

HAWAIIAN HOMES COMMISSION
Special Meeting, November 14, 2013
Meeting Held in Kapolei, Oahu

A Special Meeting of the Hawaiian Homes Commission was called to order at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawaii, at 10:10 a.m.

PRESENT Jobie M. K. Masagatani, Chairman
 Leimana DaMate, Commissioner, West Hawaii
 Gene Ross K. Davis, Commissioner, Molokai
 J. Kama Hopkins, Commissioner, Oahu
 Wallace A. Ishibashi, Commissioner, East Hawaii
 Michael P. Kahikina, Commissioner, Oahu
 Patricia W. Sheehan, Commissioner, Kauai

EXCUSED Renwick V. I. Tassill, Commissioner, Oahu
 Maui, Commissioner, Vacant

STAFF Darrell T. Young, Deputy to the Chair
 Linda Chinn, Administrator, Land Management Division
 Derek Kimura, Executive Assistant
 Puni Chee, Administrator, Information and Community Relations Office
 Elaine Searle, Secretary to the Commission

Note: Today's agenda item was deferred from the October 28, 2013 Hawaiian Homes Commission monthly meeting held on Maui, to provide Kapolei beneficiaries an opportunity to address the commission on a development project that may impact their community.

F – LAND MANAGEMENT DIVISION

ITEM NO. F-6

**SUBJECT: Approval of One-Year Extension of Option Term, Option to Lease with
 Hawaii DeBartolo, LLC, East Kapolei, Oahu, and Terms and Conditions
 Therof**

TESTIMONY

Thirty-two individuals testified and most were in support of this development project in Kapolei, and in support of granting an extension of one year to Hawaii DeBartolo, LLC (HD). Hawaii State Representative Sharon Har, representing Makakilo, Kapolei, and Kalaeloa districts,

testified that she supports a project on these sacred lands to extend a revenue stream for the department. She was instrumental in getting House Bill (HB) 1017 passed in 2007, to allow the DeBartolo developers an extended lease; a lease that will continue as an 87-year lease, not a 65-year lease. She contends that those who testified against the project at last night's informational meeting were not present today to testify. Commissioner Davis expressed his disappointment that funding for DHHL (Department of Hawaiian Home Lands) to assist native Hawaiians has always come because of a lawsuit and that beneficiaries have suffered long enough. DHHL is attempting to negotiate with an outside entity to provide for a source of revenue and he asked for Representative Har's support of DHHL in her role at the legislature. S. Har said she is a non-native Hawaiian and her naau (heart) tells her she should have never supported the project as there was no ground lease established. She said that HD paid only \$41,000 a month, which converts to \$700 an acre, to hold 67 acres of land, which she interpreted as "a slap in the face." She deemed these lands as sacred and any developer entering into a long-term lease with the department should sustain a heightened sense of duty to develop it as such. She sees more waha nui (talk too much), but action speaks louder than words. S. Har conveyed that she is a strong supporter of DHHL in the legislature. She introduced House Resolution 130 that would have required DHHL and HD to present an update on this project. HD has not been forthcoming and has not appeared at any of the community meetings. The Hawaii Railway Society (HRS) supports the project and is negotiating directly with DeBartolo without a legal binding document. She envisions the department as having time to solicit bids from other developers, as this particular developer and its project are not pono (good). Commissioner Kahikina mirrored Commissioner Davis' comments and said people have been waiting 93 years and every time the people went to court, it was pushed back at the legislature. He said that the instigator of this Act (Hawaiian Homes Commission Act) wanted every Hawaiian to be on this waitlist (1/32), and now, one has to prove 50% blood quantum, as well as being monetarily solvent. He asked what is the legislature doing to help? S. Har explained that every politician has an ego and oftentimes there is trading going on. S. Har said she feels empowered to represent the three homestead communities and will continue to assist the native Hawaiian community. Commissioner Kahikina asked S. Har to be the voice for DHHL as the HHCA (Hawaiian Homes Commission Act) was created by the federal government, and it is imperative that a legislator be bound by a constitutional responsibility to uphold the law and not their ego.

RECESS 12:23 p.m.

RECONVENE 12:48 p.m.

ITEM NO. F-6 (cont.)

The Chair said that over 200 written testimonies were received which will be made part of these minutes. Commissioners were afforded a copy of the original two-page submittal from the October 28, 2013, meeting, and Administrator Linda Chinn provided a summary of notes from the informational meeting held last evening.

RECOMMENDATION

Administrator Linda Chinn, Land Management Division, requested that the commission grant the approval to the requested extension of time by Hawaii DeBartolo, LLC to exercise the option under the Amendment to, and Restatement of Option to Lease executed on January 12, 2012, granting an additional twelve (12) months of time from December 1, 2013, to November 30, 2014, subject to the eight (8) conditions listed in the recommendation.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina.

DISCUSSION

L. Chinn, Land Management Division (LMD), requested an amendment to the recommended motion based on discussions with community leaders and the information received at last night's meeting to be included as a Condition No. 9. There shall be a separate agreement to be executed between DeBartolo and DHHL on the homestead community benefits agreement which shall include the following conditions:

- **The homestead benefit agreement shall be in effect the same day as when the general lease is executed and becomes effective.**
- **The homestead community benefit agreement shall be effective for the entire term of the general lease, i.e., 65 years, unless sooner terminated for whatever reason.**
- **The annual community benefit payment shall be calculated at 4% of the base-ground lease rent before any deductions or credits and shall be adjusted at each step-up period, as well as each rental re-opening period, as provided in the lease agreement for the entire term of the lease.**
- **The community benefit payment shall be paid at the same time as each monthly, lease-rent payment.**
- **The community benefit payments shall be paid to DHHL which will be deposited in a separate fund for the sole benefit of the Kapolei beneficiary homestead organization and associations.**
- **DHHL shall consult with impacted Kapolei Hawaiian home communities on how these funds shall be expended.**

The Chair clarified a statement made by Representative S. Har that the lease could be longer than 65 years, if an extension were granted, subject to the approval of the commission. L. Chinn concurred and added that this is subject to HHCA, Section 228. L. Chinn articulated that an extension can be applied only for an additional 20 years, or a maximum of 85 years, and the commitment to the general lease is for 65 years. L. Chinn added to Bullet Item No. 2, "unless

sooner terminated for whatever reason or extended, pursuant to Section 228 of the Hawaiian Homes Commission Act (Act).”

According to L. Chinn, the Act says a general lease can be extended up to 20 years, but there is no requirement that a 20-year extension be given. The Chair suggested that Bullet Item No. 5 be corrected to read “which will deposit payments in a separate fund for the benefit of the beneficiaries of this Kapolei region.” Deputy AG Iha suggested looking into the legality of the mechanics of setting up a separate fund. The Chair then reworded Bullet Item No. 5 to read: “The community benefit payment shall be paid to DHHL and will be set aside for the benefit of the beneficiaries of this Kapolei region.”

Commissioner Sheehan inquired if this set-aside fund will mean this fund is restricted and only used for certain things. Deputy AG Iha said “if the motion is less specific, it will aid the department in providing more options.”

The Chair reread the revised version of Bullet Items No. 2 and No. 5:

- **The homestead community benefit agreement shall be effective for the entire term of the general lease, i.e., 65 years, unless sooner terminated for whatever reason or extended pursuant to Section 228 of the Hawaiian Homes Commission Act.**
- **The community benefit payments shall be paid to DHHL and will be set aside for the benefit of the beneficiaries of this Kapolei region.**

DISCUSSION

L. Chinn clarified that in order for a general lease to be terminated, there needs to be a breach in the agreement. The Chair called for the question to amend the six bullet points, as stated above.

AMENDED MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina to amend the six (6) bullet points, as stated above.

DISCUSSION

The Chair asked the Kapolei community leaders who were present if they were amenable to the changes for payments going to the associations. She re-iterated Bullet Item No. 5, which would provide an opportunity for dialog with the leaders of this community in terms of how the funds will be distributed and how they will be used. The distribution and use of the funds will come before the commission for approval. Shirley Sweeney, President of KCDC (Kapolei Community Development Corporation), was amenable to the language, stating that it provides an open door for defining further dialog with the department.

ACTION ON AMENDED MOTION

Motion carried unanimously.

DISCUSSION

Commissioner Hopkins thanked CEO Ed Kobel, Hawaii DeBartolo, LLC for making a commitment to build a community park for the Kanehili homestead community in Kapolei. He requested to amend the agenda to include a Condition 10.

2ND AMENDED MOTION/ACTION

Moved by Commissioner Hopkins that a Kanehili Community Park shall be completed by Hawaii DeBartolo within twenty-four (24) months of lease execution, and the HHC delegate authority to the Chair to finalize the specifications of the park, in consultation with the beneficiaries residing in Kanehili, before December 2014, seconded by Commissioner Kahikina. Motion carried unanimously.

DISCUSSION

CEO Ed Kobel conveyed a thank you from his family and said this has been a lot of work. He thanked everyone that showed up to support HD the past couple of months. He takes responsibility for communication lapses and added that HD is excited to move to the next step. Commissioner Ishibashi expressed that many beneficiaries are members of the labor force and jobs are important to the community. E. Kobel said they recently finished a union labor job in Chicago, and are currently working with Nordic PCL, a local union company on this project. Commissioner Sheehan inquired about issues with the railroad crossing. Right now, the rendering of the secondary access, near Roosevelt Avenue, is fine with HRS (Hawaii Railway Society). DH Vice-President, Richard Hartline, provided information on the egress and ingress of the development. It would appear that HRS and DOT (State Department of Transportation) are still negotiating their roadway plans for the area. DOT had DeBartolo prepare three TIA (Traffic Impact Analysis) studies, one of which was for the traffic impact to Fort Barrette Road. DOT has plans to make more of the roads in Kapolei serviceable.

Commissioner Hopkins inquired whether there are any agreements with any of the trades and labor unions. R. Hartline said they are not signatory as a developer and do not sign direct PLA's (Project Labor Agreement) with any one union. Local union contractors were interviewed and Nordic PCL was selected and is the signatory. R. Hartline said there are no groups excluded for lack of a PLA. It gets more confusing when leases are assigned and tenants want to control the process with their general contractors (GC). HD will continue to support union laborers. Commissioner Hopkins asked the Hawaii Building & Construction Trades Council (HBCTC) representative Kika Bukoski to comment. K. Bukoski said the issue that HBCTC has, at this

point, is with the 80% that he represents, who are not included in the collective bargaining agreements. Although the union contractor is a signatory, they do not necessarily use 100% union workers. The HBCTC works well with most local GC's but there is a possibility that jurisdictional issues amongst the trades on the worksite may result. One of the functions of the PLA is to ensure worksite harmony in handling and adjudicating any jurisdictional disputes or grievances. K. Bukoski said he has a fiduciary responsibility to his members to look out for their best interest.

E. Kobel said he can commit to union labor for the shell of the project and they can encourage individual retailers, who are hiring contractors to complete their tenant finish work to hire union labor because of what was just shared. K. Bukoski noted that a PLA allows for non-union contractors to be retained with the understanding that they assent to the PLA. Commissioner DaMate added that she would like to see more native Hawaiian beneficiaries have an opportunity for jobs such as this.

ACTION ON THE MAIN MOTION

Motion carried unanimously, as amended.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Hopkins to adjourn the meeting.
Motion carried unanimously.

ADJOURNMENT 1:42 p.m.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

Next meeting to be held on November 18 – 19, 2013, Hilo, Hawaii

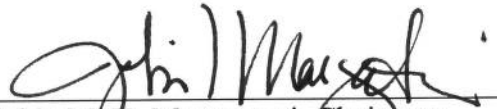
ANNOUNCEMENTS

The next community meeting will be held November 18, 2013 at Kawanakoa Hall, Keaukaha, Hilo, Hawaii, 6:00 p.m.

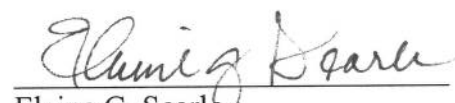
ADJOURNMENT

1:42 p.m.

Respectfully submitted:


Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission

Prepared by:


Elaine G. Searle
Secretary to the Commission