

MINUTES
HAWAII STATE BAR ASSOCIATION
BOARD MEETING

1100 Alakea Street, Suite 1000
Honolulu, HI 96813

Thursday, October 24, 2019

A. **CALL TO ORDER**

President Derek Kobayashi called the meeting to order at 12:05 p.m. with a quorum present.

The following persons were present for all or part of the meeting:

Officers Present

Derek Kobayashi
P. Gregory Frey
Karin Holma
Russ Awakuni
Paul Naso

Others Present

Catha Lee Combs
Craig De Costa (by phone)
Jeen Kwak
Craig Wagnild
Jennie Yu

Directors Present

Steven Chow
Rebecca Copeland
Vladimir Devens
Geraldine Hasegawa
Kristin Izumi-Nitao
Carol Kitaoka
Erin Kobayashi
Corianne Lau
Laurel Loo
Mark K. Murakami
Zale Okazaki
John Tonaki
Summer Kaiawe

HSBA Staff

Patricia Mau-Shimizu
Iris Ito
Christina Bae
Katra Cuskaden
Brian Simon

Directors Absent

William Harrison - excused
Jacob Lowenthal - excused
Lisa Munger - excused

- B. **Independent Auditors' Report on 2018 Financial Audit and Tax Return** - Managing Director Catha Lee Combs and Senior Audit Manager Jennie Yu of Wikoff Combs & Co., LLC presented an overview of the 2018 financial audit and tax return (hard copies of Form 990 and the Independent Auditor's Report were distributed). They began their audit presentation by noting that they had issued an "unqualified" audit report, the highest positive rating an entity can receive. They further noted that there were no finding of weaknesses.

The financial report noted that revenues increased and expenses decreased from the 2017 reporting period. Wikoff Combs recommended the following:

- The hiring of an additional staff member for the Operations and Financial Division of the HSBA office.
- Additional accounting software and nonprofit accounting seminars designed for CPAs for the Division Manager, who is an attorney with a financial background but not a CPA.
- A review of the chart of accounts for streamlining and updating.
- Explore accounting software options designed for non-profits for a possible migration.

[As a result, an additional staff member was added to the Operations and Financial Division for a separation of accounts payable and accounts receivable duties. This staff member will also prepare payroll which was being prepared by the Division Manager. The Division Manager will then be able to provide meaningful oversight. All other recommendations are being reviewed and/or acted upon.]

Thereafter, the Wikoff Combs auditors explained significant provisions of special interest to the Board members of the tax return filed:

- The existence of a conflicts of interest policy for Board members;
- A whistleblower policy which includes reporting procedures and anti-retaliation prohibitions; and
- A document retention schedule for different categories of internal records.

- C. **APPROVAL OF MINUTES** - A motion was made, seconded, and carried without opposition to approve the minutes of the September 26, 2019 board meeting.
- D. **TREASURER'S REPORT** - Treasurer Paul Naso reported that as of September 30, 2019, finances are stable and HSBA is on track with its budget. Bar convention revenue and expenses will likely be reflected in the next financial report.
- E. **EXECUTIVE DIRECTOR'S REPORT** - Executive Director Patricia Mau-Shimizu reported that we are still waiting on final numbers for the Bar Convention. There were about 400 CLE registrants and close to 500 for the luncheon. She also reminded the Board of the special board meeting to interview the judicial nominees on November 1st.

F. **YLD PRESIDENT'S REPORT** - YLD President Summer Kaiawe reported that Junior Judges is underway. This successful project will reach about 2,000 students. Good feedback is being received from the participating schools.

G. **UNFINISHED BUSINESS**

1. **Mortgage Refinancing Update** - Noting a decline in commercial and residential mortgage interest due to actions on the part of the Federal reserve in June, the HSBA staff approached First Hawaiian Bank, the Alakea Tower office mortgage holder, to check on the feasibility of mortgage refinancing. The current mortgage balloon payment will be due in April of 2022.

At the July Board meeting, First Hawaiian Bank (FHB) presented its mortgage refinancing terms which included a decrease in the interest rate and extension of the maturity date with all other terms remaining the same. After the presentation the Board discussed the proposal and its fiduciary responsibilities to conduct due diligence analysis prior to making a decision on the proposal. The Board concluded that while the First Hawaiian Bank proposal was more favorable than the current mortgage terms, in order to exercise its fiduciary duty, it was best to obtain other proposals.

As a result, the HSBA transmitted a mortgage request for refinancing proposals (RFP) to commercial lenders listed in Pacific Business News. Six (6) financial institutions stepped forward and noted their interest and intent to respond to the RFP.

During the period between the RFP issuance and the original deadline to submit responses of September 13th before 12:00 noon, the potential lenders submitted several questions to the HSBA. The questions and responses to questions were provided to all potential lenders within a 24-48 hour timeframe. Information provided in response to inquiries is summarized as follows:

- Audited financial statements for 2015 and 2016 (2017 had been provided with the RFP);
- Financial statements for 2018 (income statement and balance sheet);
- Most recent or completed interim financial statement for 2019 (income statement and balance sheet);
- Operating budget for 2019;
- TMK for the 2 parcels being refinanced;
- Q: Are you refinancing the current balance of the loan (\$926,463) or are you upsizing with new proceeds? Answer: refinancing the current balance only.
- Q: Are the FYE 2018 financials available either company prepared or CPE reviewed? Answer: HSBA prepared FYE 2018 unaudited before tax and depreciation are included in response.

- Q: Is the HSBA paying a prepayment penalty fee to the existing lender? Answer: Yes, the prepayment penalty will be triggered by the refinancing if the HSBA accepts a third-party offer.
- Q: Fair to say that the HSBA holds \$3 million in cash deposits on average including CDs? Answer: Yes.
- Q: What is the HSBA Looking for? To alleviate monthly cash flow (stretching out amortization to reduce monthly payments)? Or keeping the amortization so that debt can be paid down quicker? Answer: The HSBA seeks to refinance to take advantage of current low interest rates to reduce the overall cost of carrying the loan. Paying down the loan quickly is a priority, but it would be difficult to carry a monthly payment that is higher than the current monthly payment, thus prepayment flexibility is important. Any provisions that are favorable to the HSBA's financial well-being are welcomed.

On September 20th after the Federal Reserve announced a slight decrease in its rates, the HSBA transmitted a communication to the financial institutions submitting mortgage refinancing proposal the following message:

The HSBA Finance Committee has been actively reviewing the proposals that were submitted by 12:00 noon September 13th to make a decision by October 31st. However, if the interest rate offered in your initial proposal can be lowered, we will accept a lower interest rate when considering proposals if submitted by 12:00 noon October 18th.

All proposals from potential refinancing lenders were reviewed and analyzed by former HSBA Treasurer and President, Craig Wagnild, and Director of Operations, Christina Bae. Since the proposals varied significantly in the terms being offered, the proposed terms were applied to a uniform loan amount and compiled into a spreadsheet for the Treasurer and the Board to better conduct “an apples-to-apples” analysis. The proposed loan amount utilized was a principal of \$825,000 and an \$80,000 prepayment penalty for switching lenders.

Treasurer Paul Naso reviewed the forecasted proposals and determined that it was in the best interest of the HSBA to consider fixed rate, fixed term proposals for stability and decided not to consider adjustable rate mortgage proposals.

The 4 most favorable proposals were presented to the Board for its review. Treasurer Paul Naso recommended the FHB proposal as being in the best interest of the HSBA. The Board's extensive discussion on the recommended proposal centered on: the rate proposed; the \$80,000 prepayment penalty clause in effect; the reduction in the monthly payment; reduced closing costs; the forecasted balloon payment that would be due in 10 years; the total principal that would be paid in 10 years; the total interest that would be paid in 10 years; and the termination of the prepayment penalty clause after the fifth anniversary date of the modification.

Other comments noted during the discussion:

- In retrospect, the Board made a prudent decision to purchase the office space, as current lease rental for comparable office space with a large conference room and smaller private meeting areas to accommodate membership and legal service provider meeting requirements exceeds monthly mortgage and maintenance payments;
- Fee simple office space in the Honolulu Downtown area is scarce; and
- Equity in the office space is a financial “safety net” to meet unforeseen decreases in revenues (e.g.: natural disasters).

Treasurer Paul Naso recommended the FHB mortgaging refinancing proposal be accepted contingent upon the negotiation of the final terms of the loan document.

Action taken: After discussion a motion was made, seconded, and carried without opposition to accept the First Hawaiian Bank’s mortgage refinancing offer, and to authorize Treasurer Paul Naso to negotiate the terms of the final agreement.

H. NEW BUSINESS

2. **Specialty Bar Dues** - No action or discussion required.
3. **Website Redesign** - Ms. Mau-Shimizu described the clunky state of the current HSBA website and the need to have it redesigned to better meet the needs of HSBA members. She explained that proposals were considered from 2 local companies (Blackletter Group and ConnectWorks Group Hawaii) and 1 mainland company (Bursting Silver). The mainland company is the one that currently supports and maintains the HSBA database management system which includes the license for the current website software, so the company is already familiar with this software. HSBA Communications Coordinator Brian Simon stated that he was currently researching other bar association websites and will work with the selected company to redesign the website with a local feel. Ms. Mau-Shimizu noted the content-richness of the HSBA website and Brian’s plan to create a site-map for it.

Action taken: A motion was made, seconded, and carried without opposition to adopt the recommendation of the joint Executive-Finance Committee to accept the staff’s selection of Bursting Silver as the company to redesign the HSBA website.

4. **Proposed 2020 HSBA Operating Budget** - Treasurer Naso presented the proposed 2020 operating budget noting that the biggest increases are in payroll and technology. Ms. Mau-Shimizu explained that were additional staffing costs based upon the recommendation of financial auditor Wikoff & Combs to have another position in the accounting area for proper oversight and to protect the organization (see earlier discussion under Independent Auditor’s Report). For

technology, more funds are going into this area in an effort to give more value to members (see earlier discussion under website redesign).

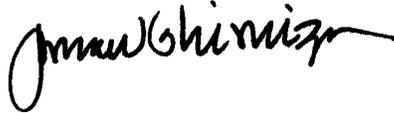
Action taken: A motion was made, seconded, and carried without opposition to adopt the recommendation of the joint Executive-Finance Committee on the proposed 2020 HSBA operating budget

5. **Board Vacancies Due to Judicial Appointments** - After discussion, the Board agreed to defer the issue for later discussion (after the Senate confirmation hearings).

I. **ADJOURNMENT**

The meeting adjourned at 1:15 p.m.

Submitted by:



Patricia Mau-Shimizu
HSBA Executive Director

Approved by:



Russ S. Awakuni
HSBA Secretary