

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 28, 2021

Ref. No.: GLS-4739
PSF No.: 21KD-028

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Kauai

Authorize One-Year Holdover of General Lease No. S-4739, Lappert's, Inc., Lessee, Lot 15, Brodie Lots, Hanapepe, Waimea (Kona), Kauai, Hawaii, Tax Map Key: (4) 1-8-008:062.

APPLICANT:

Lappert's, Inc., a Hawaii profit corporation.

LEGAL REFERENCE:

Section 171-40, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Hanapepe situated at Hanapepe, Waimea (Kona), Kauai, Hawaii, identified by Tax Map Key: (4) 1-8-008:062 as shown on the attached map labeled Exhibit A.

AREA:

0.385 acre, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: C-G (general commercial)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-4739, Lappert's, Inc., Lessee, for business purposes. Lease to expire on July 15, 2021. The last rental reopening occurred on July 16, 2011 and was for the remainder of the lease term.

CHARACTER OF USE:

Business purposes.

HOLDOVER LEASE COMMENCEMENT DATE:

July 15, 2021

HOLDOVER LEASE ANNUAL RENT:

\$21,600 Due in monthly installments.

PERFORMANCE BOND:

Currently, the lease requires a performance bond equal to twice the annual rental amount. Staff recommends a continuation of the current bond being held for the period of the holdover.

BACKGROUND:

This lease was sold at public auction and originally issued to Walter Lappert, for a term of forty (40) years, commencing on July 16, 1981 and expiring July 15, 2021. At the time of the lease auction, the parcel was vacant and unimproved. Walter Lappert built the business structure that is onsite and acts as an ice cream factory and small storefront with a walk-up counter for retail sales.

On August 12, 1996, Walter Lappert assigned the lease to Lappert's, Inc. (Lapperts).

On July 16, 2020, Lappert's, Inc., Lessee, requested an extension to their lease for business purposes. It was explained to Lapperts that their current lease allowed for an additional ten (10) year extension, but the extensions were usually based on new improvements to the property. The owner explained that this past January they had permits in hand to start construction to replace their built-in thirty-five (35) year old freezer, but those plans had been put on hold due to Covid-19.

On August 19, 2020, KDLO emailed the lessee requesting an official email or letter

requesting a ten (10) year extension based on necessary improvements that they plan on making to the property and include the estimates for the improvements. It was explained to the lessee that the Kauai District Land Office will also need a valuation letter from an appraiser stating the cost of the proposed improvements and the economic life of the improvements in order to determine whether it would be worth it for the State to extend the lease. The lessee's response is attached as Exhibit B.

Due to the unusual and unforeseeable economic situation caused by Covid-19, staff feels that a one (1) year hold over extension to lease is appropriate in order to allow the lessee time to reassess their finances now that tourism is starting to return to Kauai.

Lappert's, Inc. has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions nor has the Lessee ever been cited for any illegal or unlawful activity on the State property.

The last rental reopening occurred on July 16, 2011. There are no outstanding rental reopening issues.

DISCUSSION:

On April 21, 2021, staff conducted a site inspection of the premises. The property, including the interior and exterior of the improvements, was in satisfactory condition. See attached photos labeled Exhibit C.

The proposed use has continued since the 1980's and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

No agency comments were solicited as there will be no new disposition or change in land use.

RECOMMENDATION: That the Board:

1. Authorize a One-Year Holdover for General Lease No. S-4574 for the period of July 15, 2021 to July 14, 2022, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current holdover of lease form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General: and

- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

Alison Neustein

Alison Neustein
Land Agent

WMM

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

RT

From: Mary Pratt
To: [Neustein, Alison](#)
Cc: [Pratt Makalii](#)
Subject: Re: [EXTERNAL] Lease Extension and Rent Payment Plan Request
Date: Thursday, August 20, 2020 6:40:56 PM

Aloha Allison,

Thank you for your response. I am trying not to be emotional about all of the requests and comments. At this time I am fighting and adjusting everything that I can in order to make it through to the other side of the economic mess caused by the Covid-19 pandemic.

For nearly 40 years, I thought that providing decent quality jobs for the Westside of Kauai by, making a handmade high quality ice cream and other products was commendable. A larger more efficient freezer was badly needed, a big investment for us, and a vote for the future to support exports from our Island. Manufacturing, especially anywhere on the outer islands is a challenge and is sustained by constant juggling of a variety of very high costs and loyalty to the Island and the Team that we have worked with for many years.

Investment in manufacturing, is investment in equipment and the infrastructure to support that equipment. The investment of around \$625,000.00 plus in restructuring the concrete slabs, electrical upgrades, and the freezer and the shell to protect and house the freezer, I thought that was a very hefty investment, for a small manufacturer that is sandwiched between a Taco Stand and a decrepit building that formerly housed a day care service in an economically depressed town. I thought that Lappert's Hawaii was an asset to the community and that renewing our lease would be not a problem.

A valuation by an appraiser is requested. I looked into this and it would cost a minimum of \$10,000.00, as there is only one commercial appraiser on Kauai. We have been paying for furloughed employees Health Care costs and with the continued shut down and business down by 85%, I am at this moment trying to figure out if we will be able to pay for the Health Care costs going forward as of September 1st. A request to spend money on an appraisal does not make sense at this time.

I can provide copies of the invoices that the company has paid so far for architectural fees, electrical upgrades made in anticipation of the requirements for the freezer, an accepted bid for the freezer (including walls and ceiling, heated floor components, and compressors) and an estimate of the cost of the work provided by the general contractor (back fill for a flood zone, a new cement pad, removal and replacement of older existing cement areas, a retaining wall, a new shell to cover the freezer, supervision of subcontractors to install and hookup the freezer and inspections). The new freezer would be taller so that we could drive a forklift in and out and provide greater efficiency. The request would be for a 20 year extension of the lease for all of the improvements.

Thank you for listening to my concerns,

Sincerely,

Mary Pratt

Exhibit B



EXHIBIT C