

LAND USE COMMISSION
Minutes of Meeting
King Kamehameha's Kona Beach Hotel
Kamakahonu Room, Ballroom Eha
75-5660 Palani Road
Kailua-Kona, Hawaii

February 20, 2003

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Isaac Fiesta
Lawrence Ing
Randall Sakumoto

COMMISSIONERS ABSENT: Steven Montgomery
Stanley Roehrig
Peter Yukimura

STAFF PRESENT: Diane Erickson, Esq., Deputy Attorney General
Anthony J. H. Ching, Executive Officer
Russell Kumabe, Staff Planner
Caroline Lorenzo, Acting Chief Clerk
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 11:00 a.m.

ADOPTION OF MINUTES

Commissioner Fiesta moved to adopt the minutes of the January 9 and 10, 2003 as circulated. Commissioner Desai seconded the motion, and the motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Ching provided a status report on the upcoming commission meetings, its locations, and topic for discussion, as follows:

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| March 5-6, 2003 | King Kamehameha's Kona Beach Hotel, Eha Room
Kona, Hawaii <ul style="list-style-type: none">• A02-737 U of N Bencorp (Hawaii)• DR03-29 Doutor Coffee Hawaii Co., Inc. (Hawaii) |
| March 27-28, 2003 | Hawaii Okinawa Center, Waipio, Oahu <ul style="list-style-type: none">• Waimanalo Gulch (Oahu) |
| April 9-10, 2003 | Wailea Marriott Resort, Wailea, Maui <ul style="list-style-type: none">• DR02-26 Kuleana Ku'ikahi, LLC (Maui) |
| April 24-25, 2003 | Hawaii Okinawa Center, Waipio, Oahu <ul style="list-style-type: none">• A92-683 Halekua Development Corporation• Waimanalo Gulch (as needed) |

LEGISLATION

Mr. Ching provided a status report on the bills that the LUC are tracking, what it relates to, and LUC's position:

HB 576/SB 706 Relating to Land Use, which specifies a minimum lot size of 3 acres for the agricultural districts that are subdivided after June 30, 2003. LUC supports the intent of this bill and offered a minor technical amendment.

SB 320 Relating to Agricultural Tourism, which allows tourism-type activities in the agricultural district to occur. LUC supports the intent of this bill.

SB 530 Relating to Home Occupations within Agricultural Districts. This proposal would allow the counties to establish standards and criteria to regulate home occupations and would eliminate the need for the issuance of an LUC special permit in favor of more appropriate state and county licenses/permits. LUC supports this bill.

SB 1152 Relating to the Representation of the Office of Hawaiian Affairs on Boards, Commissions, and Advisory Bodies. If enacted, the OHA would replace an at-large LUC member as a seated and voting member. LUC supports the intent of this bill, but takes no position with respect to the specifics of the proposal, and offered that the LUC is a volunteer body, already sensitive to and responsible for preserving and protecting lands as well as valued historical, cultural and natural resources of the State.

HB 1135 Relating to Government Operations. This is an administrative proposal seeking to transfer the LUC to the Department of Land and Natural Resources. Concerns have been expressed that the Board of Land and Natural Resources chair should not be seated on the Commission as a voting member.

A00-733 HARRISON J. & SHARENE Z. KLEIN (Hawaii)

Chair Ing announced that this was an action meeting on Docket No. A00-733 Harrison J. & Sharene Z. Klein to consider the Petitioner's Motion to Release, Discharge and Delete All Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order filed November 5, 2001.

Appearances

Steven Lim, Esq., representing Petitioner

Norman Hayashi, County of Hawaii Planning Department

Patricia O'Toole, Esq., County of Hawaii Corporation Counsel

John Chang, Esq., Deputy Attorney General, representing Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

A staff report on the petition area and staff recommendations in regards to Petitioner's motion were provided by staff planner, Russell Kumabe, and Maps 1 and 2 were used in staff's orientation.

There were no public witnesses. The Petitioner made its presentation, and the state and county provided its comments. The Commission discussed and deliberated, and the following motion was made.

Commissioner Fiesta moved to retain conditions 1, 2, 4, 6, 7; and to delete conditions 3, 5, 8 and 9. The motion was seconded by Commissioner Desai. The commissioners were polled as follows:

Ayes: Commissioners Fiesta, Desai, Catalani, Coppa, Sakumoto, and Ing

The motion passed with 6 ayes and 3 absent.

DR02-25 ERIKA AND ACHIM GINSBERG-KLEMMT; and DR02-28 ERIKA AND ACHIM GINSBERG-KLEMMT (Oahu)

Because the two motions are related to each other, Chair Ing introduced both dockets together.

This was an action meeting to consider Petitioner's Motion for Reconsideration of Decision and Order filed January 16, 2003, and to consider Petitioner's Petition for Declaratory Order seeking that the November 14, 2002 minutes be revised and reissued, giving a true reflection of the matters discussed at the meeting and the views of the participants.

Appearances

Dennis Krueger, Esq., representing Petitioner

John Chang, Esq., Deputy Attorney General, representing Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

There was no public testimony. Commissioner Sakumoto moved to enter into executive session to consult with its deputy attorney general to discuss procedures that bears upon Petitioner's motion. The motion was seconded by Commissioner Coppa, and said motion was unanimously approved by voice votes.

The Commission entered into executive session at 12:01 p.m.

The Commission reconvened at 12:09 p.m.

Mr. Krueger asked the Commission that this matter be deferred to another session.

In regards to the first motion for Reconsideration of Decision and Order filed January 16, 2003, Chair Ing provided the Petitioner with two options because the Petitioner's motion was ruled out of order: 1) The Petitioner may file another Petition; or 2) The Petitioner may appeal LUC's decision to the Circuit Court. As the matter before the Commission was not a contested case, but an administrative meeting conducted in accordance with Chapter 91 and Robert's Rules of Order, motions for reconsideration can only be brought before the Commission by a member who voted with the prevailing side. As the petition for reconsideration was brought by other than a member, the petition was ruled out of order.

However, Chair Ing subsequently provided opportunity for any appropriate member to sponsor a motion for reconsideration if they so chose. As no member sponsored such a motion, the matter was closed.

As far as the second motion to consider Petitioner's Petition for Declaratory Order seeking that the November 14, 2002 minutes be revised and reissued, giving a true reflection of the matters discussed at the meeting and the views of the participants, Chair Ing ruled the motion out of order for the same reason noted before. Chair Ing did again provide an opportunity for any member to sponsor a motion seeking correction of the Commission's November 14, 2002 minutes. There being no response, the Chair closed the matter.

A92-683 HALEKUA DEVELOPMENT CORPORATION (Oahu)

Commissioner Catalani moved to adopt the Order Granting Office of Planning's Motion for an Order to Show Cause to Rescind the Decision and Order dated on October 1, 1996. Commissioner Desai seconded the motion, and said motion was unanimously approved by voice votes with 3 absent.

A02-737 U of N BENCORP (Hawaii)

Mr. Ching reported that the Commission will take a field trip to view the project site for LUC Docket No. A02-737 U of N Bencorp on Friday, February 21, 2003 at 9:00 a.m. The parties to the proceeding and members of the public who wish to testify at the hearing were invited to participate in the field trip. Those interested can meet

staff at the turnaround of the King Kamehameha's Kona Beach Hotel at 8:30 a.m. for directions to the project site, which is a short drive south along Kuakini Highway to the project site. Those interested can also meet at the existing University of the Nations campus at 9:00 a.m. at which time the field trip will begin.

A00-730 LANIHAU PROPERTIES LLC (Hawaii)

This was an agenda item of the Land Use Commission to discuss and take action, if any, relating to correspondence received regarding Docket No. A00-730 Lanihau Properties, LLC (Hawaii).

Appearances

R. Ben Tsukazaki, Esq., representing the Petitioner
Norman Hayashi, County of Hawaii Planning Department
Patricia O'Toole, Esq., County of Hawaii Corporation Counsel
John Chang, Esq., Deputy Attorney General, representing Office of Planning
Abe Mitsuda, Land Use Division, Office of Planning

There was no public testimony.

Commissioner Sakumoto moved to enter into executive session to ask a legal question of the Deputy Attorney General. The motion was seconded by Commissioner Fiesta, and said motion was unanimously approved by voice votes.

The Commission entered into executive session at 12:48 p.m.

The Commission reconvened at 12:52 p.m.

Mr. Tsukazaki presented Petitioner's position, contained in its letter dated February 10, 2003, that the Commission deferred its action on Petitioner's Motion for Reconsideration at its meeting on May 2, 2003. Petitioner felt that, in the Commission's rejection of Petitioner's Final EIS, the intention was to have Petitioner revise the EIS without going back to the Draft EIS process, which would include a re-solicitation of public comments with a 45-day public comment period. Petitioner felt the required revisions did not include any new information and revisions will be based upon reorganization of existing information. It also stated it had been working with the

National Park Service (NPS) on reaching agreements on those issues that the NPS was concerned with. Commissioner Catalani disagreed with Petitioner's position and felt that the Commission's rejection required Petitioner to make substantial new disclosures, which would require public review and comment. Petitioner offered to provide its revisions to those reviewing agencies and individuals that provided substantive comments on the EIS, and reiterated that there is a review period when the Final EIS is published in the Environmental Notice.

Commissioner Fiesta moved to rescind the Commission's rejection order. Commissioner Coppa seconded the motion and the Commissioners were polled as follows:

Ayes: Commissioner Fiesta, Coppa, Sakumoto, Desai, and Ing
Nayes: Commissioner Catalani

The motion passed with 5 ayes, 1 nay, and 3 absent.

Commissioner Fiesta moved to allow the Petitioner to replace its Final EIS of March 21, 2002 with an amended EIS. Commissioner Coppa seconded the motion, and the Commissioners were polled as follows:

Ayes: Commissioner Fiesta, Coppa, Desai, Sakumoto, and Ing
Nayes: Commissioner Catalani

The motion passed with 5 ayes, 1 nay, and 3 absent.

The meeting was adjourned at 1:11 p.m.