serving Churches in Hawaii, Guam, American Samoa and Western Samoa

September 16, 1996

Charlene E. Unoki
Department of Land & Natural Resources
P. O. Box 936
Hilo, Hawaii 96721-0936

SEP 17 12 21 PM '96
DIRECTOR OF
LAND MANAGEMENT
HILLO, HAWAII

Dear Charlene:

Subject: General Lease #S-3722

The Hawaii Baptist Convention has the property in the above noted General Lease #S-3722, Waiakea, South Hilo, Hawaii insured by State Farm Insurance Company. Enclosed is a copy of State Farm's additional insured policy.

In regards to the performance bond, we would like to request that the bond requirement be waived. Our present Bond No. 3971755 with The Hartford Insurance Group ends on November 30, 1996. We have been informed that they will not cover us for bond in the future.

The Hawaii Baptist Convention has been using the property as a student center for the Hilo campus of the University of Hawaii. We have been making our regular payments and to our knowledge have not had any problems concerning the use of the property.

We would appreciate a favorable consideration of our request that the bond requirement be waived.

Sincerely,

Stanley K. Fogikawa
Stanley K. Fogikawa
Director of Business Services

Enclosure: Insurance policy

9-17-96: XC-HNL + 10/9/96

