

LAND USE COMMISSION

Minutes of Meeting

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

Approved
7/19/01

June 28, 2001

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce A. Coppa
Pravin Desai
Lawrence N.C. Ing
Stanley Roehrig

COMMISSIONERS ABSENT: Isaac Fiesta, Jr.
M. Casey Jarman
Merle Kelai
Peter Yukimura

STAFF PRESENT: John Dellera, Esq., Deputy Attorney
General
Anthony J.H. Ching, Executive
Officer
Russell Kumabe, Staff Planner
Bert Saruwatari, Staff Planner
Teri Hee, Chief Clerk
Esther Ueda, Consultant
Emi Albright, Court Reporter

Vice Chairperson Ing called the meeting to order at 1:37 p.m.

PRESENTATION

DEPARTMENT OF TRANSPORTATION AND LAND USE RESEARCH
FOUNDATION

Brian Minaai of the Department of Transportation and Dan Davidson of the Land Use Research Foundation gave presentations regarding the Ewa Region Highway

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Transportation Master Plan. After hearing the presentations, questions were asked by the Commissioners.

MISCELLANEOUS

1. ADOPTION OF DECISION AND ORDER

Parties present for Docket No. A93-701 – Kaupulehu Developments: Patricia O'Toole, Esq., Corporation Counsel, representing the County of Hawaii; Ben Tsukazaki, Esq. representing the Petitioner, Kaupulehu Developments; John Chang, Esq., Deputy Attorney General, representing the Office of Planning; Abe Mitsuda, Office of Planning.

Commissioner Roehrig moved to adopt the Order Requiring Preparation of Proposed Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A93-701 – Kaupulehu Developments with proposed amendments. The motion, as amended, was seconded by Commissioner Desai and unanimously approved by voice votes.

Commissioner Coppa moved to adopt the Order Accepting Legal Description for Docket No. DR01-24 – Steven K. Baker. The motion was seconded by Commissioner Desai and unanimously approved by voice votes.

With respect to the adoption of the Order Denying Petition for Rulemaking for Docket No. AR&R01-15 – The Sierra Club, Hawaii Chapter, and David Kimo Frankel, Commissioner Coppa moved to go into executive session to discuss legal matters with our deputy attorney general. The motion was seconded by Commissioner Roehrig and unanimously approved by voice votes.

Commissioner Coppa clarified his motion at the June 14, 2001 meeting, and stated that after consideration of the issues and the arguments made (regarding Mr. Frankel's Petition for Rulemaking), a motion was made and seconded that the Petition be denied on the grounds that it failed to disclose sufficient reasons to justify the institution of public rulemaking proceedings. After discussion, the motion was approved by a vote of five votes for the motion and one vote against.

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Commissioner Coppa moved to adopt the Order Denying Petition for Rulemaking for Docket No. AR&R01-15 – The Sierra Club, Hawaii Chapter, and David Kimo Frankel with amendments made by Commissioner Roehrig. The motion was seconded by Commissioner Roehrig, as circulated and amended, and unanimously approved by voice votes.

STATUS REPORT

A92-683 – HALEKUA DEVELOPMENT CORPORATION (Oahu)

Vice Chairperson Ing announced that this was a meeting to receive information by Petitioner on progress in complying with conditions imposed by the Commission with special interest in work to date to convey the agricultural park site to the State.

Appearances

Charles Honma, Project Manager, for Petitioner

Reuben Wong, Esq., for HRT, Ltd.

Steven Mau, Esq., for Robinson Estate

Kathy Sokugawa, Department of Planning and Permitting

John Chang, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Randy Teruya, Department of Agriculture

Bert Saruwatari, staff planner, oriented the Commission to the subject area on the Land Use District Boundaries and tax maps and gave a background summary of the Petition.

A status report was given by Mr. Honma. After hearing the status report, Mr. Honma answered questions by the Commissioners. Comments were heard from

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Mr. Teruya, Mr. Wong, Mr. Mau and Mr. Mitsuda. Ms. Sokugawa from the Department of Planning and Permitting had no comments.

Vice Chairperson Ing suggested that the Commission place this item back on the agenda after 60 days, working with staff and the Office of Planning to determine what the Commission's options would be if the financing for this project does not come through in 60 days as reported by Mr. Honma. At that time, a motion may be entertained to move on this project, one way or the other.

Commissioner Roehrig stated that the 60 days should be sufficient time for the Office of Planning, parties and counsel to talk to the various people involved and come to some resolution.

STATUS REPORT

A92-679 - WHITE HAT DEVELOPMENT CORP. (Hawaii)

Vice Chairperson Ing announced that this was a meeting to receive information by Petitioner on its compliance with condition imposed by the Commission calling for an agreement and contribution to the DOE of a specific cash amount upon sale of individual project units.

Appearances

Renton Nip, Esq., for Petitioner

William G. Boyle, President, White Hat Development Corporation

John Chang, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Sanford Beppu, Planner, Department of Education

Russell Kumabe, staff planner, oriented the Commission to the subject area on the Land Use District Boundaries and tax maps and gave a background summary of the Petition.

A status report was given by Mr. Nip. Mr. Nip requested that this matter be continued until a hearing before the Land Use Commission at its meeting in September since payment to the Department of Education will be made by August 15, 2001. He also requested that in the event the agreement has been satisfied, that the parties be able to indicate by letter that the agreement (condition) has been satisfied.

After hearing the status report, questions were asked by Mr. Chang and the Commissioners. Comments were made by Mr. Beppu.

Commissioner Roehrig requested staff to look into the legal authority of the Commission to require as a condition of the approval in our decisions that at the time escrow closes, where there is going to be incremental payouts that Petitioner is going to receive, that it shall require the affirmative consent of the Commission in order to close escrow so that the Commission is automatically forewarned each time that escrow closes. The Commission would be able to monitor whether the conditions that run with the approval are being satisfied as they come up and not years later as in this case.

With no objections from the other Commissioners, Vice Chairperson Ing announced that since a statement made by Petitioner that they had made a commitment to make a \$25,000 payment by August 15, 2001 and the Office of Planning has expressed their approval of that agreement, that this hearing be continued until September in order to verify that the payment has been made. Mr. Ing also stated that the Commission would like to have a copy of the irrevocable escrow instructions for our file.

MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Roehrig moved to approve the minutes for the meeting date of June 14, 2001. The motion was seconded by Commissioner Desai and unanimously approved by voice votes.

OTHER PENDING MATTERS

1. Tentative Meeting Schedule – Executive Officer, Anthony Ching, reported that we received two petitions for intervention (Sierra Club and Mililani Neighborhood #25) for Docket No. A00-734/ Castle & Cooke Homes Hawaii, Inc. & Pacific Health Community, Inc. which will be heard at our July 18-19 meeting in Kona. With respect to Docket No. A00-732/TSA Corporation, Mr. Ching reported that a third prehearing was held and that the Commission will be receiving a Third Prehearing Conference Order for their review. He also reported that groundwater and surface water issues would be reserved for discussion at the August 23-24, 2001 meeting. No water issues will be covered in July but the Office of Planning and County of Hawai`i will be making presentations on their case with exception to those water issues. Mr. Ching also noted that election of officers will be held at our August 9th meeting in Hilo.

2. Litigation Update – Pacific Star, LLC v. The Sierra Club, et al., Civil No. 00-1-0209K (3rd Circuit). Executive Officer Anthony Ching reported that Deputy Attorney General Charleen Aina filed a Scheduling Conference Statement on June 25, 2001 at the District Court. The scheduling conference will be held on July 2, 2001 before Judge Kobayashi.

The meeting was adjourned at 4:05 p.m.