

Approved
11/10/03

LAND USE COMMISSION
Minutes of Meeting
Lahaina Civic Center
1840 Honoapiilani Highway
Lahaina, Hawaii

December 19, 2002

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Isaac Fiesta, Jr.
Lawrence N. C. Ing
Steven Montgomery
Stanley Roehrig
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai
Randall Sakumoto

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

Chair Lawrence Ing called the meeting to order at 10:20 a.m.

I. ADOPTION OF MINUTES

Commissioner Coppa moved to approve the minutes for the meeting of December 5-6, 2002. The motion was seconded by Commissioner Fiesta and said motion was unanimously approved by voice votes.

II. TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that representatives from the Native Hawaiian Land Use Research Foundation would like to convene and participate in a panel discussion before the Commission about the need to reform Act 205. The Commission added the panel discussion to its January 9-10 agenda.

III. CONTINUED ACTION

A. DR02-26 - KULEANA KU'IKAHI, LLC (Maui)

Chair Ing announced that the matter before the Commission was a continuation of the action meeting previously held on November 15, 2002 to consider (i) Petitioner's Petition for a Declaratory Order declaring that the subdivision and development of approximately 4,500 acres of land in the Agricultural District situated at Lahaina, Maui requires a district boundary amendment; (ii) Makila Land Company, LLC's Petition to Dismiss Petition for a Declaratory Order dated September 30, 2002, or in the Alternative, Set Matter for Hearing; and (iii) Kauaula Land Company LLC's Request for Hearing under HAR Section 15-15-103 as a Contested Case, Petition to Intervene under HAR Section 15-15-53 and Arguments in Opposition to Petition for Declaratory Order.

APPEARANCES

Richard McCarty, Esq., attorney for Petitioner

Benjamin A. Kudo, Esq., attorney for Makila Land Company, LLC

Thomas D. Welch, Jr., Esq., attorney for Kauaula Land Company LLC

John Chang, Esq., Land Use Division, Office of Planning

Ann Ogata-Deal, Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Ed Kushi, Esq., Department of Corporation Counsel, County of Maui

Clayton Yoshida, Deputy Director, Department of Planning, County of Maui

Chair Ing announced that the parties that had signed up on November 17 would be allowed to testify first. Chair Ing noted that interested respondents would not be allowed to question the parties since this was not a contested hearing.

Additional written testimonies were received from the following persons: Bruce Curtis, Lei Kahakauwila, Mike Segura, Maria Kato, Robert and Debra Cohn, and Mike Foley for Mayor-Elect Alan Arakawa.

PUBLIC WITNESSES

Yolanda Dizon
Albert Dizon
Jim Gribaudo
Eliot Kato
Ilich Kato
Uilani Kapu
Skippy Howe
Qualani White
Nimmasadda Srinivas
Ku`uleialoha Palakiko

A recess was taken at 11:40 a.m.

The meeting reconvened at 12:10 p.m.

PUBLIC WITNESSES (continued)

Vicki McCarty
Curtis Yoshimoto
Clifford Nae`ole
Keawe Kapu
Sam Biga
Mike Foley
Jim Whitehead

Commissioner Catalani moved that the Land Use Commission enter into executive session to receive advice from counsel regarding this action. Commissioner Fiesta seconded the motion and said motion was approved by voice votes. Chair Ing announced that a lunch recess would follow the executive session with the meeting reconvening at 2:30 p.m.

The Commission entered into executive session at 1:15 p.m.

- 2:45 p.m. -

Upon reconvening the meeting, Chair Ing directed Executive Officer Ching to summarize some of the additional written testimony received to date. Executive Officer Ching summarized the testimony of Bruce Curtis, Robert and Debra Cohn, Mike Segura and Mario Kato as supporting the current developer and the project. Chair Ing then announced that after having heard six written testimonies, five hours worth of public witnesses, he would recommend to the Commission that public testimony be halted and that this action be set for a contested hearing. Chair Ing added that at that time, the Commission would seek to hear from expert and public witnesses and have the appropriate government agencies appear before this Commission. However, public witness Kalani Kapu raised an objection and requested opportunity to testify. His request was granted.

(3:10 p.m. Commissioner Catalani's appearance)

Further objections were raised by Kahaunani Keahi and Ruth Keahi to testify on behalf of the Kingdom of Hawaii so they were also allowed to testify.

Chair Ing asked the respective interested respondents for their comments. After extensive citation of the law, Mr. Kudo argued that the petition was defective and should be dismissed or, in the alternative, set for hearing. Mr. Welch argued that lands included in the petition are not involved in these subdivisions and urged that he be admitted as an intervenor if the Commission decides on a contested case. The County of Maui favored dismissal of this case and stood on its earlier filing. The Office of Planning favored a contested hearing on the petition and recommended that a boundary amendment to rural designation be sought for the project.

Commissioner Coppa moved to deny the motion for dismissal of the Petition for a Declaratory Order. Commissioner Catalani seconded the motion. The Commissioners were polled as follows:

Ayes: Commissioners Coppa, Catalani, Roehrig, Fiesta, Montgomery, Yukimura and Ing.

The motion passed with 7 ayes and 2 absent.

Commissioner Roehrig moved that pursuant to the Commission's rules, the Petition for Declaratory Order is neither denied nor granted and should instead be set for hearing. Commissioner Fiesta seconded the motion. The Commissioners were polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Catalani, Coppa, Montgomery, Yukimura and Ing.

The motion passed with 7 ayes and 2 absent.

Commissioner Roehrig then proposed amending the agenda to include adoption of orders; setting the Kuleana Petition for hearing and adopting an order denying the County of Maui's Petition for Declaratory Order in the Hale Kaula matter. Commissioner Fiesta seconded the motion. The Commissioners were polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Catalani, Coppa, Montgomery, Yukimura and Ing.

The motion passed with 7 ayes and 2 absent.

Commissioner Roehrig then moved that both orders be adopted as moved. Commissioner Fiesta seconded the motion. The Commissioners were polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Catalani, Coppa, Montgomery, Yukimura and Ing.

The motion passed with 7 ayes and 2 absent.

The hearing on this matter was adjourned at 4:25 p.m.