



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 10, 2022

Ref. No: GL 5844

Calvert G. Chipchase IV, Esq.
Cades Schutte
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

Dear Mr. Chipchase:

Subject: General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

I am dismayed and disappointed to receive your email late yesterday claiming that you and your client did not know or otherwise receive notice of the June 9, 2022 Board of Land and Natural Resources (Board) meeting. I disagree.

As you know, Mr. Ed Bushor attended the May 31, 2022 Board meeting where he testified at length on Items D-2, D-3 and D-9 on the agenda. Mr. Bushor was present in the boardroom when Board Member Chris Yuen made a motion to defer action on all three items until the next meeting of June 9, 2022 and requested financial information on WHR LLC (WHR). The motion was seconded and approved by the Board.

On May 31, 2022, I emailed you stating among other things,

The Board deferred decision on the consent to mortgage until the next meeting on June 9th. The Board asked Ed to provide some financials to show he can support the payment obligations under the proposed new loan and mortgage. The Board also asked to see and review all mortgagee protection provisions in the proposed new loan and mortgage and any collateral documents such as a consent and estoppel agreement.

A copy of my email is enclosed.

Additionally, on June 1, 2022, our office emailed Mr. Bushor a copy of the Board's action of May 31, 2022 deferring WHR's request for consent to mortgage, estoppel certificate,

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and pledge agreement to the Board's meeting of June 9, 2022. The deferred action attached to the email clearly states on page 7:

Deferred. The Board deferred to the next meeting on June 9, 2022. During the interim, the Board asked the Lessee to provide the Department with financial statements showing operating income and capital in sufficient amounts to timely meet the payment obligations under the proposed adjustable-rate loan/mortgage. The Board also asked to see and review all mortgagee protection provisions in the proposed new loan and mortgage and any collateral documents such as a consent and estoppel agreement.

The body of the email repeats the language quoted above and goes on to state, "Please provide the information the Board requested as soon as possible so that we may pass it onto the Board members before the June 9 meeting." A copy of the email together with its attachment is enclosed. Mr. Bushor responded later that day expressing concerns about maintaining the confidentiality of profit and loss statements of WHR if provided to the State.

In response, I sent a letter to Mr. Bushor the following day, June 2, 2022, expressing willingness to maintain the confidentiality of any financial information received to the extent permitted by law and further detailed the information needed to properly evaluate the request for consent to mortgage. My letter again stated the Board deferred action on the request to June 9:

On June 1, 2022, our office emailed you a copy of the Board of Land and Natural Resources' (Board) action deferring to the Board's meeting of June 9, 2022 the request of WHR LLC (WHR) for consent to mortgage, estoppel certificate, and pledge agreement.

A copy of my letter (without enclosure) is also enclosed.¹ In addition, I also copied you on the email thread and correspondence with Mr. Bushor that expressed the urgency of needing the additional information before the June 9 meeting. See my emails to you of June 2, 2022 enclosed (without attachments, which are duplicates of items already enclosed in this letter).

Clearly Mr. Bushor received notice of the June 9, 2022 Board meeting on multiple occasions but chose not to attend to present testimony or answer questions,² perhaps for some strategic or other tactical reason. For your information, the Board approved the staff recommendation denying the request consent to mortgage and also approved the staff recommendations to cancel the Request for Qualifications/Request for Proposals for two other Banyan Drive properties. We will send you copies of the approved actions when they are available next week.

1 The enclosure to the June 2, 2022 letter is the same as the attachment to the June 1, 2022 email to Mr. Bushor.

2 The meeting was shown real time on YouTube.

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Very truly yours,

Russell Tsuji

Russell Y. Tsuji
Administrator

Enclosures

c: Mr. Ed Bushor