

LAND USE COMMISSION
MINUTES OF MEETING

February 3, 2006

Conference Room 405
Leiopapa A Kamehameha
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Michael Formby
Kyong-su Im
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Thomas Contrades
Lisa Judge

STAFF PRESENT: Anthony Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Wade Kersey, Audio Technician

Chair Sakumoto called the meeting to order at 9:10 a.m.

Chair Sakumoto entertained a motion to amend the agenda to include: 1) an executive session under §92-5 (a)(2) to consider the evaluation of an employee of the Commission; and 2) to shift item number III Tentative Meeting Schedule after the Lanai Resort Partners docket, and before item number V, because the Tentative Meeting Schedule will be impacted by the scheduling of the Lanai docket.

Commissioner Kanuha moved to amend the agenda as noted. The motion was seconded by Commissioner Im. The motion was approved by voice votes.

EXECUTIVE SESSION

Commissioner Kanuha moved that the Commission enter into executive session to consult with legal counsel pursuant to § 92-5(a)(2), Hawaii Revised Statutes, to consider the hire, evaluation dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved. The motion was seconded by Commissioner Im. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 9:15 a.m.

The open meeting reconvened at 9:20 a.m.

ADOPTION OF MINUTES

Chair Sakumoto noted an amendment to page 2, last paragraph. Second sentence should read that “Chair Sakumoto added that his law firm has since become more involved in this matter....” instead of “Chair Sakumoto added that he has since become more involved in this matter....”

After a brief discussion regarding Commission examination of Mr. Lemmo of the DLNR in the McCully docket as to comments on page 12, Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of January 20, 2006 as amended. Commissioner Kanuha seconded the motion. The minutes of January 20, 2006 were approved by voice votes.

A04-753 AINA NUI CORPORATION (Oahu)

Presiding Officer Montgomery stated that this was an action meeting on Docket No. A04-753 Aina Nui Corporation (Oahu) to consider the reclassification of approximately 174.209 acres of land currently in the Agricultural District to the Urban District at Ewa, Oahu, Hawaii for residential, golf course, park, and open space uses.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Cameron Nekota, Esq., represented Petitioner

Lori Sunakoda, Esq., represented Department of Planning and Permitting

Raymond Sakai, City and County of Honolulu, Department of Planning and Permitting

Gregg Kinkley, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Presiding Officer Montgomery noted that there were no public witnesses.

Mr. Kudo used a PowerPoint presentation with slides for illustration, which he indicated were not intended for submittal as exhibits. Mr. Kudo added that Petitioner Aina Nui Corporation filed on January 10, 2006, a stipulated order with the cooperative efforts and agreement with the Petitioner, State, and the City and County of Honolulu.

Mr. Kudo discussed HRS Chapter 205-17, the LUC decision making criteria and the supportive findings that were included in the stipulation. Mr. Kudo also referenced HAR 15-15-18 Standards for Determining Urban District Boundaries, and HRS Chapter 205(a)(2), the Coastal Zone Management Program and cross-referenced the criteria with appropriate findings from the stipulated order.

Mr. Kudo concluded that Petitioner has satisfactorily met its burden of proof and that the reclassification is in conformance with state laws, regulations and the administrative rules.

Ms. Sunakoda stated that the City had a few minor technical comments. On page 4, paragraph 13, the LUC meeting date should be changed from February 2 to February 3. Ms. Sunakoda added that on Page 10, item 41, with respect to the final EIS, the Department's comment is for it to be consistent with Exhibit 3.

Mr. Kinkley noted that the State has participated with Petitioner in the stipulation and agrees with the City that the date should be changed to February 3rd. Mr. Kinkley also noted the inclusion of an *okina* in the word Ewa and commented that he believes that the State was still in discussion on condition number 4.

A recess break was taken at 9:45 a.m. to allow the parties to discuss the potential amendment of condition number 4. The meeting reconvened at 10:00 a.m.

Mr. Kinkley clarified that they have no further comments on condition number 4 and that the State concluded its presentation.

Commissioner Sakumoto noted that in condition number 4, paragraph 2, there is some reference regarding the Hanua Street extension to be dedicated to the State at the option of the DOT, expiring five years after completion of the Honua Street extension. Commissioner Sakumoto asked for clarification as to when the 5-year period would commence.

Mr. Kudo explained that he believes that reference came from Ms. Thielen's testimony as the State did not want that condition to be open-ended. Mr. Kudo also noted that he believed that Ms. Thielen had a personal conversation with Ms. Goth and they have agreed that the 5-years was a reasonable time frame. Mr. Kudo cited the testimony of Ms. Thielen from the October 20, 2005 transcripts, page 51, lines 6 to 10.

Commissioner Sakumoto noted that it would be appropriate to include a finding of OP's recommendation for a 5-year term in the order.

Mr. Kudo replied in the affirmative and added that an appropriate finding will be included and could possibly reference the testimony from the transcripts.

Presiding Officer Montgomery then polled the Commissioners to confirm that each one of the members had reviewed the record or transcripts of the proceedings and were prepared to deliberate on the subject.

The Commission was polled as follows:

Ayes: Commissioners Kanuha, Im, Formby, Piltz, Sakumoto, and Montgomery.

Mr. Ching discussed the Findings of Fact, Procedural Matters under numbers 1 to 13. Mr. Ching noted that Finding No. 13 has already been offered for amendment to change the date of February 2 to February 3. Mr. Ching continued with the Description of Property, numbers 14 to 28; Proposal for Reclassification, numbers 29 to 35; Petitioner's Financial Capability to Undertake the Proposed

Development, numbers 36 to 38; State and County Plans and Programs, numbers 39 to 42. Mr. Ching noted a few punctuation amendments to Finding No. 40, and an amendment to the second sentence in Finding No. 41.

Chair Sakumoto asked if a decision was made regarding the inclusion of the *okina*.

Mr. Ching replied that the practice has been to use the *okina* and added that staff recommends that it be included in the document for consistency.

Mr. Ching continued with the Need for the Proposed Development, Economic and Social Impacts, numbers 43 to 54; Archeological/Historical/ Cultural Resources, numbers 55 to 62; Environmental Quality, numbers 63 to 70; Adequacy of Public Services and Facilities, numbers 71 to 117. Mr. Ching noted that Finding No. 75 includes a description of the Hanua Street extension and suggested that this may be the area to insert a new finding to reflect the Hanua Street 5-year construction and dedication as discussed and cited from Ms. Thielen's previous testimony.

Mr. Ching continued with the Commitment of State Funds and Resources, Conformance with the Goals and Objectives, Policies of the Hawaii State Plan, Relationship with Applicable Priority Guidelines and Functional Plans, numbers 118 to 123.

A recess break was taken at 10:10 a.m. The meeting reconvened at 10:30 a.m.

Commissioner Sakumoto provided his proposed language for a finding regarding the Hanua Street extension in support of the imposition of condition number 4.

Commissioner Formby added that Commissioner Sakumoto's proposed language brings clarity to Ms. Thielen's testimony and to condition number 4.

Commissioner Im noted that there appeared to be no findings in the stipulated order related to the golf course and the public's use of the privately owned golf course. Commissioner Im also asked about user rates for the golf course.

Mr. Kudo noted that his client is not planning any specifics at this time, however, it would be acceptable to them to indicate that the privately-owned golf course will offer comparable rates to the public similar to *kama`aina* rates.

Commissioner Im proposed a new condition number 64 referencing that the Project, including the already urbanized area, will include a privately owned golf course which will have public play for a fee equivalent to *kama`aina* rates charged by similar golf courses located in the island of Oahu.

Commissioner Formby proposed a change to condition number 4, page 43, paragraph 4, Transportation. Commissioner Formby added that this amendment clarifies that some of the improvements described in this condition are outside of the Petition Area and not only within the jurisdiction of this Petition. Commissioner Formby also noted that as customary, staff should be authorized to make technical non-substantive amendments, such as including the use of the *okina*, etc.

Mr. Kudo stated that all the amendments are acceptable to his client.

Commissioner Sakumoto made a few clarifying comments on the language of condition number 4, regarding the Hanua Street extension.

Commissioner Formby discussed the proposed language of the fair share requirements and regional improvements.

Both the County and the State had no objections to the amendments.

Commissioner Im raised concerns regarding the language in the affordable housing condition and commented on the Supreme Court case, *Ka Pa`akai o ka Aina*. Commissioner Im also raised concerns relative to an adjacent parcel owned by the Petitioner that was previously reclassified twelve years ago to the urban district, and that Petitioner had not yet proceeded to develop this parcel.

EXECUTIVE SESSION

Commissioner Im moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and

liabilities. Commissioner Sakumoto seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:50 a.m.

The open meeting reconvened at 11:10 a.m.

Commissioner Formby commented that he shared Commissioner Im's concern regarding the affordable housing requirement. Commissioner Formby proposed language for the petitioner to provide affordable housing opportunities for low, low-moderate, and gap group income residents to the satisfaction of the City and County. Commissioner Formby added that the location, distribution, and other provisions shall be under such terms as determined by the City and County and shall be reported to the LUC for review and approval.

Commissioner Sakumoto moved to defer taking action on this matter until the next meeting on Oahu. Commissioner Sakumoto noted that there are only six Commissioners present today and approval for a DBA requires that all six vote in favor of the petition. Also, the record relevant to the affordable housing condition deserves further examination and analysis. Commissioner Sakumoto asked that staff brief the Commission on the affordable housing issue and describe what the record supports as appropriate language for an affordable housing condition.

Commissioner Kanuha seconded the motion and commented that being a former county official and being on the LUC for a short period, he has noticed that there are significant differences among the counties in terms of how each addresses affordable housing matters. Commissioner Kanuha added that the LUC needs some kind of oversight to ensure that there are levels of consistency among the counties and to ensure that the representations made by the petitioner are implemented.

Commissioner Piltz echoed Commissioners Sakumoto and Kanuha adding that his concern is to ensure that the affordable housing will be built in due time.

Commissioner Formby also supports the motion to defer and commented that although he would have liked to see this matter voted on today, he also shared in the concern of the language in the affordable housing condition.

Presiding Officer Montgomery commented that affordable housing is a statewide crisis and that it is important for the LUC to proceed cautiously.

After a brief discussion, Commissioner Sakumoto clarified that he has instructed staff to only examine the record created and to not go beyond the record. Commissioner Sakumoto added that the reason is that the condition should be fairly worded and that the petitioner deserves the record to be properly understood by the LUC.

Mr. Kudo commented that although he had hoped for a decision today, he supports the motion to defer and that Petitioner has no objections.

The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Kanuha, Formby, Im, Piltz, and Montgomery.

The motion passed with 6 ayes, 2 absent.

A recess break was taken at 11:25 a.m. The meeting reconvened at 11:35 a.m.

A89-649 LANAI RESORT PARTNERS

Chair Sakumoto stated that this was an action meeting A89-649 Lanai Resort Partners to consider the recommendation of the Executive Officer for a hearing date on the remand and other pertinent scheduling issues and items.

APPEARANCES

Bruce Lamon, Esq., represented Petitioner

T.J. Quan, Esq., represented Intervenor

Jane Lovell, Esq., represented the County of Maui Department of Planning

Gregg Kinkley, Esq., represented State Office of Planning

Laura Thielen, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Ching reported that on January 24 a prehearing was held to solicit recommendations and discussion amongst the parties with respect to a timetable for this matter on remand. Mr. Ching added that a reasonable timeframe was developed at the prehearing and recommended the following dates:

- The parties have agreed that a first exchange of witness and exhibit lists is not necessary prior to the filing of the dispositive motions.
- The filing deadline for the dispositive motions will be no later than close of business on March 31, 2006.
- The filing deadline for response to the motions will be no later than close of business on April 13, 2006.
- The hearing on the motions will be held on May 18 & 19, 2006 in Lanai. A site visit may also be scheduled at this time.
- A second prehearing and the exchange of witness lists and exhibits will be conducted on May 25, 2006.
- The hearing dates to consider the remand of this docket will be scheduled to begin on June 7, 8, and 9, 2006 in Lanai

Mr. Ching added that staff would incorporate this timeline as presented if approved by the LUC today.

Mr. Lamon stated that the Petitioner has no objections to the schedule, but commented that they may ask for more time between the exchange of exhibit lists and the June 7, 8, and 9 hearing dates.

Ms. Lovell stated that she believed the report accurately reflected the concerns expressed at the prehearing conference and added that their office files on this matter was severely limited. Ms. Lovell commented that the parties have discussed the possibility of scanning copies and sharing in the costs, which may also affect the timeline.

Mr. Kinkley echoed that the State agrees to the idea of scanning the files.

Mr. Mitsuda noted that the OP has the files, although it is not according to the court's index.

Mr. Lamon stated that they have made arrangements to copy the entire file and could possibly burn CDs and circulate it on the database.

Chair Sakumoto noted that scanning the files will assure that everyone is looking at the same record and commented that the willingness to share the cost is helpful and a step in the right direction.

Mr. Ching noted that the file is a volume of materials and that the LUC needs to maintain good custodial care of these documents and will work within this realm to ensure that the parties have access to all of the materials.

Chair Sakumoto asked if the June 7, 8, and 9 hearings will be added to the regularly scheduled June meetings.

Mr. Ching commented that during the Tentative Meeting Schedule discussion, he will propose that the June 7, 8, and 9 meeting dates be the sole meetings for the month of June and will tentatively reserve as a contingency, the latter two meeting dates (June 15th & 16th) if the three hearing dates are not adequate to complete hearings on Lanai.

Mr. Quan entered the meeting at this time. Mr. Quan apologized for not being able to be present at the start of this agenda item because he was called to an emergency at his office.

Chair Sakumoto entertained a motion that the LUC direct the Executive Officer to prepare an order, which sets this matter to hearing.

Vice Chair Montgomery moved to direct the Executive Officer to prepare an order setting the matter for hearing in accordance with the dates that were set in his report. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Commissioners Montgomery, Piltz, Formby, Kanuha, Im, and Sakumoto.

The motion passed with 6 ayes, 2 absent.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- February 16 & 17 at the Kapalua Bay Hotel in West Maui for the Pulelehua docket and to also commence hearings on Kuleana Ku`ikahi.

- March 2 meeting will be held at the City and County's Kapolei Hale to ensure appropriate community participation for the West Beach and Sphere dockets.
- March 3 the LUC will reconvene their meeting in the LUC conference room for continued hearing and action on the Aina Nui and ACF dockets.
- March 16 or 17 is tentatively scheduled for a one-day meeting on Maui to take action on a motion filed by Waikapu 28 Investment.
- April 6 & 7 is tentatively scheduled on the Big Island for the Big Island County Club Homes docket. This may be cancelled should the filing not prove complete.
- April 20 on Maui to open hearings on Hale Mua. This date may also be cancelled in the event that the petition remains incomplete.
- May 18 & 19 and June 7, 8, & 9 have just been approved for Lanai hearings.

Mr. Ching added that for a number of reasons, the meeting schedule is presently hard to predict with certainty.

Vice Chair Montgomery noted that he will not be able to attend the March 16 & 17 meeting dates and suggested to change the meeting dates since there appears to be the absence of other commissioners on those dates.

Mr. Ching indicated that he would cancel the March 16 & 17 meeting dates and shift the Waikapu 28 Investment matter to April 6 & 7, 2006 in Maui.

Mr. Ching announced that the OP is also willing to facilitate a workshop event for the LUC to receive information on affordable housing from county housing agencies and legislative issues.

After a brief discussion, there were no further questions posed by the Commission.

A recess break was taken at 12:00 p.m. The meeting reconvened at 12:10 p.m.

LEGISLATIVE UPDATE

Mr. Ching provided a brief legislative update and discussed issues of HB1938 related to permissible agricultural uses. Mr. Ching also discussed two proposals being entertained by the Legislature involving a quasi-legislative mechanism where individual counties would have an opportunity to update the LUC's district boundary maps via a boundary review and application process. Mr. Ching also described a proposal seeking to nominate a native Hawaiian cultural practitioner as a member on the Commission to further enhance sensitivity to native Hawaiian cultural issues.

Vice Chair Montgomery noted that he believes there are currently only geographical requirements for members with no requirements that nominees possess specific expertise. Vice Chair Montgomery added that it might be difficult to define what a Hawaiian cultural practitioner would be and if that requirement would specify culture as opposed to ethnicity.

Mr. Ching replied that the current formula is a geographical requirement and noted that last year HB 445 proposed that OHA nominate at least one member of the Commission. Mr. Ching added that testimony was provided to include that it is currently a requirement of this Commission that all members are sensitive to the impacts of any proposed project upon native Hawaiian cultural practices.

Commissioner Formby commented that he prefers to have more cultural practitioners testify before the Commission so that the facts go onto the record.

Chair Sakumoto concurred with Commissioner Formby adding that the Commission needs these qualified people to testify before the Commission rather than sitting as a board member.

Mr. Ching noted that this matter has not yet been scheduled for hearing but will take into consideration the comments made by this Commission.

After a discussion, Chair Sakumoto requested that the Executive Officer continue to provide the LUC with his testimony and to also include the respective bills. Chair Sakumoto also noted that draft testimony would be limited to processes only as opposed to policy matters.

Mr. Ching replied in the affirmative, adding that his primary role in drafting testimony involved an analysis of how it affects the LUC's operations and efficiency and not get into policy areas.

After a brief discussion, Mr. Ching noted that he will attempt to keep the LUC informed on future legislative proposals and responses. Mr. Ching added that he will also agenda a workshop forum to provide the opportunity for LUC discussions with a balanced panel.

The meeting adjourned at 12:40 p.m.

(Please refer to LUC Transcript of February 3, 2006 for more details on this matter.)