

LAND USE COMMISSION
MEETING MINUTES

February 20, 2019

1:00 p.m.

**Maui Arts and Cultural Center, Haynes Conference Room
One Cameron Way, Kahului, Hawai'i, 96766**

COMMISSIONERS PRESENT: Edmund Aczon
Gary Okuda
Nancy Cabral
Dawn Chang
Lee Ohigashi
Aaron Mahi
Arnold Wong
Jonathan Scheuer

COMMISSIONERS EXCUSED: None
(There are currently 8 seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Patricia Ohara, Deputy Attorney General
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 1:09 p.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the February 6, 2019 minutes. There were no corrections or comments. Commissioner Mahi moved to approve the February 6, 2019 minutes. Commissioner Cabral seconded the motion. The minutes were unanimously approved by voice vote (8-0 There are currently 8 seated Commissioners).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

FEB 21- Maui overnight- A11-794 Kihei HS- evening status report and A94-706 Ka`ono`ulu

MAR13-14- TBD

MAR 27- over night @ Kona- NELHA from noon for A00-730 Lanihau, A10-788 HHFDC
MAR 28-- @Kona-NELHA – A06-767 Waikoloa Mauka Adoption of Order- A02-737 U of N Bencorp -Motion to Rescind D&O) and A06-770 Shopoff Status Reports & Action if necessary-

APR 10 now set for DR expected from Maui County for A11-794 Kihei HS matter

APR 23-24 (note TUES-WED skdl) HNL(Kaneohe Bayview GC) DBA A17-804 Hawaii Memorial Park

MAY 7- OSC action for A06-770 Shopoff and A02-737 U of N Bencorp

NO MTG- MAY 8-9

MAY 22-23- Kauai overnight – A11-791 Hokua Place & A17-803 Kealia

JUN 26-27 IAL site visit/mtg for unidentified North Shore property- DR19-??

JUL 10-11 A87-610 Waiawa

HCPO- will be on Maui SEP 11-13- details to follow later this year

Any questions or conflicts, please contact LUC staff.

There were no questions or comments.

ACTION

A94-706 Ka`ono`ulu Ranch (Maui)

Chair Scheuer announced that this was an action meeting on Docket No. A94-706 Ka`ono`ulu Ranch (Maui):

APPEARANCES

Randall Sakumoto, Esq., Lisa Cataldo, Esq., and Catherine Taschner, Esq., represented Pi`ilani Promenade North LLC, and Pi`ilani Promenade South LLC, ("PP")

Curtis Tabata, Esq. represented Honua`ula Partners, LLC ("HP")

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

Michele McClean, Director, County

Ann Cua, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP"- arrived at 1:14 p.m.)

Rodney Funakoshi, OP

Tom Pierce, Esq., represented Intervenor Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele

Mark Hyde, Representative, South Maui Citizens for Responsible Growth ("SMC")

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings.

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

DISCLOSURES

Commissioner Okuda stated that he had pending cases involving Mr. Sakumoto's law firm but did not feel that it would affect his ability to remain impartial in the proceedings. There were no objections to Commissioner Okuda's continued participation.

There were no other disclosures. Chair Scheuer called for Public Witnesses.

PUBLIC WITNESSES

1. Mike Moran- President, Kihei Community Association

Mr. Moran expressed the frustration of his organization with the lack of progress on this matter and urged for the Commission to conclude it as soon as possible.

There were no questions for Mr. Moran.

2. Harry Lake- Koa Partners

Mr. Lake presented a handout of a modified proposed plan for the Petition Area and used a PowerPoint presentation to explain the outreach effort and details of his organization's work on the proposed project.

Commissioners Okuda, Chang, and Ohigashi requested clarification on the Koa Partners' outreach effort, the number of outreach meetings and the community attendance numbers, how consistent the modified proposed plan was with the original plan, and whether the PowerPoint was admissible to the current proceedings. Chair Scheuer assessed the ability of the Commission to accept the PowerPoint testimony and Ms. Ohara stated that the Commission should be provided with a printout of the PowerPoint for the record.

3. Mark Hyde – SMC representative

Mr. Hyde provided a historical summary of the Intervenors' efforts and expressed the desire for a conclusion and favorable decision to revert the Petition Area via an Order to Show Cause (OSC). Mr. Hyde also stated that he had not seen Mr. Lake's proposal till it was displayed during public testimony.

There were no questions for Mr. Hyde.

4. Albert Perez- Executive Director, Maui Tomorrow

Mr. Perez stated that he was contacted by Mr. Lake in late November 2018 and shared the results of that meeting. Mr. Perez expressed his opposition to the proposed Koa Partners plan.

There were no questions for Mr. Perez.

There was no further Public Testimony. Chair Scheuer called for Intervenor's presentation.

Petitioner's Presentations

Pi'ilani Promenade (PP)

Chair Scheuer called for Mr. Sakumoto to make his presentation. Mr. Pierce objected to Mr. Sakumoto's use of a PowerPoint presentation and argued why he felt it was prejudicial to the Intervenors.

Chair Scheuer declared a recess at 1:42 p.m. and reconvened the meeting at 1:45 p.m.

Chair Scheuer assessed the contents of Petitioner's PowerPoint to determine if there was new information contained in it. Mr. Pierce argued why the Commission should reject this portion of Petitioner's presentation.

Commissioner Okuda questioned why Petitioner delayed introducing the PowerPoint. Mr. Sakumoto described the circumstances involved with obtaining the information contained in the PowerPoint and Ms. Taschner provided the authoritative references which permitted using it.

Commissioner Okuda requested additional clarification on when Petitioner had assembled its information and was ready to present it. Mr. Sakumoto responded that the information had been collected in the last 5 days and could have shared it earlier. Mr. Pierce argued how the motion to dismiss was impacted by Petitioner's failure to share information.

Commissioner Chang requested clarification on how the current modified plan being displayed to the Commissioners differed from the original plan.

Commissioner Ohigashi questioned how accepting the information regarding a modified plan from Mr. Lake during public testimony affected Petitioner's use of the

PowerPoint during its presentation and 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 on the matter. Commissioner Wong seconded the Motion. The Commission unanimously voted to enter Executive Session (8-0).

The Commission entered Executive Session at 1:57 p.m. and exited at 2:12 p.m.

The Commission reconvened at 2:13 p.m.

Chair Scheuer described how the Commission had determined that the diagram had not been objected to earlier during public testimony; and that it would be considered part of the record and called for Petitioner to continue its presentation.

Mr. Sakumoto argued why the OSC should be dismissed and summarized the actions that Petitioner had taken since deciding to return to its original plan for the Petition Area. Ms. Taschner provided additional current information on progress made towards substantial compliance with the original plan and how the modification was included in the proposed plan that was in front of the Commissioners to honor the community's inputs resulting from their outreach efforts. Mr. Pierce objected to Ms. Taschner's information and argued that she was augmenting the record for Petitioner. Chair Scheuer acknowledged Mr. Pierce's objection.

Additional presentation ensued with Mr. Sakumoto and Ms. Taschner describing how Conditions 5, 15, and 17 from the Decision and Order (D&O) were no longer in violation of the D&O; and how Petitioner had rectified the stated violations. Mr. Sakumoto summarized why the Motion to Dismiss should be granted and concluded his presentation.

Commissioner Questions

Commissioner Okuda requested clarification on the location of the evidence for the Motion to Dismiss; who the owners of the Petition Area were; and when the modified plan had been approved to present to the Commission. Mr. Sakumoto described how he had structured his motion and provided the requested information.

Commissioner Chang requested clarification on the modified original plan being presented to the Commission. Mr. Sakumoto described how Petitioner had filed a motion to amend and later withdrew it; and how it had been determined to include the cultural preserve in the modified original plan.

Commissioner Ohigashi requested clarification on how Conditions 5 and 15's violations had been resolved. Mr. Sakumoto described the measures that Petitioner had taken to correct/resolve the violations.

Commissioners Okuda and Chang and Chair Scheuer had additional questions on compliance with Condition 15, why Petitioner thought that the modified plan presented to the Commission was necessary, what the number of lots would be if the cultural preserve in the current modified plan were used, and how cultural features would be addressed if the cultural preserve was part of the proposed plan.

There were no further questions.

Honoua`ula Partners, LLC (HP)

Mr. Tabata stated that HP joined PP's Motion and argued why the Motion should be granted based on a jurisdictional and statutory basis.

Commissioner Questions

Commissioners Wong, Okuda, Chang and Ohigashi requested clarification on various aspects of Mr. Tabata's presentation regarding the application of statutory time limits, factors involved in determining whether there had been substantial commencement and initiating an OSC action thereafter, determining that there had been compliance with representations made, and whether estoppel was involved. Mr. Tabata described how he interpreted the application of statutory time limits and the term "substantial commencement" and why he felt estoppel did not apply.

There were no further questions for Mr. Tabata.

County

Mr. Hopper stated that County had submitted its response to Petitioners and Intervenor but was not aware of the plan being presented by Petitioner.

Commissioners Chang, Ohigashi and Cabral requested clarification on County's position in this matter, what would be involved for County to approve Petitioner's plan and whether a Declaratory Ruling was necessary and what additional details would be required from Petitioner.

Commissioner Questions

There were no further questions for Mr. Hopper.

OP

Ms. Apuna summarized how OP had determined its position and described how the Commission needed to determine whether compliance with or violations of conditions had occurred.

Commissioner Questions

Commissioner Chang requested clarification on OP's statements. Mr. Hopper requested and was granted permission by Chair Scheuer to clarify his previous remarks regarding the need for a declaratory ruling.

Chair Scheuer summarized the progress of the proceedings and declared that the meeting would be recessed to allow the Commission to relocate to Kihei for the 6 p.m. portion of the meeting and that the A94-706 Ka`ono`ulu Ranch proceedings would continue with the Intervenor's presentation on the morning of February 21, 2019 at 9 a.m. back at the MACC.

The Commission went into recess at 3:52 p.m. and relocated to the Malcom Center in Kihei, Maui.

LAND USE COMMISSION
MEETING MINUTES

February 20, 2019

6:00 p.m.

Malcolm Center

1305 North Holocono Street, Suite 5, Kihei, HI 96753

Located in the Maui Research & Technology Park

COMMISSIONERS PRESENT: Edmund Aczon
Gary Okuda
Nancy Cabral
Dawn Chang
Lee Ohigashi
Aaron Mahi
Arnold Wong
Jonathan Scheuer

COMMISSIONERS EXCUSED: None
(There are currently 8 seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Patricia Ohara, Deputy Attorney General
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO RECONVENE

Chair Scheuer called the meeting to order at 6:09 p.m. and apologized for the delay in starting the meeting due to relocating from the morning meeting site at the MACC>

STATUS REPORT A11-794 DEPARTMENT OF EDUCATION- KIHEI HIGH SCHOOL

A11-794 State of Hawaii-Dept. of Education- Kīhei High School (Maui)

Chair Scheuer announced that this was a Status Report on Docket No. A11-794 State of Hawaii, Dept. of Education- Kīhei High School (Maui) to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 77.2 acres of land at Kīhei, Maui, Hawaii, Maui Tax Map key No. 2-2-02:81 and 83.

APPEARANCES

Gaylyn Nakatsuka, DOE representative

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

Tom Colby, Esq., Deputy Corporation Counsel, County

Michele McClean, Director, County

Dawn Takeuchi-Apuna, Deputy Attorney General, represented State Office of Planning (“OP”)

Rodney Funakoshi, OP

Chair Scheuer updated the record and described the procedures for the hearing. There were no questions, objections or comments on the procedures.

DISCLOSURES

Commissioner Okuda disclosed that his firm was handling a lawsuit against DOE but did not feel that it would impact his ability to remain impartial during the proceedings. There were no objections to Commissioner Okuda’s continued participation.

PUBLIC WITNESSES

1. Mike Moran, President, Kihei Community Association (KCA)

Mr. Moran summarized KCA’s safety concerns about the high-volume of traffic’s impact on the future developed high school.

There were no questions for Mr. Moran. Commissioner Cabral thanked Mr. Moran for his testimony and attendance at the earlier portion of the February 20, 2019 meeting.

2. Randy Wagner, KCA

Ms. Wagner submitted a digital copy of her testimony and handout materials. Ms. Wagner described her concerns about not having safe access to the high school when it was ready for students and advocated for adopting suggestions from a “safe routes” proposal for the Petition Area.

Commissioners Cabral and Okuda requested clarification on the roadway improvement suggestions and what happened to the “safe routes” study that had been testified about. Chair Scheuer inquired about how/when the safety recommendations should ideally be implemented. Ms. Wagner described the various traffic safety features for the high school that she was aware of; how she was unsure of what happened to the “safe routes” documents; and that her preference was to have the traffic safety features in place before the students started using the facility.

There were no further questions for Ms. Wagner.

3. Andrew Beerer – Chair, Kihei High School Action Team

Mr. Beerer stated that he endorsed using the “safe routes” plan and shared his reasons for testifying before the Commission to share his safety concerns.

There were no questions for Mr. Beerer.

4. Kelly Takaya-King, Maui County Council Chair

Ms. King stated that she supported the “safe routes” study and shared her experience with the Board of Education (BOE) and the DOE; and her perspective on the traffic safety issue.

Commissioner Okuda requested clarification on Ms. King’s experiences with the BOE and DOE. Ms. King described her communications with both entities and stated that her engagement on this matter arose when the threat to the safety of the future high school students became apparent.

There were no further questions for Ms. King.

5. Dezireen Austin

Ms. Austin shared her personal story about why she was advocating traffic safety considerations.

There were no questions for Ms. Austin.

6. John Pfluke

Mr. Pfluke provided his perspective on why safety features needed to be adopted for the future high school.

There were no questions for Mr. Pfluke.

7. Tania Lee-Greig

Ms. Greig shared her reasons for advocating for pedestrian safety near the new high school.

There were no questions for Ms. Greig.

8. Albert Perez- Executive Director, Maui Tomorrow

Mr. Perez shared his concerns about the need to provide safe pedestrian access suitable for the Piilani Highway design.

There were no questions for Mr. Perez.

There were no more public witnesses.

Chair Scheuer called for DOE to provide its status report.

Petitioner Presentation- DOE

Gaylyn Nakatsuka, Planning Coordinator-DOE

Ms. Nakatsuka provided a progress report on the construction of the new high school and described how DOE and the Department of Transportation (DOT) had cooperated during the advanced planning stages of the high school.

Commissioners Cabral, and Okuda requested clarification on how the DOE interpreted the Commission's Decision and Order Condition on Highway and Road Improvements; and how the DOE perceived the term "warranted". Ms. Nakatsuka described the process used by DOE to evaluate and assess projects and provided her understanding of what "warranted" meant. Chair Scheuer declared a recess and stated that Commissioner Okuda's questioning would resume after reconvening.

The Commission recessed at 7:09 p.m. and reconvened at 7:14.

Commissioner Okuda resumed his questioning and requested clarification on how obvious safety concerns needing review could be addressed and echoed Commissioner Cabral's concern that not enough attention may have been given to analyzing the Commission's Condition on Highways and Roadways.

Chair Scheuer inquired what defined scope of work had been required in the contract to address the Commission's condition. Ms. Nakatsuka replied that DOE had hired Group 70 to perform the work and described the work and results that been achieved.

Commissioners Cabral, Chang, Ohigashi, Wong and Chair Scheuer requested clarification on various parts of Ms. Nakatsuka's presentation to determine how community input had not been sought or responded to; what it might take for the school to open on schedule under different circumstances; whether alternative interpretations of the Commission's Condition had been considered, and what the current time line for construction of the high school was. Ms. Nakatsuka shared DOE's outreach efforts on this matter and described how high school project work had been assessed and analyzed.

Chair Scheuer stated that the Commission was planning a hearing for a Declaratory Ruling (DR); and that County of Maui Planning Department had notified the Commission that it would be filing its Petition for the DR soon.

Commissioner Ohigashi shared his concerns about difficulties in obtaining legislative funding for such a large infrastructure feature during the initial construction phase of the project and how progress on the project could be reported. Commissioner Wong commented that the DR proceeding would allow for consideration of such matters.

Chair Scheuer acknowledged that it would be more appropriate to address details of the Highway and Roadway Condition at the upcoming DR hearing and stated that the Commission would resume its meeting at the MACC at 0900 a.m., February 21, 2019 declared a recess to the February 20, 2019 proceedings at 7:46 p.m.

