

LAND USE COMMISSION
MEETING MINUTES

February 24, 2016 – 09:30 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
Nancy Cabral
Chad McDonald

COMMISSIONERS EXCUSED: Aaron Mahi
(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 930 a.m.

APPROVAL OF MINUTES

Commissioner Estes moved to approve the February 9, 2016 meeting minutes. Commissioner Wong seconded the motion. By a unanimous voice vote (7-0-1 excused), the minutes were adopted.

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 March 23rd-24th, 2016 meeting is tentatively planned for a hearing in Kona, Hawaii for Docket No. A89-646 Queen Liliu`okalani Trust..

- The April 14th, 2016 meeting on Oahu is a follow-up status report for SP09-403 Waimanalo Gulch Sanitary Landfill and DR16-55 OP's Petition for a Declaratory Order.
- The remaining dates for LUC meetings have not been scheduled yet.
- Any questions or conflicts, please contact LUC staff.

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

ACTION

SP92-381 WAIKOLOA DEVELOPMENT COMPANY (Hawai'i)

Chair Aczon announced that this was an action meeting to adopt the form of the order to grant the requested Amendment to Special Permit No. 833 (SP92-381), to Allow a Time Extension to Condition No. 12 (Life of Permit), Allow Greenwaste Composting, and Allow the Processing and Recycling of Portland Cement Concrete and Asphalt Concrete Pavement Tax Map Key: 6-8-001: portion of 066 (formerly 6-8-001: portion of 005)

APPEARANCES

Mel Macy, West Hawaii Concrete Representative, (WHC)

Hawai'i County Planning Department (County) advised that they would not appear.

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

Lorene Maki, Planner, (OP)

Chair Aczon updated the record. There were no questions or comments about the record.

Chair Aczon called for public witnesses. There were no public witnesses.

Chair Aczon asked if Mr. Macy wished to address the Commission. Mr. Macy expressed his thanks to the Commission for granting the extension of the Special Permit on behalf of his company.

Chair Aczon entertained a motion by Commissioner Cabral to adopt the form of the order. Commissioner Wong seconded the motion.

Vice Chair Scheuer thanked Mr. Macy for the thorough job that was done by WHC on the application.

There was no further discussion.

Chair Aczon asked Mr. Orodener to poll the Commission. The Commission voted unanimously (7-0--1) to approve the form of the order:

The Commission went into recess at 9:36 a.m. and reconvened at 9:37 a.m.

Chair Aczon reconvened the meeting and stated that the next agenda item was an action meeting on Docket No. DR15-54 Pu`unoa H.O.A. and Devonne Lane.

ACTION

DR15-54 PU`UNOA H.O.A. & DEVONNE LANE (Maui)

To consider Petition for Declaratory Order that the proposed construction of a homeless encampment and commercial campground on 7.9 acres of a 22.7 acre parcel located at Hokiokio Place and Lahaina Bypass Road at Maui Tax Map Key No. (2) 4-7-003:031 (por), Lahaina, Maui, Hawai`i, in the State Land Use Agricultural District requires a district boundary amendment

Chair Aczon called for the Petitioner to identify themselves and began the proceedings.

APPEARANCES

Deborah Wright, Esq., and Doug Wright, Esq., -Pu`unoa Home Owners Association and Devonne Lane's (PHO) Counsel

(Ms. Wright introduced Neighborhood members Ross Scott and Deiter Lane)

Michael Hopper, Esq., Deputy Corporation Counsel, County Counsel

Kurt Wollenhaupt, Maui County Planning Department (County)

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

Lorene Maki, Planner, (OP

James Geiger, Esq., Ho`omoana Foundation's Counsel (HF)

Chair Aczon updated the record, described the procedures for the meeting and asked if Petitioner had been made aware of and was agreeable to the LUC's expenses reimbursement policy. Ms. Wright acknowledged that Petitioner was aware of and would comply with the reimbursement policy. There were no questions or comments on the procedures.

PUBLIC WITNESSES

1. Leo Wilke

Mr. Wilke provided his perspective of the proposed homeless encampment. Ms. Wright requested clarification on what Mr. Wilke's testimony was opposing. Mr. Wilke stated that he opposed the homeless encampment and did not oppose the Petition for Declaratory Order.

There were no other questions for Mr. Wilke.

2. Todd Erickson

Mr. Erickson shared his opinion on the proposed homeless encampment and described how he was confused by the planning processes involved.

Commissioner Estes requested clarification on what Mr. Erickson's position was. Mr. Erickson provided further details of why he felt the homeless problem was not being effectively dealt with and what needed to be done locally to better address the situation.

There were no further questions for Mr. Erickson.

3. Rich Holmer

Mr. Holmer stated that he agreed with the remarks made by Mr. Erickson and requested clarification on what the Commission would be addressing at this meeting.

Chair Aczon had Mr. Orodener state the purpose and intent of the meeting regarding DR15-54. Mr. Holmer described his support for local agriculture and for reducing negative impacts to it.

There were no questions for Mr. Holmer.

4. Lisa Ware

Ms. Ware declined testifying.

5. Gordon Firestein

Mr. Firestein described why he was in support of the Petition for Declaratory Order.

Commissioner Estes requested clarification on what proper and suitable sites for homeless encampments might be available. Mr. Firestein replied that he was not very familiar with what might be required for such facilities and identified areas that he thought might be suitable for the proposed project .

There were no further questions and no other public witnesses.

PETITIONER PRESENTATION

Ms. Wright provided the historical background of the Declaratory Order and argued why the Commission should grant the request for a Declaratory Order that the proposed construction of a homeless encampment and commercial campground on 7.9 acres of a 22.7 acre parcel located at Hokiokio Place and Lahaina Bypass Road at Maui Tax Map Key No. (2) 4-7-003:031 (por), Lahaina, Maui, Hawai'i, in the State Land Use Agricultural District requires a district boundary amendment rather than a special permit.

QUESTIONS ABOUT PRESENTATION

The Commission had no questions regarding Ms. Wright's argument.

AGENCY PUBLIC TESTIMONY

COUNTY

Mr. Hopper described how the County's Planning Commission was actively considering the proposed project as a special use permit under County jurisdiction and argued that the LUC should consider allowing the County to handle the matter and how disruptive granting the Petition might be to the County's efforts.

Chair Aczon asked if there were any questions for Mr. Hopper.

Ms. Wright had a question for Mr. Hopper, and Mr. Hopper stated his objection to being cross-examined. Chair Aczon acknowledged the objection and moved on.

Commissioner Hiranaga requested clarification on how the County interpreted the jurisdictional boundary of the 7.9 acres of the Petition Area inside the larger 22.7 acre parcel and how a Special Use Permit could be applied to different acreage amounts. Mr. Hopper described how the County would apply boundary limits to Special Use Permits within a larger parcel area and determine what the respective permitted uses would be according to statute.

Commissioner Scheuer requested clarification on County's perception of "exclusive jurisdiction" for Special Use Permits regarding "prohibited" activities. Mr. Hopper provided his interpretation of HRS §205-4.5 (6) and HRS §205-6 as it related to DR15-54 and how other associated permits from the County would be involved.

Commissioner Wong requested clarification on the status of the Maui Planning Commission's hearings on this matter and on other details of how HRS§205-4.5 (6) and HRS§205-6 were interpreted by County. Mr. Hopper stated that the matter had been deferred and provided further clarification of how he perceived the HRS statutes to apply and why the Petition for Declaratory Order should not be granted.

Chair Aczon declared a recess at 10:32 a.m. and reconvened the meeting at 10:45. Chair Aczon called on OP to provide its public witness comments.

OP

Mr. Yee stated that OP had provided written comments that the Special Permit process was an appropriate method to handle this matter and deferred the jurisdictional issue to the LUC to decide. Mr. Yee also provided his perception of what the various

courses of action were and their consequences to the Commission and what his assessment of how a District Boundary Amendment or Special Permit process could be applied in this circumstance.

Commissioner Scheuer requested clarification on how “disallowed uses” and “prohibited uses” applied to the presented argument. Mr. Yee clarified how OP had interpreted the terms and their applications in this and other cases.

Commissioner Wong requested clarification on how legislative intent factored in OP’s consideration of this matter and the activities mentioned in HRS§205-4.6 (6). Mr. Yee responded that OP’s reading of the statute did not include making determinations of legislative intent.

Commissioner Hiranaga requested clarification about whether OP regarded overnight camping as a “non-permitted” use or a “prohibited” use. Mr. Yee replied that OP read it as a “non-permitted” use and provided an example of how a “prohibited” use had been clarified by a ruling to better define the placement of a solar facility on “A” rated agricultural land with Special Permits.

There were no further questions from the Commissioners. Chair Aczon asked if Mr. Geiger, had any comments.

HF

Mr. Geiger stated that he represented Ho`omoana Foundation and had filed a position statement and a motion to intervene on this matter. Mr. Geiger added that HF supported County and OP’s position and believed them to be correct; and that HF considered this a jurisdictional matter and that it was more appropriate for County to handle the matter through its Special Use Permit (SUP) process.

The Commissioners had no questions for Mr. Geiger. Chair Aczon called for Ms. Wright’s rebuttal.

REBUTTAL

Ms. Wright argued why the SUP process was not appropriate and why a District Boundary Amendment (DBA) process should be followed instead; and provided her interpretation of how the terms “permitted use”, “non-permitted use”, or “prohibited use” were applied within HRS chapter 205. Ms. Wright stated that there were two questions- 1) should this be a DBA or SUP? and 2) who has jurisdiction to make the ultimate decision on the application- the County or the LUC?

Commissioner Wong moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

Mr. Hopper requested and was granted an opportunity to provide a comment on his perception of County's powers as defined by HRS §205-6. Chair Aczon noted that Mr. Hopper's remarks were taken into consideration and sought a second to Commissioner Wong's motion.

Commissioner McDonald seconded the motion. By a unanimous voice vote (7-0), the Commission voted to enter into Executive Session.

The Commission entered Executive Session at 11:10 a.m. and reconvened at 11:24 a.m.

Chair Aczon described the options that the Commission had and asked if the Commissioners had any final questions. Commissioner Hiranaga requested clarification on the procedural status of the meeting. Chair Aczon clarified the status of the proceedings.

ACTION

Commissioner Hiranaga moved to deny the Petition for Declaratory Order. There was no second to the Motion and it failed.

Commissioner Scheuer moved to grant the Petition and expressed his reasons for making his motion. Commissioner Estes seconded the Motion.

Discussion

Commissioner Scheuer stated that he was not speaking to the merits of the project and described the difficulty of legally interpreting the two sections of HRS chapter 205 (i.e., section 205-4.5(a)(6) and 205-6) and what the legislative intents of the different sections of the statute were and how he perceived that when there was a greater specificity within the statute, it better defined what was allowed or not allowed.

Commissioner Wong echoed Commissioner Scheuer's comments about not speaking to the merits of the project and on how the legislative intent being more specific in HRS §205-4.5(a)(6) applied to overnight camping activity; and stated that he was voting in support of the motion. Commissioner Wong also asked how it could be appropriate to ensure that the Decision and Order for this docket be signed by the Chair alone to ensure its timely processing. Executive Officer Orodener clarified that the deadline for the Commission to act was approaching and that it would be appropriate

to authorize the Chair to approve the order before the next meeting. Chair Aczon replied that he would handle the signature for the order as a separate motion.

Commissioner Hiranaga stated that he would not be supporting the Motion and expressed his concerns that the actions of the LUC were premature since the matter was still before the Maui Planning Commission; and that it was a County matter to make a determination on.

There was no further discussion.

The Commission voted as follows:

Ayes: Commissioner Scheuer, Estes, McDonald, Wong, Cabral and Chair Aczon.

Nays: Commissioner Hiranaga

The Motion passed 6-1 with 1 excused.

Chair Aczon entertained Commissioner Wong's Motion to allow the Chair on behalf of the Commission to sign the Order Granting the Declaratory Order. Commissioner Scheuer seconded the Motion and expressed his understanding of the intent of the Motion.

There was no discussion. By unanimous voice vote (7-0), the Commission voted in favor of the Motion.

Chair Aczon announced that since the Commission had granted the Petition for Declaratory Order, the Commission considered the Petition to Intervene moot; and entertained a motion to deny the Petition to Intervene.

Commissioner Wong moved to deny the Petition to Intervene. Mr. Geiger requested and was granted an opportunity to comment by Chair Aczon.

INTERVENOR COMMENT

Mr. Geiger stated why he thought that the LUC's action would have unintended consequences on the Special Use Permit process and registered his objection to the Commission's action. Chair Aczon replied that he would take Mr. Geiger's comments under advisement.

Commissioner Scheuer commented that he had considered the "due process" considerations and shared his views on the matter.

Chair Aczon sought a second to Commissioner Wong's Motion. Commissioner Scheuer seconded the motion to deny the Petition to Intervene.

Discussion

Commissioner Hiranaga questioned why the Petition to Intervene was placed after the consideration of the DR15-54 Petition for Declaratory Order on the agenda. Mr. Orodener described the options that were available to the Commission for this matter and why the agenda items were sequenced in the order that they were.

There was no further discussion.

The Commission voted unanimously (7-0) to deny the Petition to Intervene.

The Commission went into recess at 11:40 p.m. and reconvened at 11:42 p.m. Commissioner Hiranaga was excused by Chair Aczon, 6 Commissioners remained at the meeting.

2016 LEGISLATION STATUS REPORT

Chair Aczon requested that Mr. Orodener review the LUC legislative items of concern with the Commission. Mr. Orodener summarized the various pending bills that involved the Commission and described the status and anticipated action that LUC was prepared to take if the bills proceeded forward in the legislative process; and responded to various questions the Commission had.

Chair Aczon adjourned the meeting at 12:05 p.m. and commented that the next hearing on March 23-24, 2016 would require that the Commission provide meals for a “working lunch” as an integral part of the meeting due to the remote locale of the meeting facility. Mr. Orodener acknowledged Chair Aczon’s comment and replied that the necessary arrangements would be made to accommodate the “working lunch”.