

LAND USE COMMISSION
MEETING MINUTES

October 16, 2015 – 1 p.m.
Waikiki Convention Center
Room315

1801 Kalakaua Avenue, Honolulu, HI 96815

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Linda Estes
Kent Hiranaga
Aaron Mahi
Chad McDonald
Jonathan Scheuer
Arnold Wong

COMMISSIONERS EXCUSED: There are currently 8 Commissioners seated out of 9 positions.

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

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 1:07 p.m.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the September 20, 2015 minutes. There were none. Commissioner Estes moved to approve the minutes. Commissioner Mahi seconded the motion. The minutes were approved by a voice vote (7-0- 1 abstention- Commissioner Scheuer).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The next meeting is on October 22-23, 2015 at the Honolulu Airport Conference Room #3 to hear a status report of Special Permit No. SP09-403 Waimanalo Gulch Sanitary Landfill and Docket No. A06-771 D.R. Horton- Friends of Makakilo's Motion for Order to Show Cause.
- November 4, 2015 is planned for a continued hearing on Docket No. A89-643 McClean Honokohau Properties in Kona. (Both the October 22-23 and November 4th meetings are being held in remote locales and will require "working lunches" to complete LUC business within their allotted time frames. The Commission will provide meals for Commissioners and staff.
- The November 18-19, 2015 meeting will be on Maui to consider acceptance of the FEIS on A10-786 Olowalu LLC and to hear a status report on A94-706 Kaonoulu Ranch.
- The December 9-10, 2015 meeting will be on Maui for Commissioner training on the 9th and a Site visit for the Ma`alaea Plantation 201H project on the 10th.
- The January 11, 2016 date is tentatively set for hearing the Ma`alaea Plantation 201(h) project on Maui
- The balance of January and February dates are reserved for addressing the 201(h) project on Maui.
- Any questions or conflicts, please contact LUC staff.

Chair Aczon reaffirmed that the October 22-23 and November 4 meetings would be in remote locales and would require "working lunches" to conclude LUC business in time allotted. Executive Officer Orodener acknowledged that LUC staff was aware of that and that the LUC would make provisions to provide meals for the LUC Commission and staff.

There were no questions or comments regarding the tentative meeting schedule.

HEARING & ACTION

DR15-53 KA `OHANA O KALAUPAPA (KALAWAO COUNTY, MOLOKAI)

Chair Aczon stated that this was an action meeting to consider Petitioner Ka `Ohana O Kalaupapa's Petition for Declaratory Order Under §§ 15-15-98 *et seq.* of the Land Use Commission Rules and Hawai`i Revised Statutes § 91-8.

APPEARANCES

Tom Pierce, Esq., represented Ka `Ohana O Kalaupapa (“KO”)

Bryan Yee, Esq., represented State Office of Planning (“OP”)

Rodney Funakoshi, OP

(Mr. Yee advised the Commission that no representative for the Department of Health or Kalawao County would be present.)

Chair Aczon updated the record, described the procedures for the hearing and asked Mr. Pierce to address Petitioner’s request that the LUC waive reimbursement for hearing expenses and the Declaratory Order filing fees.

There were no questions or comments on the procedures for the hearing.

Mr. Pierce introduced Clarence “Boogie” Kahilihiwa and Valerie Munson to the Commission and described their roles in the non-profit Ka Ohana `O Kalaupapa organization that had brought the Petition to the Commission.

Chair Aczon requested that Mr. Pierce address the request for the LUC to waive its reimbursement requirement and docket filing fees before proceeding further. Mr. Pierce acknowledged Chair Aczon’s request and described how the non-profit organization Petitioner had evolved, and why it sought the waiver from the LUC.

Commissioner Wong moved to grant Petitioner’s request for a waiver for reimbursement costs and hearing filing fees. Commissioner Mahi seconded the motion.

Commissioner Hiranaga requested clarification on how the LUC determined whether or not it would grant waiver of fees. Commissioner McDonald stated that it could be done at the discretion of the Commission. Commissioner Wong shared his experiences with non-profit organizations’ financial needs and why he felt that the Ka Ohana `O Kalaupapa group’s attempt to build a memorial was worthy of a waiver.

Additional discussion occurred to provide examples of past situations where waivers were granted. Executive Officer Orodener described other waivers that had been granted during his tenure. Commissioner McDonald noted that this would be the first non-profit organization that he was aware of to receive a waiver.

After further discussion, Chair Aczon asked Mr. Orodener to poll the Commission. The Commission voted unanimously (8-0) in favor of the motion.

Chair Aczon called for Public Witnesses.

PUBLIC WITNESSES

1. Clarence "Boogie" Kahilihiwa

Mr. Kahilihiwa previously submitted written testimony and shared his personal involvement with the Ka `Ohana O Kalaupapa's efforts to construct a memorial in memory of the deceased residents of the community. He asked that the Commission grant the Petition and thanked the Commissioners for their consideration.

There were no questions for Mr. Kahilihiwa.

2. De Gray Vanderbilt

Mr. Vanderbilt submitted written testimony and described his association with the Kalaupapa Memorial effort, provided a historical background of this project, and a general description of the proposed memorial for the Commission.

Mr. Vanderbilt also provided his perspective on comments and remarks made regarding the proposed project by the Department of Health, Office of Planning and the State Historic Preservation Department.

Mr. Pierce requested Mr. Vanderbilt to provide further clarification on the proposed project. Mr. Vanderbilt referred to Petitioner's Exhibit 12 and described additional elements of the proposed memorial. Mr. Vanderbilt also shared what the approval process involved, provided additional details on the Ka `Ohana O Kalaupapa organization and its intentions; and what historical importance the memorial would have.

Mr. Yee requested clarification on the physical characteristics of the proposed memorial. Mr. Vanderbilt described the estimated dimensions of the proposed memorial and stated that it would be approximately 10' high and approximately 100' in diameter to fit within the footprint of the former Baldwin Boys' Home site.

There were no further questions for Mr. Vanderbilt.

There were no further public witnesses.

Admission of Exhibits

Chair Aczon asked if Mr. Pierce had any Exhibits that he would like to enter into the record. Mr. Pierce offered Petitioner's Exhibits 1-17 for the record. There were no objections or comments to these exhibits and they were admitted to the record.

Petitioner Presentation

Mr. Pierce provided a brief historical background of the Kalaupapa Memorial Project and summarized the reasons why the Ka `Ohana O Kalaupapa had decided to come before the Commission; and argued why his motion should be granted.

There were no questions or comments for Mr. Pierce by the Commission.

Public Testimony by OP

Mr. Yee stated OP's position of support in this matter and described statutory and administrative authorities that OP had referenced; and the considerations and reasons why OP had taken such a position. Mr. Yee was informed by Chair Aczon that the Exhibits submitted with OP's written testimony would be part of the record in this matter.

There were no questions or comments for Mr. Yee.

There was no representative for the Department of Health or the County of Kalawao.

Commissioner Scheuer moved to grant the Petition to allow and acknowledge that the construction of the memorial in the Petition Area was a permissible use. Commissioner Estes seconded the motion.

Commissioner Scheuer shared his reasons for making his motion and thanked Ka `Ohana O Kalaupapa for its hard work and good intentions.

Commissioner Cabral echoed Commissioner Scheuer's remarks and noted that the memorial would be a wonderful event.

There was no further discussion.

The Commission voted unanimously (8-0) to grant the motion.

Chair Aczon thanked the Parties and declared a brief recess.

The Commission went into recess at 1:47 p.m. and reconvened at 1:56 p.m.

Commissioner Hiranaga noted for the record that Commissioner Estes had exited the meeting. (There were 7 Commissioners remaining.)

HEARING & APPROPRIATE ACTION (if necessary)

DR08-36 KO OLINA DEVELOPMENT, LLC

Status/Update Report-Boat Launch Ramp

Chair Aczon announced that this was a meeting to receive a status update/report from Petitioner on Docket No. DR08-36 Ko Olina Development Company and take appropriate action, if any.

APPEARANCES

Curtis Tabata, Esq., represented Petitioner

Ken Williams, Petitioner's Representative

Bryan Yee, Deputy Attorney General, represented State Office of Planning ("OP")

Rodney Funakoshi, OP

(City and County of Honolulu was not present)

Chair Aczon updated the record and explained the procedures to be followed for the proceedings. There were no questions on the proposed procedures.

Chair Aczon called for Public Witnesses.

PUBLIC WITNESSES:

1. Creighton Chang

Mr. Chang submitted written testimony and described his displeasure with the Ko Olina Community Association (KOCA)'s boat ramp rules and regulations, and insurance requirements; and how the fishermen had no seat at the table during the planning and design phase of the boat ramp construction project.

Mr. Tabata requested clarification on what types of insurance coverage Mr. Chang had compared to what the Ko Olina boat ramp required. Mr. Chang described his policy coverages and cost.

There were no other questions for Mr. Chang.

2. Warren Von Arnswaldt

Mr. Von Arnswaldt provided his perspective of the Ko Olina Boat Ramp's construction and expressed his disappointment with the finished product. Mr. Von Arnswaldt also described how he had investigated the operating practices of the new boat ramp and shared his reasons for wanting changes made to better accommodate the needs of the fisherman community.

There were no questions for Mr. Von Arnswaldt.

3. Bill Chang

Mr. Chang read written testimony submitted by Rodney Ajifu. Mr. Ajifu's testimony described why he opposed certain boat ramp rules fees, and requirements. After concluding his reading of Mr. Ajifu's letter, Mr. Chang voice his support for the fishermen testifying before the Commission at this hearing.

Mr. Tabata requested clarification on what insurance companies had been contacted by Mr. Ajifu. Mr. Chang responded that he did not know, but that Mr. Ajifu had provided his phone number and could provide the information if needed.

There were no other questions for Mr. Chang.

4. Ronald Tam

Mr. Tam shared his personal involvement with the Ko Olina boat ramp Project and commented on what KOCA rules and requirements he disagreed with.

Mr. Tabata and OP had no questions for Mr. Tam.

Commissioner Scheuer requested clarification on what kind of data could be collected from previous boat ramp registration forms. Mr. Tam responded that vessel size was one of the items included and described other information that was required on the registration form.

Commissioner Wong requested clarification on whether the Commission was the appropriate authority to address how the boat ramp was being operated. Discussion ensued on the ownership and representations made to the Commission by past and current landowners, how the DR docket evolved, and what the past practices regarding boat ramps in the area were. Mr. Chang, Mr. Von Arnswaldt, and Mr. Tam shared their recollections of the history behind the ownership and operation of the area boat ramps.

Commissioner Hiranaga asked for further clarification on how the original boat ramp was constructed and additional historical context. Mr. Tam, with

assistance from his fellow testifiers, described how the original developer, Herbert Horita, had built the initial private boat ramp, and how it eventually became open to the public.

There were no further questions for Mr. Tam.

5. Roy Morioka

Mr. Morioka described his opposition to how KOCA was operating the boat ramp and voiced what kind of changes he would like to have made.

There were no questions for Mr. Morioka.

6. Sweetie Nelson, Director, Destination Marketing, Ko Olina Resort

Ms. Nelson described her professional capacity and shared the reasons why her organization supported the current boat ramp procedures.

Mr. Yee requested clarification on why the current boat ramp procedures were supported by Ms. Nelson's organization, and for additional clarity on the terms "preservation of" and "ensuring" guest experiences. Mr. Yee also requested clarification on fees, insurance requirements, maintenance standards, and quality control of the facilities and grounds. Ms. Nelson provided her perception of what the terms meant and why her organization felt that the boat ramp procedures contributed to that experience and how her organization administered to the upkeep of the area.

Commissioner Mahi requested clarification on how the public and commercial boating entities used the area facilities. Ms. Nelson stated that the boat ramp was primarily used by the public and that the marina was used by commercial entities.

Commissioner Hiranaga requested clarification on how KOCA was organized and how it related to other regional commercial entities. Ms. Nelson described how KOCA operated and was involved with other agencies in the region; and who the participants were.

There were no further questions for Ms. Nelson.

Commissioner Wong stated his perception of what the Commission should focus on after hearing the public witnesses.

Chair Aczon declared a recess at 2:54 p.m. and reconvened the meeting at 3:11 p.m. (Commissioner Cabral exited the meeting during recess, there were six

Commissioners remaining.) Chair Aczon requested that Petitioner commence with its status report.

PRESENTATIONS:

Petitioner

Mr. Tabata provided the historical background of the docket and described the progress made by Petitioner to construct the boat ramp after securing the proper permits and approvals. He also described what benchmarks and timelines were observed once the start of construction began, summarized the remaining details involved in completing the project; and provided Petitioner's perspective on the fishermen's concerns about launch and parking fees being charged, insurance requirements, boat and trailer length limits, and public use restrictions for the boat ramp.

Questions for Petitioner

Mr. Yee had no questions.

Commissioner Scheuer expressed his desire for additional information to better understand and discuss this matter.

There were no further questions or comments. Chair Aczon requested OP to make its presentation.

OP Presentation

Mr. Yee stated that the historical facts stated by Petitioner were correct and described OP's interaction with Petitioner during the construction of the boat ramp; and reported how OP perceived the rate of progress made by Petitioner to achieve the boat ramp's completion.

Mr. Yee acknowledged that the fishermen's concerns were valid and shared his perception of how those concerns could be more appropriately addressed at a County level hearing relating to the terms of the Conditional Use Permit instead of by the LUC. Mr. Yee described what OP's input had been to secure the construction of the boat ramp, OP's view that Petitioner's status reports were no longer needed since construction had been completed; and why the LUC was not the appropriate authority to hear the issues being raised by the fishermen.

Questions for OP

Mr. Tabata had no questions.

Commissioner McDonald stated that he agreed with Mr. Yee's assessment of the LUC's role in this matter and that the LUC was not the appropriate body to hear the issues being raised by the fishermen.

Commissioner Hiranaga requested clarification on the jurisdictional issues involved when the private ownership of the boat ramp started allowing public use. Mr. Tabata described how the boat ramp evolved from private to public use and his position that the County Conditional Use Permit had jurisdiction over concerns such as the fishermen had.

Commissioner Mahi expressed his desire for the fishermen and the KOCA to seek resolution to their disagreements in a more communicative manner.

There were no further questions for Mr. Tabata; and no further discussion or comments.

Commissioner Scheuer moved and Commissioner Mahi seconded the motion to defer action on DR08-36 for three months and:

1. That the Executive Officer receive questions from the Commissioners that could be answered in writing by the Petitioner and other relevant parties, including the County, prior to the next hearing on this matter.
2. That the Staff and Deputy Attorney General prepare a summary of the history on this matter for the Commission, and
3. Respectfully request that the Petitioner engage in discussions with the testifiers on this matter to see what greater understanding among the parties can be reached during that time.

Discussion

Commissioner Hiranaga requested clarification on whether the reports would be written or oral. Commissioner Scheuer repeated his motion to clarify its details.

Mr. Yee requested clarification on the need to address jurisdictional matters.

Commissioner Hiranaga requested clarification on details regarding public access, the Master Plan for the area, and the Conditional Use Permit for the facility.

Commissioner Wong asked whether Petitioner had filed any additional pleadings. Mr. Tabata replied that he had only submitted correspondence on the boat ramp completion and explained why he felt that was sufficient. Mr. Orodener confirmed receipt of Petitioner's letter.

Mr. Yee restated the terms of the earlier Decision and Order and noted the representations made in 1985. Commissioner Scheuer emphasized the provisions made to include a boat ramp in the order issued for the Declaratory Ruling proceeding.

Commissioner Hiranaga noted the need for more clarity on this matter. Commission Mahi commented on the value of public input in issuing a Conditional Use Permit. Additional discussion ensued to further clarify details of the motion and to restate it.

There was no further discussion.

The Commission voted as follows:

Ayes:

Commissioners Scheuer, Mahi, Wong, Hiranaga, and Chair Aczon.

Nays: Commissioner McDonald

The motion carried (5-1-2 excused- Commissioners Estes and Cabral had exited the meeting earlier)

There being no further business, the Commission adjourned at 4:04 p.m.