

CONTRACTORS LICENSE BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

Minutes of Meeting

Date: June 19, 2020

Place: Virtual Videoconference Meeting – Zoom Webinar
<https://department-of-health-hawaii.zoom.us/j/95088339206>

Present: Tyrus Kagawa, Chairperson
Leonard K. P. Leong, Vice Chairperson
Paul K. Alejado, Member
Neal K. Arita, Member
Genaro Q. Bimbo, Member
Clyde T. Hayashi, Member
Eric Higashihara, Member
Leslie Isemoto, Member
Nathan Konishi, Member
Kent Matsuzaki, Member
Joseph O'Donnell, Member
Kenneth T. Shimizu, Member
Nicholas W. Teves, Jr., Member
Candace Ito, Executive Officer
Charlene L.K. Tamanaha, Executive Officer
Lei Ana Green, Executive Officer
Christopher Leong, Deputy Attorney General
Faith Nishimura, Secretary
Sal L. Nicosia, Senior Systems Engineer, State Office of Enterprise Technology Services ("ETS")
Daniel Jacob, Deputy Attorney General
Rise Doi, Executive Officer
Kellie Teraoka, Secretary
Terry Akasaka-Toyama, Secretary to DCCA Deputy Director Jo Ann M. Uchida Takeuchi

Guests: Aloha Solar and Electrical LLC
Brian B.
Dave Rogstad
David Banks
ds
DS
Eric Vega, Northern Powerline Construction
GS
Hawaii Ironworkers Stabilization Fund
HOEISF - Lobbyist
Jeff Masatsugu
Jenn
Jeremy
John Dawley
js

jsk
Justin
Kenneth Schacht
Kristen K.
Kristiyan Assouri
Kyle Kagihara
Lei Norton
Iteshima
Maurice Torigoe
mino
Paul Lincoln
Reid Goto
Rick
Rick Paulino
Rochelle
Sandy Ma, Common Cause
Taylor Takeuchi
William Palmer, Senior Vice President, Tutor Perini Corporation

Call to Order: Chairperson Kagawa called the meeting to order at 9:02 a.m.

Agenda: The agenda for this meeting was posted on the State electronic calendar as required by HRS section 92-7(b).

A short video was played to explain the meeting procedure and how members of the public could participate in the virtual meeting.

Chairperson Kagawa welcomed everyone and proceeded with roll-call. All Board members were present.

Executive Officer Ito informed the guests that there are 5 panelists in attendance to provide technical support to conduct the virtual meeting.

Chairperson Kagawa presented the agenda item on delegation of authority to the Board's Executive Officer, any of the Board's powers or duties as it deems reasonable and proper to review and defer contractor applications and grant, deny, or condition licenses that do not require the exercise of the Board's expertise and discretion.

Chairperson Kagawa opened the floor for any comments.

William Palmer, Senior Vice President, Tutor Perini Corporation, thanked the Board for the opportunity to provide comments. He stated that they are mindful that there is not a single person, company or governmental body that has not felt the impact and disruption caused by the Covid-19 pandemic. They are encouraged by the Board's decision to conduct the meeting using technologies at its disposal allowing the Board to conduct its business while keeping the public and applicant's safe. He went on to say that they strongly urge the Board to approve the delegation of its powers to review, grant, deny, or condition licenses to the Executive Officer. He added that despite Executive Officer Ito's best efforts in navigating them during this process amid the Covid-19 pandemic, Tutor

Perini's application has been unresolved for nearly five months. He asked that upon the delegation of these powers to the Executive Officer, that the Executive Officer be required to swiftly review and grant conditional licenses for approval applications with haste.

Chairperson Kagawa asked for any comments from the Board members.

Mr. Higashihara stated that he recognizes the importance of the general contractor and specialty contractor members on the Board and is impressed by the questions that have been asked of applicants to ascertain the applicant's experience (e.g. asking the applicant how many cubic yards were moved for an excavation project). He went on to say that he fully understands that those kinds of tasks need to be evaluated by the Board. However, he also understands that items that do not require the expertise and discretion of the Board should be delegated to the Executive Officer for review and approval.

Mr. Higashihara asked the Executive Officer to specify the delegated duties. Executive Officer Ito stated that staff would only be able to review and approve applications that do not require the Board's discretion or expertise. She went on to say that one of the main things that staff does not have the expertise to review is an applicant's experience and the Board is required to review an applicant's experience. Other applications that the Board will be required to review even if the experience is not in question are applicants that have outstanding or unpaid financial issues (e.g. unpaid liens or judgments). The Board is also required to make decisions on applicants with a criminal conviction. She clarified that if an applicant has an unpaid lien or judgment, and provides to the Board a lien release or satisfaction of judgment, the determination on whether the lien or judgment is paid would be considered as ministerial. The Executive Officer would be able to determine the validity of the lien release or satisfaction of judgment and could determine whether the applicant has paid their outstanding financial debt.

Executive Officer Ito stated that there are other types of applications where the review of experience is not required. These include, but are not limited to, the following:

1. Change of status from Sole Proprietor to RME
2. Change of status from RME to Sole Proprietor
3. New entity with a licensed RME – the Executive Officer would review financial statements, tax clearance for the entity, and credit reports of the officers of the company
4. Entity conversion to another entity type – this is an administrative process in which the domestic entity files the proper paperwork with our Business Registration Division ("BREG"). The review of the BREG documents would not require the Board's expertise or discretion.
5. Reactivation
6. Bond waiver
7. Joint Venture when the RME is licensed
8. RME for More than One Contracting Entity
9. Reapply after failing to pass the examination within the required 6 months

10. Reapplication after license forfeiture due to lapse in insurance or failure to renew license

Mr. Matsuzaki asked if an application requires the review of experience, would it go to the Board. Executive Officer Ito stated yes. Mr. Matsuzaki asked about conditional licenses. Executive Officer Ito stated that Hawaii Revised Statutes 436B-8 allows the Board to delegate to the Executive Officer the authority to issue conditional licenses. However, the Board may wish not to delegate the issuance of a conditional license to its Executive Officer. Executive Officer Tamanaha stated that in the past, the applications are always taken to the Board for review and to determine whether a conditional license should be issued.

Executive Officer Ito stated that the Board had previously discussed the possibility of delegating to the Executive Officer, determining the conditions to place on applicants that have debt that is less than \$10,000 (e.g. applicant has a \$5,000 judgment and a payment plan) however, the Board did not make a determination on this matter. The conditions that the Board usually imposes on an applicant are reporting to the Board and providing verification that they are current in their payment plan and upon their last payment, verification such as a lien release or satisfaction of judgment is required. Currently all applications that may be considered for the issuance of a conditional license are taken to the Board for review.

Mr. Higashihara asked Mr. Matsuzaki if the issuance of conditional licenses are of concern for him. Mr. Matsuzaki stated no and that he is asking for clarification because there are other reasons that the Board would condition a license. However, he is okay with staff approving conditional licenses for financial matters as discussed.

Mr. Higashihara asked if the Board could narrow the scope of conditional licenses that the Executive Officer would be able to approve. Executive Officer Tamanaha suggested that the Board discuss the scope of this particular delegation at a future meeting and that the delegation could always be amended at future meetings. Executive Officer Ito agreed that this be discussed at a future meeting. Currently all applications that may be considered for a conditional license are taken to the Board for review. The Board has always approved the conditional licenses and it is always for financial matters. The Board has never issued a conditional license to anyone who has not met the experience requirement.

Mr. Isemoto asked about applications that are denied and whether the applicant has an option to appeal the Board's decision. Executive Officer Ito stated that applicants who are denied are sent a letter notifying them of the denial and affording them the opportunity to request a contested case hearing.

Christopher Leong, Deputy Attorney General ("DAG Leong"), stated that he echoes Executive Officer Ito in that anytime an applicant is denied, there is a right of appeal. He went on to address Mr. Matsuzaki's concern regarding the scope of delegation, by adding that his experience with other boards where fairly significant authority is delegated to the Executive Officer, it is important for the Executive Officer to take care of applications between board meetings, especially when the board does not meet often. In instances where the Executive Officer is

unsure because they don't have the experience on the subject matter or if they have questions, they will bring the application to the Board for review.

Mr. Matsuzaki stated that the Board should keep the issuance of conditional licenses in the delegation to the Executive Officer.

Mr. Arita asked whether the Board received any other written testimony on this matter. Executive Officer Ito stated that Roy K. Amemiya, Jr., Managing Director, Office of the Mayor, City and County of Honolulu, emailed the Board yesterday and urged the Board to allow the authorization of delegation and expressed the same sentiment as Mr. Palmer.

Mr. Higashihara asked how the Board will make it official once the Executive Officer approves the applications. Executive Officer Ito stated that the approved applications will be taken to a Board meeting for ratification by the Board. DAG Leong confirmed Executive Officer Ito's statement. He went on to say that the normal procedure for other boards that have delegated approval of applications to the Executive Officer is to ratify the approved applications at a subsequent meeting.

Mr. Bimbo asked what the Board's delegation of authority are. Executive Officer Ito read HRS section 436B-8 as follows:

(a) The board shall delegate to the department the authority to receive, arbitrate, investigate, and prosecute any complaint against a licensee.

(b) A licensing authority may delegate to the executive secretary, or other designee, any of its powers or duties as it deems reasonable and proper. The delegation of powers and duties by the licensing authority shall be made in accordance with the procedures set forth in section 436B6(c). However, the licensing authority shall not delegate its discretionary functions resulting in a final decision, including but not limited to the following:

- (1) Adopting, amending, or repealing rules;
- (2) Ordering disciplinary action against a licensee, including the revocation, suspension, or imposition of conditions or fines; provided that summary suspensions may be delegated; and
- (3) Granting, denying, or otherwise conditioning license applications, unless the granting, denying, or conditioning of a license does not require the exercise of the licensing authority's expertise and discretion.

Executive Officer Ito stated that the types of applications and types of documents that the Executive Officer would be reviewing is considered ministerial, objective and would not require the Board's expertise and discretion. Executive Officer Tamanaha stated that the Board has already set parameters (e.g. bond requirements).

It was moved by Mr. Higashihara, seconded by Mr. Bimbo, and unanimously carried to approve that the Board delegate to its Executive Officer any of its powers or duties as it deems reasonable and proper to review and defer contractor applications and grant, deny, or condition licenses that do not require the exercise of the Board's expertise and discretion which includes, but is not limited to, the following types of applications; and to ratify these approved applications at a subsequent Board meeting:

1. Entity conversion to another entity type
2. Reactivation
3. Bond waiver
4. Joint Venture when the RME is licensed
5. RME for More than One Contracting Entity,
6. Reapply after failing to pass the examination within the required 6 months
7. Change of status from Sole Proprietor to RME
8. Change of status from RME to Sole Proprietor
9. New entity with a licensed RME
10. Reapplication after license forfeiture due to lapse in insurance or failure to renew license

Executive Officer Ito announced that this is Chairperson Kagawa, Mr. Matsuzaki, and Mr. Bimbo's last meeting. She thanked them for their time, dedication and contributions to the Board; and acknowledged that Chairperson Kagawa and Mr. Matsuzaki served eight years on the Board.

Chairperson Kagawa thanked the Board and staff for all their time and hard work dedicated to serving the public. Mr. Matsuzaki also thanked the Board and staff for all the time and effort they contributed to serving the public.

Next Meeting: To be determined.

Adjournment: There being no further business to discuss, the meeting was adjourned at 9:43 a.m.

Reviewed and approved by:
/s/Candace Ito

Candace Ito
Executive Officer

Taken and recorded by:
/s/Faith Nishimura

Faith Nishimura
Secretary

7/17/20

Minutes approved as is.

Minutes approved with changes. See minutes of _____.