

LAND USE COMMISSION  
MINUTES OF MEETING

May 18, 2007

Leiopapa A Kamehameha  
4th Floor  
Conference Room 405  
235 So. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades  
Michael Formby  
Howard Hamamoto  
Kyong-su Im  
Lisa Judge  
Duane Kanuha  
Nicholas Teves  
Reuben Wong

COMMISSIONERS ABSENT: Ransom Piltz

STAFF PRESENT: Anthony Ching, Executive Officer  
Diane Erickson, Deputy Attorney General  
Russell Suzuki, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 8:45 a.m.

A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (Oahu)

Chair Judge stated that this was a continued hearing on Docket No. A06-763 Kapolei Property Development LLC to consider the reclassification of approximately 344.519 acres of land currently in the Agricultural District to the Urban District for business industrial park uses at Ewa, Oahu, Hawaii.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Jessie Souki Esq., represented Petitioner

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Ray Sakai, City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Laura Thielen, State Office of Planning

Public Witness

1. Steven Montgomery

Mr. Montgomery summarized his written testimony and discussed issues of affordable housing, Smart Growth concepts, and stated that he recommends that a condition similar to a Maui precedent regarding affordable housing be imposed for this project.

After a brief discussion, there were no questions for Mr. Montgomery by the parties or the Commission.

State's Witness

1. Laura Thielen

Commissioner Im asked what was the OP's position regarding LEED standards imposed on new projects.

Ms. Thielen stated that the LUC has a standard condition that is rather vague and it requires projects to be energy efficient. Ms. Thielen noted that the OP is recommending that this project be required to adopt the LEED silver standard. Ms. Thielen added that this was the first petition that the OP is requesting that this condition be imposed and if the LUC is amenable, the OP would like to imposed this condition on future petitions as well.

Vice Chair Formby posed questions related to work force housing.

Ms. Thielen stated that the City and County of Honolulu does not have a housing requirement on industrial or commercial developments and that the OP would work towards supporting a workforce housing program.

Commissioner Im commented that unemployment is at 2.4%, the second lowest in the nation, yet we have a massive affordable housing problem.

Commissioner Wong asked if there was a lower standard than the LEED silver standard.

Ms. Thielen replied that there is a basic certification standard and the cost of compliance would also be less.

After a brief discussion, there were no further questions for Ms. Thielen from the parties or the Commission.

Mr. Kudo provided a closing statement in lieu of calling rebuttal witnesses and stated that the Kapolei Harborside project is a piece of the Ewa master plan and that this project will improve the quality of life for those who chose to live and work in Ewa by offering skilled jobs at a higher pay range.

Commissioner Teves entered the meeting at this time.

Mr. Kudo addressed in rebuttal, other issues raised by the parties and the LUC related to affordable housing, LEED certification, the drainage master plan, and community participation.

Mr. Yee asked for a chance to respond to petitioner's closing remarks that were contrary to the OP's position.

Chair Judge noted that although she understood Mr. Yee's position, the closing statement offered by the petitioner in lieu of calling rebuttal witnesses was the final element in the evidentiary hearing.

Mr. Yee commented that the OP would then object to allowing one party an opportunity to make an argument to the Commission without allowing an equal opportunity to the other parties of the hearing.

Chair Judge stated that Mr. Yee's comment was noted. Chair Judge then continued with the post hearing instructions and informed the parties that the evidentiary portion of this proceeding had been completed. The draft findings of fact, conclusions of law and decision and order should be based upon the record and filed with the LUC and served to the parties no later than by the close of business June 15, 2007. The parties will have until the close of business on June 20, 2007 to file their responses. Chair Judge encouraged the parties to stipulate to the findings of fact, conclusions of law, and decision and order and to consult with staff early in the process so that existing protocols are adhered to.

A recess break was taken at 9:45 a.m. The meeting reconvened at 10:00 a.m.

Deputy Attorney General Diane Erickson left the meeting at this time.

DR06-32 MARK J. BENNETT, AS ATTORNEY GENERAL, STATE OF HAWAII (Oahu)

Chair Judge stated that this was an action meeting to Consider Adopting the Hearings Officer's Proposed Findings of Fact, Conclusions of Law, And Recommended Decision and Order as the Commission's Proposed Decision and Order; and Hearing on Exception to Commission's Proposed Decision and Order to treat the exceptions filed to the Hearings Officer's proposed Decision & Order as exceptions to the Commission's Proposed Decision & Order; and To Deliberate and Adopt the Commission's final Decision & Order on the matter.

APPEARANCES

Brian Aburano, Esq., represented Petitioner  
Mark Bennett, Esq., Attorney General  
Katherine Leonard, Esq., represented Intervenor  
David Karlen, Special Deputy Attorney General

Chair Judge noted that there were no public witnesses.

Chair Judge polled the Commissioners to confirm that they had reviewed the materials in this docket and were qualified to deliberate on this matter.

The Commission was polled as follows:

Ayes: Hamamoto, Wong, Formby, Teves, Kanuha, Contrades, Im, and Judge.

Chair Judge noted that after receiving presentations by the parties, the LUC may conclude that the findings of fact, conclusions of law, and recommended decision and order, as drafted by the hearings officer, is relevant in order for the LUC to act upon. The Executive Officer was appointed as the hearings officer in this matter and to maintain the independence of the hearings officer, he was provided with the assistance of a special deputy attorney general. The hearings officer has recused himself from this matter.

#### EXECUTIVE SESSION

Vice Chair Formby moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Teves seconded the motion. The motion was approved by a show of hands.

The Commission entered into executive session at 10:05 a.m.

The open meeting reconvened at 11:00 a.m.

Chair Judge reconvened the open meeting and began with the presentations of the parties.

Chair Judge posed a few questions to Mr. Bennett and Ms. Leonard. Chair Judge also asked if any of the Commissioners had any initial questions for the parties to address in their opening statements.

Vice Chair Formby asked if the State of Hawaii was considered a person under the HRS, and which entity was to have title to the 40 acres of land.

Commissioner Im commented on the definition of “interested persons” as the definition did not refer to original parties to the hearings

Mr. Bennett stated that the petitioner is asking for the LUC to reject the proposed findings of the hearings officer and because this is a matter of public importance, this matter should receive a full hearing on the merits. Mr. Bennett added that the relief sought by petitioner is for a reversal of the hearings officer’s decision and order and to postpone these issues until we understand the merits. Mr. Bennett added that the 17-year period of time is irrelevant to the matter.

Mr. Bennett noted that he was representing himself as the Attorney General of the State of Hawaii and did not intend to add the OP as a party to this matter. Mr. Bennett added that they may seek to amend their petition, although he believed it was not necessary.

Mr. Bennett also noted that for the purpose of this matter, the State is not a person and in the normal course of entitlements, the State takes title to DLNR. Mr. Bennett added that the AG represents the State and represents the people of the state. Mr. Bennett urged the LUC to reject the hearings officer’s findings and set the matter for hearing.

Ms. Leonard argued that this Commission appointed a hearings officer to hear the matter and urged the Commission to adopt his recommendations with an exception that the issue on standing be thoroughly argued. Ms. Leonard commented that the AG is not a proper request for declaratory relief and urged the Commission to reject the legal conclusions and that the hearings officer’s findings be adopted.

A recess break was taken at 11:55 a.m. The meeting reconvened at 12:10 p.m.

Vice Chair Formby stated that he believed that these issues were too complex and that there was a need for further consideration by this Commission. Vice Chair Formby noted that he would like the opportunity to review the transcripts and also reconsider the argument in light of petitioner’s emphasis of applicability. Vice Chair Formby recommended that the Commission request that the petitioner submit his written clarification of relief.

Commissioner Wong commented that on the issue of standing, there is a concept of attorney/client relationship and asked Mr. Bennett if he was appearing as attorney or client in this matter.

Mr. Bennett stated that he was appearing as the attorney general for the State of Hawaii in *propria persona*, representing petitioner and that the petitioner is the Attorney General; the Attorney General is a party.

Commissioner Wong noted that the filing of the petition did not indicate the State of Hawaii. Commissioner Wong questioned whether Mr. Bennett believed that the State of Hawaii was a proper party to this proceeding and if the OP may be a proper person to bring to this petition.

Mr. Bennett stated that he felt that the most appropriate entity to bring forward this petition was through a DR under the statute and believed that the most appropriate person was the AG. If the OP is a person, then the OP could be considered an interested person, but the interest of the OP is different from that of the AG.

Chair Judge noted that this matter was of great importance and recommended that the Commissioners review the transcript and further advice from their special counsel.

Mr. Bennett stated that they would be submitting an amendment to their motion to frame what they are asking for.

Ms. Leonard noted her concern because the issue of standing had not been addressed and she did not want to lose sight on the grounds of what the hearings officer had recommended.

Chair Judge noted that the Commission is asking for clarification and that Ms. Leonard will have the opportunity to respond. Chair Judge then set the matter for hearing.

A recess break was taken at 12:40 p.m. The meeting reconvened at 12:55 p.m.

Commissioner Wong left the meeting at this time.

Deputy Attorney General Russell Suzuki entered the meeting at this time.

#### A92-683 HALEKUA DEVELOPMENT CORPORATION (Oahu)

Chair Judge stated that this was a meeting to receive the status report of the petitioner.

APPEARANCES

Alan Mau, Esq., represented Petitioner  
Delwyn Wong, Esq., represented Intervenor  
Bryan Yee, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Commissioner Hamamoto declared that he had previously participated in projects developed by Stanford Carr Development but is no longer involved with Mr. Carr. Commissioner Hamamoto added that he believed that he could make valid judgments. The parties had no objections to the continued participation by Commissioner Hamamoto.

Mr. Mau stated that since the last LUC meeting, everything has come to fruition with the funding of 100 million dollars and the petitioner was proceeding with the development. The actual purchase and the funding had been completed and the Bankruptcy Court was satisfied.

There were no questions for Mr. Mau by the parties or the Commission.

A89-649 LANAI RESORT PARTNERS (Lanai)

Chair Judge stated that this was an action meeting to consider whether or not to refer the docket to a hearings officer; and if so, appoint a hearings officer.

Chair Judge noted that the County of Maui had indicated that they would not be making an appearance today and had no position on the matter.

APPEARANCES

Bruce Lamon, Esq., represented Petitioner  
Alan Murakami, Esq., represented Intervenor  
Bryan Yee, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Vice Chair Formby commented that this matter has proved to be difficult and time consuming. In light of the Commission's anticipated workload, he believed that it would be more efficient to assign the conclusion of the collection of evidence to a hearings officer. The hearings officer would be or become familiar with the evidence and testimony taken so far, and would conduct further hearings to take additional testimony and evidence. Therefore, Vice Chair Formby moved that pursuant to § 92-16 (a)(3), HRS, the LUC assign this matter to a hearings officer to hold further hearings and take testimony and evidence, and further moved that the hearings officer be Kyong-su Im, a member of this Commission. The motion was seconded by Commissioner Teves.

Commissioner Im stated that he would be honored to do so, but will abstain from this vote.

Mr. Lamon stated that although they had a problem with the progress of negotiations, they may have a possible resolution. Mr. Lamon also noted that since the hearings have already begun, they would prefer to have the LUC as a whole to consider this matter.

Mr. Murakami stated that he had a concern that the hearings officer could not properly justify the matter on the basis of shifting in the midst of the hearings. The evidence before the LUC was presented by the other parties and not LSG. Mr. Murakami asked that the LUC consider a hearing before July since the LSG anticipated this date and expressed a concern as to the timing and the lack of resources available to LSG.

Mr. Yee commented that the OP initially requested that the motions be denied and evidentiary hearings be held, however, the OP is now recommending that the LUC set a timetable in which motions by the parties can be filed and encouraged the LUC to make a decision based upon the motions filed rather than to appoint a hearings officer. OP was not objecting to the hearings officer, but to the process, as OP believed that the motions should be heard by the LUC.

Mr. Suzuki stated that the delegation of a hearings officer comports with the remand and that the delegation to the hearings officer does not mean that the LUC would not be making the final decision. The proceeding would satisfy the due process requirement. The hearings officer would do the fact finding for the LUC. The motion that the OP intends to file can go concurrently with having the hearings officer's hearings. The hearings officer will also expedite the proceedings for Mr. Murakami's

case and the hearings officer will get the fact finding done and would not preclude the OP in filing their motions and receiving a hearing at the appropriate time.

After a discussion, the motion to set the matter for hearing and appointing Kyong-su Im to serve as the hearings officer was polled as follows:

Ayes: Formby, Teves, Kanuha, Hamamoto, and Judge.

Nays: Contrades

The motion passed with 5 yes, 1 no, 1 abstain, 2 absent.

The meeting adjourned at 1:25 p.m.

*(Please refer to LUC Transcript of May 18, 2007 for more details on this matter.)*