

LAND USE COMMISSION  
MEETING MINUTES

**December 4, 2019- 09:30 a.m.**  
**Maui Arts & Cultural Center**  
**One Cameron Way, Kahului, Maui, Hawai`i 96732-3157**  
**Haynes Meeting Room**

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

COMMISSIONERS EXCUSED: None  
(8 Seated Commissioners)

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

COURT REPORTER: Jean McManus

**CALL TO ORDER**

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

## APPROVAL OF MINUTES

Chair Scheuer asked if there were public witnesses to testify on the minutes. There were none. Chair Scheuer then asked if there were any corrections or additions to the November 20-21, 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.  
(8 ayes-0 nays- 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.

DEC 5- Continued A04-751 and A89-642 C. Brewer status report

DEC 18-19 Kauai – A11-791 Hokua Place -Accept FEIS

JAN 8- Kona for A02-737 U of N Bencorp & A90-660 HHFDC status reports

JAN 9- HNL- A87-610 Waiawa continued hearing and SP09-403 Motion to Terminate Order Regarding Written Status Reports

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.

Commissioner Giovanni requested clarification on the location for the Kauai LUC meetings. Mr. Orodener confirmed that the Kauai meeting was scheduled to be held at the Kauai Sheraton Coconut Beach Hotel.

There were no other questions or comments on the schedule.

Chair Scheuer stated that the next agenda item was an action item on Docket No. A04-751 Maui Land & Pineapple Company.

## **ACTION**

### **A04-751 Maui Land & Pineapple Company**

Consider Petitioner Maui Oceanview LP's Motion to Amend Decision and Order dated June 30, 2006.

## **APPEARANCES**

Gil Keith- Agaran, Esq., represented Maui Oceanview LP "MO"

Paul Cheng, "MO" representative

Preston Chang, "MO" representative

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")

Rodney Funakoshi, Land Use Administrator, OP

Chair Scheuer updated the record and noted that there had been an untimely Notice of Intent to Intervene and Petition to Intervene filed with the LUC by Michael C. Carrol, Attorney at Law, Bays Lung Rose & Holma on behalf of the Kahana Hui Lot Owners Group

Commissioner Wong 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 as related to the untimely Motion to Intervene.

Commissioner Aczon seconded the Motion. There was no discussion. By a unanimous voice vote (8-0), the Commission voted to enter Executive Session.

The Commission entered Executive Session at 9:40 a.m. and reconvened at 10:10 a.m.

Chair Scheuer described how the hearing proceedings would go forward to accommodate on-going negotiations between the potential Intervenors and the Petitioner; and that public testimony would be next.

## **PUBLIC TESTIMONY**

Chair Scheuer called for public testimony.

*For brevity, the minutes 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. Van Fischer- Reject

Mr. Fischer identified himself as one of the Potential Intervenors in this matter and described why he opposed the current development plans.

### 2. Tim Hehemann- Reject

Mr. Hehemann identified himself as one of the Potential Intervenors and expressed how he had not been included in discussions on the proposed project.

### 3. Bernie Bays- Reject

Mr. Bays stated that he represented the Potential Intervenors in this matter and described how he needed more time to seek a resolution to the disagreement between the Intervenor and the Petitioner.

Commissioner Wong inquired whether a possible settlement could be reached by mid-day. Mr. Bays responded that most issues had been resolved and that the final issue still had details to be worked out.

### 4. Sharon Bandag- Support

Commissioner Cabral requested clarification on what possible rents might be in the Lahaina area to gauge the economic weight that housing costs could impose on

West Maui residents. Ms. Banaag deferred further questions to her husband, Aris Banaag.

5. Aris Banaag- Support

Commissioner Cabral sought additional information on housing costs and availability.

Chair Scheuer provided background information on how the LUC Commissioners volunteer their time and focused further questioning of witnesses on the Petition.

6. Joseph Pluta (West Maui Taxpayers Board)- Support

Commissioner Giovanni requested clarification on the interaction that Petitioner had with the West Side community. Mr. Pluta affirmed that the Petitioner had met with various individuals and groups to discuss the proposed project.

7. Kelly King (Maui County Council)- Support

Ms. King described why she supported the proposed project and how it provided the type of infill and density that the Council had been seeking.

Commissioners Cabral and Giovanni thanked Ms. King for appearing to provide testimony and for her work on attempting to provide affordable housing

8. Tiare Lawrence- Other (anti-Intervenor)/Support

Ms. Lawrence shared why she disapproved of the proposed intervention and described why she supported granting the Petition.

Commissioner Chang expressed her appreciation for Ms. Lawrence's testimony.

9. Dick Mayer- Support

Mr. Meyer shared why he was pleased with the Petitioner's efforts.

Chair Scheuer and Commissioner Okuda sought clarification on Mr. Mayer's position on the Motion to Intervene and its timeliness; and whether members of the group intervening were aware of the proposed projects details.

10. Shane Sinenci (Maui Council) – Support

Commissioner Giovanni requested clarification on Mr. Sinenci’s position on the 2006 proposal.

11. Rod Antone- Support

12. Yuki Lei Sugimura-(Maui Council)- Support

Commissioner Cabral thanked Ms. Sugimura for her testimony.

Commissioner Ohigashi disclosed that he knew Ms. Sugimura from his practice of law but that he felt that he could be fair and impartial during the proceedings. There were no objections to Commissioner Ohigashi’s continued participation.

13. Junya Nako- Support

14. Bruce U'u- Support

Commissioner Aczon disclosed that he knew Mr. U`u but that he felt that he could be fair and impartial during the proceedings. There were no objections to Commissioner Aczon’s continued participation.

15. Albert Perez (Maui Tomorrow)- Support

Commissioners Ohigashi and Okuda requested clarification on whether Mr. Perez supported the settlement agreement and project, how he felt about the untimely Petition to Intervene, and the extent of his involvement in the public meetings on the proposed project. Mr. Perez responded that he supported the settlement and proposed project and described his involvement with the community meetings and position on the intervention attempt.

16. Kathy Kaohu- Support

Commissioner Giovanni requested clarification on her perspective of the proposed project.

#### 17. Kai Nishiki- Other (anti-Intervenor)/Support

Ms. Nishiki described why she opposed the potential intervention and provided her reasons for changing her position from opposing to supporting the Petition.

Commissioners Ohigashi, Cabral, Chang, and Chair Scheuer requested clarification on the amount of community participation Ms. Nishiki was involved with and her familiarity with the intervenor group, why she had decided to now support the Petition, and whether she was compensated for her efforts. Ms. Nishiki described the involvement she had discussing the proposed project within the community and stated that she was not compensated for her work.

#### 18. Tamara Paltin (Maui County Council)- Support

Commissioners Giovanni and Ohigashi requested clarification on Ms. Paltin's position on affordable housing and interaction with Mr. Fischer and Hehemann.

Ms. Paltin described her appreciation for more affordable housing being provided in her district and recollected her meeting with Mr. Fischer and Hehemann.

There were no other public witnesses. Chair Scheuer formally closed public testimony and declared a recess.

The Commission went into recess at 11:57 a.m. and reconvened at 1:21 p.m.

Chair Scheuer was advised that the Petitioner and Intervenor required additional time to discuss matters before they could participate in the hearing.

Discussion ensued on what the Commission might address while waiting for the Petitioner and Intervenor to complete their discussion.

Chair Scheuer took a brief recess to assess the status of the discussion being held between Petitioner and Intervenor. Chair Scheuer reconvened the meeting and checked whether OP and the County had any objections to halting the meeting to allow for the discussion between Petitioner and Intervenor. OP and County stated that they had no objection to a 30 -minute delay in the proceedings. Chair Scheuer sought a motion for Executive Session.

Commissioner Cabral 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 as related to the agreement being discussed between the Petitioner and Intervenor. Commissioner Wong seconded the Motion. There was no discussion. By a unanimous voice vote (8-0), the Commission voted to enter Executive Session.

The Commission entered Executive Session at 1:30 p.m. and reconvened at 2:00 p.m. Commissioners Giovanni and Chang and Mr. Hakoda excused themselves from the Executive Session with the Chair's approval and rejoined the meeting at 2:01 p.m.

Mr. Agaran stated that Petitioner and Intervenor had reached a settlement. Chair Scheuer sought confirmation from Mr. Bays that Intervenor had indeed reached a settlement. Mr. Bays acknowledged that a settlement had been formally reached and that he was withdrawing his Motion to Intervene. Discussion ensued to determine the position of the County and OP on the state of the proceedings. Mr. Hopper was open to moving forward on proceedings but reserved the right to review the negotiated settlement and provide comments to the Commission. Ms. Apuna concurred with County.

Chair Scheuer announced that the Commission would hear Petitioner's remaining presentation.

Commissioner Wong requested a time estimate for what might be occurring in the remaining time projected for the meeting. Mr. Agaran commented that he would provide a summary of the settlement and the agreed upon changes to the proposed project.

Chair Scheuer called for Petitioner to make its presentation.

### **PETITIONER**

Mr. Gil Keith-Agaran provided information on the various parts of the development proposal that were involved in the settlement negotiations and shared what the intended final plan with the Intervenor group covered.

County and OP had no questions for Petitioner.



Commissioners Ohigashi, Cabral, Chang, Okuda, Giovanni, and Chair Scheuer requested clarification on how enforcement of the agreed upon settlement terms would be enforced, whether the County was involved in the new terms and conditions of the Petitioner/Intervenor settlement, how the settlement might be incorporated into the potential Decision and Order for Amending Conditions, how rental rates would be determined, and for additional details on how County and OP perceived the information provided by Petitioner.

Mr. Agaran described how the settlement addressed the concerns mentioned by the Commissioners, Mr. Cheng described the details that would be considered in calculating the applicable rental rates for the proposed project. Mr. Hopper described how County enforcement would be imposed and Ms. Apuna described OP's position on the current settlement agreement.

Chair Scheuer summarized the state of the proceedings and what he intended the hearing to accomplish on December 5, 2019 and stated that the proceedings would continue at the MACC at 09:30 tomorrow and declared a recess at 2:50 pm.

