

LAND USE COMMISSION
MINUTES OF MEETING

March 18, 2004

Maile Room
Maui Coast Hotel
2259 South Kihei Road
Kihei, Maui, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Isaac Fiesta
Kyong Su Im
Lawrence Ing
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai

STAFF PRESENT: Anthony Ching, Executive Officer
Russell Suzuki, Deputy Attorney General
Bert Saruwatari, Staff Planner
Caroline Lorenzo, Secretary
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 10:00 a.m.

ADOPTION OF MINUTES

Vice Chair Coppa moved to adopt the minutes of the February 19 and 20, 2004 Land Use Commission meeting. Commissioner Yukimura seconded the motion. The motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that there was a motion seeking extension of the June 1, 2004 deadline imposed by the Commission in the Waimanalo Landfill docket, and that a special meeting may be needed to address and accommodate this motion. Mr. Ching also

reported that there would be a status report on Kamehameha Schools on the Big Island regarding traffic concerns.

Mr. Ching indicated that there are two new dockets coming before the Commission – Kikiola Land Company on Kauai and Kamehameha Investment Corporation on the Big Island. He also indicated that settlement discussions are in process in the Hokulia (1250 Oceanside) civil suit.

LEGISLATIVE

Mr. Ching reported that the Senate Committee on Water, Land and Agriculture met regarding confirmation of Commissioner Im's term to the Land Use Commission.

Mr. Ching provided the Commission with a 4-page fact sheet regarding important agricultural lands, why legislation is needed and comments regarding the proposal of voluntary system of IAL designation. There was discussion of the Commission authority with respect to the administration of IAL. The next hearing is scheduled for March 20, 2004 on SB 3052. Mr. Ching asked that any comments by the Commission may be incorporated into the testimony being provided by staff at that time.

Mr. Ching provided status on other legislative bills. He reported that the Commission supports the intent of HB 1806 and offered comments. He also reported that the Commission provided testimony on HB 2166 indicating support of the legislative intent but urging deferral of the matter until some future time.

ADOPTION OF ORDERS

- A03-739 A&B PROPERTIES, INC. (MAUI)

APPEARANCES

Benjamin Matsubara, Esq., representing Petitioner
Stanley Kuriyama, CEO, Petitioner – A&B Properties, Inc.
Michael Foley, Planning Director, County of Maui Department of Planning
Jane Lovell, Esq., representing the County of Maui Department of Planning
John Chang, Esq., representing the State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Ing described the procedure for this docket, and there were no objections to the procedure by the parties.

PUBLIC WITNESS

1. Ruth Keahi

Ms. Keahi stated that she represented the Kingdom of Hawaii Sovereign Nation of God. She testified that these lands are in the trust, that these lands belong to the king, and that the entire kingdom is in this trust. She also indicated they are concerned as to where the condos and hotels will be built, and expressed that the islands and archipelago belongs to the Kingdom of Hawaii. There were no questions or comments by the Commission and the parties.

Vice Chair Coppa excused himself from the proceedings at 10:33 a.m.

Chair Ing asked if the Petitioner had reviewed the proposed Findings of Fact, Conclusions of Law, and Decision and Order as provided by staff. The Petitioner provided its comments.

Vice Chair Coppa returned to the proceedings at 10:38 a.m.

Vice Chair Coppa expressed his concern regarding duplication of responsibility between the County and the State. Mr. Foley indicated that there would be no duplication and offered hope that the Maui County Council would soon change its policy and requirement the development of affordable housing as a function of commercial/industrial projects.

Commissioner Montgomery commented that the 10-acre figure was based on minimal information and was not very scientific or based on an appropriate study.

Mr. Mitsuda indicated that the State's position was consistent on this issue and would like the County to address the issue of affordable housing as a function the development of commercial/industrial projects. He felt that the County should exercise authority and jurisdiction in determining the amount and siting of affordable housing.

Commissioner Fiesta agreed that the Commission should defer to the County regarding affordable housing.

Deputy Attorney General Russell Suzuki excused himself from the proceedings at 11:00 a.m.

Ms. Lovell indicated that the LUC should have some responsibility in determining affordable housing for this docket.

Deputy Attorney General Russell Suzuki returned to the proceedings at 11:03 a.m.

After much discussion and deliberation, Commissioner Fiesta moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order as circulated. Commissioner Yukimura seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Fiesta, Yukimura, Catalani, Coppa, Im, Montgomery, and Ing

Nays: Commissioner Sakumoto

The motion passed with 7 ayes, 1 nay, and 1 absent.

A recess break was taken at 11:21 a.m. The meeting reconvened at 11:38 a.m.

PUBLIC WITNESS

2. Kamalani Kaahanui

Ms. Kaahanui stated that she was the appointed foreign minister for the Kingdom of Hawaii Sovereign Nation of God. She referenced a document filed with the Bureau of Conveyances on July 10, 1995 which stated that no mandate shall be filed or entertained on this closed document, and that his majesty will continue to pursue and consider the truth of documents.

- A89-635 HENRY H. SHIGEKANE REVOCABLE TRUST, ET. AL. (Oahu)

Chair Ing indicated that the Movant and the City would not be attending this meeting.

APPEARANCES

John Chang, Esq., representing State Office of Planning

Abe Mitsuda, State Office of Planning

Commissioner Fiesta moved to adopt the Order Denying the Aha Hui Malama O Kaniakapupu's Motion for an Order to Show Cause Regarding Enforcement of Conditions, Representations, or Commitments. Commissioner Yukimura seconded the motion, and said motion was unanimously approved by voice votes.

- A76-418 MOANA CORPORATION (Kauai)

APPEARANCES

John Chang, Esq., representing State Office of Planning

Abe Mitsuda, State Office of Planning

The County and Movants notified the Commission that they will not be present to the proceedings.

Vice Chair Coppa moved to adopt the Order Granting (1) Kiahuna Mauka Partners, LLC's Motion to Amend or Modify Condition No. 9 of Decision and Order, as Amended on August 5, 1997; and (2) Eric A. Knudsen Trust's Motion to Modify Condition No. 9a of Decision and Order. Commissioner Montgomery seconded the motion, and said motion was unanimously approved by voice votes.

Commissioner Im moved to enter into executive session to consult with legal counsel. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

The Commission adjourned the meeting and entered into executive session at 11:56 a.m.

The meeting reconvened at 1:31 p.m.

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

Chair Ing stated that this was a meeting to receive a status report from the parties regarding the status of mediation efforts to date, recommendations on how to proceed in light of the recent pleadings that have been filed, and memorandum regarding the Commission's authority to reopen proceedings and for additional relief.

APPEARANCES

Richard McCarty, Esq., representing Petitioner
Jamie Cheng, Esq., representing Intervener
Benjamin Kudo, Esq., representing Intervener
Michael Foley, Planning Director, County of Maui Department of Planning
Jane Lovell, Esq., representing County of Maui Department of Planning
John Chang, Esq., representing State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. McCarty provided a brief status report of Petitioner's mediation efforts. He stated that the Petitioner has previously made significant efforts to utilize mediation with the parties and given past results felt that it has caused delays and allowed developments to occur which make it difficult for any mediation to reverse. The Petitioner felt that it was inappropriate that homes are being proposed and road improvements were being made without resolution to their petition. He further indicated that good faith efforts had been made to resolve the potable water situation with the families; however, the restoration of flow to Kauaula stream was another issue of concern to his clients. The Petitioner filed a motion to allow the reopening of the matter and continue where it left off.

Mr. Kudo indicated that he was not involved in the mediation efforts. He further indicated that the result of the mediation efforts was a settlement agreement, which was attached. The status report called for the parties to form a joint working group without

mediators. He stated that there had been meetings discussing water issues, access, and land title rights. He also stated that the working group attempted to address most of the issues in very good faith and hoped that mediation can resume. He asked that the motion from the Petitioner be dismissed and indicated that his client was willing to pursue mediation as a strategy to address the many issues.

Vice Chair Coppa offered his encouragement that mediation amongst the parties be restarted.

Ms. Lovell indicated that the County has provided a status report to the Commission and was not an active participant in the mediation efforts but expressed support for continuing the mediation effort amongst the parties.

Mr. Chang indicated that the State did not file a status report but reviewed the status reports filed by all parties. He further indicated that the State would agree with the recommendation of the County that there should be further attempt for mediation regarding this case before the Commission sought to take any further action.

After much discussion and deliberation amongst the Commission and the parties, a motion was made by Commissioner Fiesta to continue mediation efforts with a report to the Commission within 90 days. Commissioner Im second the motion, and the Commission was polled as follows:

Ayes: Commissioners Fiesta, Im, Catalani, Coppa, Montgomery, Sakumoto, Yukimura, and Ing

The motion passed with 8 ayes and 1 absent.

Chair Ing announced that the meeting would resume tomorrow (March 19, 2004) at 8:30 a.m.

The meeting was adjourned at 2:41 p.m.

(See LUC Transcript for more details on the above matters.)