

Ho'ike: Kauai Community Television, Inc.

Board of Directors

APRIL 13, 2005

Ho'ike Studio

10:AM

MINUTES

I Call to Order

President Jose Bulatao called the meeting to order at a 10:A.M.

II Roll Call

Present: Gabrielle Dorman, J Robertson, Greg Meyers, Lyndon Yamane, Teresa Tico, Soleille La Fete, John Isobe, Dr. Tavana, MaBel Fujiuchi, Jose Bulatao,

III. Community Correspondence

With no previous correspondence to consider, President Bulatao acknowledged Carol Bain and Ed Coll.

CAROL BAIN: Carol believed that it is not appropriate for state funded organizations to compete with wage earners, and that polices for non-profits should be set and regulated Carol offered to help establish such policies. She stated that Ho'ike should encourage others to use the equipment to produce their own video documentation as opposed to assisting others in production. She sees Ho'ike as a competitive threat to other production companies as well as her own, and threatened to pack up and quit unless Ho'ike withdrew from the competitive arena. She insisted on a first come non-discriminatory basis according to Hawaii State Law 16-31-32. She once again requested that Sunshine be put back into the by-laws, and suggested the board re-activate the former Producer's Association.

PRESIDENT BULATAO assured Carol that he would have the appropriate committee review the concerns and get back with within a reasonable time frame.

ED COLL stated that he was concerned that the \$125,000.00 Tilt Rack was supposed to be activated in Nov. 2003 yet still remained inactive. His question was: "Why is that tilt rack not operational?" He didn't want to hear any technical details because he felt it was a no brainer. He wanted to make the new board members aware that the large investment was not serving the public.

PRESIDENT BULATAO assured Ed Coll that he would have the matter looked into and respond accordingly.

IV. Approval Of Minutes

MA BEL FUJIUCHI observed that the minutes needed an original signature by the secretary. Once signed, the Motion was made to approve the minutes, and carried.

V. President's Report

PRESIDENT BULATAO provided a written report thanking all board members individually for their valuable input and contributions

VI. Treasurer's Report

J ROBERTSON gave the report due to the fact MaBel had to step out of the room momentarily. The treasurer report included total current assets as well as liabilities and reported Ho'ike being \$8,000.00 under the approved budget with two items slightly ahead of schedule:

VII. Managing Director's Report

ROBERSTON reported that the activity was down compared to last year; however, this was not a political year, and since Access tends to attract political forums it was to be expected. However the use and hours of the equipment was up. It was also apparent that more people were using the equipment for fewer hours, which indicated the producers were becoming more efficient in getting their projects done in less time.

He reported on the details of the research by Jim Lucas with B&H and a substantial savings for the purchase of the new equipment.

There was a good Jan class, although a number of people cancelled in March, so the staff reached out to the schools to extend the training program out in the community. This attracted a positive result as the first youth festival scheduled for the next month has a total of 45 school entries.

J explained that the contract with the DCCA is still in limbo. Ho'ike is still on another extension from last year. The DCCA is currently reviewing a draft version prepared by Alston Hunt Floyd & Ing in Honolulu in response to their initial proposal. The draft showed areas of both the UPIA as well as the Sunshine law that Ho'ike agrees with. Also in the first quarter, Ho'ike provided the dept. with all the requested reports as required.

J mentioned the concern of the ACM regarding the Nation wide attack against PEGs, mostly by cable operators and the local franchise authority to gutter strip the funding. Although the situation did not apply so much to Hawaii it would be a hot topic at the conference in July.

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He felt the conference was going to provide lots of new and vital information and inspiration, and that the directors scheduled to attend would return with a new energy, enthusiasm and information that would really help Kauai and the organization.

Ho'ike was able to participate in Olelo's youth program which was very successful. In June Ho'ike would launch a program with the Kauai's Children's Discovery Museum. He and Jim Lucas were putting together a years worth of involvement with their programs. They will have sites to video that will have a lot to do with environmental projects. The training will assist them in becoming documentarians.

J acknowledged Katrina for designing new business cards.

J acknowledged Boots for his excellent work in number crunching pertaining to program and submission information. This year the approach was to incorporate the DCCA reports, to formulate by quarter each of the required amounts of information requested by the DCCA. The report reveals the exact number of categories and diversity of programming, which can be compared to five years ago and demonstrates a positive dramatic shift of what is actually going on the air.

SOLEILLE LA FETE asked why Ho'ike was not as affected by the Nation wide attack against PEG.

J. In brief, J explained that In Hawaii, the state is the franchising authority. In most other communities it's a local entity. There is a requirement of the cable company to contribute up to 5% of their gross revenue, but there is no guarantee as to where that money goes. It doesn't necessarily have to go to PEG. If the county preferred, the money could go to fix their roads, or to pay for any other purpose they desire. While the cable operator is obligated to pay rent for community use of rights of way, an information service is not, so more and more, the cable entertainment service attempts to become an information service, and that's a large part of the rage across the country. Government always has a substantial voice and ability to maneuver. The dept. of education is the fourth branch of government and education always has its own means. Unfortunately the public has no means to stand up and defend itself in these issues, so it is the public that tends to take the backlash. Ho'ike is unique in that it is a public, education and government service. Most other communities are either one or the other.

JOSE BULATAO added that technology is changing so rapidly that it may shift to offer information and programming through the computer rather than through direct T.V. Verizon is hoping to provide television programs through the phone lines. Oceanic Time Warner is exploring the opportunity to become a phone service, and if that happens, and they can shift everything into the information service whereupon community T.V. would become extinct.

VIII. Ad Hoc Committee on Center update

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TERI TICO rose to admit that she had reviewed the entire all billings from all involved entities, and all available information at hand, and she still did not have a handle on the billing. She declared that if there was so much confusion that even she who had been an attorney for 30 years didn't get it- then something was wrong. She explained that upon reviewing that AIA, she learned that Maurice (architect) assumed full responsibility for consultants hired, yet it was not included in his fee and billed separately. She referred to exhibit E which was broken down into monthly payments to the architect averaging 8,000.00 per month up to Feb. She explained that we asked to cease and desist in Jan. Even so, the amount certainly did not amount to the tens of thousands charged.

GABRIELLE DORMAN suggested that Teri go to Maurice and ask to be charged for the amount of work completed to date as opposed to the monthly payments that were projected over a long period of time.

TERI TICO explained that she didn't think that would work due to the interference of Sharon Yamada of Mano Wai who continued to shove bills in her face demanding payment. She continued to explain that the Management Agreement from Mano Wai was the strangest agreement she had ever seen in her life, that it was in fact, a one sided contract, signed only by Mano Wai. No other signatures existed on the contract. The LLC and Mano Wai entered into the Managing Agreement; however, there was no one representing the LLC who was a signatory to the contract.

Teri passed the documentation on to Greg Meyers, and for the board to review.

FEE SCHEDULE

The architect had Exhibit D attached to his Architect Contract Exhibit A. was attached to the Management Agreement, which listed the Design, and Development fee.

There were fees for Design, Construction Management and Contract Administration. Months 1 thru 13, established a flat rate of 6,083.00; yet every month Mano Wai had sent bills with their Managing Agent's Contract Agreement and every month it was another \$2,000.00, 3000.00 which added up to way more than the amount that Mano Wai obligated themselves to in their contract. "We are only obligated for five months." Teri said, and went on to explain that that the billing for months 1 thru 13 was \$6,083.00, so she suggested dividing 13 into 6,083.00 and multiplying that by 5 to determine the amount owed. Teri went on to question the billing and double billing of consultants and statements from Rowena Cobb.

Teri did feel pretty clear about the contents of the contract and what Ho'ike was legally liable for. Her recommendation was to pay the amounts under Exhibit D.

PAYMENTS FOR: September 30th and October 31st equaled \$8,350.50
November, December and January equaled \$7,422.70
February 28, equaled \$9,278.33

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The final payment was debatable since Ho'ike terminated in Jan. but the unquestionable payments needed to be sent immediately.

JOSE BULAUTO felt the bill should be paid, but the board needed to be very clear about the amount legally owed and come to a very definite conclusion.

TERI TICO suggested that each party be paid directly. She was unclear as to whether or not Ho'ike owed Rowena anything, as the records indicated multiple billings; however she felt all parties definitely needed to be compensated under Exhibit D., which amounted to 51% of \$38,967.00

The contract was then passed around and the floor was open for questions.

TERI added that there was a question about a fiscal agency that Sharon Yamada of Mano Wai proposed, and was not accepted by Ho'ike, yet Sharon was demanding payment for said party. Teri wanted to know who they are, where they are, what they did, and where their bills were. Teri had never seen any of the so-called statements from such an agency in any of the provided paperwork, and she was assured she had it all.

JOSE said the numbers were most definitely questionable with the very first set of bills. When an explanation was requested, they responded with a six-page letter that only explained that the grants they applied for were not approved. Even though Ho'ike was prepared to meet the commitments, we could not come to a conclusion until we understood to what extent we were committed

TERI TICO wanted to know how the group felt about sending a payment of \$19,874.00 to Maurice the architect. She felt that Ho'ike should include a letter that stated "to the best of our ability, we reviewed the documents and billings and under pursuit to our contract we are paying this amount. We understand you are billing us for a lot more, and we are willing to listen to you, but as far as we're concerned, this is this contract. This is what we are obligated to pay, and this is what we are paying as our good faith effort in attempt to resolve the issue. If there is any disagreement please contact us and we can continue our discussions." She explained that arbitration was an option in the event they prevailed in billing a \$100,000.00 fee.

Teri had met with Sharon and Maurice on Oahu and had a really long talk where he had explained that they had to do a lot of research in order to build a building of this technological nature. Teri thought it unfair that Ho'ike had to pay for their education.

GABRIELLE DORMAN "But it's not a technological building."

TERI: "He explained how hard it was to design, and they had all this time and study

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involved, along with out of pocket expenses.” She was relieved his out of pocket expenses had been paid immediately.

J Stated that with the initial memorandum of intent, there was a structure provided by Mano Wai which described their role as to how the funding would be provided. It specifically stated that Mano Wai was to orchestrate, administer and provide government loans and grants. At no time did it say that the non-profit organizations were responsible for paying the bill. Complete funding for the project was to come from elsewhere which is what attracted all the organizations. Mano Wai’s responsibility to the project was in writing.

JOSE agreed that from the moment Ho’ike was enticed into the project it was with the understanding that as a non-profit organization working with other non-profit organizations, the process of government funding would cover the financial obligations. When that fell through, Ho’ike suddenly found itself in a legal arrangement to pay bills they had not authorized. He asked that the new board come together to make a collective conscious decision as to how to move forward and to proceed accordingly based on the facts placed before them.

SOLEILLE expressed gratitude to Teri for all her efforts, and felt her sincerity in attempting to bring it all together. She stated that there had to be some cohesive method of charging. One couldn’t just say you own me 10,000.00 and not have a reason or a Receipt. To pay without clarification would be an irresponsible act towards the community. She agreed with Teri to follow the guidelines of the contract.

TERI TICO did not wish to put the blame on anyone. She felt that everyone came together in good faith. It was a wonderful vision for the community with everyone working together, and if the funding did not come as planned, it was perhaps an overly ambitious undertaking for all parties. “We do have these billing discrepancies and if we just look at the contracts, they pretty much spell out the payment schedules.” She said.

JOHN ISOBE reiterated the above expenses and plans of payment and stressed the fact that the appropriate members of the board meet with all the parties concerned to come to a final resolution. He also expressed concerns over any arbitration process.

TERI TICO did not personally feel that it would go to arbitration. She felt that there had simply been a lot of miscommunication and that Ho’ike should pay what is clearly stated in the contract, and open any remaining claims for payment up to discussion.

JOSE addressed John’s concern stating that he felt all parties concerned needed to comply as to why they felt we owed all the extra fees. It was not clear to him as to how Ho’ike owed up to \$110,000.00. Ho’ike could not just pay for the sake of paying.

JOHN ISOBE foresaw a discrepancy. He did not feel that the architects, and Mano Wai would simply accept the payment without insisting on the rest of the billing.

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He understood that Ho'ike was going to call a meeting with all parties together in one room at the same time to discuss their points of view, and he expressed strong desire to follow through with that plan.

TERI suggested notifying all parties involved and to prepare them with a list of our questions and the necessary documentation required in order to settle the discrepancy.

JOHN said that assuming the meeting took place and there was still on impasse on both sides, at what point would we make a decision to move into arbitration and/or just pay the requested amount so as to move on.

JOSE stated that it would be a decision made by the board as a whole and could not be determined at this time.

MABEL commended Teri for all her research and hard work. She stated that communication and acquisition of information had been a problem all along and that the board had been clearly misled. She was not fearful for taking the second step, arbitration, because there was proof of the misrepresentation. Ho'ike was clearly misled in regards to the U.S. Department of Economic Development conditional commitment for a \$1.3 million dollar grant. The architect claimed that J was there the whole time, but MaBel informed him that J was there under the premise that we had a conditional commitment from the U.S. Department of Economic Development as assured by Mano Wai and Rowena Cobb, and there was no documentation to prove the commitment. She did discover from Maurice Kondo that Ho'ike could use the drawings on the same site or another site. The bottom line was that Ho'ike did not get accurate information.

GABRIELLE mentioned that since Maurice had yet to deliver any blueprints, she wondered if either MaBel or Teri were aware as to how much of the plans had been completed. She explained that Ho'ike had not seen any elevations, electrical, ceiling reflections etc. - to what stage had the plan been developed? "Was it just space planning?"

TERI said he (Maurice Kondo) said they had done everything except feed the information into the computer to print out the blueprints.

MABEL said that according to Maurice Kondo they were into the development stage.

GABRIELLE affirmed that the board hadn't really approved any of the space planning.

MABEL said that Maurice had indicated that according to his recollection, Ho'ike had approved the plans at the first presentation.

GABRIELLE stated that she was at the presentation and that no one from Ho'ike approved the plans presented.

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J informed the board that Gary Macauliffe had just flown back to Honolulu and the INK architect team apologized for the fact they had arrived on Kauai without any of the materials for Ho'ike.

JOHN asked if the board was satisfied with the work completed to date.

Most responded with "NO."

MA BEL wondered how we could be sure when we hadn't seen the whole plan?" She went on to say that the architect's said they had completed the environmental and she asked how that was possible since Ho'ike had yet to purchase the land; however these were questions that Mano Wai needed to answer, not the architects.

JOSE requested a motion for resolution.

MABEL: The motion is for immediate payment: to set up a resolution meeting with all parties, and to request the missing documentation still in question.

**The amount agreed upon is \$19,874.00 per the AIA Contract, Exhibit D
1,176/00 per the Mano Wai Agreement Exhibit A**

Motion was seconded by Teri Tico

JOHN suggested a time frame be placed upon the meeting so as not to drag it on. It was decided the meeting to be set for no later than May 27th, 2005.

IX. Announcements

JOSE announced the next BOD meeting July 27,2005 at 10:00am.

JOSE called for a motion to adjourn
Motion was made by Teri Tico
Seconded by Gabrielle and carried.
Meeting adjourned at 12:33