

LAND USE COMMISSION
MINUTES OF MEETING

April 7, 2005

Conference Room 405
Leiopapa A Kamehameha
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Isaac Fiesta, Jr.
Michael Formby
Kyong-su Im
Lisa Judge
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Steven Montgomery

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Max Rogers, Staff Planner
Bert Saruwatari, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter

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

Chair Catalani announced that Commissioner Fiesta was anticipated to attend the meeting after 1:00 p.m. and stated that at that time, Kuleana Ku`ikahi will be heard. He noted that all those interested in this docket could return at that time when the docket will be heard.

ADOPTION OF MINUTES

Vice Chair Sakumoto noted a correction on page 5, first paragraph, the McCully docket. He noted that the minutes should indicate that "...the LUC be the accepting authority and the project warrants A-FONSI." Also, on page 6, the Toyama Gardens docket, last paragraph, line 3 should read "...requires expansion of retail/commercial area beyond 25,000 square feet, then the Petitioner shall prepare a TIAR."

After the corrections were noted, Vice Chair Sakumoto moved to adopt the Land Use Commission meeting minutes of March 16, 2005. Commissioner Im seconded the motion. Said motion was approved by voice votes.

ADOPTION OF DECISION AND ORDER

DOCKET NO. A04-748 CONSOLIDATED BASEYARDS LLC (Maui)

Chair Catalani stated that this was a meeting to consider the adoption of the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A04-748 Consolidated Baseyards, LLC.

APPEARANCES

Blaine Kobayashi, Esq., represented Petitioner

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mr. Chang announced that Laura Thielen is the newly appointed Director of the Office of Planning and added that she will be introduced to the Commission today at lunch.

Chair Catalani continued with the meeting and asked if there were any comments from the Commissioners related to the Decision and Order for this docket.

Vice Chair Sakumoto had questions and concerns in reference to Tom Nance's earlier testimony, which was requested to be included in the order. Vice Chair Sakumoto also noted the changes and corrections to conditions 1 and 19 in the order related to the affordable housing agreement and time period.

Commissioner Judge posed a few questions related to the formulated language that should have been based on the A&B docket and requested that a copy should be provided to the Commission. Commissioner Judge also discussed the timelines of the housing study.

Commissioner Im had a few questions on the language in condition no. 1, the words “petitioner’s presentation” should be clarified and changed to “presentation after application has been submitted.” Commissioner Im also discussed the time limitation on the housing study.

Commissioner Formby’s questions were related to finding no. 83, related to County wastewater, DOH leach fields, and connection to the Maui Wastewater System when such service becomes available.

Mr. Kobayashi addressed Vice Chair Sakumoto’s earlier comments and read areas of the transcripts of Tom Nance’s previous testimony. Vice Chair Sakumoto replied that he was satisfied with this explanation.

There were no objections to the changes by the parties and the Commission had no further comments.

Commissioner Judge moved to adopt the decision and order with amendments for Docket No. A04-748 Consolidated Baseyards. Commissioner Formby seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Judge, Formby, Im, Sakumoto, Yukimura, and Catalani.

The motion passed with 6 ayes and 2 absent.

A recess break was taken at 10:40 a.m. The meeting reconvened at 10:50 a.m.

A03-745 HANOHANO LLC (Maui)

Chair Catalani stated that this was a meeting to consider the adoption of the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A03-745 Hanohano LLC.

APPEARANCES

David Nakamura, Esq., represented Petitioner

Don Fujimoto, Hanohano LLC.

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Catalani asked if there were any comments from the Commissioners related to the Decision and Order for this docket.

Vice Chair Sakumoto had questions and concerns in reference to finding no. 23 that indicates a discrepancy of the filing dates as March 1, 2005 and February 25, 2005. Mr. Ching clarified that the formal filing date was on March 1, 2005 and that the distribution date was on February 25, 2005.

Vice Chair Sakumoto noted a few changes related to condition nos. 4a and 4c.

There were no objections to the changes proposed by Vice Chair Sakumoto and the Commission had no further comments.

Commissioner Judge moved to adopt the decision and order with the amendments made by Vice Chair Sakumoto for Docket No. A04-745 Hanohano LLC. Vice Chair Sakumoto seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Judge, Sakumoto, Formby, Im, Yukimura, and Catalani.

The motion passed with 6 ayes and 2 absent.

DOCKET NO. A04-746 WAIKAPU INVESTMENT 28, LLC. (Maui)

Chair Catalani stated that this was an action meeting to consider the Petitioner's Motion To Amend Findings of Fact, Conclusions of Law, and Decision and Order For A State Land Use District Boundary Amendment filed December 14, 2004.

On March 24, 2005, the Commission received Petitioner's Motion To Amend Findings of Fact, Conclusions of Law, and Decision and Order For A State Land Use District Boundary Amendment filed December 14, 2004; verification; and affidavit of Scott Nunokawa.

APPEARANCES

Blaine Kobayashi, Esq., represented Petitioner

Scott Nunokawa, Waikapu 28 Investment

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Mr. Kobayashi made his presentation and stated that they did not have anything further to add beyond what was filed with the LUC in the written motion on March 24, 2005. Mr. Kobayashi noted that Petitioner had met with the County and Office of Planning, who are both in support of the amendment, and that the DOE also supports the extension of the deadline for reaching a written agreement, as indicated in the DOE memo dated April 6, 2005.

Ms. Lovell stated that the County had no objections to the amendment.

Mr. Chang indicated that the State also had no objections and added that the Commission has received the memo from the DOE supporting the amendment and that is the State's position at this time.

Vice Chair Sakumoto posed a few questions related to Petitioner's efforts to reach an agreement with the DOE and also asked for the status of the subdivision application approval. Mr. Nunokawa explained that communication with the DOE were ongoing and provided a brief summary of the subdivision application approval status.

Chair Catalani had a few questions and concerns in reference to the DOE memo and noted that Ms. Loui states that the DOE is not asking for anything different from other projects. Chair Catalani asked if the Petitioner had any problems with the DOE's formula or analysis.

After a brief discussion, Commissioner Judge moved to approve Petitioner s motion to amend condition no. 4 for Docket A04-746 Waikapu 28, the Petitioner shall work with the State Department of Education (DOE) relative to any fair share contributions. Term of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County of Maui final subdivision approval. The motion was seconded by Commissioner Formby. The Commission was polled as follows:

Ayes: Commissioners Judge, Formby, Im, Sakumoto, Yukimura, and Catalani.

The motion passed with 6 ayes and 2 absent.

DOCKET NO. A05-758 A CHARITABLE FOUNDATION CORPORATION (Oahu)

Chair Catalani stated that this was an action meeting to determine whether the proposed action discussed in Petitioner’s Draft Environmental Assessment for the reclassification of (i) approximately 28.759 acres of land currently in the Agricultural District into the Conservation District for the creation of a new State Park Reserve; and (ii) approximately 5.219 acres of land currently in the in the Conservation District into the Agricultural District for the development of farm dwellings with agricultural uses at Koolauloa and Waialua, Oahu, Hawaii warrants an Anticipated Finding of No Significant Impact pursuant to chapter 343, Hawaii Revised Statutes.

On March 15, 2005, the Commission received Petitioner’s Petition for Land Use District Boundary Amendment and Draft Environmental Assessment.

APPEARANCES

Benjamin M. Matsubara, Esq., represented Petitioner
Curtis Tabata, esq. represented Petitioner
David Druz, President, A Charitable Foundation Corporation
Rodney Funakoshi, Wilson Okamoto
Ray Sakai, City and County of Honolulu
John Chang, Deputy Attorney General, represented State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Catalani noted that the Commission has received e-mail testimony from Blake McElheny of Pupukea in support of the petition.

PUBLIC WITNESS

1. Henry Curtis

Mr. Curtis stated that he is the Executive Director of Life of the Land, an organization with a history of 36 years of involvement in land use issues. Mr. Curtis explained that this is the applicant's third proposal. The first was to build single-family homes and the second was for a spiritual or religious retreat. Both proposals were opposed by the North Shore community. Mr. Curtis added that he just wanted to be assured that the petitioner is not planning a spiritual retreat and farm on the agricultural lands with intentions to build beyond what would be allowed for the traditional farm dwelling.

Mr. Matsubara noted that there is no religious component in this application.

Mr. Funakoshi added that currently there are only recreational uses on the property for horse riding and a few hiking trails.

After a brief discussion, there were no further questions posed by the Petitioner, County and State.

Mr. Matsubara gave his presentation and noted that he will be presenting a witness to describe the project's draft environmental assessment. Mr. Matsubara stated that due to the community's input, the previous proposals as discussed by Mr. Curtis, have been abandoned and the Petitioner has no desire to pursue any of those prior options. Mr. Matsubara added that the draft environmental assessment did not contain as much as they would have wanted, however, they will include any comments requested in the final environmental assessment.

PETITIONER'S WITNESS

1. Rodney Funakoshi

Mr. Funakoshi stated that he is the Project Manager with the Planning Section at Wilson Okamoto Corporation and has been in this position for 18 years. Mr. Funakoshi provided a brief description on his duties and responsibilities and indicated that he has conducted over 50 environmental assessments or impact statements in the past. Mr. Funakoshi was qualified as an expert in planning and entitlements compliance with Chapter 343. There were no objections by the County or the State.

Mr. Funakoshi described his involvement with the Petitioner's preservation project and referred to Petitioner's map in figure 1-1.

Commissioner Judge noticed discrepancies in figures 1-1, 2-2, and 1-3. Mr. Funakoshi noted that figures 1-1 and 1-3 are correct as they essentially reflect the property lines, but figure 2-2 is incorrect and the overlay will be adjusted.

Mr. Funakoshi briefly discussed the OEQC's 13 points of significance and his conclusion that at this point, the project created no significant impact to the environment.

1. Involve an irrevocable commitment to loss or destruction of any natural cultural resource;
2. Curtail the range of beneficial uses of the environment;
3. Conflict with the state's long term environmental policies or goals and guidelines as expressed in Chapter 343, HRS, and any revisions thereof and amendments thereto, court decision, or executive orders;
4. Substantially affect the economic or social welfare of the community or state;
5. Substantially affect public health;
6. Involve substantial secondary impacts; such as population changes or effects on public facilities;
7. Involve a substantial degradation of environmental quality;
8. Individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
9. Substantially affect a rare, threatened or endangered species, or its habitat;
10. Detrimentially affect air or water quality or ambient noise levels;
11. Affect or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
12. Substantially affect scenic vistas and viewplanes identified in county or state plans or studies; or
13. Require substantial energy consumption.

Mr. Funakoshi noted that a finding of no significant impact is warranted.

Mr. Sakai stated that the County had no questions.

Mr. Chang asked if the Petitioner could describe the organization and its mission.

Mr. Matsubara stated that it is a 501 C3 non-profit organization founded in Nevada to engage in all activities to private foundations for public interest and support in scientific research, land conservation, environmental protection, fostering unity among all religions, humanitarian relief, education and arts, and helping people realize their highest potential and most noble qualities. Mr. Matsubara added that from 1997 thru 2004, the organization has also contributed more than \$1.5 million to various charitable activities.

Mr. Chang had questions related to the draft environmental assessment on issues of hydrology, drinking water contamination, pesticides from previous agricultural uses, no indication of studies on invertebrates, and the present type of agricultural district, septic tank and potable water issues.

A lunch break was taken at 12:05 p.m. The meeting reconvened at 1:05 p.m.

Commissioner Fiesta entered the meeting at this time.

The meeting reconvened and Chair Catalani stated that the Commission will continue with Docket No. A05-758 A Charitable Foundation Corporation with Petitioner's cross-examination of witness Mr. Funakoshi.

Vice Chair Sakumoto posed a few questions on matters related to the draft environmental assessment, no plan development, addressing potential impacts by the project development, and the comment letter from DLNR indicating a lack of funding to manage the donated area. Vice Chair Sakumoto added that the Commission would like to conduct a site visit on the project area.

Commissioner Im posed questions on the main purpose for this current reclassification and the proposed plans to consolidate and subdivide the land.

Mr. Matsubara noted that they could not dedicate the 79 acres to the State unless they reclassify and subdivide first.

Mr. Funakoshi added that they previously met with the City on the possibility of dedicating the land "as is" and it was the City's recommendation to see it reclassified in zone 1 from agricultural to conservation, otherwise it is an agricultural parcel that is currently land locked.

Commissioner Im had a few questions on the organization's main objective and members of the organization, and the purpose of the 4 potential farm dwellings. Mr. Matsubara noted that there are 3 directors, 2 are Hawaii residents and 1 is a resident of Australia. Mr. Druz, who was present at the meeting, is the president and one of the directors. Mr. Matsubara added that the intent or use of the property will be for farm dwellings and reiterated that these dwellings will not be used as a religious retreat.

Commissioner Im also posed questions related to the property deed, purchase date and price, and other potential uses on the property.

Mr. Druz clarified the organization's main objective and provided a brief history and details on the organization's mission statement to foster unity of the religions. He added that their main objective has always been to preserve the land.

Commissioner Formby had questions and concerns in reference to the impact assessments or studies that were not included in the draft environmental assessment, such as the studies for cultural resources, environmental, fauna, etc.

Mr. Funakoshi replied that they did not include the cultural impact assessment since it was previously included in the proposal for the spiritual retreat and that proposal is not a component of this current application to the LUC. He added that they will include the cultural impact assessment in the final document

Chair Catalani posed a few questions regarding the ESA, feasibility and suitability, the conclusions reached for sustainable agriculture, the size of the divided lots, and the septic systems.

Mr. Sakai stated that the County had no comments.

Mr. Chang indicated that the State had nothing further to add.

Staff Report

1. Bert Saruwatari

Mr. Saruwatari reported staff's recommendations noting that the fauna survey, Phase I EAS and pesticide studies, and comments on the invertebrate species should be included in the final EA.

Vice Chair Sakumoto moved that the Commission has determined that the proposed action, as discussed in Petitioner's Draft Environmental Assessment warrants a finding of no significant impact. The motion was seconded by Commissioner Fiesta.

Vice Chair Sakumoto clarified that the motion was based upon anticipated impacts from the representations in the draft environmental assessment and that during the case in chief, the issues about the possible uses and impacts on the agricultural property will be discussed more thoroughly so that appropriate conditions may be imposed at that time, if approved. Vice Chair Sakumoto then clarified his motion that the Petitioner's Draft Environmental Assessment be supplemented by the addition of the ESA, fauna survey, and cultural impact assessment and that the situation by the LUC warrants a finding of no significant impact.

Chair Catalani asked if the additions also included the expanded description of the non-profit corporation, other supplemental materials, and the corrections to the maps. Vice Chair Sakumoto replied in the affirmative.

The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Fiesta, Formby, Judge, Im, Yukimura and Catalani.

The motion passed with 7 ayes and 1 absent.

A recess break was taken at 1:55 p.m. The meeting reconvened at 2:00 p.m.

Commissioner Judge left the meeting at this time.

ADOPTION OF RESOLUTION

DR04-30 KULEANA KU`IKAHI, LLC (Maui)

Chair Catalani stated that this was a meeting to consider the adoption of the resolution for Docket No. DR 04-30 Kuleana Ku`ikahi, LLC.

APPEARANCES

Richard McCarty, Esq., represented Petitioner

Blaine Kobayashi, Esq., represented Intervenor

James Geiger, Esq., represented Intervenor

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that the Commission has a written resolution, which has not been reviewed yet, and copies of 2 letters before them. The first from Mr. Geiger, dated March 2, 2005 requesting that the Commission revisit the selection of Ms. Jarman as hearing officer. The second letter from the County of Maui, dated May 9, 2005, stating that the County objects to Ms. Jarman as hearing officer. Chair Catalani entertained a motion for executive session to discuss personnel matters with their counsel.

EXECUTIVE SESSION

Vice Chair Sakumoto moved that the Commission enter into executive session under §92-5 (a) HRS, to discuss personnel matters with its Deputy Attorney General. The motion was seconded by Commissioner Fiesta. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 2:05 p.m.

The open meeting reconvened at 2:25 p.m.

Chair Catalani reconvened the open meeting and stated that the Commission has received advice from their Deputy Attorney General in this matter. Chair Catalani noted that the Commission is not required to issue a written order or resolution and that it has not been done so in the past. Chair Catalani added that with respect to the 2 letters, there is no specific action that the Commission is required to take under their rules and that the parties will have two (2) opportunities – once before the fact finder and another opportunity with the LUC after the fact finder has submitted her recommendations. He also noted that he has reviewed the submissions by Mr. Geiger and Maui County and have found nothing extraordinary in this context.

Chair Catalani asked if the Commissioners had anything to add. There being no further comments, Chair Catalani asked for any public witnesses wanting to provide public testimony. There being none, Chair Catalani stated that the hearing schedule will commence at the end of next week.

Ms. Lovell stated that she wanted the record to reflect the County's continuing objections to Professor Jarman as the hearing officer and that previous testimony and the letter be entered on the record.

Chair Catalani noted that the letters from both the Maui County and Mr. Geiger are a part of the record.

TENTATIVE MEETING SCHEDULE

Mr. Ching reported the following schedule:

- April 20 – one day meeting in Kona
- May 5-6 – commence hearings for Maui Lani and also hear an application for incremental approval for E.F. Stoner.
- May 17-18 and June 1-2 in Kona to commence the HELCO hearings.
- June 16-17 will be the final meeting for 3 commissioners. Meeting will be on Oahu with ACF and action items for Aina Nui.

Mr. Ching noted that within the next few months, the Commission will be traveling to Kona several times for the HELCO hearings and other dockets that will be adding on. He also reported that it is the intention of KIC to file a motion for an extension of time, which should be received any day now and included on the April 20th agenda for consideration.

After a brief discussion, there were no further questions

LEGISLATIVE UPDATE

Mr. Ching reported that both Lisa Judge and Michael Formby had their confirmation hearings last week. Mr. Ching commented that he has received assurances that the commission vacancies would be filled.

Mr. Ching then summarized and discussed with the Commission three bills – HB 109, HB 1640, and SB 1593.

After a brief discussion, there were no questions posed by the Commission.

The meeting adjourned at 3:05 p.m.

(Please refer to LUC Transcript of April 7, 2005 for more details on this matter.)