

LAND USE COMMISSION
Minutes of Meeting
Legacy II Room
Hawaii Okinawa Center
94-587 Ukee Street
Waipahu, Hawaii 96797

March 28, 2003

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Isaac Fiesta
Randall Sakumoto
Stanley Roehrig
Peter Yukimura

COMMISSIONERS ABSENT: Lawrence Ing
Steven Montgomery

STAFF PRESENT: Russell Suzuki, Deputy Attorney General
Anthony J. H. Ching, Executive Officer
Bert Saruwatari, Staff Planner
Caroline Lorenzo, Acting Chief Clerk
Holly Hackett, Court Reporter

Presiding Officer Catalani called the meeting to order at 9:30 a.m.

DR02-26 KULEANA KU'IKAHU LLC (Maui)

Presiding Officer Catalani announced that this was an action meeting on Docket No. DR02-26 Kuleana Ku'ikahi, LLC, last heard on December 19, 2002, to consider the following:

1. Launiupoko's Motion to Dismiss Launiupoko From This Proceeding.
2. Kauaula Land Company LLC's Request for Order Limiting the Scope of Proceedings. Additionally,
 - Kauaula Land Company LLC's Request for Certain Additional Orders.
 - Kauaula Land Company LLC's Petition to Intervene under HAR Section 15-15-53.
3. Makila Land Company's Petition to Intervene.

APPEARANCES

Richard McCarty, Esq., representing Kuleana Ku'ikahi, LLC

Jamie Tanabe, Esq., representing Makila Land Company

U'ilani Pauole, Esq., representing Makila Land Company

Thomas Welch, Esq., representing Kauaula Land Company, LLC

Richard Kiefer, Esq., representing Launiupoko Associates, LLC

Russell Tsuji, Esq., representing Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Ruby Edwards, Land Use Division, Office of Planning

Mr. Kiefer noted that Launiupoko Associates, LLC (Launiupoko) owned lands approximately a mile from Kauaula Stream, identified as Mahanalua Nui, Phases III and IV. He explained that Launiupoko was a Hawaii limited liability company whose members included Peter Martin, a principle of Makila Land Company and Kauaula Land Company.

Mr. Kiefer indicated that the Petitioner did not mention Launiupoko nor the Mahanalua Nui subdivision in its petition filed in 2002. Mr. Kiefer also indicated that at the December hearing, this Commission recognized that because the rights and interest of the parties could be affected, it was appropriate to hold a contested case hearing on this matter. Mr. Kiefer stated that he was given insufficient notice by the Petitioner, who filed a memorandum dated February 7, 2003, that Launiupoko's lands were involved and identified in its petition. Mr. Kiefer indicated that Launiupoko was not identified at the December hearing as one of the landowners whose development was going to be a subject of this hearing, and that bringing in Launiupoko at this time violates the Commission's rules, Chapter 91, and general due process concerns. He noted that the Commission's rules indicated that anything served upon the parties must be done by certified mail or personal service. He pointed out that the Petitioner's petition was served by regular mail.

Presiding Officer Catalani indicated that he believed that Launiupoko (absent a petition to intervene being granted by the Commission) was not yet a party to this proceeding, and questioned Mr. Kiefer as to what kind of relief was being sought. Mr. Kiefer responded that Launiupoko's request was to be excluded from this proceeding.

Mr. McCarty, representing the Petitioner, indicated that he filed a memorandum with attachments that proved Launiupoko had actual notice. Mr. McCarty explained that he learned that after filing petition, Launiupoko had substantial properties in the area, and that it would be fair to let them know that it filed a petition for declaratory ruling with the Land Use Commission, so that Launiupoko could file a petition to intervene and become a party to this proceeding. Mr. McCarty further expressed that it was the Commission's decision to decide who would be a party.

Ms. Tanabe indicated that Makila Land Company (Makila) supported Launiupoko's motion to exclude itself, and believed that the notice given was inadequate. She noted that the relief was specifically directed at Makila only and only Makila was served. Ms. Tanabe stated that only Makila was subjected to these proceedings and not all three landowners. Ms. Tanabe also noted that this case was improperly brought as a declaratory action.

Mr. Welch, representing Kauaula Land Company (Kauaula) supported Launiupoko's motion to exclude itself as its position was similar to that of Makila.

Mr. Tsuji commented that Launiupoko has had actual notice that its lands were included in these proceedings, and that if there were prejudice and insufficient time to prepare for this case, then it was the Office of Planning's position, with the Commission's approval, to stipulate to a reasonable continuance of time to allow Launiupoko to adequately prepare for its case. Mr. Tsuji also commented that a declaratory action was appropriate when there was a dispute between the parties.

Commissioner Coppa moved to enter into executive session to discuss the legal aspects regarding this matter. Commissioner Yukimura seconded the motion and said motion was unanimously approved by voice votes.

The Commission entered into executive session at 9:57 a.m., and the meeting reconvened at 10:10 a.m.

Presiding Officer Catalani expressed the Commission's concern over the form of Mr. Kiefer's motion. He added that if the problem was a due process issue and inadequate time to prepare, the Commission could grant additional time to Launiupoko to prepare its case. Presiding Officer Catalani noted that Launiupoko was not guaranteed that its land would not be affected by the Commission's ruling.

Mr. Kiefer indicated that he would make an oral motion to intervene because Launiupoko was a landowner in the petition area.

Vice Chair Roehrig moved to defer ruling on this motion until evidence was heard on April 9-10, 2003 on Maui. Commissioner Fiesta seconded the motion.

Vice Chair Roehrig indicated that the facts would be heard by the Commission on April 9-10, 2003. He added that if Mr. Kiefer was making a motion to intervene and participate in this meeting, all parties would have an opportunity to provide the Commission with its facts and concerns.

Commissioner Coppa suggested that the motion indicate that the Commission would grant Launiupoko's oral motion to intervene with the understanding that Launiupoko moved to withdraw its Motion to Dismiss, and further that Launiupoko will be ready to proceed at the April 9-10, 2003 hearing.

The Commission was polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Sakumoto, Coppa, Yukimura, Desai, and Catalani

The motion passed with 7 ayes, 0 nays, and 2 absent.

A break was taken at 10:35 a.m., and the meeting reconvened at 10:48 a.m.

Commissioner Fiesta excused himself from the proceedings.

Mr. Welch noted that if the Commission granted his Petition to Intervene, he would withdraw his Request for Order Limiting the Scope of Proceedings.

Vice Chair Roehrig moved to grant Kauaula's motion to intervene with the understanding that Kauaula will withdraw its Request for Order Limiting the Scope of Proceedings, and further that Kauaula will be ready to proceed at the April 9-10, 2003 hearing. Said motion was seconded by Commissioner Yukimura, and the Commission were polled as follows:

Ayes: Commissioners Roehrig, Yukimura, Desai, Sakumoto, Coppa, and Catalani

The motion passed with 6 ayes and 3 absent.

Vice Chair Roehrig moved to grant Makila's Petition to Intervene with the understanding that Makila will be ready to proceed at the April 9-10, 2003 hearing. The motion was seconded by Commissioner Coppa, and the Commission were polled as follows:

Ayes: Commissioners Roehrig, Coppa, Desai, Yukimura, Sakumoto, and Catalani

The motion passed with 6 ayes and 3 absent.

A break was taken at 11:20 a.m., and the meeting reconvened at 11:21 a.m.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Vice Chair Roehrig moved to adopt the Order Rescinding the Order Denying Acceptance of Petitioner's Final Environmental Impact Statement by the State Land Use Commission Issued on April 25, 2002. Commissioner Coppa seconded the motion, and the Commission was polled as follows:

Ayes: Commissioners Roehrig, Coppa, Yukimura, Desai, Sakumoto, and Catalani

The motion passed with 6 ayes and 3 absent.

Vice Chair Roehrig moved to adopt the Order Allowing the Submission of the Revised Petitioner's Final Environmental Impact Statement Filed March 21, 2002. Commissioner Coppa seconded the motion, and the Commission were polled as follows:

Ayes: Commissioners Roehrig, Coppa, Sakumoto, Yukimura, Desai, and Catalani

The meeting was adjourned at 11:25 a.m.