



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Hwy., Suite 200
Honolulu, Hawai'i 96817**

MEETING OF THE COMMITTEE ON ASSET AND RESOURCE MANAGEMENT

DATE: Tuesday, January 13, 2015
TIME: 10:00 a.m.
PLACE: OHA Board Room, Na Lama Kukui
560 N. Nimitz Hwy., Suite 200
Honolulu, HI 96817

****** AMENDED**

AGENDA

- I. Call to Order
- II. Community Concerns / Beneficiary Comments*
- III. New Business**
 - A. Consultation with ARM Committee Financial Analyst
PKF Pacific Hawai'i LLP
 - B. OHA Budget Analysis
- IV. Executive Session***
 - A. Discussion regarding investment possibilities with Ernest Kimoto, OHA Corp.
Counsel, Re: Questions and issues pertaining to Board of Trustees' powers, duties,
privileges, immunities, and liabilities. Pursuant to HRS §92-5(a)(4). ****
- V. Announcements
- VI. Adjournment

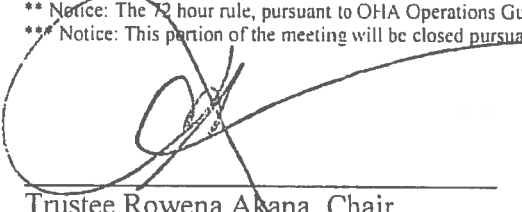
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LIEUTENANT GOVERNOR'S
OFFICE

* Notice: Persons wishing to provide testimony are requested to submit 10 copies of their testimony to the OHA CEO at 560 N. Nimitz Hwy., Honolulu, HI 96817 or fax to 594-1865 48 hours prior to the scheduled meeting. Persons wishing to testify orally may do so at the meeting. Oral Testimony shall be limited to five minutes.

** Notice: The 72 hour rule, pursuant to OHA Operations Guide, may be waived for distribution of new committee materials.

*** Notice: This portion of the meeting will be closed pursuant to HRS §92-5. For further information, please call 594-1934.


Trustee Rowena Akana, Chair
Committee on Asset and Resource Management

1/6/15
Date

**Office of Hawaiian Affairs
560 No. Nimitz Highway, Suite 200
Honolulu, HI 96817**

Committee on Asset & Resource Management

MINUTES OF MEETING OF JANUARY 13-14, 2015

TRUSTEES PRESENT:

TRUSTEE ROWENA AKANA, CHAIR ARM COMMITTEE
TRUSTEE JOHN WAIHE'E, IV, VICE CHAIR ARM COMMITTEE
TRUSTEE PETER APO
TRUSTEE HAUNANI APOLIONA (Left at 10:38 a.m. on 1/13/15)
TRUSTEE CARMEN HULU LINDSEY
TRUSTEE ROBERT LINDSEY

TRUSTEES EXCUSED:

TRUSTEE LEI AHU ISA
TRUSTEE DAN AHUNA
TRUSTEE COLETTE MACHADO

BOT STAFF:

ANI PANG
KAMA HOPKINS
HAROLD NEDD
CLAUDINE CALPITO
BETHANN AHSING
CRAYN AKINA
LAURENE KALUAU-KEALOHA
KANANI SOUZA
NATHAN TAKEUCHI

CAPSUN POE
REYNOLD FREITAS
LOUISE YEE-HOY
LEHUA ITOKAZU
LADY ELIZABETH GARRETT
DAYNA PA
ALVIN AKEE
MELISSA WENNIHAN

ADMINISTRATIVE STAFF:

KAMANA'OPONO CRABBE, CEO
HAWLEY IONA, CFO

KAWIKA BURGESS, COO
KEHAU ABAD, CED

DAVID OKAMOTO, INVT
MOMILANI LAZO, EA CEO
JOHN KIM, CONTROL
CHARLYN ONTAI, RM

GARETT KAMEMOTO, MRM
ERNEST KIMOTO, CC
LORNA LOEBL, AS
PILIALOHA WONG, NHRLF

GUESTS:

JEFFREY LAU, OGAWA, LAU, NAKAMURA & JEW
KURT LEONG, OGAWA, LAU, NAKAMURA & JEW
MILILANI TRASK, HUENA POWER
ROBBIE CABRAL, HUENA POWER
BILL MILKS, HUENA POWER

RODNEY LEE, PKF PACIFIC HAWAII LLP
DAN PURCELL
PATRICIA K. BRANDT, HUENA POWER
LEE ERWIN, HUENA POWER
NEAL AOKI, HUENA POWER

I. CALL TO ORDER

Chair Akana called the meeting to order at 10:00 a.m. Trustees present are Akana, Apo, Apoliona, Hulu Lindsey, Robert Lindsey, and Waihe'e constituting a quorum of six (6) Trustees. Excused absences were received from Trustees Ahu Isa, Ahuna, and Machado.

II. COMMUNITY CONCERNS / BENEFICIARY COMMENTS

There were no Community Concerns / Beneficiary Comments.

III. NEW BUSINESS

A. Consultation with ARM Committee Financial Analyst PKF Pacific Hawai'i LLP

Chair Akana said okay committee members, we have consultants PKF Pacific Hawaii here and they are going to do a brief overview of the analysis that they did and I did not know until yesterday that some of the content of what they have to discuss must be done in executive session. Therefore he's going to do a brief overview but next week's meeting will be a full-on discussion on his findings and then the Trustees can have a healthy discussion and hopefully come up with some recommendations based on their findings. Okay, so I'd like to welcome Rodney to the board table.

Trustee Robert Lindsey said Madame Chair?

Chair Akana said yes?

Trustee Robert Lindsey said are we going to call for Community Concerns or...?

Chair Akana said I don't have a list of anyone who signed up.

Trustee Robert Lindsey said Oh, okay.

Chair Akana said did you sign up? Yeah, I didn't have a list so let's begin with our analyst. Good morning and thank you.

Rodney Lee said good morning Trustees. Happy New Year. It's good to see all of you again. As Trustee Akana has said, I had the chance to meet with her yesterday and unfortunately, and I apologize, I didn't have the foresight to allow her to understand the content of the presentation itself, but we have completed a full financial analysis of OHA with the cooperation of the Administration and others. I'm getting the numbers together and understanding the basis of what our analysis is going to cover. It does cover large swaths of information that get into detail some of the things that happened in the past but how they play out into the future as they move forward. And it also asks very pointed questions that will be posed in the executive session and that's why we recommended that it be that way. Those that are really for the Board to decide and understand. These are not easy questions. It's not that it's bad news. It means it's good news as long as we can discuss them in a logical progression. What I can tell you today is that we have looked at the operating budget but also been given enough information about the portfolio and the tracked earnings over time. We've considered the effect of inflation as it relates to the portfolio, but also on buying power. Our common theme that some of you may have heard in the

past is this idea that there is a “cost” to money. There’s a cost to every decision and the consequences and tradeoffs that go with it. And that’s why it takes a little more time to get through the presentation itself. But we’re taking that into consideration the cost to money and how it effects how you make financial decisions. So one of the things you will see is the context in which financial decisions are made. So finances, the way we look at them, are longer term, and therefore those are made in the context of what your purpose or goal is. The finances of the results of decisions that are made in a directional sense and we’re going to touch on those. What can be done, what we think are positives and negatives about what is going on, but more over there are questions and there are questions that are pointed in the direction of OHA, but also setting parameters around that direction itself. So I do apologize for not presenting a full today, but I believe next week you will get the full breath of the presentation itself.

Chair Akana said I just want to say to the Trustees it wasn’t that they weren’t prepared, because they did give me a draft. However I did not know until yesterday that it should be in executive session because of the content of the findings. So that is why it’s just a brief overview today. Trustees have any questions?

Kamana’opono Crabbe, Ka Pouhana/CEO said just one comment Madam Chair. I think it would be helpful, as Rodney had shared, is with their comprehensive analysis of our fiscal status, investment portfolio, and the direction OHA is going, Administration has been working since September, October for a comprehensive update as well that would complement their presentation. Where they leave off, I believe we will pick-up and present what we think the organization should be considering given some of the organizational priorities of nation building, Kakaako Makai, achieving our strategic plan. And then how do we set all of these priorities in order within the budget framework and our financial projections we would like to see in the future.

Chair Akana said I think that’s important and from my brief thumbing through the voluminous report, I really want Trustees to think about this before next week’s meeting and one of the most important things I think in their analysis is the Trustees to set priorities that our strategic plan now, and John was a part of it when Trustee Cataluna when they helped work on that strategic plan, it was never meant to be gold and solid. It was meant to be a guide for us to follow on the things that we should be doing for our people, but through the years, I know Peter was here back in 1980 and since then, we’ve had two plebiscites in the 90’s about what is important to our people and you will find that as far back as 1980, and I think Peter will confirm that, and what we did in the 1990’s, that our people said there were three most important things to them was health, education, and housing. And those three things still remain at the top of the list. Number four was looking at the return of trust lands. But as we think about priorities that we need to set as Trustees, nation building is very important, but it is not the most important thing to our people right now. You can’t think of nationhood if you have no house, if you’re living on the street or family are in tents, and so I really would like the Trustees to start thinking about the priorities so that when they present, you can add more of your insight, and you can ask them questions on how we can guide the office into a structure.

Trustee Apoliona said Madame Chair?

Chair Akana said yes?

Trustee Apoliona said how soon will we get the information because my understanding was we would have had it this morning. So how soon are we going to get information to review? Because we can’t just talk.

Rodney Lee said it's prepared, so I think it's a matter of distribution.

Chair Akana said we can make the copies and you will have them 72-hours like the rules allow. So you will be able to go through it. I have a draft copy that was given to me yesterday.

Trustee Apoliona said that was kind of late, yeah, for you guys to produce it? I'm not trying to put you on the spot but this was agendized a while ago, so why the fact that the material is not ready?

Chair Akana said let me say that, before the election and the Christmas holidays, I was not the Chair of the committee, Peter was, and if it was prepared, there was no meeting, we couldn't have a meeting without being sworn in and so there was that lag time. So even if they finished it, we couldn't have done anything with it as a board. So, I'll just say that. And this is my first meeting and so I wanted to put that on the table and deal with it right away.

Trustee Robert Lindsey said I would assume Rodney that there's an executive summary that goes with the report as it says it is?

Rodney Lee said this one doesn't.

Trustee Robert Lindsey said it would help us be able to quickly get a gist of the major themes to be presented next week.

Rodney Lee said the current presentation does not have an executive summary but I can put one together very quickly.

Chair Akana said I will make sure.

Trustee Apoliona said I guess that's the situation we're in right now. We're going to have what we're going to have because we don't have it as scheduled. And this is, you know, just the facts. Just trying to understand the facts here.

Rodney Lee said it's been prepared. We want to make sure the Chair had a chance to review.

Chair Akana said I received it yesterday and like I said, did not know we should have it in executive session because of the content. And the reason it's not in your folders is because of the confidential information, so it shouldn't be public. It's for Trustees at this point and I will make sure that you all get a copy. Rodney?

Rodney Lee said thank you.

Chair Akana said thank you very much for coming. I'm going to ask for a short recess of about five minutes while we get the other presenters to come in.

RECESS

BEGIN at 10:13 a.m.

END at 10:15 a.m.

Chair Akana said Hawley is distributing the materials for in-house budget analysis so I'll call the meeting back to order out of recess.

B. OHA Budget Analysis

Trustee Hulu Lindsey said where's the spreadsheets, Hawley? I understand numbers easier with a spreadsheet.

Hawley Iona, CFO said so e kala mai, there is one spread sheet and there are numbers imbedded into the presentation so certainly we can go through it. So e kala mai that you were not given 72-hours for this information. Moving forward that is our goal, that is our intended goal, however I just met with Trustee Akana on Friday and she expressed a desire to kind of start off at least the internal discussions, not necessarily the PKF discussions which is just a high level overview of where we are now with our fiscal year fifteen budget so that is what this presentation is intended to do. So the high level overview of our total operating budget that was approved by the board, the realigned budget that was approved by the Board on October 2014 is composed of six separate "buckets" if you will. So our total operating budget consists of our core operating budget, fiscal reserve, any authorizations or designations from there, our governance planning budget, commercial properties, legacy properties, and out special projects. So these are high level "sums" of what you have already authorized us for spending. Taking a closer look at our core operating budget the major tranches include personnel, about 39% of our core operating budget, followed by our grants program at 24%, our contracts at 22%, and then program, overhead, equipment and travel. Moving forward, we wanted to give the Trustees an update on what uses have been through December 31st of 2014, so as of that period of time we have used of the \$35.2 million that has been authorized for our core operating budget, we have used, which means actually paid out and/or encumbered \$19.7 million. So the far right hand column shows what's currently remaining. Personnel at 50%, program at 60% of the budget, contracts, grants, travel, equipment and overhead. This is important because this at a glance really shows the performance of how we're utilizing the budget that you have authorized, not necessarily into the detail of it. But certainly what we have been able to use and encumber. There are separate reports that actually show more detail and they are submitted to the Trustees quarterly. So we are currently in the process of issuing our quarterly report to you, which shows activity by Pai'a.

Kamana'opono Crabbe, Ka Pouhana/CEO said just one caveat Trustees. In the second column, under "budget" it has the total \$35,218,000. I do want to highlight is that in 2010, the budget was much higher, in the \$40 million. So our budget is again depending on the five percent spending policy and the rolling twenty quarter and what we receive from general funds as well. So our budget has decreased over time, these past years, and what we're trying to show is as it has decreased, we're still trying to maintain the different levels within the Administrative categories such as personnel, programs, contracts, grants. With regards to personnel, I believe we are over 90% full within the organization and that's one of the highest rates of employment since 2010 when we were estimating 70-75% of our workforce within the organization.

Chair Akana said I have a question for either of you. The meeting prior to the last election, the Trustees approved an additional nine point something million dollars, bringing our budget up to \$50 million. So I don't understand the \$35 million when we calculated at that last meeting that we were up to \$50 million in our budget by appropriating that nine plus million dollars.

Hawley Iona, CFO said so Trustee, Madame Chair, taking you back to the first summary slide the total operating budget is \$49.6 million, that's what your board has authorized for spending. What Pouhana is referencing as far as the almost \$40 million was just in the core operating budget. To put it in context, our core operating budget in 2010 was somewhere around \$38 million now we're looking at \$35 million. So his focus really is on the decrease in that area. Keep in mind that our core operating budget really is the core operations of the organization although we do add fiscal reserve, governance planning, commercial properties, legacy properties, and special projects those are not effecting specifically our core operations and most times do not affect directly our strategic plan. So from an administrative stand point that's what we focus on as far as being able to impact our mission.

Chair Akana said okay, for the future, for the committee and for the administration I want you all to focus in on what we hope to accomplish within this next year and that is looking totally at our expenditures and separating out by categories in our budget so that we can identify the spending with your LOB's or divisions. I notice that in one of the reports the administration used money from the rents of this building and put it into grants and the expenses and the revenues generated from this building should be put in a separate category so that at the end of the year we can look at how much money we made and how much it costs to operate the building. The money should not be taken out and put into our budget and used for grants. That is something we're going to have to work through so that we can identify exactly what we're spending, what we're spending it on, and the money should not be co-mingled because when you set a budget, if you live by that budget there is no need to infuse money from other areas, especially from rents from this building. We have to identify how much money we're making in profit and the only way to do that is to make sure that it is separate. It can't be infused or co-mingled in our budget. So I just say that upfront because we need start to look at how to do this.

Hawley Iona, CFO said Madame Chair, if I may. So, we do not reallocate any revenues from this building, Na Lama Kukui, to the grants program.

Chair Akana said it was in a document, Hawley.

Hawley Iona, CFO said no, it's Kakaako Makai only and that's pursuant to the Kakaako Makai policy. So Na Lama Kukui, and I don't mean to jump around the presentation but this a slide towards the end. Na Lama Kukui is a operating unit that revolved onto itself, which means any surplus in any given year will carry forward specifically for the operations of this investment. So we have gross revenues for this current fiscal year fifteen. We do have carry over surplus from the year before of approximately \$1.3 million bringing the spending limit this year up to about \$5 million. Once you deduct all of the operating expenses as well as the debt service for the loan on the purchase of this property, we will have another net surplus carry forward of approximately \$1.5 million. When you look at Kakaako Makai however, that's where Madame Chair is referring to the allocation back to the grants program. So she is correct that at this point, there is a 10% allocation that your Board did approve based upon the gross revenues. Outside of that, it has a very similar structure in that it revolves onto itself, meaning any surpluses after expenses for that fiscal year will carry forward to that next fiscal year. If the Trustees choose, you know, you can always change that at any point in time and not allow the ten percent allocated back to the grants program, but at this point, it is something that is allocated back.

Trustee Apoliona said Madame Chair, so basically, by our own policy, Trustees have provided for that "grants."

Hawley Iona, CFO said that is correct.

Trustee Apoliona said okay, thank you.

Trustee Robert Lindsey said I have a question on the next slide, slide four, and it's a budget variance question. So, I'm assuming that what shows up on the screen is our midpoint financials?

Hawley Iona, CFO said that's correct. And when you say "financials" it is very specific to the operating budget for the year as opposed to what ends up in our financial statements at the end of the year which is actually on a modified accrual basis. This is on a budgetary basis, yes. So, and what you'll be receiving on the next week or so is, once again, exactly what Madame Chair had asked, which is, she wants to see it not at a high level like this, only a budget categories, but actually broken down by division. And that's actually how we've been. We started the quarterly report, Pai'a level variances to the Trustees a few reports back. So, you got it, I believe in November for that first quarter and this will be a second quarter that we'll also do a Pai'a level variance report to you.

Trustee Robert Lindsey said thank you.

Trustee Hulu Lindsey said I have one question. The savings that we have experienced from 2010 to today is in what part of the pie?

Hawley Iona, CFO said I'm sorry, Madame Chair, could you clarify the question, Trustee?

Trustee Hulu Lindsey said yes, Kamana'o said that we are spending less today than we did in 2010. I just want to know where the savings are.

Hawley Iona, CFO said to clarify his statement, we're spending less because we're forced to based upon the 5% spending policy that the Trustees have approved and what that means is when you take the 5% based upon the formula which is a twenty quarter rolling average of our market value, we are actually seeing a decrease in what we are able to spend. So you don't akin that to savings, per se, because you still at the maximum spending for that fiscal year, but what you don't draw down remains in the investment portfolio. So in essence you're allowing your portfolio to also recover as well.

Trustee Hulu Lindsey said I'm seeing on the core operating budget "pie" that the grants amount is less than what we've been giving.

Hawley Iona, CFO said so the grants in our core operating budget remains anywhere from about eight million to ten million every year. It really depends on how much we're able to allocate towards that. In past years, however, a good majority of our fiscal reserve was actually also including our grants and so when you see, like our annual report, and you see a \$12 million commitment to our grants program you'll actually see our core operating budget and any allocations through fiscal reserve reported there. So for this Fiscal Year fifteen it's going to be somewhere closer to eleven million or so.

Trustee Apoliona said anything else you need to finish?

Hawley Iona, CFO said I can just go through it very quickly. Just in case there are any other questions. So personnel count, primarily because personnel is our largest single expenditure I did want to give the Trustees an opportunity to pose any questions that we can answer moving forward. When you talk about our personnel count, Trustees have authorized total staffing level at 179 Full-Time Equivalent positions, that's what "FTE" stands for, and that is inclusive of yourself. And 179 is broken down between 166 and the core. We have three FTE's in Governance Planning; two FTE is our Commercial Properties; and eight FTE's in our Federal Programs. So that's important to note because our core only

funds 166. Broken down by our organization chart, I know the Trustees recall they did authorize the creation of the Land Division and that took effect in July first in the prior calendar year. So that correlates to twenty-nine in your Board of Trustees offices, nine FTE in the CEO's office, nine in the COO's office and then across the divisions. Thirteen for Land, forty for Financial Assets, thirty-one in Community Engagement, nineteen in Research, and twenty-nine in Advocacy.

Chair Akana said Trustee Apo?

Trustee Apo said under personnel, as a State agency, we're subject to certain budget constraints in the area of personnel how the organization grows, people we actually hire on staff, but we are an unusual agency where in the past we had, in order to keep personnel costs down, I think, done a lot more subcontracting of certain responsibilities as being more efficient. And if I'm not mistaken, Kamana'o, when you came on board, we tended to back-off on the subcontracting and bring more and more people in house. Where are we now in terms of the growth of personnel obligations and the growth of the budget that kind of "seals us in" and in my opinion it deflects flexibility in being able to manage the finances? What is the philosophy of how you make decisions as to where a kuleana will be contracted out or whether we're going to hire to that position?

Kamana'o pono Crabbe, Ka Pouhana/CEO said Trustee, each year as we go through planning, we go through biennium budget planning and then we go year-to-year planning and then within every year, each Pai'a has projects that they will be focusing on that contribute not just to their kuleana as a Advocate, Research, Asset Resource Manager, Community Engagement, and whether or not we have capacity internally or if we don't, the Directors are left up with that decision whether or not we really need to contract out. For example, the OHA website and multi-media display, we did do a contract out for the basic framework of the website, however that contract was \$50,000 for the basic, technical framework. However, we did all of the work in-house with our digital media staff, our community outreach, our Ka Wai Ola, and then just coordinating within the organization, Kehau we spent about?

Kehau Abad, CED said [Inaudible - did not speak at table into microphone].

Trustee Apo said one more question.

Chair Akana said yes, Trustee Apo.

Trustee Apo said what category of spending is our personnel the largest growth of in terms of cost, internal to us?

Hawley Iona, CFO said so there are several areas of expenditure growth since, say about 2010 that administration has taken a closer look at and I can't recall if we actually addressed it or if PKF addresses it in the presentation, but definitely personnel as well as programs and contracts. Program expenditures being freight and delivery, our mail comes out of there, our conference and meeting costs come out of there, so that's an area we taking a closer look at. Personnel, keep in mind that in 2010 we have increased Full Time Equivalent count, so it makes sense that our personnel cost increased as well. And then same thing with contracts. Contracts often fluctuate depending on need, any kind of advocacy related work that we've had either on the national level that the board as authorized also gets into our contract costs. So, I'm hoping in the next month or so we'll be able to have a more detailed analysis of the variances over the past say four or five years for you.

Chair Akana said because we're going to lose quorum at 11:00 a.m., I'd like you to wrap it up and let's try to save a lot of this information for next week and we will have a good measure of time, that whole

day to go over it. I want the Trustees to know that I intend to, as I have discussed with Hawley to look at each LOB division and go through each one with purpose. The personnel, the costs and benefits to OHA and the Trustees will have an opportunity to weigh in on what they think and how they feel about this because surely when you here the presentation done by the analyst we're going to have to tighten our belts and we're going to have to look at focusing in on priorities. So it will be a decision for Trustees. So can we wrap it up?

Hawley Iona, CFO said Madame Chair, if you will , you have it in front of you. I'm hoping that you can look thought it before our next meeting, send questions if you will. I believe everything is being routed through Chair Lindsey's office or at least through your committee so if you don't mind meeting with Chair Lindsey to just clarify how you'd like the questions consolidated and given to Administration. We'd be more than happy to be prepared for the next meeting.

Trustee Apoliona said thank you, Hawley.

Chair Akana said thank you.

Trustee Apoliona said Madame Chair, I'm going to have to leave.

Chair Akana said okay, fine. Can we go into Executive Session. Can I have a motion?

Trustee Apoliona left the meeting at 10:38 a.m.

Trustee Waihe'e said Madame Chair, I'd like to move that we recues ourselves into Executive Session Pursuant to HRS §92-4 & 5.

Trustee Hulu Lindsey said I second.

Chair Akana said all those in favor say "aye."

All members present said "aye." Motion passed.

IV. EXECUTIVE SESSION

Resolved into Executive Session at 10:38 a.m.

Resolved into open session at 11:13 a.m.

Chair Akana said we are back into open session and so the meeting is recessed until tomorrow morning at 9 o'clock.

RECESS

BEGAN on Tuesday, January 13, 2015 at 11:13 a.m.

ENDED on Wednesday, January 14, 2015 at 9:33 a.m.

Chair Akana called the meeting back to order at 9:33 a.m. on Wednesday, January 14, 2015. Trustees present are Akana, Apo, Hulu Lindsey, Robert Lindsey, and Waihe'e constituting a quorum of five (5) Trustees. Excused absences were received from Trustees Ahu Isa, Ahuna, and Machado.

Chair Akana said [Inaudible].

Trustee Robert Lindsey said Ernie, need your help please. And I'm assuming, Madame Chair, that you are speaking to the e-mail that I circulated this morning where there was an issue.

Chair Akana said yes, I read this. [Inaudible] and that we continue.

Ernest Kimoto, CC said can I ask Madame Chair, is it the continuation of the Executive Session from yesterday or?

Chair Akana said well we can continue in Executive Session and then I'll call for an open session. Actually, we were in open session at the end and so there is no problem with the presentees to be in open session so I'm going to leave it that way.

Trustee Hulu Lindsey said Madame Chair, I think we should go back into Executive Session, only because Executive Session does not allow the public in. So I think that the notice of ours is not necessary because we don't need the public in here.

Trustee Robert Lindsey said but if I may, Madame Chair. There is an issue too in terms of Sunshine about Executive Sessions and the prerogatives and the protocols that relate to Executive Sessions. And that is, as I understand, limited to us as a board and to our counsel. Am I correct? And that comes from OIP.

Chair Akana said who saw that opinion from OIP?

Trustee Robert Lindsey said I did.

Trustee Hulu Lindsey said what is the opinion?

Trustee Robert Lindsey said that we cannot have an Executive Session with anyone other than our own attorneys.

Ernest Kimoto, CC said Chair Lindsey is referring to the subject matter that is not dealing with board liabilities and responsibilities and so forth.

Chair Akana said but it was on the original... [Inaudible] ...from that agenda applies today.

Trustee Robert Lindsey said the option that is being offered us is that we re-agendize this meeting so that we can continue.

Chair Akana said I would like to see their opinion in writing because it doesn't make sense at all because the public, we announced that the meeting was in [Inaudible] that we were going to reconvene [inaudible]. I'm insisting on it because we've done it so many times and the point made by Trustee Lindsey that our agenda was [inaudible]. In other words the public is not invited to that. Judge Klein ruled on that before.

Trustee Hulu Lindsey said it's the same agenda too.

Chair Akana said it's the same agenda. So I don't understand. Judge Klein has a previous ruling on such a thing and now we have something that's conflicting. This is not right.

Trustee Robert Lindsey said if I may, Madame Chair, when it comes it comes to the Executive Session opinion, it's a current opinion based on, and what's in the email to all of us is based on an opinion which Judge Klein gave me yesterday evening in response to an email to him. So that is a very current opinion.

And so, I'm not sure. Yes, maybe previously we operated under one rule, but that is his very current opinion. When it came to reconvening, yesterday, after going back into open session the humbug is we failed to announce to others who were outside of the room that we were recessing and our reason for going into recess. That was the humbug.

Chair Akana said when we recessed into open session there was no other people out there.

Trustee Robert Lindsey said but there were. There were the two gentlemen, Mr. Lau and his associate.

Trustee Apo said Madame Chair, if I might. I think we would be wise to take the caution and reschedule. As much as I would like to finish this dialogue, I think playing with OIP is asking for a lot of trouble. We're in enough trouble with OIP already. So to aggravate the situation, particularly knowing that if we proceed with this meeting there's going to be a complaint filed and then we're going to have to respond and then we're going to have to get and then the process and the procedure becomes a bigger challenge than the issue we're trying to address. So it's not worth it to me.

Chair Akana said okay, so let me just say this as the committee chair. It is obvious to me that something is awry here and while we're using OIP, it really is Judge Klein who has this objection and we're quoting OIP so I don't know from this, Bob, if this opinion really came from OIP or if it came from Klein.

Trustee Robert Lindsey said I'm sorry to interrupt Madame Chair, it came from both. From the Office of Information Practices and from Justice Klein and I provided the impetus for this only because as we move forward in this New Year, I have several focuses. One is transparency, another is accountability, and another is compliance with the rules and the law. I'm sorry, but I asked for the debrief not only of our ARM meeting yesterday, but also our BOT meeting from last week and all of our other meetings. I want to be sure that we protect the institution, we protect this office, that we not damage our image and that we do what's right.

Chair Akana said Mr. Chair, I agree with you wholeheartedly as you recall, this was my lawsuit against OHA, to be in the sunshine and not hide things in agendas like we have in the past. It's unfortunate that our Board Counsel now makes contradictory opinions when in the past he's, in my opinion, has put this Board in jeopardy in many, many cases. Two that are glaring now, one is a complaint at OIP. One resulted in the State Auditor calling out one of our Trustees who was advised by our Board Counsel to take a vote that she should not have done. So it is troubling to me that our own Board Counsel has given us conflicting opinions depending who is asking for those opinions. So it bothers and troubles me greatly. And because the Board Chairman has opined that we should re-agendized, that's what we will do. I apologize to all of you. If I had my druthers, I would continue this meeting because I know that we've done it in the past, it's been "kosher." We even have an opinion from the same lawyer. So I apologize again to you all and to the Trustees and hope that you will be amenable to coming back before us again to finish this meeting. Is it okay with the Trustees?

Trustee Robert Lindsey said and if I may, Madame Chair, I want to apologize to you too for where we are now in terms of our conversation and I want to apologize to our family from Huena Power for what has happened. I just want to be sure that our "i's" are dotted and our "t's" crossed. And I apologize for the inconvenience that is the result of, we made a mistake. It was not intentional and for us, you know it's going to be some lessons learned.

Chair Akana said with that said I will, yes?

Mililani Trask, Huena Power said I would just like to say this on the record because this is the second time we're coming back and yesterday I gave some of you my three-page statement I was going to make today. I'm happy to come back. You know, my colleagues, I want to tell you something. When I read the decision of the OIP which found this board in violation twice of Sunshine Law, I went back to your records. Your records demonstrate clearly that your Board Counsel advised you to act in a certain way. He was called to advise you on the Sunshine Law. You followed his advice and as a result you, the elected officials, Trustees of this office, have been found guilty of two violations of the Sunshine Law. It is significant, colleagues, because you're elected officials here. It wasn't your fault and I could see it when I read the record because of the advice you got. I agree with Trustee Rowena Akana because I myself was a Trustee and repeatedly this problem came up. But one thing I want to say to you is that even though your counsel gives you advice that is poor, when you follow it, you are violating Sunshine Law. Your attorney, wisely, filed for an appeal because where an attorney advises their client to violate the law, and then a decision comes down whether from Ethics or OIP, the client is responsible and the attorney has prima facie evidence of malpractice. That's what happens when an attorney advises you to do something that violates the law. Point number two, I gave you my document yesterday. You know that I believe that there's been tortious interference not only with regards to statements made about the work I did along with NHLC to win a landmark decision in the Pele case. So colleagues, when I come back I'm going to present this to you. I'm on my way to the disciplinary counsel in the State Ethics Commission so let's please set this in a timely manner because I think you're entitled to at least know what is going on. If you wish to have it in public session it's not my liability, it is yours, but either way I will come back, but let's proceed. You know, I'm concerned with this and I know that this board is blameless. I know this and I don't want to see further liability for this office.

Chair Akana said thank you. Trustee?

Trustee Apo said yeah, you know Madame Chair, first of all, the very conversation we are having now is illegal. We are right now in violation of the Sunshine Law. We're having discussions about items that were not agendaized. We have five Trustees sitting at the table. It's very difficult to rise to another level of accountability, public accountability. We are not used to that. We're going to have to get used to it. And whether counsel is right or counsel is wrong, the decisions don't lie with the counsel, they lie with us. So if there's fault to be had, it is the Trustees fault. We have to get our act together and get up. And I commend you Chairmen, for you know, and I also commend you for agreeing to postpone the meeting, but we're playing with fire, I'm telling you. This is really serious stuff and we cannot be screwing around with this so let's come back and take care of business. That's what we want to do right?

Chair Akana said so I will re-agendaize the meeting to be continued in executive session. Just like yesterday when talked with our consultants on budget, some of the content could be libelous, if people got a hold of it. It is advice to us so it has to be in Executive Session and perhaps this as well. So I will agendaize it again and Mr. Lau and his partner or whomever can come and give their opinions but know that the presentation first will be to complete the Huena presentation. They may speak afterwards. Anybody can speak afterwards if they will, but they will not be allowed in our Executive Session in the presentation of Huena. But we definitely want them here. Okay? So that said.

V. ANNOUNCEMENTS

There were no announcements.

VI. ADJOURNMENT

Chair Akana said what is the proper way that you recommend we close this meeting?

Ernest Kimoto, CC said adjourn the meeting, Madame Chair.

Chair Akana said the meeting is adjourned.

Hearing no objections, meeting adjourned on Wednesday, January 14, 2015 at 9:49 a.m.

Respectfully submitted,



Nathan Takeuchi, Aide
Committee on Asset and
Resource Management



Rowena Akana, Chair
Committee on Asset and
Resource Management

Approved: ARM meeting on February 3, 2015