

LAND USE COMMISSION
MEETING MINUTES

April 20, 2016 – 09:30 a.m.

Maui Arts & Cultural Center

One Cameron Way, Kahului, Hawaii 96732-1137

COMMISSIONERS PRESENT: Edmund Aczon
Kent Hiranaga
Arnold Wong
Jonathan Scheuer
Nancy Cabral
Aaron Mahi

COMMISSIONERS EXCUSED: Linda Estes
Chad McDonald
(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 9:40 a.m.

APPROVAL OF MINUTES

Commissioner Wong moved to approve the March 23-24, 2016 meeting minutes. Commissioner Scheuer seconded the motion. By a unanimous voice vote (6-0-2 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 May 18 or 19th, 2016 meeting on Oahu is a follow-up status report for SP09-403 Waimanalo Gulch Sanitary Landfill.

- The remaining dates for LUC meetings have not been scheduled yet.
- Any questions or conflicts, please contact LUC staff.

Commissioner Scheuer asked if the Intervenors in SP09-403 had been heard from. Mr. Orodenker replied that the Commission would probably hear from the Intervenors as the hearing date approached.

There were no further questions or comments on the tentative meeting schedule. Chair Aczon stated that since the May meeting might be in a remote locale, it may be necessary for the Commission to have meals served to the Commission and required staff as an integral part of the meeting to finish its business in the allotted meeting time. Mr. Orodenker acknowledged that LUC staff would be prepared to make that accommodation if necessary.

ACTION

A89-646 QUEEN LILI'UOKALANI TRUST (Hawai'i)

Chair Aczon announced that this was an action meeting to adopt the form of the order to grant Docket No. A89-646 QUEEN LILI'UOKALANI TRUST (Hawai'i)'s Motion for Order Modifying Findings of Fact, Conclusions of Law, Decision and Order filed 8/28/91.

APPEARANCES

Queen Lili'uokalani Trust, no appearances entered.

County of Hawai'i Planning Department, ("County") advised via email that it had no objection to the adoption of the order and would not be attending the hearing

Bryan Yee, Esq., and Dawn Takeuchi-Apuna, Esq., represented State Office of Planning ("OP")

Lorene Maki, Planner, OP

(Intervenor Greater Kona Community Council in original Docket is no longer represented by Mark Van Pernis, and according to public records, was involuntarily dissolved in 1994)

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

There was no further discussion.

Chair Aczon asked Mr. Orodenker to poll the Commission. The Commission voted unanimously (6-0-2 excused) to approve the form of the order:

The Commission went into recess at 9:46 a.m. and reconvened at 9:50 a.m.

Chair Aczon stated that Agenda Items V, VI, and VIII pertained to Docket No. DR15-54 Pu`unoa H.O.A. and Devonne Lane and called for the Petitioner to identify themselves for the record.

ACTION

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

To consider rescission of April 20, 2016 LUC Decision on Petition for Declaratory Order filed 8/28/91 which granted the 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

APPEARANCES

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

Devonne Lane (PHO co-Petitioner)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Will Spence, Director, County

Kurt Wollenhaupt, Planner, County

Bryan Yee, Esq., and Dawn Takeuchi-Apuna, Esq. represented State Office of Planning ("OP")

Lorene Maki, Planner, OP

James Geiger, Esq., Ho`omoana Foundation's Counsel, was in the audience but did not enter an appearance

Chair Aczon called for public witnesses.

PUBLIC WITNESSES

1. Joshua Lodine

Mr. Lodine provided his perspective of the proposed homeless encampment project and why he felt the Special Permit process should be decided by the people of Maui. Commissioner Scheuer clarified what the role of the LUC was in the matter at hand. Mr. Lodine further clarified his perspective of the situation.

There were no other questions for Mr. Lodine.

2. Bruce U`u

Mr. U`u shared his opinion on the agenda items under discussion and stated that he had served on the Maui Planning Commission and was confused by the processes involved.

Ms. Wright requested clarification of Mr. U`u's position on the Petition.. Mr. U`u provided further details of why he felt the County of Maui rather than the LUC should address the situation.

There were no further questions and no other public witnesses.

Chair Aczon asked if Petitioner wished to make Oral Argument. Ms. Wright responded that she did.

PETITIONER ORAL ARGUMENT

Ms. Wright argued that the Commission did not have any further jurisdiction over DR15-54 after granting the 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 required a district boundary amendment rather than a special permit.

Ms. Wright cited various legal references to support her argument and stated her objection to the LUC taking any further actions.

COUNTY ORAL ARGUMENT

Mr. Hopper stated that County had not had time to properly review the supplemental pleadings filed by Petitioners, but did wish to make some comments. Mr. Hopper stated that without the benefit of reviewing case law, his initial reaction was that County would be agreeable if the Declaratory Order was rescinded and modified to correct any errors it contained to avoid a dispute in circuit court.

OP ARGUMENT

Ms. Apuna stated that OP supported the LUC's revisiting the Declaratory Order and argued why the Commission needed to address any jurisdictional questions over this matter and consider obtaining a remand from circuit court instead of taking any rescission action.

PETITIONER REBUTTAL

Ms. Wright was granted an opportunity for a short rebuttal. Ms. Wright stated that she shared the jurisdictional concerns mentioned by OP and agreed that obtaining a remand from circuit court instead of taking any rescission action might be a more appropriate action .

Chair Aczon entertained a Motion for an Executive Session to consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities concerning DR15-54.

Commissioner Mahi moved for and Commissioner Wong seconded the Motion for an Executive Session. By a unanimous (6-0-2 excused) vote, the Commission voted to enter Executive Session

The Commission entered Executive Session at 10:40 a.m. and reconvened in public session at 10:44 a.m.

Chair Aczon asked if there was any discussion regarding the oral arguments. Commissioner Scheuer moved to acknowledge that the LUC had no jurisdiction to Agenda Items V, VI and VIII pertaining the DR15-54 and that no further action be taken on agenda items V, VI, and VIII.. Commissioner Wong seconded the motion. There was no discussion.

Chair Aczon called for Mr. Orodener to poll the Commission. The Commission unanimously voted in favor of the Motion (6-0-2 excused).

Chair Aczon moved on to Agenda Item VII and entertained a Motion 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.

Commissioner Wong moved for and Commissioner Mahi seconded the Motion for an Executive Session. By a unanimous (6-0-2 excused) vote, the Commission voted to enter Executive Session

The Commission entered Executive Session at 10:48 a.m. and reconvened at 11:04 a.m.

Chair Aczon asked if there was any action that the Commission wished to take based on the information received during the Executive Session.

Commissioner Cabral moved to have LUC Staff and the Deputy Attorney General investigate and obtain personnel recommendations for a Hearings Officer to

preside over the remand ordered by the Hawaii Supreme Court relating to Docket No. A89-649 Lanai Resorts. Commissioner Mahi seconded the motion. There was no discussion and by a unanimous voice vote (6-0-2 excused), the Commission voted to in favor of the motion.

Chair Aczon moved on to Agenda Item IX, LUC Legislation Status Report

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 11:07 a.m. and again commented that the next hearing on May 18, 2016 might require that the Commission to provide meals for a “working lunch” as an integral part of the meeting due to the anticipated 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”.