

Approved
12/5/02

LAND USE COMMISSION
Minutes of Meeting
Conference Room 405
State Office Tower, Leiopapa A Kamehameha
235 South Beretania Street
Honolulu, Hawaii

November 14, 2002

COMMISSIONERS PRESENT: Lawrence N. C. Ing
Bruce Coppa
Pravin Desai
Isaac Fiesta, Jr.
Steven Montgomery (present from 9:50 a.m.)
Randall Sakumoto

COMMISSIONERS ABSENT: Peter Yukimura
P. Roy Catalani
Stanley Roehrig

STAFF PRESENT: Diane Erickson, Esq., Deputy Attorney General
Jim Halvorson, Esq., Supervising Deputy
Attorney General
Anthony J.H. Ching, Executive Officer
Russell Kumabe, Staff Planner
Bert Saruwatari, Staff Planner
Arlene Shimokawa, Chief Clerk
Holly Hackett, Court Reporter

Chair Lawrence Ing called the meeting to order at 9:31 a.m. Chair Ing introduced Jim Halvorson, Deputy Attorney General.

I. ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes for the meeting of October 31, 2002. The motion was seconded by Commissioner Desai and said motion was unanimously approved by voice votes.

II. TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reminded the Commissioners that at the December 5 meeting he would update them as to the activities of the Agency and discuss the activities for the coming year. Depending on the outcome of the November 15 meeting with Docket No. DR02-26, Mr. Ching reported that the December 6 meeting may be held on Maui.

There is only one meeting scheduled for January 9-10, due to the legislative session, for Docket No. A92-683, motion for show cause for Halekua.

III. STAFF REPORT

Russell Kumabe, LUC planner, provided the Commission with a report on the TSA forum held in Kona on November 4, 2002 with about seventy participants. The forum was well received, and Peter Young, Deputy Managing Director, conveyed that this forum provided an excellent opportunity for stakeholders and agencies to communicate and improve interaction with each other.

Abe Mitsuda from the Office of Planning and John Chang, Deputy Attorney General, reported that this forum brought together all parties to discuss a common topic and provide perspective to area developers as to what might be in store for the region in the future.

Also present was Jim Greenwell who concurred that the forum was very successful and commended the LUC staff. He also commended Peter Young for speaking openly about the various projects.

Although there were no questions by the Commissioners, Chair Ing felt that the list of attendees were very impressive but questioned the lack of participation by representatives from the unions, hotels, and tourist industry. He was concerned that these individuals were also stakeholders. Russell clarified that the forum was intended for the invitees only, but the public was welcomed to attend.

IV. MISCELLANEOUS

Status of C. 01-1-1759-07, The Sierra Club v. LUC, et al

Commissioner Fiesta moved that the Land Use Commission enter into executive session to receive advice from counsel regarding pending litigation. Commissioner Desai seconded the motion and said motion was approved by voice votes.

The Commission entered into executive session at 10:05 a.m.

The meeting reconvened at 10:35 a.m.

V. ACTION

A. DR02-25 – ERIKA & ACHIM GINSBERG-KLEMMT (Oahu)

Chair Ing announced that the matter before the Commission was to consider the Petition for a Declaratory Order clarifying and correcting the boundary interpretation (BI) 02-03 of the Land Use Commission dated May 31, 2002 of that certain property containing an area of approximately 0.24 acres located at the end of Kehaulani Drive in Lanikai, Kailua, Oahu.

APPEARANCES

Erika Ginsberg-Klemmt, Petitioner

Achim Ginsberg-Klemmt, Petitioner

Ms. Ginsberg-Klemmt requested use of a video camera to tape the proceedings. Chair Ing approved the taping as long as the tape was used for personal purposes only.

Chair Ing invited public witness testimony but there was none. Ms. Ginsberg-Klemmt proceeded with a slide presentation together with a map orientation and brief history of the site. Questions were asked by the Commissioners. There was much discussion with respect to the physical conditions of the site.

A brief recess was taken at 11:10 a.m.

The meeting was reconvened at 11:13 a.m.

A letter to Barbara Smith dated November 17, 1987 was distributed by the Petitioners to the Commissioners.

Executive Officer Anthony Ching presented the Commission with an overview of the rationale behind staff's boundary interpretation (issued on May 31, 2000) for the subject area.

Executive Officer Ching made the following points:

1. The current official map (as well as all previous) utilize USGS quadrangle maps (Mokapu 0-14) which feature a scale of 1"=2,000'. At this scale, district boundary lines have a width of 50' on the ground and are very much subject to interpretation.
2. Current and preview maps all provide a view of major surface feature, roadway systems and contour lines.
3. While the district boundary lines in some instances run parallel or in some relationship to the major roadway, this relationship is not static or consistent.
4. Rather than representing a fixed distance from any roadway or other landmark, the district boundary lines would appear to be constructed in many cases to be a function of the slope of the land then it is distance from roadways.
5. The faxed map describing the district boundary line for the subject parcels received by the Petitioners from DLNR is not an official map and is likely in error.
6. Previously issued BIs (BI-November 20, 1968 and BI-June 3, 1971) also support the staff's current interpretation.

7. 1969 aerial photos of the Koohoo Place parcels do show evidence of existing urban development.

Commissioner Coppa felt that perhaps Petitioners should go before DLNR for a ruling at which time Ms. Ginsberg-Klemmt explained that she had already gone that route and that building was not allowed. Upon learning that Petitioners were asking the Land Use commission to make a change in the boundary, Commissioner Coppa felt that that was an erroneous request of this Commission. Commissioner Montgomery suggested that a site visit be done for more clarity of the situation.

Commissioner Montgomery moved to defer this matter to the December 5 meeting on Oahu. Commissioner Coppa seconded said motion but stated that the motion should be amended to include an optional field trip. The Commissioners were polled as follows:

Ayes: Commissioners Montgomery, Coppa, Desai, Fiesta, Sakumoto and Ing.

The motion passed with 6 ayes and 3 absent.

Chair Ing announced that the meeting will resume on Friday, November 15, 2002, at 1:30 p.m. The meeting was adjourned at 12:20 a.m.