

MINUTES

BOARD OF REGENTS' COMMITTEE ON PLANNING AND FACILITIES MEETING

APRIL 7, 2016

I. CALL TO ORDER

Committee Chair Ben Kudo called the meeting to order at 10:45 a.m. on Thursday, April 7, 2016, at the University of Hawai'i at Mānoa, Information Technology Building, 1st Floor Conference Room 105A/B, 2420 Correa Road, Honolulu, Hawai'i 96822.

Committee members in attendance: Committee Chair Ben Kudo; Committee Vice Chair Stanford Yuen; Board Vice Chair Jan Sullivan; Regent Jeff Portnoy; Regent Michelle Tagorda; Regent David Iha; Regent Ernest Wilson, Jr.

Others in attendance: Board Chair Randy Moore; Regent Simeon Acoba; Regent Michael McEnerney; Regent Lee Putnam (ex officio committee members); President David Lassner; Vice President for Administration Jan Gouveia; Vice President for Community Colleges John Morton; Vice President for Legal Affairs and University General Counsel Carrie Okinaga; Vice President for Research Vassilis Syrmos; Vice President for Information Technology and Chief Information Officer, Garret Yoshimi; Vice President for Budget and Finance and Chief Financial Officer Kalbert Young; Interim UH-Mānoa (UHM) Chancellor Robert Bley-Vroman; UH-Hilo (UHH) Chancellor Donald Straney; Executive Administrator and Secretary to the Board Cynthia Quinn; and others as noted.

II. APPROVAL OF MINUTES OF THE FEBRUARY 11, 2016 MEETING

Regent Wilson moved to approve the minutes of the February 11, 2016 meeting, seconded by Regent Higaki, and the motion carried unanimously.

III. PUBLIC COMMENT PERIOD

Executive Administrator and Secretary of the Board Cynthia Quinn announced that the Board Office received one late written testimony that had been distributed to the committee from Trent Y. Hata, Academic Support at CTAHR Hawai'i County, provided written testimony regarding support of the Komohana Agriculture Complex in Hilo. No individuals signed up to testify.

IV. AGENDA ITEMS

A. For Action

- 1. Recommend Approval of Amendments to RP 10.201, Interest and Real Property**

VP Gouveia requested the committee recommend board approval of amendments to the Regents Policy 10.201 requiring board approval for interests and real property lease transactions with five year or more terms, and any disposition of title in fee, and stating that the president may bring to the board for approval any transactions he determines as significant. It was explained that the revisions intend to address clarity of terms and alignment with board roles and responsibilities, and based upon assessment of historical transactions that revealed most transactions were administrative in nature with short term leases ranging from one day to one year, and values from no cost up to \$16,000; the board approved leases or rights-of-entry with terms exceeding five years, and values ranging up to \$20,000; other transactions that were deemed minor and administrative involved leases less than five years, a restrictive covenant required as part of the federal grant condition, and an easement to satisfy terms of a legal settlement agreement. It was acknowledged that the discretionary language is intended to provide some flexibility for unique circumstances although the university general counsel clarified that the president presently has the discretion to bring anything of concern to the board.

Comments and questions raised regard ambiguity with proposed terms; clarification needed as to the additional requirements for documentation that could be addressed in executive policy; and recognition of the board's reliance on the president's general responsibility and judgment to seek board input on all significant or controversial matters to the board.

President Lassner indicated support for the proposed policy amendments as it provides an opportunity for public input and helps administration understand what actions are appropriate for board approval.

Further discussion ensued regarding appraisals or other valuation validation. It was suggested to add qualifying language "in fee simple" for "Actions that come to the board involving the disposition or acquisition of real property" to clarify what actions require an appraisal. It was noted that because an appraisal is the only way to verify fair market value, the language requiring an appraisal to accompany any disposition or acquisition would resolve the conflict in presenting a lease without a fair market value appraisal.

A motion was made by Board Chair Moore to recommend board approval of amendments to RP 10.201, Interest and Real Property, seconded by Regent Wilson, and Regent Portnoy requested a friendly amendment to the motion to delete all language in III.B. after the word "provided." As a point of order and clarity, the actions were withdrawn, and Board Chair Moore moved to recommend board approval of amendments to RP 10.201, Interest and Real Property, as amended, to include in section E the words "in fee simple" to clarify disposition and acquisition, and delete the language "fair market value," seconded by Regent Wilson.

Regent Portnoy made a friendly amendment to the motion to delete all language in III.B. after the word "provided," Board Chair Moore seconded the motion to amend.

Committee Chair Kudo called for the vote on the motion to amend. Regent Portnoy voted aye, and Regents Kudo, Yuen, Sullivan, Tagorda, Iha, Wilson, and Moore voted no. The motion failed.

Committee Chair Kudo called for the vote on the motion to recommend board approval of amendments to RP 10.201, as amended, to include the revisions to section E by the committee members. Regents Kudo, Yuen, Sullivan, Tagorda, Iha, Wilson, and Moore voted aye, and Regent Portnoy voted no. The motion passed.

2. Recommend Approval of Professional Services Contract for Agricultural Complex in Hilo, Phase II, University of Hawai‘i at Mānoa (UHM) Project No. UHM-07 697B

VP Gouveia requested the committee recommend board approval of a professional services contract for the agricultural complex in Hilo for Phase II that is as amendment to the existing professional services contract to address leaks in the building, which results exceeding the \$1 million threshold for contracts requiring board approval by \$21,000.

Questions and comments were raised regarding occupancy status; justification of additional costs in light of multiple deficiencies that may involve design, construction, or both; rationale to contract with the original design contractor rather than a third party to conduct repairs; statute of limitations for recoverability of damages due to defect; and recoverability of damages under the contractor’s insurance policy as an additional insured.

It was explained that the building is currently occupied and in use. The Office of General Counsel has been consulted regarding recoverability and insurance coverage. Time is of the essence to mitigate damages in the best interest of the campus, and as it is not a design issue, the existing design consultant is familiar with the facility to remediate the roof issue and design around the construction. SSFM International Inc. was the construction manager for this project, and continues to be involved to identify the source of the leaks.

Regent Acoba (ex-officio) left the meeting at 11:31 a.m.

Discussion ensued regarding university general counsel assessment of liabilities and legal issues, exploring other options, and cost effectiveness of spending additional funds in light of ongoing unresolved issues.

Board Chair Moore noted there may be no other reasonable alternative to address the problem and moved to recommend board approval of the professional services contract for the agricultural complex in Hilo for Phase II, seconded by Board Vice Chair Sullivan.

At 11:40 a.m. the committee went into recess. The committee reconvened at 11:45 a.m. Board Chair Moore and Board Vice Chair Sullivan withdrew their actions. Board Chair Moore moved to recommend the matter be referred back to administration for further work, and brought back to the full board for consideration at the April board meeting with a consideration of an executive session report on construction, design, and insurance issues, and potential litigation to fully inform the board, Regent Wilson seconded the motion.

Administration acknowledged the need for review and investigation as to causation and potential of a broader scope of design to adequately address water damage and mold, litigation, and the potential inherent conflict of interest with using the original design contractor. Given the exigency of circumstances and facing lapsing funds, priorities will be adjusted to accommodate for the contract.

Committee Chair Kudo called for the vote on the motion that had been seconded, and the motion passed unanimously.

V. ADJOURNMENT

There being no further business, Board Vice Chair Sullivan moved to adjourn, seconded by Board Chair Moore, and with unanimous approval, the meeting was adjourned at 11:53 a.m.

Respectfully Submitted,

/S/

Cynthia Quinn
Executive Administrator and
Secretary of the Board of Regents