

LAND USE COMMISSION  
MINUTES OF MEETING

June 21, 2007

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

COMMISSIONERS PRESENT: Howard Hamamoto  
Kyong-su Im  
Lisa Judge  
Ransom Piltz  
Reuben Wong

COMMISSIONERS ABSENT: Thomas Contrades  
Michael Formby  
Duane Kanuha  
Nicholas Teves

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 1:00 p.m.

Chair Judge announced that this was the last meeting for Commissioner Im. Chair Judge commended Commissioner Im for volunteering his time and commitment to the Commission during the past four years. The other members present also expressed their appreciation for his efforts and wished him well.

Commissioner Im stated that he will miss everyone and commented that the Land Use Commission's process really works and that he was glad to have been a part of this Commission.

### ADOPTION OF MINUTES

Commissioner Hamamoto moved to adopt the minutes of June 7, 2007. Commissioner Im seconded the motion. The minutes of June 7, 2007 were approved by voice votes.

### TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- On July 12, the LUC will meet in Kauai to hear the Knudsen motion to withdraw and Kauai ATV order to show cause hearing. Due to the requirement of the LUC contract with the hotel, the LUC will overnight in Kauai and return to Honolulu on Friday to deal with a number of Oahu docket items.
- On July 26-27, the LUC will travel to Maui to open hearings on the Emmanuel Lutheran Church docket.
- On August 9-10, the LUC will be meeting in Oahu.
- On September 6-7, the LUC will open hearings in Kona for the Waikoloa Mauka docket.

Mr. Ching polled the LUC regarding a 1-day meeting in Maui on September 20 to possibly take action on the Emmanuel Lutheran Church docket. He noted that on the following week of September 26 to 28, the HCPO Conference is scheduled to be in Kona.

After a brief discussion, Chair Judge noted to leave the 1-day meeting in Maui on our calendar and to poll the other commissioners as to their availability on these dates.

A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (Oahu)

Chair Judge stated that this was a meeting on Docket No. A06-763 Kapolei Property Development, LLC.

Chair Judge stated that since the LUC was unable to achieve the necessary quorum of five members at the 9:30 a.m. time specified on the agenda, staff was on hand to explain the situation and inform any party or member of the public that the meeting would commence at 1:00 p.m. After convening at 1:00 p.m., the LUC's Chair deferred action on this agenda item until another appropriate meeting date. However, the public witnesses would be heard on this agenda item.

APPEARANCES

Jessie Souki Esq., represented Petitioner

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

Bryan Yee, Esq., represented State Office of Planning

Laura Thielen, State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

Public Witnesses

1. Steven Montgomery, Ph.D.

Dr. Montgomery stated that he resides in the leeward side of the island and noted his disappointment that there were no members of the LUC who claimed residency on the West side of Oahu. Dr. Montgomery referenced an article from the Honolulu Advertiser entitled "Finding Creative Ways to Relieve Crisis in Affordable Housing" dated June 10, 2007. Dr. Montgomery stated that he would be duplicating copies of this article for distribution to the LUC.

After a brief discussion, there were no questions posed for Dr. Montgomery by the parties or the Commission.

2. Bob Nakata

Reverend Nakata stated that he was the pastor of the Kahaluu United Methodist Church in Kaneohe. Reverend Nakata stated that he was an advocate for the homeless and affordable housing and was heavily involved with the Kukui Gardens project. Reverend Nakata commented on the severe housing shortage in this state and his involvement with helping the homeless population. Reverend Nakata added that he was encouraged to hear that the LUC has started to look at requiring commercial developments to provide affordable housing.

There were no questions posed for Reverend Nakata by the parties or the Commission.

3. Kathleen Hasegawa

Ms. Hasegawa stated that she was the Executive Director of Hawaii Habitat for Humanity. Ms. Hasegawa briefly described her organization and noted that they are a part of an international organization that has built more than 200,000 homes. In Hawaii, there are seven organizations that build homes for the low- and very-low income families. Land is donated by leasehold or fee simple and they work with partner families and community volunteers who help to build these homes with sweat equity. Ms. Hasegawa commented that if the LUC asked the petitioner to form a partnership with Habitat for Humanity in the Kapolei area, non-profit developers and for-profit developers would be able to build homes at approximately \$75,000 each.

Commissioner Im expressed his appreciation to Ms. Hasegawa and the other public witnesses for coming before the LUC today and volunteering their time in helping the community. Commissioner Im commented that this topic was one which was most endearing to him and that it is important to keep things in perspective as Hawaii has seen much economic growth and has the lowest unemployment rates in the nation.

There were no further questions posed for Ms. Hasegawa by the parties or the Commission.

Chair Judge noted that this matter is deferred until the July 13 meeting.

A recess break was taken at 1:45 p.m. The meeting reconvened at 1:53 p.m.

A89-649 LANAI RESORT PARTNERS (Lanai)

Chair Judge stated that this was a meeting to consider setting deadlines for the filing of motions, and memoranda in opposition; and setting a date for hearing on the motions; and other appropriate action.

Chair Judge noted that the LUC had received email correspondence from the office of the County of Maui, Corporation Counsel indicating that they would not be in attendance at today's hearing.

APPEARANCES

Bruce Lamon, Esq., represented Petitioner  
Alan Murakami, Esq., represented Intervenor  
Bryan Yee, Esq., represented the State Office of Planning  
Laura Thielen, State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Ching provided a chronology of events for this docket.

Chair Judge noted that based upon the receipt of the June 15, 2007 motion filed by the Office of Planning, and based upon the LUC's rules, the parties should file their responses by the close-of-business June 25, 2007.

Chair Judge added that any motions filed by Castle & Cooke/Lanai Resort Partners, the County of Maui, and Intervenor Lanaians for Sensible Growth (LSG) be filed with the LUC and served upon the parties by the close-of-business on July 16, 2007. Any response by the parties to these motions should be filed by the close-of-business on July 23, 2007. If appropriate, a pre-hearing would be conducted shortly after this date.

Chair Judge noted that a consolidated hearing on OP's motion and any other motions filed by the close-of-business on July 16, 2007 will be held on the island of Lanai on August 23 and 24, 2007.

Chair Judge stated that the continued hearing on the remand (Lanai Company, Inc. v. LUC et al S.C. No. 22564 by the Commission's hearings officer) specified by the LUC at its hearing on May 18, 2007 will be held in abeyance until the LUC has completed its own hearing on the motions to be and already filed with the LUC.

Mr. Murakami asked if there was any leeway for additional time, possibly a week's continuance to file their responses.

Mr. Lamon stated that he would not object to a 1-week continuance and noted that he is scheduled for trial in Hilo during August 23 and 24, but will do his best to reconcile his calendar.

Mr. Yee also stated that they did not object to the 1-week continuance. However, Mr. Yee requested that the motions be filed electronically for efficiency. Mr. Yee also inquired whether they would be allowed a rebuttal to their motion filed on June 15.

A recess break was taken at 2:00 p.m. The meeting reconvened at 2:05 p.m.

Chair Judge noted that on the close of business, July 2, would be the deadline for the parties to file responses. In addition, as requested by the OP, any additional motions should be served by email to the respective parties and mailed on that date. Chair Judge noted that OP's request for rebuttal was denied, as any rebuttal that the OP or the parties would likely make could be made and heard at the August hearings.

Mr. Murakami stated his objection that the LUC would set a hearing date on the remand and not schedule a hearing on the motions, as it had already been at a year's delay. Mr. Murakami added that they have an airline ticket for their key witness that expires in July. Mr. Murakami noted his objections to this procedure and that he believed it was unfair and prejudicial to his clients.

After a brief discussion, Chair Judge noted his objection and stated that this hearing would be continued on August 23 and 24, 2007 on Lanai.

A recess break was taken at 2:10 p.m. The meeting reconvened at 2:15 p.m.

Deputy Attorney General Diane Erickson left the meeting at this time.

Chair Judge stated that this was a hearing on Docket No. DR06-32 Mark J. Bennett vs. Richard W. Gushman, II, et al., for action on various procedural matters:

- Acknowledgment of receipt of the Amended Petition;
- Establishment of a deadline for written comments with respect to the Amended Petition by Respondents and the Intervenor; and
- Establishing a further date for the continuation of the prior hearing of May 18, 2007 wherein the Commission would reach a decision on the Intervenor's and Respondents' Motion to Dismiss the original Petition as well as what course of action to take on the Amended Petition.

#### APPEARANCES

Robyn Chun, Esq., represented Petitioner

Katherine Leonard, Esq., represented Intervenor

David Karlen, Special Deputy Attorney General

Chair Judge noted that there were no public witnesses.

Chair Judge provided a brief chronology starting from the LUC hearing on May 18, 2007 and noted that the Hearings Officer had recused himself on this matter.

Chair Judge asked Petitioner whether the Amendment of the Petition was the Petitioner's response to the May 17, 2008 request to define exactly the relief sought.

Ms. Chun replied that she believed that this was correct.

Chair Judge noted that if the Intervenor wished to respond to the amendment, their response should be filed on or before July 2, 2007 and limited to a maximum of 10 pages.

Ms. Leonard stated that they would be requesting that the LUC dismiss the amended petition as well as the petition. Ms. Leonard added that the deadline of July 2 was sufficient.

Ms. Chun noted that the Petitioner would also like the opportunity to file a brief or reply to the Intervenor's response.

Ms. Leonard commented that the Intervenor recently filed a document that was not acknowledged by the Chair, and also raised concerns on the 10-page limit for Intervenor's response.

Chair Judge stated that the LUC was in receipt of the document that Intervenor filed yesterday and that it would be addressed.

Chair Judge noted that the Petitioner's response should be filed no later than July 2 and that the document does not exceed 5 pages. Chair Judge then set the hearing for July 13, 2007 in Oahu.

Chair Judge acknowledged the filing of Intervenor's document entitled "Submission of Dispositive New Hawaii Supreme Court Case" and noted that this document would be considered by the Commission on its July 13, 2007 hearing.

A recess break was taken at 2:25 p.m. The meeting reconvened at 2:30 p.m.

Deputy Attorney General Diane Erickson returned to the meeting at this time.

A99-728(a) A99-728(a) UNIVERSITY OF HAWAII (Oahu)

(Formerly part of A99-728 Housing and Community Development Corporation of Hawaii, State of Hawaii)

APPEARANCES

Emi Kaimulua, Esq., represented Petitioner

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

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

Chair Judge noted that there were no public witnesses.

Chair Judge stated that since the LUC lacked the appropriate number of members to take action on this docket, this matter would be deferred until the next appropriate date.

A recess break was taken at 2:35 p.m. The meeting reconvened at 2:40 p.m.



A93-701 KAUPULEHU DEVELOPMENTS (Hawaii)

APPEARANCES

Steven Lim, Esq., represented Petitioner

Jennifer Benck, Esq., represented Petitioner

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Lim began his presentation and provided a brief history of the project. Mr. Lim discussed the Kaupulehu Developments monitoring committee, the two LUC dockets for this petition area, and the projected number of units at total build out. Mr. Lim added that they believed that the May 21, 2007 Kaupulehu concept plan is in accordance with the requirements of the LUC's condition 25 that required petitioner to develop the land in substantial compliance with the representations made in the original proceeding.

Mr. Lim noted that petitioner would be returning to the LUC for further action on some of the procedural matters such as changing the petitioner's formal name and reporting on Kaupulehu Development's monitoring committee status.

Mr. Yee posed questions related to the filing of annual reports and the status of the preservation plan to be submitted to SHPD.

Mr. Lim stated that the last annual report was filed in December 2006. Mr. Lim added that the burial treatment plan was approved on August 2002 and the interim site preservation plan and data recovery was approved on August 2003.

Mr. Yee had questions and concerns on condition number 8 regarding protecting the coastal trail in its entirety, the 2006 annual report, and the archaeological site preservation plan.

Chair Judge questioned whether petitioner would be returning to the LUC with these answers. Chair Judge noted that petitioner could then address the timing on the archaeological preservation plan and the status of the approvals at that time.

Mr. Lim stated that they planned to return to the LUC within the next 6 months and would address these issues in the context of their motions.

There were no further questions posed by the parties or the Commission.

Mr. Lim expressed his appreciation to Commissioner Im for his many years of service as a member on the Commission.

The meeting adjourned at 2:50 p.m.

*(Please refer to LUC Transcript of June 21, 2007 for more details on this matter.)*