

LAND USE COMMISSION
MINUTES OF MEETING

May 17, 2007

Leiopapa A Kamehameha
4th Floor
Conference Room 405
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Howard Hamamoto
Kyong-su Im
Lisa Judge
Duane Kanuha
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: Ransom Piltz

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

Chair Judge called the meeting to order at 9:40 a.m.

Chair Judge introduced and welcomed the LUC's newest Commissioner - Howard Hamamoto.

ADOPTION OF MINUTES

Chair Judge noted that the approval of the minutes would be deferred until another time.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the next scheduled meeting will be held in Kona and noted that the LUC may meet for as long as possible on Thursday, June 7 and return to Honolulu on Friday morning, June 8. Mr. Ching added that there is a possibility that the August meeting items and location may change, but the meeting dates will remain the same.

There were no questions posed by the Commissioners.

A99-728 HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, STATE OF HAWAII (Oahu)

Chair Judge stated that this was an action meeting to:

- Consider Petitioner University of Hawaii's Motion to Waive Fees and Expenses and to Excuse Petitioner From Any Requirement to Reimburse Fees and Expenses; and
- To consider the University of Hawaii's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order dated September 8, 1999, which reclassified approximately 1,300 acres of land from the Agricultural District into the Urban District at Honouliuli, Ewa, Oahu for residential, commercial, sports complex, school site, park, and open space uses.

APPEARANCES

Douglas Ing, Esq., represented Petitioner

Emi Kaimulua, Esq., represented Petitioner

Gene Awakuni, Chancellor, University of Hawaii West Oahu Campus

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Matthew Higashida, City & County of Honolulu, Department of Planning and Permitting

Yvonne Izu, Esq., represented Intervenor Haseko (Ewa) Inc.

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

Vice Chair Formby disclosed that his law firm represented the UH Marine Program and despite this representation, he believed that his continued participation in this matter would not be impartial. There were no objections by the parties as to the participation of Vice Chair Formby in this docket.

Mr. Ing began his presentation regarding their motion to waive fees and stated that the UH is a public body and requested that the hearing fees be waived.

The parties had no objections to the waiver of fees for the University.

Vice Chair Formby then moved to grant petitioner's motion to waive fees and expenses. The motion was seconded by Commissioner Wong.

The Commission was polled as follows:

Ayes: Formby, Wong, Contrades, Im, Kanuha, Hamamoto, Teves, and Judge.

The motion passed with 8 yes, 1 absent.

Admission of Additional Exhibits

Mr. Ing offered petitioner's exhibits UH 1 to 24. The parties had no objections to the submittal of petitioner's exhibits. UH exhibits 1 to 24 were admitted into evidence.

Ms. Sunakoda described the City's exhibit 1. There were no objections by the parties. The City's exhibit 1 was admitted into evidence.

Ms. Izu briefly described and offered Haseko's exhibit 1 to 8 and the written statement of Nelson Lee. The parties had no objections to the submittal of Intervenor's exhibits. Said exhibits were admitted into evidence.

Mr. Yee described and offered the Office of Planning's (OP) amended list of exhibits and OP's exhibits 1 to 4. There were no objections by the parties. OP's exhibits 1 to 4 were admitted into evidence.

Commission's Witness

The Commission called upon John Wong to provide a historical context for today's proceedings. Mr. Wong had served as the original petitioner's counsel (Hawaii Community Development Corporation of Hawaii - HCDCH) during its hearing on reclassification.

1. John Wong

Mr. Wong stated that he is the supervising deputy attorney general for the housing unit of the Department of the Attorney General and was now testifying on behalf of the Hawaii Housing Finance and Development Corporation (HHFDC), successor in interest to the HCDCH. Mr. Wong provided a factual context of the original petition proceeding.

Chair Judge asked in what fashion had the DLNR approved or authorized HCDCH to pursue reclassification of the 16,000 acres back in 1994.

Mr. Wong noted that the 16,000 acres was subsequently conveyed by board action to the Department of Hawaiian Home Lands (DHHL) in response to Act 316, which was passed by the legislature to reimburse the Hawaiian Home Lands Trust.

Commissioner Im posed questions regarding the various parcels that were transferred and the relocation of the UH site from mauka to makai of the highway. Commissioner Im commented that there seems to have been many changes since the reclassification approval in 1999 and wondered if these changes comport to the original EIS filed with the petition.

After a discussion, there were no further questions posed for Mr. Wong by the parties or the Commission.

Petitioner's Presentation

Mr. Ing began his presentation and referenced a table that compared the existing language of the LUC's conditions for the original docket to those that the petitioner was seeking to modify today. Copies of the chart were distributed to the parties and the Commission for reference.

Petitioner's Witnesses

1. Gene Awakuni

Mr. Awakuni stated that he was the Chancellor of UH West Oahu. Mr. Awakuni described his duties and responsibilities and stated that he oversees all aspects of the institution. Mr. Awakuni noted that the West Oahu campus is currently situated on the makai side of Leeward Community College on 30,000 square feet of space with some portable units, 860 students and approximately 93 faculty and staff. Mr. Awakuni added that they hope to break ground in March 2008 and occupy the new campus in the Fall of 2009. The new campus facility anticipates enrolling 7,600 students and employing 700 faculty and staff. Mr. Awakuni also noted that with the conveyance of these lands from the Campbell Estate, they have a covenant to build at the Kapolei site by December 31, 2011.

Ms. Izu posed questions related to the drainage issues and asked if the petitioner was willing to commit to the development of a drainage master plan.

Mr. Ing stated that they have an engineer who will be testifying on this matter.

Mr. Yee posed questions related to the 2 acres designated as the elementary school site and the professional development charter school.

A recess break was taken at 10:55 a.m. The meeting reconvened at 11:10 a.m.

Commissioner Kanuha posed questions related to the recently sold off portion of the petition area to Hunt and the conditions imposed on the previous petition.

Commissioner Wong had a few questions on the LEED silver certification program.

Commissioner Im raised questions regarding any covenant attached to the land purchase and the date that construction on the campus might commence.

Vice Chair Formby posed a few questions about the DOE request for a fair share requirement and the sale of the remaining 298 acres.

Commissioner Hamamoto asked if Hunt was committed to developing the entire site or whether it would subdivide and sell to other developers. He also asked if they were required to build only residential units by the UH.

Mr. Awakuni stated that the decision to develop the entire site or subdivide had not yet been fully determined and added that they would not be restricted from pursuing either commercial or retail developments.

Chair Judge referenced the principles of smart growth and new urbanism and asked if the petitioner would encourage Hunt to adopt those principles for their project.

Mr. Awakuni confirmed that they would be encouraging Hunt to adopt these principles and were themselves committed to utilizing these principles.

Commissioner Wong asked if Hunt was required to pursue LEED certification for their portion of the project.

Mr. Awakuni stated that they are encouraging Hunt to follow sustainability principles but as a part of the sale agreement, they are unable to require them to pursue LEED certification for their development project.

After a brief discussion, there were no further questions posed for Mr. Awakuni by the parties or the Commission.

2. Grant Murakami

After considering his resume and the lack of any objections by the parties or the Commission, Mr. Murakami was qualified as an expert in urban planning. Mr. Murakami referenced exhibit UH-10 and discussed his involvement with the UH West Oahu project and described the UH West Oahu site selection process.

Ms. Izu posed questions related to the proposed amendments to condition number 13.

Mr. Ing stated that their engineer, Todd Beiler, would be speaking on this matter.

Mr. Yee asked if Mr. Beiler would be addressing the April 26, 2007 letter from the U.S. Coast Guard.

Mr. Ing stated that they have not planned to have him address that letter and noted that the Coast Guard was not a party to this matter.

Commissioner Hamamoto had a few questions related to the anticipated 7,600 students for the new site and if this was a maximum amount of students for enrollment. Commissioner Hamamoto also raised questions regarding plans for future expansion of the site.

Commissioner Kanuha asked if the petitioner knew what DHHL planned for the adjacent site. Commissioner Kanuha commented that the development of this site and planned adjoining projects would greatly increase the population density in this area. Commissioner Kanuha asked about the issues of drainage, potable water, regional park, traffic, and the alignment of the rail system.

Commissioner Wong posed a few questions about the need or development of a regional park.

A lunch recess was taken at 12:15 p.m. The meeting reconvened at 1:35 p.m.

Commissioner Im commented that the original petition area is 1,300 acres and this motion was only on the 500 acres. Commissioner Im asked why all the conditions could not be coordinated with the rest of the petition area.

Mr. Ing stated that the university is the owner of the 500 acres and want to have conditions specifically applied to the 500 acres. The other agencies involved would need to handle their own conditions.

Commissioner Im also discussed condition number 5 related to the avigation right of flight and noise easements; condition number 16 regarding the regional park requirement; and condition number 20 related to the habitat conservation plan.

EXECUTIVE SESSION

Commissioner Wong 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 Teves seconded the motion. The motion was approved by a show of hands.

The Commission entered into executive session at 1:55 p.m.

The open meeting reconvened at 2:25 p.m.

Mr. Ing noted that for the 1,300 acres, there was no regional park planned under the master plan and that the only recreational activities shown in the original petition were small parks and the sports complex.

3. David Miyamoto

After considering his resume and lack of objections raised by the parties and the Commission, Mr. Miyamoto was qualified as an expert in civil engineering. Mr. Miyamoto noted that Engineering Concepts provided the consulting services for this project and discussed the scope and concept of the drainage report for the UH West Oahu EIS.

A recess break was taken at 2:40 p.m. The meeting reconvened at 2:55 p.m.

Ms. Sunakoda posed questions in reference to condition number 13 regarding the proposed modification in EIS exhibit 14, page 27, adding that this condition is identical to the finding of fact in the Gentry docket.

Ms. Izu raised questions regarding the existing drainage improvements on the property, the Kaloi watershed, the decision and order in the Gentry docket, and how the proposed condition compared to the condition in the Gentry docket.

Mr. Yee had questions related to the condition related to the Ewa Villages drainage master plan and the language of condition number 13.

A recess break was taken at 3:05 p.m. The meeting reconvened at 3:30 p.m.

Mr. Ing stated that the parties have reached a stipulation regarding condition numbers 12 and 13.

The parties noted that they had indeed stipulated to the language offered by the Movant (UH West Oahu).

A recess break was taken at 3:30 p.m. The meeting reconvened at 3:55 p.m.

Mr. Ing stated that based on the stipulations by the parties, the petitioner had no further questions of Mr. Miyamoto.

5. Todd Beiler

Mr. Beiler stated that he was an acoustics engineer with DR Adams and Associates. Mr. Beiler was subsequently qualified by the Commission as an expert in acoustics engineering. Mr. Beiler discussed his involvement with the UH West Oahu project and the environmental noise assessment which was compiled. Mr. Beiler's report was submitted as exhibit UH-21. Mr. Beiler discussed noise level contours and stated that he prefers outdoor indoor noise reduction levels at 55 Ldn and recommended that condition number 8 be eliminated due to its measurement of LEQ instead of Ldn.

Chair Judge referenced the April 16, 2002 letter from the Department of Homeland Security and the U.S. Coast Guard and commented that this matter needs to be addressed.

Mr. Ing stated that the Ldn is consistent with aircraft noise and that the project area is outside of the Ldn contour.

Commissioner Im raised questions regarding condition numbers 5, 6, and 8 related to restrictions and the noise from aircrafts, and Ldn versus LEQ measurements.

After a discussion, Vice Chair Formby stated that to clarify the status of the petitioner and the legal confines of the property that is subject to this hearing, he moved that the LUC recognize the UH as the successor in the interest to the HCDCH, the petitioner in Docket No. A99-728, with respect solely to the approximate 500 acres identified as TMK 9-16-16 por. 108 and 120 and also identified as Land Court lot 10077.

Vice Chair Formby also moved that the approximate 500 acres be treated separately from the rest of the land that is the subject of Docket No. A99-728 and that this petition be given a different docket number, Docket No. A99-728(a). The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Formby, Kanuha, Wong, Teves, Hamamoto, Im, Contrades, and Judge.

The motion passed with 8 yes, 1 absent.

Vice Chair Formby discussed the stipulated conditions by the parties and the conditions that were in dispute by the parties.

Ms. Sunakoda noted that in reference to condition 16, the City is currently in discussion with the City's Department of Parks and Recreation and other City agencies regarding the recreation space needs of the anticipated area population.

Commissioner Kanuha asked who is the successor to the 800 remaining acres since the LUC bifurcated the 500 acres to the UH.

Mr. Yee stated that he was unsure, but that he believed that the outcome of today's decision should not affect the present motion before the LUC. Mr. Yee added that it was his understanding that the DHHL had no objections to the UH motions, and that they were not participating as a party, and had no objections to the 500 acres being carved out.

Commissioner Contrades left the meeting at this time.

Chair Judge commented that the LUC had a copy of a letter from the DHHL that recognizes that the motion was to carve out the 500 acres and that the DHHL did not object to the relief sought by the UH.

Mr. Yee commented that there had been stipulations modifying the conditions offered by the parties and asked if any amended decision and order filed by the LUC would be filed with the Bureau of Conveyances

Mr. Ing noted that the amended decision and order would be filed with the Bureau of Conveyances.

Admission Of Additional Exhibit

Mr. Ing requested that the EIS previously prepared and approved for the UH project be admitted into evidence as petitioner's exhibit UH-25. There were no objections by the parties. Said exhibit was admitted into evidence.

Vice Chair Formby stated that solely with respect to the approximate 500 acres identified as TMK 9-16-16 por. 108 and 120, also identified as Land Court lot 10077, the LUC would go through the proposed modifications and action one by one and vote on each condition separately.

Vice Chair Formby moved to approve the new language of Condition No. 3. The motion was seconded by Commissioner Hamamoto.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Wong, Teves, Kanuha, Im, and Judge.

The motion passed with 7 yes, 2 absent.

Vice Chair Formby moved that Condition No. 5 be stricken and released for this petition area. The motion was seconded by Commissioner Hamamoto.

Vice Chair Formby noted that there was some discussion on this issue but in referencing exhibit UH-22, he believed it was clear that as far as aircraft noise, there is no contour levels that apply to the property and it was his belief that it was better to not have it in.

Commissioner Im commented that although he understood Vice Chair Formby's position, he believed that this Commission had only a one-day hearing on this matter and the other commissioners who approved this in 1999 had a much more extensive hearing on this matter. Commissioner Im added that he felt uncomfortable removing it at this time.

Vice Chair Formby added that the testimony today noted that the number is not even the proper number as exhibit UH-24 shows the proper number so he believed that leaving it in would be a disservice to the petitioner.

Commissioner Wong concurred with Commissioner Im noting that if the petitioner is suggesting that it is not applicable to them, then they have nothing to worry about. Commissioner Wong stated that he felt that the condition should remain.

Commissioner Kanuha clarified that this condition and the subsequent condition amendments would only apply to the bifurcated area of UH's 500 acres.

After a brief discussion, the Commissioners were polled as follows:

Ayes: Formby, Hamamoto, Judge.

Nays: Wong, Teves, Kanuha, Im

The motion failed with 3 yes, 4 no, and 2 absent.

Vice Chair Formby moved that Condition No. 6 be released. The motion was seconded by Commissioner Hamamoto.

Commissioner Wong commented that he raised the same questions as raised before without repeating them.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Judge.

Nays: Wong, Teves, Kanuha, Im

The motion failed with 3 yes, 4 no, and 2 absent.

Vice Chair Formby moved to release Condition No. 8. The motion was seconded by Commissioner Hamamoto.

Commissioner Wong stated that he believed that there was testimony and support on the record why petitioner needed relief from this condition and expressed his support for the motion.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Wong, Teves, Kanuha, Im, and Judge.

The motion passed with 7 yes, 2 absent.

Vice Chair Formby moved to approved the proposed modified language for Condition No. 12. The motion was seconded by Commissioner Hamamoto.

Commissioner Wong stated that he believed that there was testimony and support on the record why petitioner needed relief from this condition and expressed his support.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Im, Kanuha, Teves, Wong, and Judge.

The motion passed with 7 yes, 2 absent.

Vice Chair Formby moved to approve the modification of Condition No. 13 as proposed by petitioner. The motion was seconded by Commissioner Hamamoto.

Commissioner Im offered a friendly amendment to “An updated drainage master plan, if required” to add “by the City” after the word required.

Vice Chair Formby and Commissioner Hamamoto accepted this friendly amendment.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Im, Kanuha, Teves, Wong, and Judge.

The motion passed with 7 yes, 2 absent.

Vice Chair Formby moved to accept Condition No. 16 as modified and stipulated by the parties. The motion was seconded by Commissioner Hamamoto.

Commissioner Im offered a friendly amendment to add “university uses” within the petition area.

Vice Chair Formby and Commissioner Hamamoto accepted this friendly amendment.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Wong, Teves, Kanuha, Im, and Judge.

The motion passed with 7 yes, 2 absent.

Vice Chair Formby moved to release Condition No. 20. The motion was seconded by Commissioner Hamamoto.

Commissioner Im commented that although he understood that there was funding, he was unsure if that complied with everything that this condition required. Commissioner Im added that it was his preference to leave it there.

Commissioner Wong concurred with Commissioner Im and noted that if the petitioner has satisfied this condition, then there is nothing wrong with leaving it in, but to release it may be a dangerous thing to do.

Commissioner Hamamoto asked if the condition is released, would the UH still be held to the U.S. Fish and Wildlife provision.

Chair Judge stated that the language called for the petitioner to fund an approved habitat conservation plan and that there was testimony that this had occurred. However, if the condition is released and in the future if the government agency requested for more funding to the plan, this would not apply any longer.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Kanuha, Judge.

Nays: Wong, Teves, Im

The motion failed with 4 yes, 3 no, 2 absent.

Vice Chair Formby moved to accept the modified language of Condition No. 21 as amended by the LUC. The motion was seconded by Commissioner Hamamoto.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Im, Kanuha, Teves, Wong, and Judge.

The motion passed with 7 yes, 2 absent.

Vice Chair Formby moved to release Condition No. 26. The motion was seconded by Commissioner Hamamoto.

After a discussion, the motion was made to retain Condition No. 26, subjected to friendly amendment as offered by Chair Judge and Commissioner Im. The amendments were approved by Vice Chair Formby and Commissioner Hamamoto.

The Commission was polled as follows:

Ayes: Formby, Hamamoto, Im, Kanuha, Teves, Wong, and Judge.

The motion passed with 7 yes, 2 absent.

Commissioner Wong moved that the petitioner comply with LEED silver standards as an additional condition. As there was no second to the motion, the matter was not pursued any further.

After a discussion regarding Condition Nos. 5 and 6, Commissioner Im moved that solely with respect to the 500 acres described in the motion brought by the UH in this matter that Condition Nos. 5 and 6 as modified, described or offered by the UH be approved. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Im, Kanuha, Hamamoto, Teves, Wong, Formby, and Judge.

The motion passed with 7 yes, 2 absent.

The meeting adjourned at 5:40 p.m.

(Please refer to LUC Transcript of May 17, 2007 for more details on this matter.)