

LAND USE COMMISSION
MEETING MINUTES

November 19, 2015 – 8:30 a.m.

Maui Arts & Cultural Center
One Cameron Way, Kahului, Hawaii 96732-1137

COMMISSIONERS PRESENT: Edmund Aczon
Kent Hiranaga
Arnold Wong
Linda Estes
Jonathan Scheuer
Chad McDonald

COMMISSIONERS EXCUSED: Aaron Mahi
Nancy Cabral
(There are currently 8 seated Commissioners out of 9 positions)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 8:34 a.m.

CONTINUED ACTION

A10-786 Olowalu Town LLC and Olowalu Ekolu LLC (Maui)

Chair Aczon announced that this was a continuation of a meeting to consider granting a motion to extend the acceptance period for a Final Environmental Impact Statement for Docket No. A10-786 Olowalu Town LLC and Olowalu Ekolu LLC.

APPEARANCES

Jennifer A. Lim, Esq., Olowalu Town LLC and Olowalu Ekolu, LLC's (OT)
Representative
Onaona Thoene, Esq., OT's Representative
Bill Frampton, (OT)
David Ward, (OT)

Will Spence, Director, Maui County Planning Department (County)
Michael Hopper, Esq., Deputy Corporation Counsel, County
Danny Dias, Planner, County
Bryan Yee, Esq., Office of Planning's (OP) Representative
Rodney Funakoshi, Land Use Administrator (OP)

Chair Aczon requested that Petitioner begin its presentation.

PETITIONER

Ms. Lim provided argument why Petitioner's Motion should be granted.

COUNTY

Mr. Hopper stated that County had no objection to the motion

OP

Mr. Yee stated that OP supported the Motion for the reasons provided by Ms. Lim.

Commissioner Questions:

Commissioner Estes asked why OP had made its filing so late. Mr. Yee apologized for the late filing and explained the circumstances involved with the late filing.

Commissioner Estes moved to grant the extension. Commissioner Hiranaga seconded the motion. Discussion ensued and Commissioner Scheuer asked how the process flow would be impacted if the motion to extend was granted. Mr. Orodenker provided his understanding of how proceedings would move forward once an extension date was established; and how the current LUC meeting schedule would need to be rearranged to accommodate the new extension deadline date.

Additional discussion ensued to clarify how the Commission would proceed if the motion to extend was granted.

Commissioner Estes stated that she was withdrawing her motion to grant the extension. Commissioner Hiranaga withdrew his second.

Commissioner Wong moved for an Executive Session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities if it granted the motion to extend the acceptance period. Commissioner McDonald seconded the motion. By a unanimous voice vote (6-0) the Commission voted to enter Executive Session.

The Commission entered Executive Session at 8:58 a.m. and reconvened at 9:18 a.m.

Commissioner Estes moved to grant the motion. Commissioner Hiranaga seconded the motion.

Discussion

Commissioner Hiranaga stated the types of information contained in the FEIS that he would like to hear when the Petitioner presented its argument to have its FEIS accepted.

Similarly, Commissioners Wong, Scheuer, and McDonald also expressed the types of specific information that they would like to have presented to clarify their understanding of various sections of the FEIS.

There was no further discussion.

Chair Aczon had Mr. Orodener poll the Commission.

The Commission unanimously voted (6-0) to grant the Motion to Extend Acceptance Period for a FEIS.

Ms. Lim requested clarification on the procedures that would be followed for the next meeting on the acceptance of the FEIS. Chair Aczon directed Ms. Lim to coordinate with Mr. Orodener on procedural matters and declared a recess.

The Commission went into recess at 09:36 a.m. and reconvened at 09:53 a.m.

Chair Aczon announced that the Commission would next address Docket No. SP94-386 County of Maui -Lanai Sanitary Landfill.

ACTION

SP94-386 County of Maui -Lanai Sanitary Landfill

To Consider County of Maui, Dept. of Planning's Recommendation of Approval of Time Extension of LUC Special Permit for LUC Docket No. SP94-386 Pertaining to the Lanai Sanitary Landfill, Located at Kaunalapau Highway, Lanai City, Lanai, HI, TMK: (2) 4-9-002:060 (por.)

APPEARANCES

Michael Miyamoto, Deputy Director, Maui County Department of Environmental Management (ENV)

Elaine Baker, Solid Waste Engineer, ENV

Will Spence, Director, Maui County Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, County

Kurt Wollenhaupt, Planner, County

Bryan Yee, Esq., Office of Planning's (OP) Representative

Chair Aczon updated the record, and described the procedures for the hearing. There were no questions or comments on the procedures.

Mr. Miyamoto and Ms. Baker made the presentation on the time extension request. Following discussion on the operations of the landfill and how ENV had complied with the various conditions imposed upon it by the Special Permit, discussion on the Lanai Planning Commission's vote record ensued.

Commissioner Wong moved for an Executive Session and withdrew his motion when it failed to receive a second.

Additional discussion ensued to clarify the current state of the Lanai recycling program, the anticipated capacities for various types of refuse on Lanai, and what types of procedures were in place to handle excess waste that could not be accommodated in the Lanai landfill.

Commissioner Wong moved and Commissioner McDonald seconded to enter into Executive Session to consult with the Commission's attorney regarding the Commission's powers, duties, privileges, immunities and liabilities regarding this matter. The Commission entered into Executive Session and 10:19 a.m. and reconvened at 10:37 a.m.

Commissioner Wong moved to remand the recommendation of the Lanai Planning Commission to approve the Applicant's 15 year extension request for further proceedings to obtain a clear vote in light of HRS §92-15 and AG Opinion No. 85-11. Commissioner Scheuer seconded the motion.

Discussion

Mr. Hopper argued that County rules allowed for an abstention to be counted as a "yes" vote and described how he perceived the minutes supported his position.

Commissioner Wong stated that he was uncomfortable with how the County rules appeared to conflict with HRS §92-15 and AG Opinion No. 85-11.

Commissioner Estes stated that she opposed the motion and would vote accordingly.

Commissioner Hiranaga requested clarification on who attended the Lanai Planning Commission and what the circumstances of the meeting were. Mr. Hopper stated that Rachel Thompson was the Deputy Corporation Counsel who attended the meeting and deferred to Mr. Wollenhaupt to describe the Lanai proceedings. Discussion occurred to clarify how the Lanai proceedings were conducted and memorialized. Commissioner McDonald stated that he was also uncomfortable with the Lanai Planning Commission rules and noted the need for the rules to be more consistent with HRS §92-15 and AG Opinion No. 85-11.

Commissioner Scheuer stated that he supported the Motion.

Commissioner Hiranaga stated that he did not support the motion and echoed the concerns that Commissioner McDonald had.

Commissioner Wong stated that he was withdrawing his Motion. Commissioner Scheuer stated that he was withdrawing his second to the Motion.

Commissioner Estes moved to grant the Motion. Commissioner McDonald seconded the motion and offered a friendly amendment that the Conditions 1 and 3 would read as follows:

1. That the State Land Use Commission Special Permit shall be valid until September 13, 2029, subject to further extensions by the Lanai Planning Commission and the

State Land Use Commission upon a timely request for extension filed at least ninety (90) days prior to its expiration.

3. That Petitioner shall use non-drinking water, to the extent possible, for grading and dust control of the landfill.

Commissioner Estes accepted the friendly amendment and Commissioner McDonald seconded the amended Motion.

Discussion

Commissioner Wong restated his concerns about the need for the Lanai Planning Commission Rules to conform to State law. Commissioner McDonald echoed Commissioner Wong's concerns.

Chair Aczon restated the Motion offered by Commissioner Estes and had Mr. Orodener poll the Commission.

The Commission unanimously voted to grant the extension.

Mr. Hopper acknowledged the Commission's remarks regarding the Lanai Planning Commission's rules being inconsistent with the HRS and stated that he would review the rules to make any necessary corrections.

Chair Aczon stated that the next agenda item was an Executive Session relating to pending litigation involving the Commission and entertained a motion. Commissioner Wong moved and Commissioner McDonald seconded for an Executive Session.

The Commission entered into Executive Session at 10:55 a.m. and reconvened at 11:21 a.m.

There being no further business, Chair Aczon adjourned the meeting at 11:21 a.m.