

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

Kamakahonu Ballrooms  
King Kamehameha's Kona Beach Hotel  
75-5660 Palani Road  
Kailua-Kona, Hawaii

May 30, 1996

*Approved*  
*6/28/96*

COMMISSIONERS PRESENT:

Allen K. Hoe  
Merle A.K. Kelai  
Rupert K. Chun  
M. Casey Jarman  
JoAnn Mattson  
Lloyd Kawakami  
Trudy K. Senda  
Elton Wada

COMMISSIONERS ABSENT:

Eusebio Lapenia, Jr.

STAFF PRESENT:

Esther Ueda, Executive Officer  
Jon Itomura, Esq.,  
Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Leo Asuncion, Jr., Staff Planner  
Darlene Kinoshita, Chief Clerk  
  
Holly Hackett, Court Reporter

Chairperson Hoe called the meeting to order.

CONTINUED HEARING

A94-705 - COUNTY OF HAWAII, PLANNING DEPARTMENT

Chairperson Hoe announced that this matter before the Commission is a continuation of the hearing which was previously held on April 11, 1996.

Appearances

Frederick Giannini, Esq., Deputy Corporation Counsel,  
County of Hawaii

Virginia Goldstein, Director, Planning Department,  
County of Hawaii

Guy Archer, Esq., Deputy Attorney General, Office of  
State Planning

Lorene Maki, Land Use Division, Office of State Planning

Abe Mitsuda, Land Use Division, Office of State Planning

Eric Maehara, Esq., Attorney for Hawaiian Development Corporation

Steven Lim, Esq., Attorney for Kam Investment

Judith Graham, E Mau Na Ala Hele

EXHIBITS

1. County of Hawaii's Exhibit No. 19 was admitted into evidence by the Land Use Commission.

2. The appeal letter regarding requirements of Chapter 6E, HRS dated May 29, 1996 (Exhibit No. 30) from E Mau Na Ala Hele to DLNR, Historic Preservation Office was admitted into evidence by the Land Use Commission.

3. OSP's Exhibit Nos. 3 and 4 were admitted into evidence by the Land Use Commission.

Chairperson Hoe continued the hearing until further notification of the parties.

CONTINUED HEARING AND ACTION

A93-701 - KAUPULEHU DEVELOPMENTS (Hawaii)

Chairperson Hoe announced that this matter before the Commission is a continuation of the hearing which was previously held on March 27 and 28, 1996.

Appearances

R. Ben Tsukazaki, Esq., Attorney for Petitioner

Frederick Giannini, Esq., Deputy Corporation Counsel, County of Hawaii

Royden Yamasato, Planning Department, County of Hawaii

Guy Archer, Esq., Deputy Attorney General, Office of State Planning

Robyn Loudermilk, Land Use Division, Office of State  
Planning

Abe Mitsuda, Land Use Division, Office of State Planning

Alfred Lerma, Esq., Attorney for Intervenors (Coalition)

Michael Matsukawa, Esq., Attorney for Intervenors  
(Coalition)

Maile David, Intervenor, Ka Lahui

Charles Young, Intervenor, Ka Lahui

Hannah Springer, Intervenor, Kona Hawaiian Civic Club

Leimana Damate, Kona Hawaiian Civic Club

Karen Eoff, Intervenor, Protect Kohanaiki

John Powell, Esq., Attorney for Intervenor, Plan To  
Protect

Chairperson Hoe announced that there are several  
motions that are pending before the Commission to be disposed  
of.

The Commission received the Motion to Strike DLNR's  
Testimony filed March 15, 1996 by Intervenors (Coalition), the  
Motion to Dismiss filed March 15, 1996 by Intervenors  
(Coalition), the Joint Motion to Dismiss filed by Plan to  
Protect, the responsive pleading filed by Petitioner,  
Intervenors' (Coalition) reply to Petitioner's Response, and  
Petitioner's response to Intervenors' (Coalition) response.

Chairperson Hoe denied Intervenors' (Coalition) Motion  
to Strike DLNR's Testimony.

Arguments on the Motion to Dismiss were heard from  
Mr. Matsukawa and Mr. Tsukazaki. Chairperson Hoe denied  
Intervenors' (Coalition) Motion to Dismiss and Plan to  
Protect's Joint Motion to Dismiss.

The following motions were granted by Chairperson Hoe:

a. The Motion to Correct Transcript for the Hearing on  
November 17, 1995;

b. The Motion to Correct Transcript for Hearing on March 27, 1996 filed by Petitioner;

c. The Motion for Oral Argument filed by Intervenors;

d. Motion to Correct Transcript for hearing on March 27, 1996 filed by OSP.

Having no further arguments, the Motion to Strike County of Hawaii's Proposed Findings of Fact, Conclusions of Law and Decision and Order was denied by Chairperson Hoe.

The requests to withdraw the following motions were granted by Chairperson Hoe:

a. Motion to Strike Witness lists filed by Intervenor (Plan to Protect) on March 27, 1996;

b. Motion for Clarification of Order Granting Petitioner's Motion to Quash Subpoena Duces Tecum, Motion for In Camera Review of Master Lease, and Motion to Set Procedure Pending Plan to Protect Inc.'s Appeal to Third Circuit Court filed November 6, 1995 (Request for Withdrawal filed May 3, 1996);

c. Motion to Bar Documentary Evidence filed December 1, 1995 (Request for Withdrawal filed May 9, 1996)

At this time Chairperson Hoe closed the proceedings and allowed the parties an opportunity for closing arguments.

Closing arguments were heard from Mr. Tsukazaki, Mr. Giannini, Mr. Archer, Mr. Powell, Mr. Matsukawa, Ms. David, Mr. Young, Ms. Eoff, Ms. Damate, and Ms. Springer.

It was determined by Chairperson Hoe that all of the Commissioners present were eligible to participate in the action on the Petition.

Commissioner Senda moved to approve the petition by Kaupulehu Developments subject to twenty-five conditions. The motion was seconded by Commissioner Kelai and polled as follows:

Ayes: Commissioners Senda, Kelai, Mattson, Wada, Chun, and Hoe

Nays: Commissioners Jarman and Kawakami

Commissioner Jarman stated for the record that the petition should be denied because the Petitioner has failed to meet its burden under the law in four key areas as follows:

- a. Native Hawaiian Rights
- b. Impacts on natural resources
- c. Environmental considerations
- d. Economic analysis

MISCELLANEOUS

1. APPROVAL OF MINUTES

Commissioner Senda moved to approve the minutes for the following date: May 16, 1996. The motion was seconded by Commissioner Mattson and unanimously approved by voice votes.

The hearing was adjourned at 9:00 p.m.