

Approved
12/19/02

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

December 5, 2002

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Lawrence N. C. Ing
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta, Jr.
Stanley Roehrig

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 10:05 a.m.

I. ADOPTION OF MINUTES

Commissioner Desai moved to approve the November 14-15, 2002 minutes as circulated. The motion was seconded by Commissioner Coppa and said motion was unanimously approved by voice votes.

II. TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the continued action meeting on DR02-26 – Kuleana Ku`ikahi is scheduled for December 19-20, 2002 in Lahaina, Maui.

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Mr. Ching also reported that there are two dockets scheduled for January 9-10, 2003 in Honolulu: A92-683 – Halekua Development Corporation and A93-689 Palauea Bay Partners.

The hearing on Docket A02-737 – University of Nations Bencorp is anticipated for March 6-7, 2003 in Kona.

Mr. Ching will apprise the Commissioners of upcoming legislation.

III. ACTION

CONTINUED ACTION

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

Chair Ing announced that this was a continued action meeting 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

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

Abe Mitsuda, Land Use Division, Office of Planning

Mr. Ginsberg-Klemmt distributed to the Commissioners a copy of a letter dated December 4, 2002 from Dierdre Mamiya, Administrator of the Land Division of the Department of Land and Natural Resources.

Mr. Ching gave a brief synopsis of the December 4, 2002 field trip to the property that was attended by himself, Commissioners Pravin Desai and Steven Montgomery, Arlene Shimokawa, and Abe Mitsuda and Lorene Maki of the Office of Planning.

Mr. Ching also gave a brief overview of the materials submitted by the Petitioners on November 29, 2002.

Ms. Ginsberg-Klemmt provided further information on the status of their property and of their subdivision. She also noted that she has a meeting next week with Loretta Chee of the City's Department of Planning and Permitting on the status of their subdivision and lot.

Questions were asked by the Commissioners.

Commissioner Yukimura moved that the Land Use Commission enter into executive session to receive advice from counsel regarding this action. Commissioner Coppa seconded the motion and said motion was approved by voice votes.

The Commission entered into executive session at 10:28 a.m. The meeting reconvened at 10:43 a.m.

Petitioners circulated photographs noting the approximate boundaries of their property to the Commission. This was followed by extensive questioning by the Commissioners of the Petitioners.

Commissioner Sakumoto moved to deny the Petition for Declaratory Order. Commissioner Coppa seconded the motion. Commissioners Sakumoto and Catalani indicated that the Petitioner did not carry their burden of proof that the boundary interpretation issued by staff did not apply appropriate rules of the Commission. Other issues cited include the disclosure that the City and County does not view Petitioner's property as lots of record (raising question whether the Petition before the Commission involved speculative facts) and how the threat of litigation on this topic might preclude the LUC from issuing any decision in this docket. The Commissioners were polled as follows:

Ayes: Commissioners Sakumoto, Catalani, Coppa, Desai, Montgomery, Yukimura and Ing.

The motion passed with 7 ayes and 2 absent.

A 10-minute recess was taken at 11:05 a.m.

The meeting was reconvened at 11:15 a.m.

ACTION

DR02-27 DEPARTMENT OF PLANNING, COUNTY OF MAUI (Maui)

Chair Ing announced that this was an action meeting to consider the Petition for Land Use Declaratory Order requesting a declaratory ruling on the interpretation and applicability of H.R.S. Chapter 205.

APPEARANCES

Madelyn S. D'Enbeau, Esq., Deputy Corporation Counsel, County of Maui

John Min, Department of Planning, County of Maui

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

Abe Mitsuda, Land Use Division, Office of Planning

Bert Saruwatari, LUC planner, provided the Commission with a map orientation.

Ms. D'Enbeau summarized the issues presented in the Petition for Land Use Declaratory Order.

The Commission raised questions relating to the jurisdiction of the LUC and counties over special permits.

Commissioner Catalani moved to deny the Petition for Land Use Declaratory Order in DR02-27. Commissioner Sakumoto seconded the motion. The Commission pointed out, among other things, that pursuant to section 15-15-102(4), HAR, the matter was not within the jurisdiction of this Commission given that section 205-6, HRS, delegated the counties with the authority to grant special permits to certain unusual and reasonable uses involving lands that are 15 acres or less within the Agricultural District other than those for which the district is classified. The Commissioners were polled as follows:

Ayes: Commissioners Coppa, Catalani, Sakumoto, Desai, Montgomery, Yukimura and Ing.

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The motion passed with 7 ayes and 2 absent.

Chair Ing announced that the meeting would resume on Friday, December 6, 2002, at 8:30 a.m. The meeting adjourned at 12:15 p.m.