

LAND USE COMMISSION

MEETING MINUTES

February 21, 2018 – 8:30 a.m.

The Meeting was held at the following Video Conference Centers simultaneously:

Maui- (Main Meeting Locale)

Wailuku State Office Bldg., 54 South High Street, Wailuku, Hawai`i, 96793

O`ahu- Kalanimoku Bldg., 1151 Punchbowl St., Room #132, Honolulu, Hawai`i, 96813

Kaua`i – Lihu`e State Office Bldg., 3060 `Eiwa Street, Basement, Lihu`e, Hawai`i, 96766

Hawai`i- Hilo State Office Bldg., 75 Aupuni Street, Hilo, Hawai`i, 96720

COMMISSIONERS PRESENT: Edmund Aczon (on O`ahu)
Gary Okuda (on O`ahu)
Aaron Mahi (on O`ahu)
Dawn Chang (on O`ahu)
Arnold Wong (on Maui)
Jonathan Scheuer (on O`ahu)
Nancy Cabral (on Hawai`i)
Lee Ohigashi (on Maui)
Linda Estes (on Kaua`i)

COMMISSIONERS EXCUSED None

LUC STAFF PRESENT: Daniel Orodenker, Executive Officer (on Maui)
Diane Erickson, Deputy Attorney General (on Maui)
Scott Derrickson, Staff Planner (on O`ahu)
Riley Hakoda, Staff Planner/Chief Clerk (on O`ahu)

COURT REPORTER: Jean McManus (on Maui)

CALL TO ORDER

Chair Wong called the meeting to order at 8:30 a.m.

APPROVAL OF MINUTES

Chair Wong asked if there were any corrections or additions to the January 24-25, 2018 meeting minutes. There were none. Commissioner Ohigashi moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (9 ayes-0 nays- 0 excused).

ADOPTION OF ORDER

A15-798 Waikapū Properties LLC, et al, (Maui) (“WP”)

Chair Wong stated that this was a meeting on Docket No. A15-798 to adopt the form of the order for the Petition To Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai`i, consisting of 92.394 acres and 57.454 acres, and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai`i, consisting of 236.326 acres, 53.775 acres, and 45.054 acres

Chair Wong updated the record; and asked the Parties to identify themselves.

APPEARANCES (All are on Maui except for OP)

James Geiger, Esq., attorney for Waikapu Properties, LLC's (WP)

Michael Atherton, WP Representative

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

Dawn Takeuchi-Apuna, Esq., Deputy Attorney General, representing the State Office of Planning (OP-on O`ahu)

Lorene Maki, Planner (OP- on O`ahu)

Chair Wong called for Public Witnesses.

Public Witnesses

None

Chair Wong verified that Commissioner Aczon had reviewed the material and transcripts for the December 6-7, 2017 and January 24-25, 2018 meetings and was prepared to participate in the proceedings. Commissioner Aczon confirmed that he had read the material and transcripts and was prepared to participate.

Chair Wong asked if there were any final questions or comments regarding the docket under discussion. There were none.

Commissioner Okuda asked whether he could propose that the order be adopted with the following amendment to Condition No. 17 (page 61) that “No dwelling or structure on the adjacent agricultural lands shall or may be used for a residence or residential use and the agricultural easement or the conservation easement shall include this restriction” since he felt that the adjacent lands could become “gentlemen’s farms” otherwise, contrary to the representations of the Petitioner and Finding of Fact (FOF) No. 387 in Petitioner’s proposed supplemental D&O as edited by staff per Commission’s approval on January 25, 2018. (see FOF No. 410 in final D&O).

Commissioner Scheuer requested clarification on what “adjacent lands” were being referred to and whether a motion had formally been made. Discussion ensued to clarify that Commissioner Okuda had asked a question and had not made a formal motion.

Chair Wong stated that he would entertain a motion on the adoption of the order. Commissioner Okuda made a motion to adopt the order with an amended Condition No. 17 that would read:

“17. Agriculture Easement. Petitioner shall submit an executed copy of the conservation easement or relevant instrument for at least 800 acres of adjacent agricultural lands to the Commission. No dwelling or structure shall or may be used for a residence or residential use, including farm dwellings or farm worker housing, on the adjacent agricultural lands which are subject to the agricultural easement or conservation easement, and such easement shall include this restriction.

If any development is proposed in the area made subject to the conservation easement or relevant instrument, SHPD shall be notified and shall make a determination on whether an archaeological inventory survey is to be provided by Petitioner for such area. The Commission shall also be notified of any proposed development within the conservation easement lands and any determination made by SHPD.”

Commissioner Mahi seconded the motion.

Discussion on the motion ensued. Commissioner Cabral shared her concerns that not allowing dwellings in the agricultural lands would make it harder to deter agricultural theft. Commissioner Chang commented that she supported the proposed

amendment to Condition No. 17 but was concerned that it should be clear that the Order reflected Petitioner's intent and representations to facilitate agriculture rather than a mere imposition on the Petitioner by the LUC with language more restrictive than existing statutes or ordinances. Commissioner Okuda recalled the circumstances and representations that were made during the presentation of Petitioner's case that motivated him to amend Condition No. 17.

Chair Wong requested that Petitioner provide comments on the proposed amendment to Condition No. 17. Mr. Geiger reaffirmed that Commissioner Okuda's recollection was accurate; that Petitioner was agreeable to the proposed amendment to Condition No. 17; and that the agricultural lots would not serve a residential purpose.

Commissioner Scheuer requested clarification of the motion on the floor. Chair Wong stated that the motion was to adopt the form of the order as proposed, including Commissioner Okuda's amendment to Condition No. 17. Commissioner Cabral asked if the amendment to Condition No. 17 could be separated from the motion on the floor. Chair Wong reiterated that the motion included the amendment to Condition 17.

Commissioner Scheuer added that he appreciated the efforts of Petitioner and relied on Condition No. 27 to ensure compliance with the representations made and would be voting favorably on the motion based on the overall representations of Petitioner.

Chair Wong called for Mr. Orodener to poll the Commission. The form of the order was unanimously approved (9 ayes-0 nays- 0 excused).

Chair Wong asked if there were any Legislative Status Matters (Agenda Item V) that needed to be addressed. Mr. Orodener responded that he had nothing new to report.

Commissioner Okuda stated that he wished to acknowledge the efforts of Mr. Geiger in presenting the A15-798 Petition to the Commission and thanked him for his work.

There being no further business to address, Chair Wong adjourned the meeting at 08:57 a.m.