

STATE OF HAWAII
OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813
March 24, 2011

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

DENIAL OF REQUEST FOR CONTESTED CASE HEARING BY JOEL LABER

Joel Laber submitted a written petition for a contested case hearing concerning the non-renewal of his mooring permit at the Honokohau Small Boat harbor. See Exhibit A. We request that the Board deny the petition for a contested case hearing based on a lack of standing.

BACKGROUND

On February 3, 2010, Joel Laber ("Petitioner") was sent a Conditional Offer of Available Berth for a slip. On February 10, 2010, Joel Laber accepted the offer of an available berth. Mr. Laber secured a mooring permit that expired on January 31, 2011. Condition #8 on the mooring permit that Mr. Laber signed states: "This mooring permit shall not exceed one (1) year from 02/10/10 and the mooring privilege under this permit terminates on 01/31/11." Mr. Laber failed to renew his mooring permit prior to the expiration date of January 31, 2011.

Historically, DOBOR had mailed out courtesy mooring permit renewal reminder letters which informed permittees of the permit expiration date and the renewal requirements. This courtesy letter was sent out via certified mail – return receipt requested to every permittee statewide. The mooring permit renewal notices were sent out as a courtesy and were not required by law.

On September 18, 2009, DOBOR sent out a letter to all permittees statewide that stated that as a cost saving measure, DOBOR would discontinue sending out monthly mooring permit renewal notices since the cost to send out these notices was over \$10,000 each year. The letter stated that in lieu of the renewal notices, the mooring permit expiration date would continue to be written on the billing statement that the permittee received each month. All Oahu harbors also posted the notice in the harbor informing the permittees of the change.

DISCUSSION

A contested case is defined as "a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." Hawaii Revised Statutes §91-1. A contested case is required if a statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if a hearing is mandated by due process. *Bush v. Hawaiian Homes Com'n*, 76 Haw. 128, 134, 870 P.2d 1272, 1278 (1994). Thus a particular petitioner has standing if stated in a statute or rule or if the petitioner has a property interest entitled to due process protection.

Petitioner's petition requests after-the-fact renewal of their expired mooring permit located at the Honokohau Small Boat Harbor." DOBOR is unable to identify any statute or rule that requires a hearing in this situation. As such, Petitioner's entitlement to a contested case rests on the identification of a property interest which is entitled to due process protection.

The petition fails to identify any existing property interest which Petitioner has in his prior mooring permit. Contrary to the characterization in the petition, DOBOR did not terminate Petitioner's mooring permit. The permit terminated automatically as a result of the failure of Petitioner to renew the permit prior to expiration.

Hawaii Administrative Rules (HAR) §13-231-5 states that the Department may issue or renew a use permit for up to, but not exceeding, one year. This provision further states that "[u]pon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall automatically terminate." When Petitioner failed to renew his mooring permit prior to the expiration date, all of Petitioner's rights automatically terminated. There is no interest that exists that may be renewed. Petitioner does not have a property interest that is entitled to due process protection.

There are no statutes or rules that require that Petitioner be afforded a contested case nor does Petitioner have a property interest that is entitled to due process protection. Petitioner does not have standing that would require the Board to hold a contested case in this matter. Based on the above, DOBOR asserts that Petitioner is not entitled to a contested case hearing.

RECOMMENDATION

That the Board deny the petition for a contested case hearing filed by Joel Laber based on lack of standing.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson

C. SUBJECT MATTER

17. Board Action Being Contested

Non-renewal of mooring permit, H-5865, Honokohau Harbor Account No. 0843R004859

18. Board Action Date

DOBOR Action Date
January 31, 2011

19. Item No.

Honokohau Harbor Account No.
0843R004859

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

Secure Moorage for sailing vessel "Imagine" USCG Documentation #1192836 at Honokohau Harbor Pier/Number J-16, stern to with bow mooring buoy.

21. Any Disagreement Petitioner May Have with an Application before the Board

Non renewal of mooring permit in violation of Sections 13-231-6 and 13-234-16 of Hawaii

Administrative Rules; notice was not issued nor a reasonable period of time to remedy default

offered. and Hawaii District manager's refusal to allow me to submit necessary paperwork and

penalty to complete a mooring permit renewal application. DLNR DOBOR denied my due

process by violating their own rules. The proposed admendment to the Hawaii Administrative

Rules allowing for a grace period is a sham, a guise and a means of DLNR DOBOR to sweep



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED
71 MAR -7 P2:06

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390

RECEIVED

MAR -7 2011

DLNR/APO

- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Joel Laber	2. Contact Person Joel Laber	
3. Address P.O. Box 383932	4. City Waikoloa	5. State and ZIP HI 96738
6. Email joel@laberarchitects.com	7. Phone 808 883-9020	8. Fax 808 883-2690

B. ATTORNEY (if represented)		
9. Attorney Name n/a	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

away their required adherence of the current rules and not take responsibility for what

amounts to unlawful conduct. A reasonable period of time is fact a grace period.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

A contested case hearing or administrative hearing for Renewal of Mooring Permit Honokohau

Harbor Account No. 0843R004859, Accepted Mooring Permit Renewal Application, Payment

of Fees (renewal of permit - \$10 .00 + penalty - \$1.00 per month for each month the permittee

is late in applying for renewal of permit - HAR 13-234-16) , and restored mooring at J-16,

Honokohau Harbor.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

Public's interest would be served by DLNR DOBOR complying with their own Hawaii

Administrative Rules, Hawaii Revised Statutes and Federal Laws for restored trust in our

government and the new administration.

Section 13-231-6 is basic common sense, business practice - a notice or even a courtesy call

and a reasonable period of time to remedy default. A notice is not a small print notation on a

monthly bill and a reasonable period of time is not 2-days, neither of which is reasonable and

customary.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

It took 7-years to acquire a DLNR DOBOR mooring permit at Honkohau Harbor and 2-days

time for their refusal to renew. On a 30-day late mortgage payment, a bank will charge a late

fee, not take your house. This is not correct behavior for anyone and especially not for a

governing administration that should be held to the highest standards of ethics and lawful

practice in serving the public interest at local, state and federal levels.

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Joel Laber
Petitioner or Representative (Print Name)


Signature

March 3, 2011
Date