

LAND USE COMMISSION

Minutes of Meeting

Conference Room 405  
State Office Tower, Leiopapa A Kamehameha  
235 South Beretania Street  
Honolulu, Hawaii

October 19, 2000

Approved  
11/02/00

COMMISSIONERS PRESENT: P. Roy Catalani (portion of proceedings)  
Bruce A. Coppa  
Isaac Fiesta, Jr.  
Lawrence N.C. Ing  
M. Casey Jarman  
Merle Kelai  
Stanley Roehrig  
Peter Yukimura

COMMISSIONER ABSENT: Pravin Desai

STAFF PRESENT: Presley Pang, Esq., Deputy Attorney  
General  
Bert Saruwatari, Staff Planner  
Russell Kumabe, Staff Planner  
Teri Hee, Chief Clerk  
  
Holly Hackett, Court Reporter

Chairperson Kelai called the meeting to order at 9:30 a.m.

ACTION

A00-733 - HARRISON J. & SHARENE Z. KLEIN

Chairperson Kelai announced that this is an action meeting to consider whether the anticipated effects discussed in Petitioner's Draft Environmental Assessment to reclassify approximately 2.621 acres of land currently in the Conservation District into the Agricultural District at Keonepoko Iki, Puna, Hawaii for the cultivation of ti-leaf plants, coconut trees and palms, and recommence a commercial farming operation constitutes a "significant effect" pursuant to Chapter 343, H.R.S.

On October 6, 2000, the Commission received the Amended Verified Petition For Amendment of District Boundaries and Reclassification From Conservation to Agricultural; Exhibits A and B; Affidavit of Harrison J. Klein and Sharene Z. Klein; and Certificate of Service.

On October 18, 2000, Alice Kawaha of the County of Hawaii Planning Department notified the Commission staff that they would not be attending today's meeting.

Appearances

Steven S.C. Lim, Esq., representing petitioner

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

Arguments were heard from Mr. Lim and Ms. Ogata-Deal.

Questions were asked by the Commissioners. Commissioner Jarman requested that the following information be included in Petitioner's Final Environmental Assessment: (1) the identification of the hula halau that gather in the area; (2) a copy of the assessments from the agencies consulted; and (3) more information on their consultation with the OEQC.

Commissioner Roehrig moved to accept Petitioner's Draft Environmental Assessment with the inclusion of the information requested by Commissioner Jarman. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

SP89-371 - CHRISTIAN BROADCASTING ASSOCIATION (Maui)

Chairperson Kelai announced that this matter before the Commission is a continued action to consider a time extension and transfer of special use permit to Salem Media of Hawaii, Inc. for continued operation of a radio transmitting facility on approximately 30 acres of land within the Agricultural District at Kaluakoi, Molokai.

Appearances

Donna Leong, Esq., representing petitioner

Doug Campbell, General Manager of KAIM

Kelly Cairns, Esq., Deputy Corporation Counsel, County of Maui

Will Spence, Planner, County of Maui Planning Department

Russell Kumabe, staff planner, oriented the Commission to the special permit area on the Land Use District Boundaries and tax maps and gave a summary of the special permit request.

Arguments on the special permit were heard from Ms. Leong and Mr. Spence.

Questions were asked by the Commissioners. Commissioner Ing requested that Petitioner submit the results of the RF exposure study which would evidence compliance with the FCC guidelines as far as maximum exposure and suggested that Petitioner give a status report to the Commission in six months.

Commissioner Coppa moved to approve Petitioner's motion. Commissioner Ing seconded the motion with the understanding that: (1) the motion is based upon the record and the representations made by Petitioner today; and (2) that the approval is for the time extension for the special permit subject to the conditions as recommended by the Molokai Planning Commission and for the approval of the transfer of the special permit to Salem Media of Hawaii, Inc. The motion was unanimously approved by voice votes.

A88-622 - HOUSING FINANCE AND DEVELOPMENT CORPORATION,  
STATE OF HAWAII (Oahu)

A89-652 - HOUSING FINANCE AND DEVELOPMENT CORPORATION,  
STATE OF HAWAII (Maui)

A90-660 - HOUSING FINANCE AND DEVELOPMENT CORPORATION,  
STATE OF HAWAII (Hawaii)

Chairperson Kelai announced that this matter before the Commission is an action meeting to consider Petitioner's Motion to Consolidate LUC Docket Nos. A88-622, A89-652 and A90-660 to allow for a more consolidated presentation and to obviate the need for the Commission to open and close three separate dockets.

Commissioner Ing moved that Petitioner's motion to consolidate the petitions be granted. The motion was seconded by Commissioner Fiesta and unanimously carried by voice votes.

Commissioner Catalani excused himself from the proceedings at this time.

Chairperson Kelai announced that this is an action meeting to consider Petitioner's Motion to Amend Findings of Fact,

Conclusions of Law and Decision and Order for the following dockets:

Docket No. **A88-622 - HOUSING FINANCE AND DEVELOPMENT CORPORATION, STATE OF HAWAII** to consider Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order which reclassified approximately 830 acres of land from the Agricultural District into the Urban District at Honouliuli, Ewa, Oahu, Hawaii for a residential community primarily for affordable housing.

On October 6, 2000, the Commission received Petitioner's Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order; Affidavit of John C. Wong and report submitted by KPMG Peat Marwick entitled "Hawaii Affordable Housing Market Assessment".

On October 11, 2000, the Commission received a letter from Randall K. Fujiki, Department of Planning and Permitting, dated October 10, 2000.

On October 16, 2000, the Commission received Petitioner's Second Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order and report entitled "Governor Cayetano's Blueprint For Affordable Housing" dated January 10, 1996.

On October 17, 2000, the Commission received Petitioner's Briefing Memorandum and Petitioner Housing and Community Development Corporation of Hawaii's Witness and Exhibit List.

On October 18, 2000, the Commission received Office of Planning's Response to the Commission's Request for a Legal Memorandum Re: Application of Act 15 and Ka Pa`akai O Ka`aina v. Land Use Commission.

Docket No. **A89-652 - HOUSING FINANCE AND DEVELOPMENT CORPORATION, STATE OF HAWAII** to consider Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order which reclassified approximately 1,097.765 acres of land from the Agricultural District into the Urban District at Wahikuli, Lahaina, Maui, Hawaii for a planned community primarily for affordable housing.

On September 19, 2000, the Commission received Maui Planning Department's Statement of Position Re: Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order.

On October 6, 2000, the Commission received Petitioner's Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order; Affidavit of John C. Wong and report submitted by KPMG Peat Marwick entitled "Hawaii Affordable Housing Market Assessment".

On October 16, 2000, the Commission received Petitioner's Second Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order.

On October 17, 2000, the Commission received Petitioner's Briefing Memorandum; Petitioner Housing and Community Development Corporation of Hawaii's Witness and Exhibit List; Affidavit of John C. Wong with an attachment of a memorandum dated October 17, 2000 from Timothy E. Johns to Sharyn L. Miyashiro with enclosures.

On October 18, 2000, the Commission received Maui Planning Department's Statements of Position Re: Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order, Filed October 6, 2000 and Petitioner's Motion to Consolidate LUC Docket Nos. A88-622, A89-652, and A90-660 at public hearing filed September 8, 2000.

On October 18, 2000, the Commission received Office of Planning's Response to the Commission's Request for a Legal Memorandum Re: Application of Act 15 and Ka Pa`akai O Ka`aina v. Land Use Commission.

On October 19, 2000, the Commission received Maui Planning Department's Legal Memorandum Concerning (1) Act 15, Session Laws of Hawaii (1988), and (2) Delegation of Authority.

**Docket No. A90-660 - HOUSING FINANCE AND DEVELOPMENT CORPORATION, STATE OF HAWAII** to consider Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order which reclassified approximately 727 acres of land from the Conservation and Agricultural Districts into the Urban District at Kealakehe, North Kona, Hawaii for a planned community primarily for affordable housing.

On October 6, 2000, the Commission received Petitioner's Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order; Affidavit of John C. Wong and report submitted by KPMG Peat Marwick entitled "Hawaii Affordable Housing Market Assessment".

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On October 16, 2000, the Commission received Petitioner's Third Amended Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order and report entitled "Governor Cayetano's Blueprint For Affordable Housing" dated January 10, 1996.

On October 17, 2000, the Commission received a letter dated October 16, 2000, from Raynard C. Soon, Chairman of the Hawaiian Homes Commission.

On October 17, 2000, the Commission received Petitioner's Briefing Memorandum; Petitioner Housing and Community Development Corporation of Hawaii's Witness and Exhibit List; Affidavit of John C. Wong with an attachment of a memorandum dated October 17, 2000 from Timothy E. Johns to Sharyn L. Miyashiro with enclosures.

On October 18, 2000, Alice Kawaha of the County of Hawaii Planning Department notified the Commission staff that they will not be attending today's meeting.

On October 18, 2000, the Commission received Office of Planning's Response to the Commission's Request for a Legal Memorandum Re: Application of Act 15 and Ka Pa`akai O Ka`aina v. Land Use Commission.

#### Appearances

John C. Wong, Esq., for Petitioner Housing Community Development Corporation of Hawaii formerly known as Housing Finance & Development Corporation.

Randolph Hara, City & County of Honolulu, Department of Planning and Permitting

Kelly Cairns, Esq., Deputy Corporation Counsel, County of Maui

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Russell Kumabe, staff planner, oriented the Commission to the subject areas on the Land Use District Boundaries and tax maps and gave background information on the motions.

Mr. Wong presented his arguments on the legal issues of the motion.

Questions were asked by the Commissioners. Concerns were raised by the Commissioners with respect to the legal power or jurisdiction the LUC has to change a condition set by the legislature. Mr. Wong acknowledged that there is no case law in the State of Hawaii or legislative authority that says the LUC has the power given by the legislature to change the conditions that the legislature mandated.

Commissioner Roehrig moved to go into executive session after lunch to discuss legal matters relating to Petitioner's motions with our deputy attorney general. The motion was seconded by Commissioner Coppa and unanimously approved by voice votes.

MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes for the meeting dates of September 28 and 29, 2000. The motion was seconded by Commissioner Roehrig and unanimously approved by voice votes.

2. PENDING MATTERS

Executive Officer Esther Ueda reported that the Commission received from Ben Tsukazaki, Kaupulehu Developments' Motion For Establishment Of Procedure on Remand for Docket No. A93-701/ Kaupulehu Developments. Deputy Attorney General Presley Pang advised the Commission as to the options available in proceeding in this case. Staff was directed to put this matter on the agenda for the next meeting that is held on the Big Island.

A lunch recess was taken at 11:25 a.m. with the executive session to begin at 12:15 p.m.

- 1:35 p.m. -

MISCELLANEOUS (cont'd.)

3. ADOPTION OF DECISION AND ORDER

Commissioner Roehrig moved to adopt the Declaratory Order for Docket No. DR00-23 - The Sierra Club and David Kimo Frankel

with amendments as circulated to the Commissioners. Commissioner Ing added that the motion should be approved with the understanding that any other typographical errors that staff may find should be corrected. The motion, as amended by Commissioner Ing, was seconded by Commissioner Fiesta and unanimously approved by voice votes.

ACTION (cont'd.)

- A88-622 - HOUSING FINANCE AND DEVELOPMENT CORPORATION,  
STATE OF HAWAII (Oahu)  
A89-652 - HOUSING FINANCE AND DEVELOPMENT CORPORATION,  
STATE OF HAWAII (Maui)  
A90-660 - HOUSING FINANCE AND DEVELOPMENT CORPORATION,  
STATE OF HAWAII (Hawaii)

EXHIBITS

1. Petitioner's Exhibit Nos. M and N were passed out to the Commission members and entered into the record.

Mr. Wong noted for the record that Exhibit Nos. M and N should be added to their Exhibit List.

Mr. Hara and Ms. Cairns voiced no objections to Petitioner's motion. Ms. Ogata-Deal reported that the State cannot support Petitioner's motion and finds no rational legal basis upon which the Commission can grant Petitioner's request to amend the affordable housing conditions. She believes that the appropriate forum to amend the conditions is through the legislature. Ms. Ogata-Deal stated that another possible solution is for Petitioner to voluntarily revert the undeveloped land to its original classification and come back with a new petition for reclassification which would not be pursuant to Act 15.

Commissioner Fiesta moved to deny the motion for lack of jurisdiction. The motion was seconded by Commissioner Roehrig.

Commissioner Jarman questioned if the motion for lack of jurisdiction failed, whether or not it could be brought up again. Deputy Attorney Presley Pang clarified that if the motion is to deny for lack of jurisdiction and it fails to get 5 votes, it is a failed motion. It doesn't constitute an affirmative binding that we do have jurisdiction so you are not stopped from bringing the motion again a second time. Mr. Pang also clarified that if the motion to deny fails because it doesn't get 5 votes, there is no motion. If there is a follow-up motion to have further



the motion to deny fails because it doesn't get 5 votes, there is no motion. If there is a follow-up motion to have further hearing and that also fails to get 5 votes, that also fails. Because there has been no action, the meeting continues on as if nothing has been decided procedurally and continues where it left off.

The Commissioners were polled as follows:

Ayes: Commissioners Fiesta, Roehrig and Kelai

Nays: Commissioners Ing, Jarman, Yukimura and Coppa

There being a vote tally of 3 ayes and 4 nays, the motion was defeated.

Commissioner Jarman moved to continue the hearing until further notice. The motion was seconded by Commissioner Ing and polled as follows:

Ayes: Commissioners Jarman, Ing, Coppa and Roehrig

Nays: Commissioners Yukimura, Fiesta and Kelai

There being a vote tally of 4 ayes and 3 nays, the motion was defeated.

Mr. Pang announced that the Commission has not taken an action to depart from the underlying procedure so we continue where we left off.

There was discussion with respect to the meaning of not having enough votes.

Commissioner Jarman renewed her motion to continue this docket at another date to be set by the staff when it is convenient for all the parties and the Commission. The motion was seconded by Commissioner Ing and polled as follows:

Ayes: Commissioners Jarman, Coppa and Ing

Nays: Commissioners Yukimura, Roehrig, Fiesta and Kelai

There being a vote tally of 3 ayes and 4 nays, the motion was defeated.

EXHIBITS

Petitioner's Exhibit Nos. A through L1 were admitted into evidence by the Land Use Commission with the understanding that other exhibits may be introduced. Mr. Wong will be adding a letter dated October 16, 2000 from Raynard C. Soon to Esther Ueda as an exhibit.

PETITIONER'S WITNESSES

1. Sandy Pfund

Commissioner Catalani was present to the proceedings at this time.

2. Wesley Segawa
3. Ron Lim

Commissioner Jarman excused herself from the proceedings at this time. Ms. Cairns from the County of Maui Corporation Counsel also left the proceedings at this time.

4. Susan Todani

Mr. Wong presented his closing remarks.

Commissioner Catalani disclosed that he was not here for the entire proceedings on this case and therefore would be abstaining from voting.

Commissioner Coppa moved to approve the motion for all three dockets. The motion was seconded by Commissioner Yukimura and polled as follows:

Ayes: Commissioners Coppa, Yukimura and Ing

Nays: Commissioners Roehrig, Fiesta and Kelai

Abstain: Commissioner Catalani

There being a vote tally of 3 ayes, 3 nays, and 1 abstention, the motion was defeated.

Commissioner Roehrig moved to table this matter indefinitely. The motion was seconded by Commissioner Fiesta. Commissioner Roehrig withdrew his motion.

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Commissioner Roehrig moved to continue this matter until the next meeting after the legislature opens in January 2001. The motion was seconded by Commissioner Fiesta and polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Ing and Kelai

Nays: Commissioners Yukimura and Coppa

Abstain: Commissioner Catalani

There being a vote tally of 4 ayes, 2 nays, and 1 abstention, the motion was defeated.

Commissioner Roehrig and Commissioner Fiesta excused themselves from the proceedings at this time. Having no quorum, the meeting was adjourned at 4:40 p.m. with the announcement that the Commission will reconvene tomorrow at 9:00 a.m.