



## **MEETING MINUTES**

### **KAKAAKO PUBLIC INFRASTRUCTURE AND FACILITIES WORKING GROUP**

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FRIDAY, DECEMBER 11, 2015  
COUNCIL COMMITTEE MEETING ROOM  
2<sup>nd</sup> FLOOR  
HONOLULU HALE  
2:30 p.m.

#### MEMBERS PRESENT

Co-Chair Carol Fukunaga, City Council  
Co-Chair Suzanne Chun Oakland, State Senate  
Co-Chair Ryan Yamane, State House of Representatives  
George Atta, Department of Planning and Permitting  
Michael Formby, Department of Transportation Services  
Deepak Neupane, Hawaii Community Development Authority  
Steve Scott, Scott Hawaii

#### MEMBERS ABSENT

Leo Asuncion, Jr., Office of Planning  
Roy Bumgarner, Imperial Plaza  
Aaron Landry, Ala Moana-Kakaako Neighborhood Board #11  
Ross Sasamura, Department of Facility Maintenance  
Russell Tsuji, Department of Land and Natural Resources  
Jennifer Waihee-Polk, Department of Corporation Counsel  
Mike Wong, Department of the Attorney General

#### OTHERS PRESENT

Facilitator Thomas Mitrano, Mediation Center of the Pacific, Access ADR program

#### CALL TO ORDER

The meeting of the Kakaako Public Infrastructure and Facilities Working Group ("Working Group") was called to order by the co-chairs at 2:40 p.m.

#### APPROVAL OF MEETING MINUTES

The minutes of the Thursday, November 12, 2015 Working Group meeting were approved, with no additions or corrections.

#### DISCUSSION

The Working Group discussed a list of questions and proposed recommendations that were developed based on discussions during the previous Working Group meeting (see attachment, revised December 2, 2015). The questions were organized based on the following two categories: 1) Ownership; and 2) Maintenance, Usage, and Enforcement. The proposed recommendations included both comments and submittals by members. The facilitator explained that at the end of the meeting the Working Group would decide whether or not an additional meeting was needed. He also expressed his appreciation for the thorough response

submitted by the Hawaii Community Development Authority, and copies of the response were distributed.

### 1. REMAINING OWNERSHIP ISSUES

The facilitator noted that the issue of ownership had been discussed at length during the previous meeting. Members agreed that they had no additional questions, comments, or responses relating to ownership at that time.

### 2. REMAINING MAINTENANCE, USAGE, AND ENFORCEMENT ISSUES

The Working Group discussed the issue of taxation, in relation to roads being taxed at a different rate when commercial activities occur, compared to when no commercial activities occur. The Department of Transportation Services ("DTS") designee provided information he had received from the Department of Budget and Fiscal Services. The DTS designee stated that he was told that private roads with no commercial use are taxed at a minimum level, versus private roads where owners used the road for commercial use, which are taxed at a higher level; and provided examples. Discussion ensued. The City Council co-chair suggested that contacting the Department of Taxation for more information regarding taxes paid and licenses held by specific businesses.

The issues of access, jurisdiction, enforcement, and City-provided services were discussed by members, with the City Council co-chair noting that specific ordinances were submitted previously by Corporation Counsel. Members made additional comments.

The Working Group discussed the utilization of shoulders, sidewalks, and unimproved sidewalks on, in conjunction with the maintenance of the travel lane portions of, publically-used private roads. The DTS designee provided examples of various landowners who utilized the right of ways on their publically-used private roads for their own private interests, but noted that those landowners also maintained the roads.

### 3. REMAINING MAINTENANCE, USAGE, AND ENFORCEMENT ISSUES

The Working Group discussed the following proposed recommendations relating to:

- State condemnation of private roads, including the possibility of making infrastructure improvements and creating an Improvement District ("ID"), with subsequent dedication of those improved roads to the City, including an intergovernmental agreement to modified road standards and City maintenance;
- Adoption of legislation requiring developers to provide supplemental documentation as to ownership of the surrounding roads at the time of a development project application was discussed by members;
- Construction of a parking structure to address the limited public parking issue; and
- City enforcement of traffic regulations on private roads was discussed by members.

Discussion ensued. It was noted that a proposed recommendation relating to City enforcement of ordinance violations regarding a specific business was submitted and discussed at the previous meeting.

### PUBLIC COMMENTS

A representative from a small business located in Kakaako provided oral testimony, including posing a question to the Department of Planning and Permitting, expressing concern regarding the creation of an ID Program, and expressing support for any joint State-City resolution that would result in the resuming of private road maintenance without burdening local businesses.

A representative from another small business located in Kakaako provided oral testimony, including providing historical background, expressing the concern of local businesses regarding the condition of Kakaako private roads, and expressing the need for a State-City resolution to be reached.

#### DISCUSSION OF FINAL REPORT

The Working Group agreed an additional meeting was needed, prior to final recommendations being reached and a final report submitted. The City Council co-chair stated the co-chairs would be actively working with State-City departments to move the discussion forward. It was announced that the next meeting would be the discussion of, and decisions regarding, final recommendations.

#### ANNOUNCEMENTS

There were no announcements offered.

#### NEXT MEETING

The next meeting is scheduled for Friday, January 22, 2015, at 2:30 p.m. (State Capitol, Conference Room 229, 2nd Floor).

#### ADJOURNMENT

The meeting was adjourned by the co-chairs at 4:09 p.m.

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**Identification of Proposed Questions/Responses and Recommendations**  
*(11/12/15 KPIF Working Group Meeting • Revised 12/2/15)*

Ownership

1. In an ownership transfer of a road parcel, can a landowner dedicate the travel lane portion of the road and retain ownership of the remainder of the right of way?

Maintenance, Usage, and Enforcement

2. Is a road taxed differently when there are commercial activities occurring (i.e. a private landowner charging for parking), compared to when there are no commercial activities occurring (i.e. free, public parking on a private road)?
  - Any examples?
3. When does an access become a prescriptive easement (i.e. the right to use the property of another, acquired by continued use without permission of the private landowner for a prescribed period of time)?
  - What is the current law, rule, or policy? Is a prescriptive easement formalized by a document (i.e. resolution, memo of understanding, etc.)? If a prescriptive easement is granted, would the City be able to maintain the roadway?
4. How do DFM and ENV decide whether or not to provide services (trash pickup, road repaving, etc.) on a private road?
  - What is the controlling ordinance?
  - Is the decision/agreement to provide services formalized by document (i.e. resolution, memo of understanding, etc.)?
5. How do HPD and DTS decide whether or not to enforce regulations (traffic violations, homeless issues, etc.) on a private road?
  - What ordinances are applicable to streets outlined in Reso 15-45, CD1, FD1?
6. Do any other private landowners alienate the interest (i.e. alienate a portion of the road, from property line to property line, and claim ownership of only part of the property)?
  - Do any landowners of other private roads use the unimproved shoulders/sidewalks for parking (i.e. Kakaako, Kalihi, Mililani, etc.)? Have they erected parking meters, with proceeds going to the private landowner instead of to the City?

Potential Recommendations Based on Discussion/Member Submitted Recommendations

7. The State could condemn the road (i.e. the entire right-of-way, including the road, shoulders, etc.), make road and infrastructure improvements (gradually, if necessary), and subsequently dedicate the improved road to the City. The City could then accept the entire right-of-way (including the road, shoulders, improvements, etc.) and maintain the road going forward.
  - The State Legislature could appropriate funds to the appropriate State department(s) for condemnation and infrastructure improvements in preparation for dedication to the City.
  - HCDA's Improvement District ("ID") Program could be utilized to fund infrastructure improvements. Relaxed requirements (compared to current City standards) could be adopted by State/City agencies, thereby minimizing the

- assessment amounts on small landowners. The City would then accept the dedication of the road upon completion of the agreed-upon infrastructure improvements.
- The City Council could appropriate funds to the appropriate City department(s) for maintenance.
8. HCDA does not currently require developers to provide supplemental documentation as to ownership of the surrounding roads at the time of a development project application.
    - The State Legislature could adopt legislation to require, at the time of a development project application, that developers provide supplemental documentation to HCDA regarding ownership of all surrounding roads.
  9. The City/State could build a public parking structure/lot in the Kakaako area to address the limited public parking issue.
    - The City Council/State Legislature could appropriate funds.
  10. The City could enforce traffic regulations on private roads in Kakaako, as HRS section 46-16 and ROH section 15-1.1 allows the City to enforce traffic regulations on private streets that have been used by the public for more than six months.
    - The City could enforce the appropriate ordinance, to allow pedestrians unobstructed access to a safe walking area; or the City could enforce the appropriate ordinance, to restrict the parking of vehicles where it is dangerous to those using the road and to prevent parked vehicles on the shoulder of the road from obstructing the normal flow of traffic.
  11. Request City to research the ROH and make a determination on whether or not Kakaako Land Co. is violating any City ordinances.
    - If they are found to be in violation, inform the appropriate City agencies in charge of enforcement of the violations and have them contact Kakaako Land Co. with a deadline to comply with correction. If correction of violations isn't performed, then the appropriate agencies would levy penalties and remove all Kakaako Land Co. signage. With signage and rented parking spaces removed, the roadways would qualify for surface maintenance by the City.

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