

LAND USE COMMISSION
MEETING MINUTES

October 25, 2019 – 9:00 a.m.
The Grand Naniloa Resort - Crown Room
93 Banyan Dr. Hilo, HI 96720

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Dan Giovanni
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: Laurie Savo

CALL TO ORDER

(Prior to start of the meeting several members of the Public approached the Chief Clerk requesting to provide public testimony and it was determined that ultimately there would only be two more new public witnesses. Their requests were conveyed to Chair Scheuer for consideration).

Chair Scheuer called the meeting to order at 9:01 a.m.

Chair Scheuer described the circumstances involved with perhaps allowing 2 more witnesses to provide public testimony. Commissioners Wong and Cabral expressed their desire to allow the two testifiers to speak but that they were anxious to continue proceedings as well.

Chair Scheuer responded that he would allow the two new testifiers to speak and then would continue proceedings.

There were no objections to Chair Scheuer's decision.

APPEARANCES

Bianca Isaki, Esq. represented the Kanahaes

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 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 (continued)

23. Shea Rodrigues – Reject

Commissioners Wong requested clarification on the number of environmental hazard spills that Mr. Rodrigues had referred to in his testimony. Commissioner Okuda described the parameters of authority that he thought were involved in this issue and sought to discover what Mr. Rodrigues thought UH needed to do to establish better credibility with the community.

24. Gene Tamashiro – Other

Mr. Tamashiro expressed his opinions on the present jurisdiction of the Hawaiian Kingdom and how he thought it should be applied to current events.

Commissioner Aczon requested clarification on Mr. Tamashiro's position on the matter before the Commission. Mr. Tamashiro was unclear in his response.

25. Lance Collins, Esq.

Mr. Collins described his affiliation with the organizations West Maui Preservation Association and *Na Papai Wawae Ulaula* and shared his reasons for supporting the Petition.

Ms. Isaki requested clarification on the organizations that Mr. Collins was involved with.

Commissioners Okuda, Ohigashi, Giovanni, Chair Scheuer, Aczon, and Cabral requested clarification on Mr. Collins's perception of jurisdictional and legal concerns involved with the Petition, how the issues of agency authorities and re-districting land use designations might apply, how the CDUP/DBA processes might be applied or improved to better address the jurisdictional, and management/monitoring/development authorities in the telescope district, what possible courses of action the Petitioner might take if the Petition were denied by the Commission, how the Petition related to the current Thirty Meter Telescope ("TMT) issue, what kind or type of enforcement and oversight was specifically being sought by the Petition, and what possible actions might resolve the community concerns and outreach efforts to effect positive movement to resolve issues related to the Conservation District on Mauna Kea.

There were no further questions. Chair Scheuer declared a recess at 10:24 a.m., reconvened the meeting at 10:42 a.m. and called for the next public witness.

26. Ahiena Kanahele- Support

Mr. Kanahele described why he filed the Petition and what he hoped to accomplish by doing so by achieving a pause to the current situation.

Commissioners Okuda, Cabral, Aczon, Wong and Chair Scheuer requested clarification on why the UH was considered untrustworthy, what could be done to restore relationships between the community, the telescope industry and UH, and what "common ground" or compromise could be achieved to better negotiate matters.

27. Kuulei Kanahele- Support

Ms. Kanahele described her perception of traditional land use and how it applied to the current situation.

Commissioners Giovanni, Okuda, Aczon, and Chair Scheuer requested clarification on how the community could have been involved in the process, what Ms. Kanahele's educational background was and further considerations that the LUC should note in deliberating on the Petition.

Chair Scheuer declared a recess at 11:41 a.m., reconvened the meeting at 12:34 p.m. and stated that Public Testimony was formally closed. Chair Scheuer called for Ms. Isaki to make her presentation on behalf of Petitioner.

PETITIONER

Ms. Isaki argued why her Petition was worthy of being considered and granted by the Commission citing the legal authorities and reasoning that it was based on.

Commissioners Okuda sought clarification on the legal substance of the citations that were being offered for consideration by Ms. Isaki.

Chair Scheuer declared a recess at 1:19 p.m., reconvened the meeting at 1:25 p.m. and resumed allowing the Commissioners to question Ms. Isaki.

Commissioners Giovanni, Wong, Ohigashi, Cabral, Aczon, and Chair Scheuer sought clarification on why seeking a DBA action was being pursued, what kinds of consequences were desired from the Petition action before the Commission, how the DBA process could provide the proper oversight and management desired by the Petitioner and whether there was legal standing to request such action, what timetable or legal constraints could be applied, how to engage the proper agency or agencies if a DBA was pursued, and the legal authorities that would allow for the process to move forward.

Ms. Isaki concluded her presentation.

Chair Scheuer declared a recess at 2:05 p.m., reconvened the meeting at 2:14 p.m., stated that the Commission would begin formal deliberation on the Petition and confirmed if all Commissioners were prepared to deliberate.

All attending Commissioners formally acknowledged that they had reviewed the record and were prepared to deliberate.

Commissioner Okuda moved that the LUC deny the Petition. Commissioner Ohigashi seconded the Motion. Chair Scheuer opened the floor to discussion.

Commissioner Okuda spoke in favor of the Motion and described how he felt there was no subject matter jurisdiction in the case, how the telescopes were a permissible use, how the LUC could not force a party to seek a DBA, why a DBA was the proper proceeding to address this matter, and re-designating land use using current processes was necessary.

Commissioners Aczon agreed with Commissioner Okuda's assessment of the situation and stated that he would vote in favor of the Motion.

Commissioner Ohigashi described why he seconded the Motion and stated that he would be voting in support of the Motion.

Commissioner Giovanni shared his thoughts on the need to move for a resolution and described why he was having difficulty deciding on the issue, but would be voting in support of the Motion.

Commissioner Wong described how he was similarly struggling to decide but would be supporting the motion.

Commissioner Cabral stated that she would be supporting the Motion based on the legal perspectives that she had considered.

Commissioner Okuda clarified that his motion was not intended to support approval of how UH had performed in overseeing the telescope district and described his disappointment with how UH had not exhibited good stewardship of the area and interacted with the community.

Chair Scheuer stated that he would not be voting in favor of the Motion and described his frustration with the situation after examining it from a historical/legal perspective and how he disagreed with OP's public testimony regarding the regulatory processes involved with their Position Statement.

Commissioner Giovanni stated that after considering Chair Scheuer points, he would reconsider and vote against the Motion.

Chair Scheuer called for Mr. Orodener to poll the Commission.

The Commission voted as follows:

Ayes: Commissioners Okuda, Ohigashi, Cabral, Aczon and Wong.

Nays: Commissioner Giovanni and Chair Scheuer.

The Motion passed (5-2-1excused - 8 sitting Commissioners).

Chair Scheuer stated that since there was no further business to address he declared the meeting adjourned at 2:58 p.m.