

LAND USE COMMISSION
MINUTES OF MEETING

April 6, 2006

Maui Beach Hotel
Elleair Ballroom
170 Kaahumanu Avenue
Kahului, Maui, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Kyong-su Im
Duane Kanuha
Steven Montgomery
Randall Sakumoto

COMMISSIONERS ABSENT: Ransom Piltz

COMMISSIONER RECUSED: Lisa Judge

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

Chair Sakumoto called the meeting to order at 10:05 a.m.

ADOPTION OF MINUTES

Chair Sakumoto noted a correction on the minutes of March 2, 2006, page 4, 2nd full paragraph, 2nd sentence to read “a denial with modification is not permitted.”

Commissioner Im also noted the corrected spelling of the word “application” on the minutes of March 2, 2006, page 6, last paragraph,

Vice Chair Montgomery then moved to adopt the Land Use Commission meeting minutes of March 2, 2006 as amended and the meeting minutes of March 3, 2006. Commissioner Contrades seconded the motion. The amended minutes of March 2, 2006 and March 3, 2006 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- April 20 the LUC will take a field trip to include various sites; a visit to the H-power facility, Kapolei Harborside development (a new docket), the Phonecians boat ramp, the Ko Olina marina and the previous location of the Ko Olina boat ramp, and the Waimanalo Gulch landfill site. The field trip will commence at approximately 9:00 a.m.
- April 21 will be a full agenda with the status report from the Department of Environmental Services on the Waimanalo Gulch landfill and other ministerial items. The meeting will be held at the conference room on the 2nd floor to accommodate a large audience.
- May 4 will feature a one-day meeting at the Hilo Hawaiian Hotel to hear the McCully docket.
- May 18-19 the LUC is scheduled for Lanai, but may also be on Maui for a portion of that time.
- July 6-7 the LUC will be on Maui to commence hearings on the Hale Mua docket.
- July 20-21 the LUC may be on the Big Island.

There were no questions posed by the Commission.

DR04-30 KULEANA KU`IKAHI, LLC (Maui)

Chair Sakumoto stated that this was an action meeting on DR04-30 Kuleana Ku`ikahi, LLC (Maui) to adopt the Findings of Fact, Conclusions of Law, and Decision and Order.

APPEARANCES

Richard McCarty, Esq., represented Kuleana Ku`ikahi, LLC

Blaine Kobayashi, Esq., represented Intervenor R. Charles Bergsen, et al

Paul Horikawa, Esq., represented Intervenor Jason and Concetta Cuevas

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

Bryan Yee, Deputy Attorney General, represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that the Commission had received correspondence from James Geiger, Esq., indicating that he was not able to attend the meeting due to previously scheduled court matters.

Chair Sakumoto noted that there were no public witnesses.

Mr. Ching stated that at the last meeting in Kapalua, the Commission in its deliberations, directed that a number of changes be made to the document. Mr. Ching summarized the changes made to the decision and order as per the Commission's deliberations.

Chair Sakumoto noted that he had proposed that an additional change be made to ensure that the order section track the language currently found in Finding of Fact Number 10.

Mr. Ching commented that such a change was outside of the scope of the LUC's deliberations and that Commission action was needed.

After a brief discussion, Commissioner Formby commented that he recollects that at the last meeting, Chair Sakumoto proposed a change but the Commission had not made a decision at that time. Commissioner Formby then moved for a non-substantive change to the language of the decision and order that it parallels that of Findings of Fact Number 10. The motion was seconded by Vice Chair Montgomery.

Commissioner Formby added that this change assures that the language of the decision and order reflects the same charge that the LUC gave to its hearings officer. The motion directs staff to ensure that the order parallels the language found in Findings of Fact Number 10.

The Commission was polled as follows:

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

The motion passed with 6 ayes, 1 recused, 1 absent.

Commissioner Formby then moved that the Land Use Commission in DR04-30 Kuleana Ku`ikahi LLC adopt the Findings of Fact, Conclusions of Law, and Decision and Order as amended. The motion was seconded by Commissioner Contrades.

The Commission was polled as follows:

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

The motion passed with 6 ayes, 1 recused, 1 absent.

A04-753 AINA NUI CORPORATION (Oahu)

Chair Sakumoto stated that this was an action meeting on Docket No. A04-753 Aina Nui Corporation (Oahu) to adopt the Findings of Fact, Conclusions of Law, and Decision and Order.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner
Cameron Nekota, Esq., represented Petitioner
Naomi Kuwaye, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Ching summarized the changes to the order, and noted that the outstanding issue was that the LUC had directed that changes be made to condition number 1 governing affordable housing. Mr. Ching added that the changes were made to the second sentence, and read the amended condition.

Vice Chair Montgomery moved to adopt the decision and order as conforming to the vote taken at the previous meeting. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

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

The motion passed with 6 ayes, 2 absent.

A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (Oahu)

Chair Sakumoto stated that this was an action meeting to: 1) determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 331.674 acres of land currently in the Agricultural District to the Urban District at Ewa, Oahu, Hawaii; and 2) to determine whether an Environmental Impact Statement Preparation Notice is warranted pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner
Cameron Nekota, Esq., represented Petitioner
Naomi Kuwaye, represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that staff has received communication from the City and County of Honolulu that they will not be attending today's meeting.

Chair Sakumoto noted that there were no public witnesses.

Ms. Kuwaye stated that the Petitioner has begun to prepare an EIS and that they believed that the proposed boundary will have a significant effect and that the Land Use Commission is the appropriate accepting authority. Ms. Kuwaye commented that the Petitioner plans to amend the petition filed on March 17, 2006 to include a 12.845-

acre lot located on the southern boundary of the Petition area. Ms. Kuwaye added that the petitioner will also be amending its exhibits and an amended EISPN will also be filed.

Mr. Yee stated that OP agrees that the LUC is the appropriate accepting authority and that the proposed action will have a significant effect to warrant the preparation of an EIS.

Mr. Ching stated that staff concurs with petitioner that the possibility of a significant impact warrants the preparation of an EIS and that the LUC is the appropriate reviewing and accepting authority.

Vice Chair Montgomery moved that the LUC is the accepting authority in Docket No. A06-763 Kapolei Property Development. The motion was seconded by Commissioner Formby.

The Commission was polled as follows:

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

The motion passed with 6 ayes, 2 absent.

Commissioner Im moved that the proposed action would have a significant effect and warrants the preparation of an EIS. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

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

The motion passed with 6 ayes, 2 absent.

A recess break was taken at 10:45 a.m. The meeting reconvened at 11:00 a.m.

A00-734 CASTLE & COOKE HOMES HAWAII, INC. (Oahu)

Chair Sakumoto stated that this was an action meeting to Vacate the Decision and Order issued on June 27, 2002, pursuant to Supreme Court decision filed in S. C. No. 26174 on February 10, 2006.

APPEARANCES

Benjamin Matsubara, representing Castle & Cooke Homes Hawaii, Inc.
Bryan Yee, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Public Witness

1. Lucienne deNaie

Ms. deNaie stated that she was appearing in the capacity of Chairperson of the state chapter of the Hawaii Sierra Club. Ms. deNaie noted that they were the plaintiffs in this matter requesting that a full EIS be done on the project and expressed her appreciation to the LUC for taking the necessary steps to allow that to proceed in compliance with the Supreme Court ruling.

There were no questions posed by the parties and the Commission of the witness.

Staff's Report

Mr. Ching provided a brief chronology of the docket.

Mr. Matsubara stated that the co-applicants are working out the details and they intend to proceed consistent with the Supreme Court's decision. Mr. Matsubara clarified that he is representing Castle and Cooke Hawaii and has spoken to the attorney for Pacific Health Community, who has indicated that they had no objections to his attendance at this meeting.

Mr. Yee noted that the OP agrees with the proposed LUC action.

Chair Sakumoto stated that given the ruling filed by the Supreme Court, the LUC's order of June 27, 2002 is vacated. Chair Sakumoto added that any further

consideration by the LUC in this docket requires an environmental assessment or environmental impact statement be completed for the project in accordance to HRS §343(5)(c).

Mr. Matsubara noted a housekeeping matter and introduced Richard Mirikitani, Senior Vice President for Castle and Cooke Hawaii.

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:25 a.m.

Chair Sakumoto noted that they have received a message that the counsel for the Lanihau Properties docket was still in flight to the meeting from Hilo. Chair Sakumoto entertained a motion to amend the agenda to hear the next item first, the Waikapu Investment 28 docket.

Commissioner Im moved to amend the agenda to take the Waikapu Investment 28 matter before the Lanihau Properties docket. The motion was seconded by Commissioner Formby. The motion was approved by voice votes.

A04-746 WAIKAPU INVESTMENT 28, LLC. (Maui)

Chair Sakumoto stated that this was an action meeting: 1) to consider the First Stipulation for Extension of Time to File Responses to Waikapu 28 Investment, LLC's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed December 14, 2004; and 2) to consider the Petitioner's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed December 14, 2004.

APPEARANCES

Scott Nunokawa, Waikapu Investment 28, LLC

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

Bryan Yee, Deputy Attorney General, represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that Petitioner was seeking relief in relation to the Petitioner's educational fair share contribution. The LUC had previously authorized the issuance of a subpoena to the DOE, Patricia Hamamoto, or her designee to appear

before the Commission to be examined under oath regarding the statements and allegations related to the DOE's fair share contribution calculations raised in Petitioner's motion filed on November 25, 2005. On March 31, 2006, the Petitioner filed a motion withdrawing the Motion To Amend Findings of Fact, Conclusions of Law, and Decision and Order.

Chair Sakumoto stated that the withdrawal by the Petitioner of their motion leaves no matter before the LUC.

Chair Sakumoto noted that there were no public witnesses.

Mr. Nunokawa stated that the fair share agreement with the DOE is being executed at this point.

Ms. Lovell stated that the County had no comments and that they are happy that this matter has been resolved.

Mr. Yee noted that the State had no comments.

Chair Sakumoto stated that given the withdrawal of Petitioner's motion, the LUC recalls their subpoena of Patricia Hamamoto.

Chair Sakumoto noted that Mr. Moore, counsel for Lanihau Properties had not yet arrived on Maui and called for a lunch break at 11:25 a.m. Mr. Moore arrived at this time.

Commissioner Formby then moved that the Commission reconvene at 11:30 a.m. to hear the Lanihau docket prior to taking a lunch break. The motion was seconded by Vice Chair Montgomery. The motion was approved by voice votes.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Chair Sakumoto stated that this was an action meeting on Docket No. A00-730 Lanihau Properties, LLC, to consider the request for time extension of six months to allow Petitioner to comply with certain conditions of approval.

APPEARANCES

Michael Moore, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Chair Sakumoto noted that the Commission has received communication from the County Planning Department and the National Park Service (intervenors) that both parties were not able to attend today's meetings and that they both have no objections to the request for time extension.

Staff's Report

Mr. Ching provided the procedural history relevant to this time extension.

Mr. Moore summarized petitioner's request and reported on the status of condition 1c, which relates to the individual wastewater systems required; condition 3b, which relates to pollution prevention plans that are required prior to any construction or occupation of the property; and condition 8, the affordable housing assessment requirement.

Mr. Yee noted that the State had no questions.

Chair Sakumoto raised a few questions related to condition 8 and the County of Hawaii ordinance on affordable housing for industrial properties.

Mr. Yee stated that OP has no objections to the request for extension and also noted that the National Park Service is supporting the request. Mr. Yee added that if a future extension is required, they would request that a formal motion be submitted, as it was difficult to respond and formulate a response to an extension request in the form of a letter, where more discussion and justification could have been provided.

Chair Sakumoto asked what is the commencement date being requested for the time extension of 6 months and noted that the last extension expired in February.

Mr. Moore commented that he would request the date to start from today, the date of action from the board.

Commissioner Im stated that he was not opposed to the extension but if the extension expired in February, he believed that the condition has not been met and technically the Petitioner is in violation of that condition. Commissioner Im discussed whether the LUC would need to waive that lapse and then grant the extension. Commissioner Im believed that the extension should begin from the date of the termination of the last extension (February) so that there is no gap in the time period. Commissioner Im added that he agreed with the State's counsel that a formal motion needs to be filed, if necessary in the future. Commissioner Im asked if the Petitioner would have adequate time if the time extension is granted from February.

Mr. Moore commented that their request is for 6 months and would like that date effected as of today, with the inclusion of a waiver from the last extension.

Mr. Yee suggested that the date should begin from the expiration date to assure that there is no lapse.

Commissioner Formby concurred with Commissioner Im that the date should start from the date of expiration. Commissioner Formby suggested that since there are no waivers before the LUC, the extension could be for 8 months and treated as a motion for extension.

Commissioner Kanuha raised a few questions regarding the modification of the County's affordable housing policy for industrial developments. Commissioner Kanuha commented that TSA, which is in the same area as the petitioner, has recently submitted a housing needs assessment and has addressed the pending modification to this policy. Commissioner Kanuha added that since TSA could produce an adequate housing needs assessment, he believed that Petitioner may not need the proposed extension.

After a brief discussion, Commissioner Formby moved to approve a time extension of 8 months from the expiration of the prior extension, which was in February 2006, on conditions 1c, 3b and 8. In addition, should Petitioner come back to this Commission for another extension that it be only by formal motion with a discussion of substantive issues. The motion was seconded by Commissioner Montgomery.

The Commission was polled as follows:

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

The motion passed with 6 ayes, 2 absent.

The meeting adjourned at 12:10 p.m.

(Please refer to LUC Transcript of April 6, 2006 for more details on this matter.)