

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission	LIQUOR CONTROL COMMISSION	Meeting Date	May 2, 2019
Location	Mo'ikeha Building, Liquor Control Conference Room 3	Start of Meeting: 4:01 p.m.	End of Meeting: 5:02 p.m.
Present	Vice-Chair Shirley Akita; Members: William Gibson, Jean Iida, Maryanne Kusaka, Gerald Matsunaga, Gary Pacheco Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; Deputy County Attorney Cameron Takamura		
Excused	Chair Paul Endo		
Absent			



SUBJECT	DISCUSSION	ACTION
Call To Order		Vice Chair Akita called the meeting to order at 4:00 p.m. with 6 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 6 members were present.	
Approval of Agenda		Mr. Pacheco moved to approve the agenda. Mr. Matsunaga seconded the motion. Motion carried 6:0.
Approval of Minutes	<u>APPROVAL OF MEETING MINUTES:</u> a) Open Session minutes of April 18, 2019 b) Executive Session minutes of April 18, 2019	Ms. Iida moved to approve the open session minutes of April 18, 2019, and the Executive Session minutes of April 18, 2019. Ms. Kusaka seconded the motion. Motion carried 6:0.
1. Public Hearings	a) <u>KAUAI BEACH RESORT:</u> Application No. 2019-073 was filed on March 20, 2019 for a transfer of Hotel License No. 12G-003 from Kai Management Services, LLC dba Kauai Beach Resort to Team Filament, LLC dba Kauai Beach Resort located at 4331 Kauai Beach Drive, Līhu'e, Kauai, Hawaii. The Commission accepted Application No. 2019-073 for publication and public hearing on April 4, 2019 and ordered to print notice of public hearing in The Garden Island on Wednesday, April 10, 2019, scheduling the public hearing on May 2, 2019 at 4:00 p.m. or	

	<p>shortly thereafter in Meeting Room #3 of the Līhu‘e Civic Center, Mo‘ikeha Building, 4444 Rice Street, Līhu‘e, Kauai, Hawaii.</p> <p>Mr. Jonathan Chun, counsel, was present along with Robert Minicola, General Manager, on behalf of the applicant.</p> <p>Up until the time of the hearing, the department did not received any letters in support or opposition to the application; there was no one present to object to the application.</p> <p>The public hearing for Application No. 2019-073 was closed.</p>	<p>Mr. Gibson moved to approve Application No. 2019-073. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
	<p>b) <u>HEALTHGO MARKET INC.</u>: Application No. 2019-066 was filed on February 19, 2019 by Healthgo Market Inc. dba Healthgo Market Inc. for a New Retail Dealer General license at 3486 Rice Street, Līhu‘e, Kauai, Hawaii. The Commission accepted Application No. 2019-066 for publication and public hearing on March 7, 2019 and ordered to print notice of public hearing in The Garden Island newspaper on Wednesdays, March 13 & 20, 2019, scheduling the public hearing on May 2, 2019 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu‘e Civic Center, Mo‘ikeha Building, 4444 Rice Street, Līhu‘e, Kauai, Hawaii.</p> <p>Mr. Jeremy Hillstrom, President, was present on behalf of the applicant.</p> <p>Up until the time of the hearing, the department did not received any letters in support or opposition to the application; there was no one present to object to the application.</p> <p>Commissioner Gibson asked to clarify the location of the proposed premises. Mr. Hillstrom explained that it is the old gas station located just before Anchor Cove. He noted that there is an ABC Store located inside the Anchor Cove shopping center, but that it is more of a draw to visitors. He is planning to sell beer & wine, some organic products, and hopes to attract more local customers.</p>	<p>Ms. Iida moved to approve Application No.</p>

	<p>The public hearing for Application No. 2019-066 was closed.</p>	<p>2019-066. Ms. Kusaka seconded the motion. Motion carried 6:0.</p>
<p>2. Continuance of Violation Hearings (continued from March 21, 2019 meeting)</p>	<p>a) <u>7-ELEVEN STORES (LIHUE)</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>b) <u>7-ELEVEN STORES (HANAMAULU)</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Mr. Kenneth Hoo, counsel, was present on behalf of the licensee along with Mr. Blake Yokotake, Director of Human Resources.</p> <p>Ms. Maryann Sasaki, counsel, was present on behalf of the County of Kauai Department of Liquor Control.</p> <p>Director Rapozo asked if the licensee wished to consolidate Item 4(a) with Items 2(a) & (b) to which Mr. Hoo replied yes, since Item 4(a) relates to the same type of offense.</p> <p>Deputy County Attorney Cameron Takamura asked to clarify whether both parties are making the same stipulations for Item 4(a) as they did for Items 2(a) & (b). Both parties agreed to the stipulated charges, the facts of the investigators' reports, and the fact that the sole issue is the question of law under HRS 281-31(s).</p> <p>Chair Akita noted for the record that the Commission has received 7-Eleven's motion to dismiss, the amended and restated response from the Deputy County Attorney, and the reply from 7-Eleven to the County's response. She asked if either party wished to make any additional comments.</p> <p>Mr. Hoo stated that under HRS 281-31(s), there is no clear requirement that the licensee must have proof of liquor liability insurance on the premises,</p>	<p>Ms. Kusaka moved to amend the agenda to consolidate Item 4(a) with Items 2(a) & (b). Mr. Pacheco seconded the motion. Motion carried 6:0.</p>

and seeing that the statute is penal in nature, it must be strictly construed; there is no language that clearly states that. He added that HRS 281-45(4) states that a convenience minimart is not required to provide proof of liquor liability insurance to obtain, renew, or transfer a license. He questioned that if they are not required to have that insurance, why would they be required to have proof of insurance on the premises.

Ms. Sasaki replied that it would seem unwise for a company to proceed without insurance. She stated it would be averse to public policy to operate a risky business such as liquor retail, and not have insurance. The statute states that a “mom and pop” retail operations, or convenience minimarts, do not have to have insurance in the amount of \$1,000,000; they are exempt from that amount. However, according to the statute, all licensees are required to have insurance. She added that it is clear from the legislative history of the statute what the intent was, which was to alleviate the pressure of “mom and pop” stores having to have a \$1,000,000 insurance policy; it is not to exempt them from having insurance at all. Ms. Sasaki stated that it is a misreading of the statute to state that no insurance is required; she thinks that insurance in the amount of \$1,000,000 is not required for this class of license.

Attorney Takamura asked to clarify with Mr. Hoo that on Page 3, Paragraph 2 in the motion to dismiss where there is a citation to State v. Bates, which states: That the statutory language should be strictly construed is especially important where the statute is penal in nature. He noted that as used in State v. Bates, that was part of the court’s analysis for determining unconstitutional vagueness. He asked to clarify whether the licensee is arguing that the statute is unconstitutionally vague. Mr. Hoo replied yes, from the County’s position. He stated that he does not think the requirement to have insurance is vague; they do not have to have insurance. However, he feels the County’s interpretation may differ, which is where he thinks the vagueness is.

	<p>Ms. Sasaki noted that that licensee did not argue unconstitutionally vague language, and did not argue it even now. She stated the language is clear that minimarts are required to have insurance, the question is how much. She does not feel the statute is unconstitutionally vague.</p> <p>Commissioner Matsunaga thanked both parties on behalf of the Commission for provided memoranda to enlighten them of the issue regarding the interpretation of HRS 281-31, noting the appreciation for the time spent on that. He proposed that the Commission take the matter under advisement to allow the Commission to discuss the legal issues with counsel, and subsequently render a decision. He added that the prevailing party will be asked to prepare a Findings of Fact Conclusions of Law.</p>	<p>Mr. Matsunaga moved that the Commission take the matter under advisement to consult with counsel and render a decision at a subsequent meeting, and that the prevailing party provide a Findings of Fact, Conclusion of Law, Decision and Order. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
		<p>Commissioner Matsunaga exited the meeting at 4:18 p.m.</p>
<p>3. Continuance of Violation Hearings</p>	<p><u>THE FISH EXPRESS</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Mr. David Wada, President, was present on behalf of the licensee; no counsel. The licensee admitted to the charges.</p> <p>Mr. Wada explained that the certificate of liability insurance is usually in his office, and when the investigators came to inspect the premises, he had already left for the day, and his office was locked. He noted that the certificate of insurance is now kept with the Rules and Regulations book.</p> <p>The licensee provided the certificate of liability insurance document. Director Rapozo noted for the record that the licensee had current liquor liability insurance at the time of the violation.</p>	<p>Mr. Gibson moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Ms. Kusaka seconded the motion. Motion</p>

		carried 5:0.
<p>4. Violation Hearings</p>	<p>a) <u>KAUAI PASTA LIHUE CORP.</u>: Violation of Rule 3.12 Commission Orders.</p> <p>Mr. Adam Pompas, General Manager, was present on behalf of the licensee; no counsel.</p> <p>Mr. Pompas explained that he had forwarded the paperwork to the accountant who paid for Kauai Pasta West’s violation fine, but failed to pay for the Līhu‘e location’s fine. He was highly apologetic.</p> <p>Director Rapozo noted the fine was paid on April 2, 2019.</p> <p>Mr. Pompas asked that the Commission take into consideration that the fine for Kauai Pasta West was paid for even though that location is no longer open.</p>	<p>Mr. Gibson moved that a fine of \$500 be imposed. Mr. Pacheco seconded the motion.. Motion carried 5:0.</p>
<p>5.</p>	<p><u>DIRECTOR’S REPORTS:</u></p> <p>a) <u>INVESTIGATOR’S REPORTS:</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u></p> <ul style="list-style-type: none"> (1) From Avid Marketing Group (2) From Strike & Techel (3) Disturbance Reports from Oasis on the Beach <p>c) <u>OUTGOING COMMUNICATIONS:</u></p> <ul style="list-style-type: none"> (1) To Avid Marketing Group (2) To All Wholesale Licensees, Re: Transfer Liquor License Capt. Andy’s Sailing, and Sueoka Market 	

	<p>d) <u>EMPLOYEES IN LICENSED PREMISES:</u> Managers and Assistant Managers – See Attachment “A”</p> <p>e) <u>ACTIONS OF THE DIRECTOR:</u> (1) THE BEACH HOUSE RESTAURANT (2) SAFEWAY LIHUE (3) NATIONAL TROPICAL BOTANICAL GARDEN (4) ST. CATHERINE SCHOOL (5) KILOHA (6) NA (7) INTERCRUISES SHORESIDE & PORT SERVICES</p> <p>f) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Pacheco moved to approve Items 5(a) through f. Mr. Gibson seconded the motion. Motion carried 5:0.</p>
<p>6.</p>	<p><u>CHANGE IN CORPORATE OFFICERS:</u></p> <p>a) <u>KAUAI BLUE, INC.:</u> Removal of Sergio David Rivera as President and CEO, William Louks Harvey as Executive Vice President, Stephen Gatewood Williams as Senior Vice President and COO, Heather Ann McGill as Senior Vice President at CFO, Ralph Antonio Baro as Assistant Treasurer, and Victoria Jean Kincke as Assistant Secretary; Addition of Ralph Lee Cunningham as President and CEO, John Edward Gellar as Executive Vice President, James H. Hunter as Vice President and Secretary, and Daniel Zanini as Secretary.</p>	<p>Ms. Iida moved to approve the change in corporate officers. Ms. Kusaka seconded the motion. Motion carried 5:0</p>
	<p>b) <u>AQUA-ASTON HOSPITALITY, LLC:</u> Removal of Kelvin Mark Bloom as Manager; Addition of Denis George Ebrill as Manager.</p>	<p>Ms. Iida moved to approve the change in corporate officers. Ms. Kusaka seconded the motion. Motion carried 5:0</p>
	<p>c) <u>VAN WESCOMP HAWAII, INC.:</u> Removal of Nathan A. Tanner as Vice President.</p>	<p>Mr. Pacheco moved to approve the change in corporate officers. Mr. Gibson seconded the motion. Motion carried 5:0</p>

<p>7.</p>	<p><u>VIOLATION REPORTS:</u> <u>THE POOL BAR:</u> Violation of Rule 7.8(a) Manager on duty, qualifications.</p>	<p>Mr. Gibson moved to call licensee for violation hearing. Mr. Pacheco seconded the motion. Motion carried 5:0.</p>
<p>8.</p>	<p><u>SOLICITOR’S PERMIT:</u> <u>EDMUND LEE:</u> Application No. 2019-084 was filed on April 24, 2019 by Edmund Lee for a Solicitor’s Permit in the County of Kauai to represent Kahuna Distribution LLC a Wholesale General licensee in the City & County of Honolulu.</p>	<p>Mr. Pacheco moved to approve the solicitor’s permit. Ms. Iida seconded the motion. Motion carried 5:0.</p>
<p>9.</p>	<p><u>NEW LIQUOR LICENSE:</u> <u>SUSHI BUSHIDO:</u> Application No. 2019-084 was filed on April 26, 2019 by Sushi Bushido LLC dba Sushi Bushido for a New Restaurant General (live entertainment with dancing) license at The Coconut Marketplace in Kapaa located at 4-484 Kūhi‘ō Highway, Kapaa, Kauai, Hawaii.</p>	<p>Mr. Pacheco moved for publication and public hearing of Application No. 2019-085. Ms. Iida seconded the motion. Motion carried 5:0.</p>
<p>10.</p>	<p><u>DISPOSITION OF VIOLATION HEARINGS HELD ON APRIL 4, 2019:</u> a) <u>SHERATON KAUAI RESORT (OCEAN):</u> Violation of HRS 281-31(s) Licenses, classes. b) <u>SHERATON KAUAI RESORT (GARDEN):</u> Violation of HRS 281-31(s) Licenses, classes.</p>	<p>Mr. Pacheco moved to vacate judgments for Sheraton Kauai Resort (Ocean), and Sheraton Kauai Resort (Garden). Mr. Gibson seconded the motion. Motion carried 5.0</p>
<p>Announcements</p>	<p>Next Scheduled Meeting: Thursday, May 16, 2019 – 4:00 p.m., Mo’ikeha Building, Meeting Room #3.</p>	
<p>Adjournment</p>		<p>Vice Chair Akita adjourned the meeting at 4:37 p.m.</p>

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
Shirley Akita, Vice Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.