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LAND USE COMMISSION

STATE OF HAWAI'I

HEARING)
)
A12-796 WAIKO INDUSTRIAL INVESTMENT, LLC)
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TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing
at the Courtyard Maui Kahului Airport, Haleakala Room
532 Keolani Place, Kahului, Hawai'i, commencing at
9:30 a.m. on April 18, 2013, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

A P P E A R A N C E S

COMMISSIONERS:

SHELDON R. BIGA
THOMAS CONTRADES
LANCE M. INOUE
JAYE NAPUA MAKUA
ERNEST MATSUMURA
CHAD McDONALD

EXECUTIVE OFFICER: DAN ORODENKER
CHIEF CLERK: RILEY HAKODA
STAFF PLANNER: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A12-796 Waiko Industrial Investment, LLC
(Maui)

For the Petitioner: GREGORY GARNEAU, ESQ.

Landowner's Representative: CHARLES JENCKS

For the County: JAMES GIROUX, ESQ.
Deputy Corporation Counsel
PAUL FASI, Planner

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI
OP Planning Program Administrator

1 PRESIDING OFFICER McDONALD: Morning. I'd
2 like to call the state of Hawai'i Land Use Commission
3 meeting to order. First order of business is the
4 adoption of the April 4th/5th meeting minutes.
5 Commissioners, any comments, revisions, updates?
6 Hearing none, do I have a motion to approve?

7 COMMISSIONER BIGA: So moved.

8 COMMISSIONER INOUYE: Second.

9 PRESIDING OFFICER McDONALD: All those in
10 favor? (Aye) Any opposed? Minutes are adopted.
11 Executive Officer Orodener, could you please cover
12 the tentative meeting schedule for the Commissioners.

13 MR. ORODENER: Thank you, Mr. Chair. On
14 May 2nd we have a video conference meeting. On O'ahu
15 it'll be held at the state office building video
16 conference room -- state office building excuse me,
17 video conference room, and locations on Lihue, Kauai;
18 Hilo, Hawai'i; Wailuku judiciary building on Maui and
19 the NELHA facility in Kona. That will be to cover
20 Waiko Industrial, this docket's adoption of order; and
21 Kaonoulu Ranch motion to stay.

22 May 16th is currently open. June 13th and
23 14th we will be once again here for the state of
24 Hawai'i DOE and Kihei High School commencement of
25 hearings. June 27-28 once again here for continuation

1 on both of those dockets.

2 PRESIDING OFFICER McDONALD: Thank you,
3 Dan. Okay. This is an oral argument and
4 decision-making on Docket No. A12-796 Waiko Industrial
5 Investment, LLC. Maui to amend the land use district
6 boundary amendment on certain lands situated at
7 Waikapu, Wailuku, Island of Maui, state of Hawai'i
8 consisting of approximately 31.222 acres from the
9 agricultural district to the urban district, TMK Nos.
10 2-3-8 parcels 7 and 102. Will the parties please
11 identify themselves.

12 MR. GARNEAU: Yes, thank you. Good
13 morning, Mr. Vice Chair, members of the Commission and
14 staff. My name is Greg Garneau. I'm with Carlsmith
15 Ball. I'm here on behalf of Waiko Industrial
16 Investment, LLC. And present with me this morning is
17 Mr. Charley Jencks.

18 MR. GIROUX: Good morning. James Giroux on
19 behalf of the Department of Planning. With me is Paul
20 Fasi.

21 MR. YEE: Good morning. Deputy Attorney
22 General Bryan Yee on behalf of the Office of Planning.
23 With me is Rodney Funakoshi from the Office of
24 Planning.

25 PRESIDING OFFICER McDONALD: Thank you.

1 Let me update the recent record in this docket. On
2 February 21st, 2013 the Commission received
3 Petitioner's List of Exhibits and Exhibits 53 to 57
4 and concluded the evidentiary portion of the
5 proceedings.

6 Between March 15th, 2013 and April 5th the
7 parties timely filed their respective proposed
8 findings of fact, conclusions of law, and decisions
9 and orders and their respective comments, responses,
10 joinders, stipulations, objections and replies with
11 the Commission.

12 On April 10, 2013 the Commission mailed the
13 April 18th and 19th, 2013 LUC agenda to the parties on
14 Maui, O'ahu and statewide mailing lists.

15 Let me briefly run over our procedure for
16 the day. First, I will call for those desiring to
17 provide public testimony on this docket to identify
18 themselves. All such individuals will be called in
19 turn to our witness box where they will be sworn in
20 prior to their testimony.

21 Secondly, the Chair will allow each party
22 no more than 15 minutes to present oral argument in
23 support of its proposed decision and order and/or its
24 exceptions to those proposed by other parties.

25 The Petitioner may reserve a portion of his

1 time for rebuttal. At the conclusion of oral argument
2 and after questions from the commissioners and the
3 answers thereto, the Commission will conduct formal
4 deliberations on this matter. The Chair would also
5 note for the parties and the public that from time to
6 time I may be calling for short breaks. Are there any
7 questions on the procedures for today?

8 MR. GARNEAU: No, we have none.

9 MR. GIROUX: No questions.

10 MR. YEE: No questions.

11 PRESIDING OFFICER McDONALD: Hearing none,
12 before I call on public testimony let me remind you
13 all that the public testimony from previous hearings
14 was transcribed and is part of the record. For those
15 that are testifying again the Commission would
16 appreciate if you confine your testimony to new
17 information.

18 Because the Commission needs time to
19 conduct its deliberations this morning, a 1-minute
20 time limit will be enforced for all those testifying.
21 (pause) No public testimony. Okay. Anybody in the
22 audience wishing to provide public testimony? Seeing
23 none, Mr. Garneau, are you prepared to proceed?

24 MR. GARNEAU: Yes, I am.

25 PRESIDING OFFICER McDONALD: Please

1 proceed.

2 MR. GARNEAU: Thank you very much. At this
3 time I just wanted to inform the Commission a little
4 bit about what happened since we were last here. As
5 you had indicated the parties had been working
6 diligently between the time we were here last and
7 today to come to an agreement to the findings of fact,
8 conclusions of law and decisions and order.

9 So the Petitioner's response that was
10 submitted to you on April the 4th, it had several
11 concerns that we had at the time. But attached to it
12 more importantly we attached Exhibit A, which is the
13 revised order that includes everything that we had
14 agreed to as of that date.

15 So the reason I put that is to make it a
16 little easier today to all of us be looking at the
17 same things. Because each time you change things the
18 paragraph numbers change and the language changes, so
19 forth. So I'll be referring to those numbers in the
20 document that's attached as Exhibit A to the April 4th
21 filing.

22 But in any event since then we've actually
23 come to an agreement, the parties' all in agreement as
24 to the changes. And so if I might, if I could just go
25 down those changes with you so you'll know.

1 So with regards to -- we had some
2 discussions, you know, in the filings with regards to
3 findings of fact 153 and 154. So the agreement of the
4 parties is that we will stay with the original
5 language as it was proposed and as it is in Exhibit A.

6 We also had some conversation relating to
7 findings of fact 163 and 178 and also finding of fact
8 181. I had proposed deleting those, Petitioner had.
9 The Office of Planning had recommended retaining
10 findings of fact 163 and findings of fact 175 to 178.
11 So we're in agreement on that. We'll accept OP's
12 position.

13 And so what that would mean essentially
14 read together, is that findings of fact 164 to 174 and
15 181 will be deleted.

16 The next thing as I had proposed or
17 Petitioner proposed, rather, deleting conditions 17
18 and 18. And OP objected and asked us to keep those as
19 they originally were. So we agree. And so there'll
20 be no change to those two conditions 17 and 18. And
21 they'll stay in.

22 Everything else I believe we were in
23 agreement on. Finding of fact No. 43 we'll be
24 deleting the term "affordable" from that because there
25 was some confusion. Finding of fact 47 we'll be

1 deleting the word "as is" in the Exhibit A. There's
2 also -- we had with regard to findings of fact 303
3 there was a question as to the source for the
4 reference to the county ordinance.

5 And so what I brought with me today, and we
6 filed, it actually refers to ordinance No. 4004. And
7 this was adopted in December of 2012. It's been -- in
8 the Maui Island Plan we've provided in the exhibit, I
9 think it was Exhibit 56 which is a map from the plan.
10 But this is the actual ordinance that was adopting the
11 plan.

12 So we are asking that the commission take
13 judicial notice of that ordinance, the Maui County
14 ordinance, and that that become part of the record in
15 this Petition.

16 Then lastly, there is -- there are a couple
17 county conditions which are Nos. 11 and 12. And those
18 conditions we actually had come to agreement on during
19 or after our last meeting. The county is in agreement
20 and the Petitioner's in agreement, and OP has stated
21 they have no objection.

22 But what I would like to do is just put on
23 the record today, hear from them, the county, that
24 they do in fact have no objection and add as a finding
25 of fact after No. 308 that we did put that on the

1 record and just reflect today's hearing date. Because
2 I don't believe anywhere else in the record that we
3 have that agreement so far.

4 And so those would be all of the changes
5 that we're proposing. And as I said we're all in
6 agreement with them. So we would ask the Commission
7 then to make those changes to the proposed order at
8 this time.

9 PRESIDING OFFICER McDONALD: Thank you.
10 Mr. Giroux, are you prepared to proceed?

11 MR. GIROUX: Yes, Chair, thank you. Just
12 for the record the county is in agreement with those
13 changes. And that we have no objections to the
14 Exhibit A, the changes made in Exhibit A. So other
15 than that we do support the voluntary amendment. We
16 feel that it does fit into our long-range planning.
17 And that the Maui Island Plan will drive the future of
18 Maui and this is a part of it.

19 PRESIDING OFFICER McDONALD: Thank you.
20 Mr. Yee, you're prepared?

21 MR. YEE: Yes. The Office of Planning
22 confirms our agreement as set forth by Mr. Garneau.
23 Just a couple of comments, if I may. I think the
24 process has worked, I think, as it is intended to.
25 The Petitioner submitted a fairly substantial number

1 of findings of fact, conclusions of law, and decision
2 and order. The Office of Planning gave a shorter
3 series of comments and objections. The Petitioner
4 came back with an even shorter series in which they
5 agreed with most of things and came back with a few
6 things which where they were asking for changes. And
7 since then we were able to come to an agreement on
8 those six remaining issues, as Mr. Garneau went
9 through. So I think the process did work.

10 A couple of comments just as a bit of a
11 side note and for the record. With respect to taking
12 judicial notice of the county ordinance, I just wanted
13 to cite for the record that your administrative rules
14 15-15-63(k) allows the Commission to take official
15 notice of matters as may be judicially noticed in the
16 courts of the state of Hawai'i. And under the Federal
17 Rules of Evidence, I believe 202, it allows courts to
18 take judicial notice of county ordinances.

19 So that's the basis by which I believe
20 you're allowed to take official notice of the county
21 ordinance.

22 And then as one last comment really is just
23 as we move forward with some of these cases, one of
24 the changes the Office of Planning made was to the
25 condition with respect to the representations made by

1 Petitioners. It was made to be consistent with the
2 prior decision you made in Kahoma. That is that the
3 representations as set forth in the decision and order
4 may be a basis for reversion. That does limit, I
5 think, the scope of review of representations by
6 petitioners. We've accepted that -- you've made that
7 change in a prior case. We thought it should be
8 consistent with the prior cases. We understand the
9 concern of the county, for example, saying, "Well, we
10 need some place to look at rather than an entire
11 record."

12 So we sort of understood why you made that
13 change. We're not complaining about the change, but I
14 just want to note for you this does put some
15 additional pressure on our review of the findings of
16 fact to be more precise, to be more accurate, and more
17 importantly, be more comprehensive.

18 This is not a complaint. It's just an
19 indication that we may need more time to review these
20 findings of fact because they're very extensive. And
21 what we need to look at is not just are the findings
22 of fact correct, but are they complete.

23 So we have to go through the entire record,
24 see what might be missing. It's the part about trying
25 to find what's missing that takes time. So we had two

1 weeks and I know I had to ask you for the additional
2 week. And this was a very simple case.

3 So just as we move forward to sort of put
4 you on notice, this may be an issue as we move forward
5 with the other cases. Thank you.

6 MR. ORODENKER: We can discuss that, Bryan.

7 MR. YEE: Thank you.

8 MR. ORODENKER: No guarantees though.

9 MR. YEE: Yeah, I understand.

10 PRESIDING OFFICER McDONALD: Thank you
11 Mr. Yee. Mr. Garneau any rebuttal?

12 MR. GARNEAU: No, sir, I don't have.

13 PRESIDING OFFICER McDONALD: I do
14 appreciate and I think we all do appreciate the
15 parties working together and collaborating, coming to
16 a form of agreement on the conditions and findings of
17 fact. We do appreciate that.

18 Okay, Commissioners, do you have any
19 questions for the parties at this time? Seeing none,
20 the Commission will now conduct formal deliberations
21 concerning whether to grant the Petition in whole or
22 in part, or to deny the Petition.

23 If the Commission decides to grant the
24 Petition in whole or in part it needs to determine
25 what conditions of approval to impose. I would note

1 to the parties and the public that during the
2 Commission's deliberations I will not entertain
3 additional input from the parties or the public unless
4 those individuals or entities are specifically
5 requested to do so by the Chair. If called upon I
6 would ask that any comments be limited to the
7 questions at hand.

8 The Commission held hearings on the merits
9 of this Petition on February 21st, 2013 and oral
10 argument was concluded today. Commissioners, let me
11 confirm that each of you have reviewed the record and
12 read the transcripts for any meeting that you may have
13 missed and are prepared to deliberate on the subject
14 docket.

15 After I call your name would you please
16 signify with either an aye or a nay that you are
17 prepared to deliberate on this matter. Commissioner
18 Biga?

19 COMMISSIONER BIGA: Aye.

20 PRESIDING OFFICER McDONALD: Commissioner
21 Contrades?

22 COMMISSIONER CONTRADES: Aye.

23 PRESIDING OFFICER McDONALD: Commissioner
24 Inouye?

25 COMMISSIONER INOUYE: Aye.

1 PRESIDING OFFICER McDONALD: Commissioner
2 Makua?

3 COMMISSIONER MAKUA: Aye.

4 PRESIDING OFFICER McDONALD: Commissioner
5 Matsumura?

6 COMMISSIONER MATSUMURA: Aye.

7 PRESIDING OFFICER McDONALD: The Chair is
8 also prepared to deliberate on this matter. The goal
9 today is to determine by way of motion the
10 Commission's decision on whether to grant in whole or
11 in part Petitioner's request to reclassify the subject
12 property or to deny the petition.

13 If a decision is reached today and based
14 upon the Commission's guidance, staff will be directed
15 to draft appropriate findings of fact, conclusions of
16 law and decision and order reflecting the Commission's
17 decision. Commissioners, what's your pleasure on this
18 matter?

19 COMMISSIONER BIGA: Chair, I move to grant
20 the Petitioner's request for A12-796 Waiko Industrial
21 Investment, Maui.

22 COMMISSIONER CONTRADES: Second.

23 PRESIDING OFFICER McDONALD: There's a
24 motion by Commissioner Biga to approve the district
25 boundary amendment and a second by Commissioner

1 Contrades. Any discussion? (Pause) Executive Officer
2 Orodenger, could you please poll the Commission.

3 MR. ORODENER: Mr. Chair, the motion is to
4 grant the petition for district boundary amendment in
5 case No. A12-796 Waiko Industrial Investment.
6 Commissioner Biga?

7 COMMISSIONER BIGA: Yes.

8 MR. ORODENER: Commissioner Contrades?

9 COMMISSIONER CONTRADES: Yes.

10 MR. ORODENER: Commissioner Matsumura?

11 COMMISSIONER MATSUMURA: Yes.

12 MR. ORODENER: Commissioner Teves is
13 absent. Commissioner Makua?

14 COMMISSIONER MAKUA: Aye.

15 MR. ORODENER: Commissioner Inouye?

16 COMMISSIONER INOUE: Yes.

17 MR. ORODENER: Commissioner Heller is
18 absent. Commissioner Chock is absent. Chair
19 McDonald?

20 PRESIDING OFFICER McDONALD: Yes.

21 MR. ORODENER: Mr. Chairman, the motion
22 carries unanimously.

23 PRESIDING OFFICER McDONALD: Thank you,
24 Dan. Again, I would like to thank the parties for the
25 work, the collaboration. We do appreciate it. Also

1 like to thank the staff for preparing us
2 commissioners for these hearings and getting us here.
3 I know it's been difficult at times. (Laughter). But
4 we do appreciate it. Therefore we're adjourned for
5 the day.

6 MR. GARNEAU: Thank you.

7 MR. YEE: Thank you.

8 PRESIDING OFFICER McDONALD: Thank you.

9
10 (The proceedings were adjourned at 9:50 a.m.)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the
State of Hawai'i, do hereby certify;

That I was acting as court reporter in the
foregoing LUC matter on the 18th day of April 2013;

That the proceedings were taken down in
computerized machine shorthand by me and were
thereafter reduced to print by me;

That the foregoing represents, to the best
of my ability, a true and correct transcript of the
proceedings had in the foregoing matter.

DATED: This_____ day of_____2013

HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter