

LAND USE COMMISSION  
MINUTES OF MEETING

July 22, 2004

Makena Salon Ballroom  
Maui Prince Hotel Makena Resort  
5400 Makena Alanui  
Makena, Maui, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Kyong-Su Im  
Lisa Judge  
Steven Montgomery  
Randall Sakumoto  
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai  
Isaac Fiesta, Jr.

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Maxwell Rogers, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter

Chair Catalani called the meeting to order at 2:01 p.m.

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

Chair Catalani announced that this was an action meeting on Docket No. DR02-26 Kuleana Ku`ikahi, LLC on the following:

- The December 19, 2003, Petition of Kuleana Ku`ikahi, LLC for Order Re-Opening Proceedings and for Additional Relief;
- The January 20, 2004, Supplement filed by Kuleana Ku`ikahi relevant to its original Petition for Declaratory Order;
- The March 11, 2004, Makila Land Company, LLC, Kauaula Land Company, LLC, and Launiupoko Associates, LLC's Petition to Dismiss Petition of

Kuleana Ku`ikahi, LLC, for Order Re-Opening Proceedings and for Additional Relief;

- The July 15, 2004, amended motion of Kauaula Land Company, LLC's to dismiss petition for declaratory order dated September 30, 2002 and Petition for Order Re-Opening Proceedings and for Additional Relief filed on December 15, 2003;
- The July 15, 2004, joinder by Launiupoko Associates, LLC in Kauaula Land Company, LLC's amended motion to dismiss noted previously; and
- The July 15, 2004, petition by Makila Land Company, LLC for an order dismissing Makila Land Company, LLC from the instant proceeding and joinder in the amended motion of Kauaula Land Company, LLC noted previously.

### APPEARANCES

Richard McCarty, Esq., represented Petitioner - Kuleana Ku`ikahi, LLC

Jamie Cheng, Esq., represented Makila Land Company, LLC

Benjamin Kudo, Esq., represented Makila Land Company, LLC

James Keiger, Esq., represented Kauaula Land Company, LLC

Martin Luna, Esq., represented Launiupoko & Associates, LLC

Blaine Kobayashi, Esq., represented Launiupoko & Associates, LLC

Jane Lovell, Esq., represented County of Maui Department of Planning

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Catalani noted that the focus of today's meeting was whether a petition for declaratory order, which had been withdrawn, could be reopened.

Mr. McCarty provided his comments before the Commission. He indicated that the Petition was filed during the time that the parties were engaged in mediation. There was fear that mediation might prove unsuccessful. He reiterated that there were public issues about properties on agricultural lands and whether there were suitable non-potable resources to support agricultural activities in the petition area. He felt that public policy issues regarding agricultural lands and water have not been addressed, and believed that the Land Use Commission continues to have jurisdiction over these matters.

Chair Catalani indicated that the Petitioner has the option to dismiss without prejudice and to refile the exact record and continue where they left off.

Mr. McCarty indicated that if the Commission chooses to deny its motion, Petitioner will refile its Petition. He added that cost is not an issue.

Ms. Cheng indicated that the proceedings should not be reopened because a lot of the individual lot owners have not been able to participate and that the Petition is defective in the way that it was originally filed.

Mr. Geiger indicated that he agreed with arguments made by Ms. Cheng and added that as a matter of fundamental fairness, the hearing should not be reopened. If reopened, it would impact property rights without benefit of notice to those with a property interest.

Mr. Luna agreed with Ms. Cheng and Mr. Geiger and asked the Commission to note that the LUC's authority is restricted to Chapter 15-15-98b, HAR.

Ms. Lovell indicated that the Commission has jurisdiction over this matter. She believed that the new commissioners who did not sit at the meetings at the time of the hearings could read the transcripts to familiarize themselves with the docket. She stated that the County asks that the Commission not discard the old record and proceed from there. She felt that this was a very important issue, which needs resolution. Ms. Lovell also asked that all counsel keep a civil and professional tone in the proceedings and their pleadings.

Mr. Chang stated that the State had not actively participated in this docket but felt there were some procedural issues that were unresolved. He indicated that the State agreed with the County that refileing another petition to clarify those issues would be beneficial. He also indicated that if a new petition is filed, the old record should be integrated in the new record. He further indicated that if new parties were added, that the new parties should have the opportunity to cross-examine the witnesses who had already testified.

There were no public witnesses for this docket.

Vice Chair Coppa moved to enter into executive session to receive advice from counsel on this matter. Commission Montgomery seconded the motion. The motion was unanimously approved by voice votes.

The Commission entered into executive session at 2:30 p.m.

The Commission reconvened at 2:57 p.m.

Commissioner Judge made a disclosure that her husband has an ownership interest in the Ukumehame Valley, but neither her husband or Commissioner Judge has a personal or business interest related to any of the parties in this proceeding, namely

Kuleana Ku`ikahi LLC, Makila Land Company LLC, Launiupoko & Associates, and Kauaula Land Company, LLC, nor are they related by blood or marriage to any of the parties in addition to being familiar with the record of this docket.

Mr. McCarty asked Commissioner Judge if Peter Martin and Jim Riley were involved in her family project. Commissioner Judge responded in the negative.

Ms. Lovell indicated that the County has concerns regarding the proximity of the property to the Petition Area and was unsure as to what the appropriate objection would be, but felt that it would be appropriate for Commissioner Judge to recuse herself from proceedings on this matter.

There were no other objections or comments made by the State and Interveners.

The Commission discussed and deliberated the issue. Vice Chair Sakumoto asked the interveners how many new owners there are at this point compared to when the Petition was originally filed. Ms. Cheng, Makila Land Company, indicated that there are approximately 20-30 lots. Mr. Geiger, Kauaula Land Company, indicated that he could not provide a number at this time but affirmed that there had been new lot sales. Mr. Luna, Launiupoko & Associates indicated that there are 42 new lot owners for Phase 3 and also indicated that a disclosure had been made to each owner as to the subject of the pending proceedings.

Vice Chair Sakumoto moved to deny the petition of Kuleana Ku`ikahi to reopen the proceedings and for additional relief. Vice Chair Coppa seconded the motion. Vice Chair Sakumoto stated that the reason for his motion was that he believed there was no LUC authority to reopen the proceedings when the Petitioner has withdrawn its Petition. He further stated that there are due process concerns arising out of the lack of notice to the new homeowners, and that there may be a number of people who might be affected by a decision made but did not have an opportunity to participate in this process. He clarified that his motion to deny would be without prejudice and the Petitioner would have the opportunity to refile its Petition. If the Petitioner chooses to refile, Vice Chair Sakumoto requested that the petition area be made very clear.

Chair Catalani agreed with Vice Chair Sakumoto and reiterated that the issues raised in this docket were substantial.

On the motion to deny Kuleana Ku`ikahi's petition to reopen the proceedings and for additional relief, the Commission was polled as follows:

Ayes: Commissioners Sakumoto, Coppa, Im, Judge, Montgomery, Yukimura, and Catalani.

The motion passed with a vote of 7 ayes and 2 absent.

Chair Catalani indicated that the other motions filed were automatically moot because of the Commission's ruling.

#### ADOPTION OF MINUTES

Vice Chair Sakumoto moved to approved the Land Use Commission minutes of July 8, 2004. Commissioner Coppa seconded the motion. The motion was unanimously approved by voice votes.

#### TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported on the following:

- Two prehearing meetings are scheduled on August 9, 2004 on two Maui dockets – A03-745 Hanohano LLC and A04-750 Spencer Homes and the Department of Housing and Human Concerns. Hearings are scheduled for September 2-3, 2004 and September 16-17, 2004. Mr. Ching stated that the prehearing meetings are attended by staff and the parties to discuss the necessary protocols and promote efficiency of the proceedings.
- The August 12-13, 2004 hearing will be held on the Big Island. The agenda includes continued hearing on Docket No. A04-747 Kamehameha Investment Corporation.
- The next meeting on the Big Island will be scheduled for October 7-8, 2004. Included on the agenda is a status report on Kamehameha Schools – East Hawaii. This would give the Kamehameha Schools and the Department of Transportation the opportunity to meet and continue to work toward a resolution.

Chair Catalani indicated his interest in the Department of Transportation's position on the matter of Kamehameha Schools East Hawaii.

Mr. Ching also indicated that the Hiluhilu docket would be taken up in the December meeting.

Chair Catalani indicated that he would like to hear from the Housing and Community Development Corporation of Hawaii regarding its affordable housing policies.

Chair Catalani asked that either Vice Chair Coppa or Vice Chair Sakumoto be presiding officer on August 12, 2004 since he will not be able to attend the hearing on that day.

Vice Chair Coppa moved to adjourn the meeting. Commissioner Montgomery seconded the motion. The motion was unanimously approved by voice votes.

The meeting was adjourned at 3:30 p.m.

*(Please refer to LUC Transcript of July 22, 2004 for more details on this matter.)*