

LAND USE COMMISSION
MEETING MINUTES

October 24, 2019 – 9:30 a.m.
The Grand Naniloa Resort - Crown Room
93 Banyan Dr. Hilo, HI 96720

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Dan Giovanni (arrived at 10:09 a.m.)
Gary Okuda
Jonathan Scheuer
Arnold Wong
Lee Ohigashi

COMMISSIONERS EXCUSED: Dawn N. S. Chang
(8 seated Commissioners as of 10/1/19)

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

COURT REPORTER: Jean McManus (from 09:30-3:44 p.m.) _
Laurie Savo ((from 3:44 p.m. to 5:19 p.m.)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:32 a.m.

APPROVAL OF MINUTES

Chair Scheuer stated that there were two sets of minutes to adopt- September 25-26, 2019, and October 9-10, 2019.

Chair Scheuer then asked if there were any corrections or additions to the September 25-26, 2019 meeting minutes. There were none.

Commissioner Cabral moved to approve the minutes and Commissioner Wong seconded the motion. There were no comments or discussion on the minutes.

The minutes were unanimously approved by voice vote.

(6 ayes-0 nays- 2 excused- 8 seated Commissioners).

Chair Scheuer then asked if there were any corrections or additions to the October 9-10, 2019 meeting minutes. There were none.

Commissioner Wong moved to approve the minutes and Commissioner Cabral seconded the motion. There were no comments or discussion on the minutes.

The minutes were unanimously approved by voice vote.
(6 ayes-0 nays- 2 excused- 8 seated Commissioners).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.

LUC meeting Schedule

- OCT 25 continuation of DR19-67 Kanahahele -Mauna Kea (Hilo) on Hawai`i
- OCT28-if needed DR19-67 continued on Hawai`i
- OCT 31- video conference- adoption of order for DR19-67- Kanahahele & SP09-403 Waimanalo Gulch at respective video conference centers
- NOV 6-7- SP19-410 Sacred Earth Assembly (Maui) on Maui
- NOV 20- mtg for DR19-66 Poma`ikai Partners IAL, & A87-610 Waiawa on O`ahu at airport
- NOV 21-A17-804 Hawaiian Memorial Life Plan on O`ahu at SOT 2nd floor
- DEC 4-5- on Maui- A04-751 C. Brewer (continued)
- DEC 17-18 on Kauai – A11-791 Hokua Place
- JAN 8- Kona for A02-737 U of N Bencorp & A90-660 HHFDC status reports, SP-1-36
- JAN 9- TBD
- JAN 22-23 on Oahu for A17-804 Hawaiian Memorial Life Plan (JAN 22 at Koolau Ballroom/ JAN 23 at HNL airport)

Any questions or conflicts, please contact LUC staff.

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

Chair Scheuer declared a recess at 9:36 a.m. to await the arrival of Commissioner Giovanni from the airport and reconvened the meeting at 10:09 a.m.

Chair Scheuer announced that this was an action meeting on

DR19-67- KU'ULEI HIGASHI KANAHELE

Consider Petition of Ku'ulei Higashi Kanahele and Ahiena Kanahele, individuals, for a "Declaratory Order Concerning the invalid classification of the de facto and improper industrial use precinct on approximately 525 acres of State Land Use Conservation District lands located in Mauna Kea and Hilo, County of Hawai'i. Tax Map Key Nos. 4-4-015:009 (por)"

APPEARANCES

Bianca Isaki, Esq. represented the Kanaheles

County of Hawai'i had earlier notified the Commission that it would not attend since this docket was not a County matter)

Bryan Yee, Esq., represented State Office of Planning (OP) appearing as Public Witness

Chair Scheuer updated the record and described the procedures to be followed for the hearing.

There were no comments or questions regarding the procedures.

Chair Scheuer asked if Ms. Isaki had reviewed HAR 15-15-45.1 regarding reimbursement of LUC hearing expenses. Ms. Isaki said that she had and that her clients would comply with reimbursing the LUC for hearing expenses.

DISCLOSURES

Commissioners Ohigashi, Okuda, Wong, Cabral and Chair Scheuer disclosed their respective past and present personal/voluntary/professional associations and business relationships with the University of Hawai'i, various legal entities/businesses within the local community and Petitioner's attorney, Ms. Isaki.

There were no objections to any of the Commissioners continuing to participate in the proceedings.

Chair Scheuer called for Public Witnesses.

Due to the large amount of public witnesses, the minutes format will provide a list of the witnesses in the order they testified. ("Support" notation indicates that testimony was in favor of the LUC granting the Petition. "Reject" notation indicates that testimony was against the LUC granting the Petition. "Other" notation indicates that the testimony was unclear on accepting or denying the Petition). (Parentheses indicate organizational representation)

Please refer to the transcripts for further details of public testimony. Only comments and/or questions asked of testifiers are noted. No notation indicates that no questions were posed to the testifier.

PUBLIC TESTIMONY

1 James Mauiola Keaka Stone Jr- Reject

2 Hanalei Fergestrom- Support (Na Kupuna Moku O Keawe)

During his testimony, Mr. Fergestrom stated that he requested a contested case hearing. Chair Scheuer explained that there was no entitlement to a contested case on a declaratory ruling.

3 Ken Church - Support

Mr. Church shared his personal case before the LUC and described how he felt land zoning should be decided.

Commissioner Aczon asked if Mr. Church supported the Petition. Mr. Church acknowledged that he did.

Chair Scheuer requested additional clarification on how Mr. Church thought land classification should be performed. Mr. Church described how he thought Conservation could be moved into Agricultural designation.

4 Donna Keala Leong- Support

5 Deborah J Ward – Support (Sierra Club Hawaii Island Group)

Ms. Isaki requested clarification on how Ms. Ward thought the LUC could provide guidance in this matter. Ms. Ward described how the UH management plan seemed to have mishandled allowing telescope facilities in the Mauna Kea area.

Commissioner Okuda requested clarification on past Sierra Club lawsuits regarding the environment and commented on how the LUC differed from the Legislature and was not a law-making body.

6 Manu Kaiama - Support

7 Dexter Kaiama - Support

Commissioner Okuda requested clarification on how Mr. Kaiama envisioned the future of Hawai'i. Mr. Kaiama described how sustainable agriculture needed to be considered.

Chair Scheuer requested clarification on how Mr. Kaiama perceived the rejection of the conditional use permit (CDUP) in this matter since the LUC was not an appellate body. Mr. Kaiama provided his perception of the permit situation for the Mauna Kea area and how it applied to the DR19-67 matter.

8 Laura Acasio Support

Chair Scheuer declared a recess at 11:15 a.m. and reconvened the meeting with continued public testimony at 11:25 a.m.

9 James K Kaulukukui Jr. Support

10 Shelley Muneoka – Support- (KAHEA: The Hawaiian-Environmental Alliance)

Ms. Isaki requested clarification on Ms. Muneoka's organization and its participation in proceedings involving the Mauna Kea TMT issue.

Commissioner Okuda and Chair Scheuer requested clarification on what KAHEA's perspective on this matter was and what legal concerns about the DR19-67 docket existed. Ms. Muneoka stated that she was not an attorney and declined to answer law-related questions; and provided commentary on why a district boundary amendment ("DBA") process might not work.

11 ~~Nawahine Kaho'opi'i~~ **Left**
beforetestifying

12 Cory Harden Support

13 Millicent Cummings Support

14 Jaerick Medeiros-Garcia Support

15 Grace Bezilla

Support

Commissioner Cabral asked if Ms. Bezilla was a Rotarian due to how she had included the Rotarian Mission Statement in her testimony. Ms. Bezilla responded that she was not a Rotarian but admired their values.

Chair Scheuer shared his personal perception of how the word “genocide” used in testimony affected him.

16 Kalkolehua Kanaele - Support

(Aloha Aina Life and Education Center
Pahoa Hawaiian Kingdom)

17 Bonnie Irwin- UHH Chancellor- Reject

(UH Hilo)

Before Ms. Irwin testified for the UH Hilo, her counsel, Jesse Souki stated his objection to the LUC subjecting Ms. Irwin to questioning without benefit of counsel.

Discussion ensued with Commissioners Okuda, Ohigashi and Chair Scheuer requesting clarification on what basis Mr. Souki was making his objection, clarifying how this matter was not a contested case hearing and how public and organizational witnesses could react to questions to avoid prejudice.

Commissioner Ohigashi 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 regarding proper procedure for handling public testimony from Public Witnesses who are represented by counsel.

Commissioner Wong seconded the motion. There was no discussion.

Commissioner Giovanni requested and was granted opportunity to thank everyone for their patience and indulgence for awaiting his late arrival and for contributing their public testimony to the meeting. The Commission unanimously voted to enter Executive Session.

Chair Scheuer stated that the Commission would take a “working lunch” during Executive Session and estimated that the Commission would reconvene at 1:30 p.m.

The Commission entered Executive Session at 12:23 p.m. and reconvened at 1:34 p.m. Chair Scheuer described how proceedings would be handled if an attorney

or client with counsel testified before the Commission (for the benefit of testimony clarification) and began taking public testimony from Ms. Irwin.

Ms. Irwin described the role of the University of Hawai`i, and provided her understanding of how CDUPs applied to the development of the telescope area. Ms. Irwin requested that the Commission deny the Petition.

Commissioners Cabral, Okuda, and Chair Scheuer requested clarification on why decommissioning telescopes took so long, how UH's relationship with the community could be improved, whether the UH would pursue obtaining a DBA for the telescope district in the future or not, and what authority structure (chain of command) needed to be followed for decision-making to occur. Ms. Irwin stated that she had recently joined UH Hilo in June and provided her knowledge of what was required to decommission telescopes, what UH community outreach had been done on the telescope matters, how UH would not seek a DBA in the present or future to attempt to resolve matters; and was unable to respond to questions about monitoring and maintenance of existing telescope facilities and the mechanics of pursuing a DBA.

18 Greg Chun – Reject (UH Hilo)

Mr. Chun described his role within the UH Hilo system and provided a historical summary of the policy and stewardship involved with the Mauna Kea area and commented on why the petition should be denied.

Commissioners Okuda Ohigashi, Cabral Wong, Giovanni, and Chair Scheuer requested clarification on community outreach efforts, the lifespan and maintenance requirements of the facilities, funding and technical problems associated with telescope facilities, alternate uses considered for decommissioned facilities, on efforts being made to mitigate the impact of existing and future facilities, on rules/regulations associated with the facilities.

19 Jesse K. Souki, Esq. – Reject (UH)

Mr. Souki summarized the main points of UH's submitted written testimony and described why DLNR had sole jurisdiction over the conservation district of Mauna Kea.

Commissioner Okuda requested clarification on how various legal case decisions applied to the matter before the Commission.

Commissioner Wong requested and was granted a recess.

Chair Scheuer declared a recess at 2:27 p.m., reconvened the meeting at 2:33 p.m. and resumed hearing Mr. Souki's testimony.

Commissioners Okuda, Wong, Ohigashi, Cabral, Giovanni and Chair Scheuer requested clarification on how DR19-67 could be addressed, how much time remained on the existing lease and what might transpire during that time with the Department of Land and Natural Resources ("DLNR") or the Board of Land and Natural Resources ("BLNR") agencies, possible considerations to pursue a DBA, and what jurisdictions at County and State levels that may be involved in different pursuits of action regarding the telescope district.

Chair Scheuer declared a recess at 3:28 p.m., reconvened the meeting at 3:44 p.m. and called for the next public witness. (Court Report Laura Savo replaced Court Reporter Jean McManus).

- 20 Ross Shinyama, Esq.,- Reject (Watanabe Ing- representative for TMT International Observatory LLC "TIO")
Mr. Shinyama stated that TIO joined in UH- Mr. Souki's procedural objection to the questioning of counsel/client and argued that the verbal disclosures that the Commission had made prior to beginning proceedings should have been in writing. Discussion ensued to determine what basis Mr. Shinyama was using to request written disclosure. Mr. Shinyama referenced the "TMT 2" case and Commission Okuda opined how *res judicata* might apply. Chair Scheuer took notice of Mr. Shinyama's comments and called for the next witness.
- 21 Bryan Yee – Reject- (Dept. of the A.G. on behalf of OP)
Mr. Yee summarized why OP opposed the Petition.

Commissioners Wong, Ohigashi, Cabral, Okuda and Chair Scheuer requested clarification on what various governmental agency authority limits were, how land use district designations could be hypothetically be applied, reference authorities cited in OP's position statement, what oversight and protection could or should be provided and applied for the telescope precinct area, what authority/jurisdiction authority might work better and whether the current CDUP process should be more in line with a DBA format.

22 Lanny Sinkin- support

Mr. Sinkin shared that he was an attorney and provided his perspective of the history involved with Petition and why he supported it.

Commissioners Okuda and Cabral sought clarification on comments that Mr. Sinkin made about legal procedures/issues and on land ownership matters.

Discussion ensued regarding the status of the proceedings. Ms. Isaki sought clarification on how the remainder of the public witnesses would be handled. Commissioner Cabral commented on how the order in which testimony might be given could be better organized.

Chair Scheuer declared a recess at 5:07 p.m. and reconvened the meeting at 5:15 p.m.

Chair Scheuer announced that the remaining public witnesses on the witness list would be heard on October 25, 2019 and closed public testimony.

Commissioner Giovanni inquired who the individuals seated at the Petitioner's area were. Ms. Isaki identified her clients, the Kanacheles, and Lance Collins, Esq.

Commissioner Aczon sought clarification on whether Public Witnesses appearing on October 25, 2019 would be allowed to testify. Chair Scheuer responded that his current inclination was not to allow additional testimony in the interest of advancing the proceedings and allowing Petitioner to put on its case.

Chair Scheuer declared a recess at 5:19 p.m. and stated that the meeting would resume tomorrow at 9:00 a.m. in the Crown Room.

