

Small Business Regulatory Review Board

MEETING MINUTES - **DRAFT** August 15, 2024

ZOOM Meeting Recording

- I. **CALL TO ORDER:** Chair Shick called the meeting to order at 10:10 a.m., with a quorum present.

MEMBERS PRESENT:

- Jonathan Shick, Chair
- Mary Albitz, Vice Chair
- Sanford Morioka, 2nd Vice Chair
- Robert Cundiff
- James (Kimo) Lee
- Tessa Gomes
- Nikki Ige
- Mark Ritchie
- Garth Yamanaka

ABSENT MEMBERS:

STAFF: DBEDT

Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF July 26, 2024 MINUTES**

Vice Chair Mary Albitz motioned to approve the July 26, 2024 meeting minutes, as presented. Robert Cundiff seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Subchapter 4, Petitions for Intervention, promulgated by Kauai Planning Department (KPD) – County of Kauai

Discussion leader Nikki Ige introduces Jodi Higuchi Sayegusa, Deputy Director from the Kauai Planning Department (KPD), to discuss the proposed changes to the rules. Ms. Sayegusa explained that the Department of Planning will be coming back for various rules, both administratively and to implement certain ordinance updates. The first rules that needed to be focused on were internal departmental rules and one of the first rules that needed to be amended are the Planning Commission's rules of practice and procedures.

Ms. Sayegusa stated that the rule change rose to the top because of litigation that was pending and became a pressing issue. KPD is faced with a lot of requests for intervention, which may be used as tactics against development rather than legitimate concerns. Some requests have tenuous relation to an actual injury. KPD has been working with their attorney's office, who revealed some updates to the law that require amendments to this chapter.

KPD believes the amendments clarify who may qualify to intervene in zoning permit decisions before the Planning Commission. Also, the amendment clarifies that intervention must be decided upon prior to the initiation of the public hearing for zoning permits. These amendments should result in a reduction on the impact to zoning permit applicants including small businesses as well as allow clarity for petitioners who seek to intervene.

The rules could impact small businesses to the extent small businesses are impacted by zoning permit applications and wish to be able to become a party/intervenor to advocate for their interests. In addition, small businesses may be impacted when third party intervenors wish to become involved in permit decision involving small businesses. The filing fee for a petition to intervene will increase from \$25 to a proposed \$300. Indirectly, the amendments will result in cost savings with greater clarity on who or how to file for petitions to intervene. Comparison with other jurisdictions (Maui has a \$828 petition filing fee) and a rough calculation of an average of over \$900 to process, file, distribute, and hear petitions to intervene between staff and Planning Commission.

Mr. Ritchie seeks clarification on the legal standing and potential harm related to a case. Mr. Ritchie is interested in understanding how a small business might be impacted by regulatory decisions and whether their legal counsel could be affected. Ms. Sayegusa explains that previously, to intervene legally, one had to prove a specific and distinguishable interest—either direct ownership, proximity to the land, or a unique concern not shared by the public. Ms. Sayegusa provides an example of how an environmental concern, such as dust from a nearby manufacturing business, could justify intervention if it directly affects the individual's property.

Ms. Ige discusses the need for checks and balances regarding activist groups filing petitions to intervene in cases. She notes that the low cost of filing can lead to excessive and potentially disruptive interventions, which can delay permit approvals for small businesses. She states that clarifying the rules can help ensure that petitions are relevant and more efficiently handled.

Mr. Ritchie then asks about the average permitting time on Kauai, indicating interest in understanding the impact of these issues on local permit processes. Ms. Sayegusa acknowledges the concern, highlighting that addressing the housing crisis is a priority for the county and provides an overview of permit processing times. For standard permits, if the application is complete, the turnaround is typically about three months. For discretionary permits handled by the Planning Commission, the process is longer, usually around one month, but can extend to one to three years if interventions occur. She also mentioned efforts to improve efficiency by collaborating with various departments like public works and engineering.

Mr. Yamanaka raises a concern about fees collected from permits being deposited into the general fund, suggesting it might be more effective to keep the funds within the department for better tracking and allocation. Ms. Sayegusa responds that currently, the department only retains funds for enforcement purposes and acknowledges the fees are generally low. She suggests that updating the fees to reflect current needs could be beneficial, as it would help with budgeting for additional staff and resources. Mr. Yamanaka agrees that the fees may be too low to adequately cover the costs of processing permits and supporting staff.

Ms. Sayegusa explains that the department only retains fees in a special fund for enforcement purposes. Other fees go to the General Fund. She mentions that current fees are low and that updating them might be necessary to better reflect today's needs, which would impact the budget for more staff. Mr. Yamanaka suggests that keeping fees separate from the General Fund might improve monitoring and efficiency. He also inquires about a non-refundable filing fee for petitions, questioning whether it should be reimbursed if a petition is denied. Ms. Sayegusa clarifies that the fee is non-refundable because administrative costs are incurred regardless of the petition's outcome.

Mr. Yamanaka suggests that increasing the fee for filing petitions and making it refundable could help deter non-valid interventions while still allowing legitimate concerns to be addressed. Mr. Cundiff supports this idea, emphasizing that a low fee can lead to numerous frivolous petitions, which delay the process and negatively impact small businesses. Both members propose that a higher fee might discourage unnecessary delays, but also suggest considering whether the fee should be refundable based on the validity of the intervention. Mr. Yamanaka adds that a balance is needed to avoid delays, which are costly for everyone involved.

Mark Ritchie motioned to pass the rules on to public hearing. Second Vice Chair Sanford Morioka seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 19 Subtitle 5 Motor Vehicle Safety Office, Chapter 152 State Highway Enforcement Program, promulgated by Department of Transportation

Although there is no apparent impact on small business, one potential impact may be, for example, if a landscaping company performing work on the highway is parked on the side of the highway and receives a violation for doing so. It was indicated that the new rule was prompted by alleged problems on the Island of Kauai where cars were illegally parked along state highways, specifically at state parks.

Ms. Laura Manuel, DOT's Highway Safety Specialist, was having technical difficulties and unable to unmute herself. She indicated to discussion leader Mr. James Lee that there were four attendees with no comments at the public hearing. The board members thanked her for attempting to log in and participate in the meeting.

Robert Cundiff made a motion to pass the rules on to the Governor for adoption. Mark Ritchie seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Review and Update of Board's "Discussion Leader Assignments" for the State and County Agencies' Hawaii Administrative Rules

Chair Shick expressed that most of the TBD 's are just backup discussion leaders, so the following changes to the discussion leader assignments were discussed:

- Office of the Governor – Discussion Leader Chair
- Office of the Lieutenant Governor – Back-up Discussion Leader Sanford Morioka
- Department of Agriculture – Discussion Leader Nikki Ige
- Department of Attorney – Discussion Leader Nikki Ige
- Department of Business, Economic Development & Tourism – Back-up Discussion Leader – Tessa Gomes
- Department of Education – Discussion Leader Robert Cundiff
- Department of Human Services – Discussion Leader Garth Yamanaka
- Department of Public Safety – Back-up Discussion Leader Nikki Ige
- Department of Taxation -- Back-up Discussion Leader Nikki Ige
- University of Hawaii -- Discussion Leader Chair
- County of Kaua'i -- Discussion Leader Nikki Ige

Mr. Cundiff motioned to adjust the discussion leader assignments to reflect the listed changes. Chair Shick seconded and the Board members unanimously agreed.

2. Update and Discussion on Becker Communications, Inc., regarding the Board's Small Business Outreach

DBEDT staff has a meeting scheduled with Becker representatives on September 26th to discuss upcoming PR initiatives. Mr. Ritchie suggested a meeting amongst DBEDT staff in the beginning of September to discuss examples Becker has done for other divisions.

3. Presentations to Industry Associations

No new updates were reported.

4. Staff's Small Business Outreach

Ms. Ariola will be attending the AI and Cloud Innovation Summit at the Hawaii Convention Center on August 21st. The summit will be hosted by DBEDT.

- VI. NEXT MEETING** – Thursday, September 19, 2024 at 10:00 a.m., via Zoom and in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.
- VII. ADJOURNMENT** – Mark Ritchie motioned to adjourn the meeting and Robert Cundiff seconded the motion; the meeting adjourned at 11:03 a.m.

DRAFT