

LAND USE COMMISSION
MEETING MINUTES

May 18, 2016 – 9:30 a.m.

State Office Tower (Leiopapa A Kamehameha Building)
Conference Room 405
Honolulu, HI 96813

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Linda Estes
Kent Hiranaga
Dawn N. S. Chang
Arnold Wong

COMMISSIONERS EXCUSED: Gary Okuda
Jonathan Scheuer
Aaron Mahi

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 9:30 a.m.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the April 20, 2016 minutes. There were none. Commissioner Estes moved to approve the minutes. Commissioner Wong seconded the motion. The minutes were unanimously approved by a voice vote (6-0-3 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- On June 8-9, 2016, the Commission will be on Maui to consult with the Commission's attorney regarding the Commission's duties, rights, responsibilities and obligations with respect to (1) conducting meetings and contested case hearings, (2) applicability of HRS chapter 92, the state sunshine law, (3) applicability of HRS chapter 92F, the uniform information practices act, (4) ex parte communications [etc.], "
- On August 10-11, 2016, the Commission will be on Kauai to consider Docket No. A16-800 Island School and A16-801 the Kaua` i Community College.
- On September 21 - 23 the Commission will be on Kauai for the annual HCPO conference with a tentative meeting on Friday Sept. 23rd.
- The calendar is open for July.
- Any questions or conflicts, please contact LUC staff.

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

SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (WAIMANĀLO GULCH SANITARY LANDFILL), (O`ahu) APPEARANCES

Kamilla Chan, Esq., represented City and County of Honolulu, Department of Environmental Services (ENV)

Calvert Chipchase, Esq., represented Intervenors-the Ko Olina Community Association (KOCA) and Senator Maile Shimabukuro

Richard Wurdeman, Esq., represented Intervenor Colleen Hanabusa

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

Rodney Funakoshi, OP

Chair Aczon updated the record, described the procedures to be followed for the hearing, and reminded the audience that the Commission would not be considering the merits of the Special Use Permit No. 2008/SUP-2; but rather, the Commission was interested in learning about the current status of the proceedings related to this Special Permit pending before the Honolulu Planning Commission.

Chair Aczon stated that Public Testimony in regard to this docket would be heard after the Applicant's presentation, and the completion of questioning by the

Commission. After the completion of the public testimony, the Intervenors and OP would be given an opportunity to comment and the Commission would ask any final questions.

There were no objections, comments or questions regarding the procedures.

Commissioner Chang disclosed that she had been a jury consultant for a legal team representing a Waste Management Inc. employee, (a contractor of ENV.), in connection with a federal criminal case, which did not involve the special permit.

There were no objections to Commissioner Chang's continued participation in the hearing.

PRESENTATIONS

Petitioner

Ms. Chan stated KOCA and the City would be filing a stipulated agreement with the Planning Commission to memorialize the results of the negotiations between ENV and KOCA in a final proposed stipulated agreement that would impose a stay on proceedings before the Planning Commission until April of 2017. It was her hope that the continued negotiations that will take place during the stay period would result in a stipulated findings of fact and conclusions of law and decision and order to be presented to the Planning Commission that would dispose of this matter. Ms. Chan described the work that had been performed to prepare the stipulation.

Mr. Wurdeman arrived at 9:35 A.M. and his appearance was acknowledged by Chair Aczon during Ms. Chan's presentation.

Ms. Chan stated that Ms. Hanabusa was the only party that had not signed the stipulation and that Mr. Wurdeman was aware of the status of the negotiations.

Commissioner Questions

There were no Commissioner questions and Chair Aczon called for Public Witnesses.

PUBLIC WITNESSES:

There were no public witnesses.

INTERVENOR COLLEEN HANABUSA

Mr. Wurdeman described his client's current position and perspective on the proceedings and stated his disappointment with the lack of progress on the matter.

Chair Aczon asked if there were any questions from the commissioners. There were none.

INTERVENOR KOCA AND SENATOR SHIMABUKURO

Mr. Chipchase stated that he did not disagree with Mr. Wurdeman's presentation and emphasized the need to answer the question of "where do we go from here"; and echoed Ms. Chan's remarks relating to the stipulated agreement and described why he felt an agreement finally resolving the issues could be obtained if the stipulated stay were approved by the Planning Commission.

Chair Aczon asked if there were any questions from the Commissioners. There were none.

OP

Mr. Yee described the past history of proceedings for the Commission and noted how further delays could extend matters to April 2017. Mr. Yee also acknowledged Mr. Wurdeman's concerns regarding the pace of the proceedings and he stated OP's position that the Planning Commission, not the LUC, had jurisdiction of the matter. He also recognized the gravity of Mr. Chipchase's query of "where do we go from here" and how matters still needed to be resolved by the Planning Commission.

Commissioner Questions

Commissioner Chang requested clarification from ENV on the status of matters currently being addressed by the Planning Commission in regards to this matter. Ms. Chan provided her understanding of what the Planning Commission had accomplished.

Commissioner Wong inquired about the status of the Special Use Permit (SUP) and whether it had been amended and extended. Ms. Chan replied that to her knowledge no action had been taken.

Commissioner Wong also requested clarification on the progress of the Blue Ribbon Committee. Ms. Chan stated that the City was reviewing a list of 11 sites and had been evaluating the various concerns for each site.

Commissioner Wong requested further clarification on the time required for startup of a new landfill site and whether the Waimanalo Gulch Sanitary Landfill would need to be in operation during the entire length of the startup of the new landfill.

Ms. Chan responded that opinions about the duration of startup times varied and that the Waimanalo Gulch Sanitary Landfill had adequate capacity to remain open during the startup period.

Commissioner Wong requested clarification from OP regarding the negative impacts resulting of the lack of progress being made by the Planning Commission. Mr. Yee described different scenarios and possible outcomes that could occur if the Planning Commission failed to make substantial progress.

Mr. Chipchase provided his perspective on what might happen if the stipulation was not filed with and approved by the Planning Commission.

Discussion ensued regarding the remaining life of the current special permit and other possible actions that the Planning Commission could take. Ms. Chan provided her understanding of the significance of the Condition 14 closure deadline. Mr. Wurdeman provided his understanding of the current state of the proceedings and stated that he had no idea if the Planning Commission would take any action and emphasized that Intervenor Hanabusa still maintained that there was no valid SUP in effect that allowed the City to operate the landfill.

Chair Aczon asked if Mr. Wurdeman had seen the stipulation and was aware of the status of the negotiations. Mr. Wurdeman replied that he was aware of the stipulation and maintained that the landfill should be closed; and that the search for a replacement landfill was not being seriously conducted.

Commissioner Cabral requested clarification on the extent of participation Mr. Wurdeman had in the ongoing negotiations. Mr. Wurdeman stated that he had not participated in negotiations. Ms. Chan stated that only Mr. Chipchase and the ENV had worked on the stipulation but had reached out to Mr. Wurdeman with a draft sometime in November of 2015

Commissioner Wong moved for an executive session.

Commissioner Chang stated she had a few more questions.

Chair Aczon acknowledged Commissioner Chang and deferred action on Commissioner Wong's motion.

Commissioner Chang requested clarification from Mr. Chipchase on whether the stipulation would provide a comprehensive resolution of the issues. Mr. Chipchase replied that the stipulation would provide a framework and timetable only. Ms. Chang stated that the Parties had only committed to the stated time frames. Commissioner Chang commented that it did not appear that any of the underlying issues would be resolved without better defined objectives. Mr. Chipchase and Ms. Chan restated their intended objectives and described how the stay of proceedings would foster discussions on other issues.

Commissioner Chang requested clarification on what alternatives were available to ENV and Mr. Chipchase if Intervenor Hanabusa did not sign the stipulation. Mr. Wurdeman described the effort he had expended to obtain action from the Planning Commission and replied that he was not sure what results were possible.

There were no further questions.

Chair Aczon sought a second to Commissioner Wong's motion. Commissioner Chang seconded the motion for Executive Session. There was no discussion and by unanimous voice vote. (6- 0- 3 excused) the Commission voted to enter into Executive Session at 10:22 a.m. and reconvened at 10:39 a.m.

Chair Aczon asked if there were any final comments or questions.

Commissioner Chang stated her concerns with the Planning Commission's lack of progress and questioned whether only presenting the stipulation to the Planning Commission for consideration would be sufficient to resolve any problems.

Commissioner Wong requested that a copy of the stipulation be provided to the Commission. Ms. Chan acknowledged that a copy would be provided.

Commissioner Wong made a motion that the Executive Officer and the Attorney General write a letter to the Planning Commission to inquire about the status of their proceedings on this matter and to inform them of the LUC's position and concerns. The motion was unanimously approved by a voice vote (6-0- 3 excused).

2016 LEGISLATION STATUS REPORT

Chair Aczon requested that Mr. Orodener review the final status of LUC legislative items. Mr. Orodener stated that all bills associated with the LUC powers of enforcement had died in the legislative process; and described how House Bill 1581 - Act 48 would affect the LUC.

Chair Aczon asked if there were any questions.

Commissioner Chang requested clarification on whether the LUC had any contested case hearings pending. Mr. Orodener listed the various cases that still required attention.

There were no further questions.

APPOINTMENT OF HEARINGS OFFICER

Chair Aczon stated that the Commission would next address the appointment of a Hearings Officer to preside over the remanded Docket No. A89-649 Lanai Resorts, LLC.

Commissioner Chang disclosed that she is retained as a consultant to Pulama Lanai on burial matters.

Mr. Orodener reported that he and Ms. Erickson had reviewed various candidates and were recommending Commissioner Scheuer for the position because of his technical knowledge about water resources and specialized qualifications in this field of study.

Commissioner Estes moved to approve appoint Commissioner Scheuer as Hearings Officer for matters related to Docket No. A89-649 Lanai Resorts, LLC and Commissioner Cabral seconded the motion.

Commissioner Hiranaga requested clarification on what the proceedings on Lanai would involve. Ms. Erickson described the parameters of the Hearing Officer's duties and anticipated role in the proceedings on Lanai. Mr. Orodener noted that the Supreme Court required the LUC to use a Hearings Officer and provided additional details on the demands that would be made on this official. Commissioner Hiranaga noted that the Commission could consider appointing a Maui person familiar with the concerns of the Lanai community rather than an outsider. Commissioners Estes and Cabral voiced their support for the appointment of Commissioner Scheuer as hearings officer. There was no further discussion and Chair Aczon called for the vote. The motion was unanimously carried by a voice vote (6-0-3 excused).

There being no further business, Chair Aczon adjourned the meeting at 10:55 a.m.