

LAND USE COMMISSION

MEETING MINUTES

County of Kaua`i Piikoi Conference Room

4444 Rice Street

Līhu`e, Hawai`i

January 19, 2017 9:30 a.m.

COMMISSIONERS PRESENT: Kent Hiranaga
Arnold Wong
Nancy Cabral
Linda Estes
Aaron Mahi
Jonathan Scheuer
Gary Okuda

COMMISSIONERS EXCUSED: Edmund Aczon
Dawn Chang

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

COURT REPORTER: Cynthia Murphy

CALL TO ORDER

Vice Chair Wong called the meeting to order at 9:30 a.m.

HEARING AND ACTION

A17-802 County of Kaua`i Housing Agency, (Kaua`i) ("CKHA")

Vice Chair Wong stated that this was an action meeting on Docket No. A17-802 to consider Jean Nishida Souza's Petition to Intervene in County of Kaua`i Housing Agency's Petition for State Land Use District Boundary Amendment To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at 'Ele'ele, Kaua`i, Hawaii; consisting of approximately 75 acres, Tax Map Key No. (4) 2-1-001:054

APPEARANCES

Jean Nishida—Souza, proposed Intervenor

James K. Mee, Esq., Representative, CKHA

Michael Dahilig, Director, Kaua`i County Planning Department (County)

Sinclair Salas-Ferguson, Esq., Deputy Corporation Counsel (County)

Dawn Takeuchi-Apuna, Esq., Deputy Attorney General, State Office of Planning (OP)

Rodney Funakoshi, Land Use Administrator (OP)

Vice Chair Wong updated the record, described the procedures for the hearing and asked if there were any Public Witnesses who wished to testify. There were no questions or comments on the procedures.

Commissioner Scheuer stated that he wished to disclose that he has known Ms. Nishida-Souza for over 20 years, but that he believed that it would not interfere with his ability to be fair and impartial in this docket. The Chair asked the Parties if there were any objections to Commissioner Scheuer's continued participation in the proceedings. There were no objections.

PUBLIC WITNESSES

1. Susan Remoaldo–

Ms. Remould expressed her support and appreciation of the community outreach performed by Ms. Souza.

There were no questions for Ms. Remoaldo

2..Makaala Kaaumoana

Ms. Kaaumoana shared her reasons for supporting Ms. Souza's intervention and stated that she was offended by the use of the term "kibitzer" in the Petitioner's opposition to proposed Intervenor Souza.

Mr. Mee apologized to Ms. Souza and Ms. Kaaumoana for using the term "kibitzer".

Commissioner Mahi requested clarification on how Ms. Kaaumoana perceived the term and its use. Ms. Kaaumoana described the negative connotations that "kibitzer" had to her.

Commissioners Cabral requested clarification on the impact of the Princeville project that Ms. Kaaumoana had referred to in her testimony. Ms. Kaaumoana described the housing density, appearance and lack of attention to workforce housing issues that she associated with the Princeville project.

Commissioner Okuda requested clarification on why Ms. Kaaumoana felt that the Kaua`i County and State Office of Planning were not doing an adequate

job in reviewing the proposed project; and what difficulties she experienced in participating at the County level. Ms. Kaaumoana shared why she felt that it had been difficult to participate at community level discussions on the proposed project and remain engaged with the process as it was reviewed by the respective government agencies.

Commissioner Estes asked if Ms. Kaaumoana expected an “ombudsman” like participation from Ms. Souza. Ms. Kaaumoana described what she hoped Ms. Souza’s participation would be like.

Commissioner Scheuer requested clarification on Ms. Kaaumoana’s understanding of what the roles of intervenor and public testifier were. Ms. Kaaumoana described why she felt an intervenor role carried more weight during the proceedings than a testifier.

Discussion ensued over when the Commission would address the role of the Intervenor. Commissioner Cabral expressed her understanding of what powers the Intervenor would have as a participant to the proceedings. Deputy Attorney General Chang described what abilities the Intervenor would have. Commissioner Hiranaga commented that it might be more appropriate to address this matter later. There were no other comments and the questioning of the witness resumed.

Commissioner Wong requested clarification on the amount of participation that Ms. Kaaumoana had when this matter was at the Planning Commission and at the County Council. Ms. Kaaumoana replied that she had not been involved.

There were no further questions for Ms. Kaaumoana.

There were no further public witnesses.

Commissioner Hiranaga asked if the Commission would address the role of the Intervenor next. Vice Chair Wong replied that the Commission would hear the presentations by the Parties first and called for Ms. Souza to make her presentation.

PRESENTATIONS

Prospective Intervenor

Ms. Nishida- Souza, after being sworn in, made her presentation to the Commission and argued why the LUC should grant her petition and described the

reasons why she wanted to intervene in the County's proposed project that would be coming before the Commission.

CKHA, County and OP had no questions.

Commissioner Questions

Commissioner Okuda requested clarification on Ms. Souza's education and work experience. Ms. Souza shared her personal and professional background and planning qualifications.

Commissioner Mahi requested clarification on who Ms. Souza was representing and whether she had the community's support. Ms. Souza replied that she was intervening as an individual and described the circumstances that prompted her to intervene.

Commissioner Okuda requested and was granted permission to exercise personal privilege to provide his understanding of the standards used to qualify an Intervenor by Vice Chair Wong.

Commissioner Mahi questioned whether the intervention request was due to the voice of the community not being heard. Ms. Souza provided her motivation for filing to intervene in this matter.

Commissioner Cabral requested clarification on the exchange of communication that had occurred between Ms. Souza and the housing agency. Ms. Souza described the difficulties she had in obtaining information and elaborated on her concerns about the proposed project and its County approval process.

Commissioner Hiranaga inquired as to the 'Ele`ele area population and the organization of the community group aligned with Ms. Souza's interests. Ms. Souza estimated that the 'Ele`ele population was approximately 2,300, and that there were approximately 25 people who originally participated in early discussions about the proposed development in the 'Ele`ele/Hanapepe area, of which 8 were currently active. Discussion ensued on how the community representation for the region was handled and whether it was organized. Ms. Souza estimated the population for the greater 'Ele`ele/Hanapepe area to be about 5,000 and described how the area population attempted to participate in community matters without having a formal organization or structure. Ms. Souza also described how a website and community events helped communicate information to people in the area.

Commissioner Scheuer inquired whether Ms. Souza planned to engage counsel to assist her during the proceedings and what her specific concerns were regarding the proposed project. Ms. Souza replied that she might ask for advice, but did not plan to

engage an attorney and would be representing herself; and that she felt she had specialized knowledge of the area that she could contribute during the proceedings.

The Commission went into recess at 10:43 a.m. and reconvened at 10:52 a.m.

Questioning of Ms. Souza resumed, and Commissioner Estes inquired what legal issues Ms. Souza had with the proposed project. Ms. Souza replied that her concerns were more procedural than legal; and that her focus was to help facilitate mitigation measures and/or provide possible action alternatives in the areas that she had experience/expertise in.

Commissioner Scheuer requested clarification on how Ms. Souza would rely on an attorney. Ms. Souza described how she might seek advice on how to better represent herself more efficiently.

Commissioner Hiranaga described how Maui County communities were organized despite having smaller populations than the `Ele`ele/Hanapepe area and questioned why Ms. Souza felt she needed to individually intervene when organizations like the Sierra Club had not. Ms. Souza provided her perception of the community situations in the region and shared the professional qualifications of members of her local network. She stated that no formal organization existed to voice concerns as she was attempting to do.

Commissioner Cabral requested clarification on what the impact of the proposed development might have to property values. Ms. Souza responded that she had no opinion.

There were no further questions for Petitioner.

Vice Chair Wong entertained a motion for Executive Session. Commissioner Mahi moved and Commissioner Cabral seconded the motion to consult with the board's attorney. Commissioner Scheuer commented that the County had not made its presentation yet. Discussion occurred on whether to delay entering Executive Session.

Commissioners Mahi and Cabral withdrew the motion and second, respectively, to enter Executive Session.

Vice Chair Wong called for CKHA to make their presentation.

AGENCY COMMENTS

CKHA

Mr. Mee again apologized for the use of the term “kibitzer” to Ms. Souza and stated that CKHA opposed the Petition to Intervene and argued why the Commission should deny the prospective Intervenor.

There were no questions for CKHA from Ms. Souza, County, and OP.

Commissioner Questions

Commissioner Hiranaga requested clarification on the status of the proposed 201H at the County level. Mr. Mee described how the County had reviewed the proposed project and prepared for presenting the development to the LUC.

Commissioner Cabral inquired about available housing in the region and how the community was informed about community matters. Ms. Souza shared her perception of the amount of workforce housing that existed in the area and described how the local newspaper and community communication helped keep residents informed.

Commissioner Scheuer requested clarification on how CKHA perceived the 8 areas of concern that Ms. Souza identified in her response to CKHA’s opposition. Mr. Mee described how Petitioner might act to limit the scope of intervention.

Commissioner Okuda requested clarification on CKHA’s opposition to Intervenor Souza’s petition. Mr. Mee provided his understanding on how Intervenors were allowed to participate in LUC proceedings and why CKHA was opposed to Ms. Souza.

There were no further questions for Mr. Mee.

County

Mr. Salas-Ferguson stated that County joined CKHA in opposing the Petition to Intervene and argued why the Commission should deny the prospective Intervenor.

Questions for County

Ms. Souza questioned how the County could represent the Public with no communication with public members that could potentially be affected by the proposed project. Mr. Ferguson deferred to Mr. Dahilig to respond to Ms. Souza.

Mr. Dahilig, after being sworn in, described the role that his department had in making determinations on developments within the County and what processes were involved in assessing and evaluating different proposals.

CKHA and OP had no questions.

Commissioner Questions

Commissioner Estes inquired whether there was a County Planning Commission representative for the Petition Area. Mr. Dahilig responded that the nearest Planning Commission representative was in Kalaheo.

Commissioner Hiranaga requested clarification on how the 201H would proceed through the Planning Department process if the LUC approved of the Petition. Mr. Dahilig described how Class IV permits would still be required and how the permitting approval process allowed for public input.

Commissioner Scheuer asked if County joined in the apology to CKHA regarding the term "kibitzer". Mr. Salas-Ferguson acknowledged that County joined in the apology.

There were no further questions for County.

OP

Ms. Apuna stated that OP had no objection to allowing Ms. Souza to intervene and argued the reasons why OP had taken that position.

Commissioner Hiranaga questioned why the term "freely admitted" was used in contrast to having standards for a prospective Intervenor to meet in the administrative rules. Ms. Apuna provided her perception of how the standards could be used as a guideline for the LUC to use in assessing/evaluating prospective intervenors.

Commissioner Scheuer questioned whether a formal relationship to a committee organization was a consideration. Ms. Apuna described how a formal or informal relationship was considered in OP's determination.

Commissioner Okuda requested further clarification of how the terms "freely" and "standards" applied. Ms. Apuna described how she perceived the use of both terms.

There were no further questions for Ms. Apuna.

The Commission went into recess at 11:51 a.m. and reconvened at 12:01 a.m.

Vice Chair Wong called for final statements.

Final Statements

Ms. Souza stated that she would stand on her submittal, and that she believed she had met the standards to intervene.

Mr. Mee stated that he had nothing more to add and shared his understanding of what “adjacent properties” might refer to in potential Intervenor Souza items of concern on page 8 of her response to the respective Positions on her Petition to Intervene.

Mr. Salas-Ferguson summarized the reasons why County argued to deny the Petition to Intervene.

Ms. Takeuchi-Apuna stated that she had nothing to add.

There were no further comments.

Vice Chair Wong re-entertained a motion to enter into executive session to consult with the board’s attorney on questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities as it related to this Petition to Intervene.

Commissioner Mahi moved and Commissioner Cabral seconded a motion to consult with the board’s attorney. Discussion occurred on whether the Commission would break for lunch or continue and work to conclude business. Vice Chair Wong stated that the Commission would work to conclude business and polled the Commission.

By a unanimous voice vote, the Commission voted to enter into Executive Session at 12:07 p.m. and reconvened into regular session at 12:34 p.m.

After the meeting had reconvened, Mr. Dahilig stated that the Petitioner, OP, the Planning Department and Ms. Souza had met during the break and had agreed to an oral stipulation to admit Ms. Souza as an Intervenor in her individual capacity; and that the scope of her intervention would be limited to the 7 items of concern that were listed on Page 8 of Ms. Souza’s response to the respective Positions on her Petition to Intervene filed on January 19, 2017.

Commissioner Cabral asked if the concerns included “land banking”. Mr. Dahilig responded that it did not and that the stipulation was confined to the 7 items on page 8.

Commissioner Estes commented that it was a good compromise.

Vice Chair Wong confirmed with the Petitioner, OP, the Planning Department and Ms. Souza that Mr. Dahilig’s statement regarding the stipulation was acceptable. All Parties acknowledged that it was.

There was no further discussion.

Commissioner Mahi moved and Commissioner Cabral seconded the motion to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities as it related to this Petition to Intervene

By a unanimous voice vote, the Commission voted to enter into Executive Session at 12:38 p.m. and reconvened into regular session at 12:42 p.m.

Vice Chair Wong entertained a motion.

Commissioner Scheuer moved to accept the oral stipulation among Petitioner, the Planning Department, OP and Ms. Souza to admit potential Intervenor Souza in her individual capacity and that the scope of her intervention would be limited to the 7 items of concern that were listed on Page 8 of Ms. Souza's response to the respective Positions on her Petition to Intervene filed on January 19, 2017.

Commissioner Mahi seconded the motion. Commissioner Hiranaga questioned whether the 7 items needed to be read into the record. Vice Chair Wong replied that it was not necessary since the filing was part of the record.

The Commission voted as follows to accept the oral stipulation.

Ayes: Commissioners Scheuer, Mahi, Estes, Hiranaga, Okuda and Wong

Nay: Commissioner Cabral.

The motion passed 6-1-2 excused.

Commissioner Cabral commented on why she had opposed the motion in principle.

With no further action or other business, Vice Chair Wong declared the meeting adjourned at 12:45 p.m.