



ALOHA TOWER DEVELOPMENT CORPORATION

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BOARD MEETING ALOHA TOWER DEVELOPMENT CORPORATION

October 25, 2006

No. 1 Capitol District
250 S. Hotel Street
DBEDT Conference Room 436
Honolulu, Hawaii 96813

MINUTES OF MEETING

BOARD MEMBERS PRESENT: Sidney Quintal, Vice-Chairperson – C&C of Honolulu
Neal Otani
Theodore Liu – DBEDT (arrived at 12:17 p.m.)
Barry Fukunaga – DOT
Jason Okuhama

BOARD MEMBER EXCUSED: Melissa Pavlicek, Chairperson
Robert Masuda - DLNR

ATDC STAFF PRESENT: Sandra Pfund, Deidre Harrison, Shari Ikeda, Tom Otake

OTHERS PRESENT: Jonathan Durrett, Sumner Howard, Nina Wu, Michelle Matson, Andrew Yanoviak, Paul Sheriff, Jon Pang, Esq.

LEGAL COUNSEL PRESENT: Gregg Kinkley, Deputy Attorney General

A. CALL TO ORDER

Vice-Chair Quintal called the meeting to order at 12:03 p.m.

B. APPROVAL OF MINUTES

Regular Meeting of September 27, 2006

Vice-Chair Quintal called for a motion to adopt the Meeting Minutes for the meeting held on September 27, 2006. Director Otani moved to adopt the minutes, and was seconded by Director Okuhama. The motion passed unanimously.

C. REPORT OF THE CHIEF EXECUTIVE OFFICER

Ms. Pfund referred to her report in the Board packet and highlighted key matters of concern.

1. Personnel

Ms. Pfund introduced and welcomed Mr. Tom Otake, the new ATDC Development Director/Special Assistant, who will join ATDC on November 1, 2006. Mr. Otake was the top candidate for the position with over 32 years of development experience and was the Acting Development Section Chief at Hawaii Housing Finance and Development Corporation.

2. Night Farmers Market

Ms. Pfund reported that meetings were held with the Farm Bureau and the Aloha Tower Marketplace to continue exploring the possibility of holding a Night Farmers Market at Aloha Tower.

3. Hawaii Harbors Project

Ms. Pfund provided a progress report on the development plan for the Kapalama Container Terminal, which is being prepared by port development consultants, JWD Group. She noted that a briefing to the Governor's Office is being planned.

4. Draft Report on the Hawaii Harbors Task Force

Ms. Pfund distributed a draft report to the directors on the Hawaii Harbors Task Force. The report is in response to legislative provisos attached to the DOT Harbors and ATDC budgets requesting: 1) recommendations to addresses the best way to proceed on harbor infrastructure projects, and 2) a report on the progress of the Task Force in the past one-and-a-half (1-1/2) years. Ms. Pfund noted that the report summarizes why the Task Force was formed, its accomplishments to date and recommendations for the future. Ms. Pfund asked that the Board review the report and advise her of comments or revisions, noting that the internal deadline is December 1, 2006, to allow sufficient time for submission 20 days prior to the opening of the Legislature.

Director Fukunaga reported that the effort between Harbors and ATDC has been very successful and an effective collaboration.

D. ITEMS FOR INFORMATION

1. Status Report on the UC URBAN Project at Piers 5 and 6

Ms. Pfund referred to her staff report. She noted that Ken Hughes continues to move forward with design development. Mr. Jonathan Durrett, attorney for Ken Hughes had no comment.

Ms. Pfund introduced Mr. Jon Pang of Imanaka Kudo & Fujimoto, LLLC, Special Legal Counsel for ATDC on the project, who will address the Board during Executive Session on legal issues regarding the development agreement.

E. ITEMS FOR ACTION

1. Approval of a Fourth Extension of Time of Six (6) Months to Commence Construction of the New World Divers (NWD) Project

Ms. Pfund presented her staff report.

Mr. Paul Sheriff, CEO of New World Divers, described various actions being taken to complete the remaining requirements to begin construction. Mr. Sheriff expects to have these items resolved in two to three months, but as this is the fourth extension, six months has been suggested to ensure compliance to commence construction.

Director Fukunaga expressed concern with the number of extensions that have been asked for and granted.

Mr. Sheriff responded that one of the required actions is execution of a sub license agreement that is pending before the DOT attorneys, but also acknowledged that NWD needs to conclude negotiations and finalize its financial commitments.

Director Fukunaga indicated that he would follow up with the Deputy Attorney General assigned to DOT to expedite the sub license document.

Vice-Chair Quintal asked for a motion to grant New World Divers a fourth extension of time to April 21, 2007, to complete the remaining conditions and requirements identified in the Development Agreement to begin construction. Director Otani moved and Director Fukunaga seconded the motion.

The Vice-Chair asked if there was any discussion on the motion.

Director Fukunaga expressed that it should not be held against NWD if the Attorney General's office is not responsive within the six months extension, however notwithstanding this exception, the sentiment of the Board is that this is the last extension to be issued to NWD.

A vote was taken and the motion passed unanimously to grant New World Divers a fourth extension of time to April 21, 2007, to complete the remaining conditions and requirements identified in the Development Agreement to commence construction.

2. Approval to Conduct a Public Hearing and Appoint a Hearings Officer to Consider a Modification to Certain Provisions in the ATDC Hawaii Administrative Rules Pertaining to the UC URBAN Project at Piers 5 & 6

Ms. Pfund presented her staff report.

Ms. Pfund reported that UC URBAN is withdrawing their variance request and will instead submit a request for modification of specific provisions in the Hawaii Administrative Rules (HAR) along with a project eligibility review, as this is a more proper venue to proceed with the project. She noted that a public hearing is required as part of the modification request, so in order to proceed in a timely manner, staff is seeking approval to proceed to conduct the public hearing when it receives UC URBAN's application.

Ms. Pfund further reported that a Hearings Officer must be appointed to conduct the public hearing and that the Hearings Officer acts in an administrative capacity only, reporting the findings to the ATDC Board. She recommended that she be appointed as the Hearings Officer for this action.

Ms. Pfund explained that the project eligibility review involves sending schematic plans to various government agencies for initial review and feedback. The modification request involves what changes the developer will be seeking regarding the maritime zoning requirement and whether it fits in the master plan for the area.

Director Liu asked why a variance request was at first submitted, rather than the modification request.

Ms. Pfund responded that upon receipt and review of the variance request, it was determined that a variance was not the proper venue for what the Developer was trying to achieve.

Ms. Pfund noted that the variance request is very specific and limited to very narrow changes to the rules pertaining to a specific parcel of land or building,

whereas a modification is broader and permits use modifications if the modification provides flexibility and will result in a development that is practically and aesthetically superior to that which could be accomplished with the rigid enforcement of the rules. She noted that the burden would be on the developer to make a solid case for why the use modification will result in a better project.

Vice-Chair Quintal asked for a motion to conduct a public hearing upon satisfactory receipt of UC URBAN’s application for Project Eligibility Review and the Modification request and to appoint the Chief Executive Officer as the hearings officer to conduct the public hearing. Director Liu moved and Director Otani seconded. A vote was taken and the motion passed unanimously.

F. EXECUTIVE SESSION

Vice-Chair Quintal asked for a motion to move into Executive Session. Director Fukunaga moved and Director Otani seconded a motion to enter into Executive Session. The motion passed unanimously.

Mr. Kinkley, Ms. Pfund, Ms. Harrison and Special Legal Counsel Jon Pang were requested to be present for the Executive Session.

1. Discussion and Deliberation Regarding ATDC’s Rights and Responsibilities Under the Development Agreement Relative to the Proposed UC Urban Project, Pursuant to Section 92-5(a)(4), Hawaii Revised Statutes

The Board entered into Executive Session at 12:45 p.m. and reconvened at 1:23 p.m.

G. ADJOURNMENT

There being no further business, Vice-Chair Quintal asked for a motion to adjourn the meeting. Director Liu moved and Director Otani seconded the motion for adjournment. The motion passed unanimously and the meeting was adjourned at 1:25 p.m.

Respectfully submitted,

 /Sandra Pfund/
Recorder