

LAND USE COMMISSION
MINUTES OF MEETING

April 24, 2008

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

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Vladimir Devens
Lisa Judge
Duane Kanuha
Normand Lezy
Ransom Piltz
Nicholas Teves
Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Rodney A. Maile, Interim Executive Officer
Bert Saruwatari, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 10:40 a.m.

ADOPTION OF MINUTES

Commissioner Contrades moved to adopt the minutes of April 10, 2008. Commissioner Piltz seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Chair Judge noted that there have been some changes to the May meeting dates. Chair Judge reminded the Commissioners to contact Sandy should they have any conflicts on the proposed May 15 meeting date.

EXECUTIVE SESSION

Commissioner Chock moved to go into executive session pursuant to §92-5(a)(2), HRS, to consider personnel issues where consideration of matters affecting privacy will be involved, and pursuant to §92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities regarding personnel issues.

The motion was seconded by Commissioner Devens.

The Commission entered into executive session at 10:42 a.m.

The open meeting reconvened at 10:50 a.m.

Chair Judge introduced Mr. Orlando "Dan" Davidson as the new Executive Officer for the LUC.

DR08-35 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY & COUNTY OF HONOLULU (Oahu)

Chair Judge stated that this was a meeting on Docket No. DR08-35 Department of Environmental Services, City and County of Honolulu.

APPEARANCES

Colleen Hanabusa, Esq., represented Petitioner

Ken Williams, Ko`olina Association

Gary Takeuchi, Esq., represented City and County of Honolulu

Chair Judge stated that at a previous meeting, the LUC heard the arguments from the parties and that the LUC would take action on this matter today. Chair Judge noted that this was not a contested case proceeding and that under the LUC rules, the LUC had the following options: 1) to grant the petition for declaratory order; 2) to deny the petition for declaratory order; 3) to refuse to issue the declaratory order; 4) or to set the matter for hearing. Only if the LUC chooses to set the matter for hearing, will there be a contested case hearing.

Mr. Maile provided a brief background on the matter, summarized the flow chart and the provisions of the statute and the rules related to declaratory orders.

Commissioner Piltz moved to refuse to issue the declaratory order, adding that issuing the declaratory order may affect the interests of the LUC in the pending litigation, namely the appeal of the LUC's decision to extend the special permit filed on March 14, 2008. The motion was seconded by Commissioner Teves.

Commissioner Wong asked whether the rules permit the LUC to postpone the consideration of the DR, to allow time for the litigation to be resolved.

Mr. Maile noted that under the LUC's procedural rules, the LUC had a 90-day window to decide which of the dispositions to follow.

Commissioner Devens questioned the specific litigation that is being referred to in Commissioner Piltz's motion.

Ms. Erickson noted that the Ko`olina Community Association and Ms. Hanabusa filed an appeal from the LUC's order extending the landfill special permit for 18 months. Ms. Erickson added that there was another litigation that involved the Planning Commission, however, the LUC is not a party to that matter.

EXECUTIVE SESSION

Commissioner Chock then moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Teves.

The Commission entered into executive session at 11:00 a.m.

The open meeting reconvened at 11:10 a.m.

Chair Judge noted that the motion made by Commissioner Piltz and seconded by Commissioner Teves was still pending.

The Commission was polled as follows:

Ayes: Piltz, Teves, Chock, Contrades, Devens, Wong, Kanuha, and Judge.

The motion passed with 8 yes, 1 absent.

Chair Judge noted that there were no public witnesses.

SP87-362 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (Oahu)

Chair Judge stated that this was a meeting to consider the Applicant's Motion to Waive Fees and Expenses and to Excuse Applicant From Any Requirement to Reimburse Fees and Expenses.

APPEARANCES

Paul Herran, Esq., represented City and County of Honolulu, Department of Environmental Services

Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Herran stated that the City rests on their motion. Mr. Herran added that the department is a public service agency and requested that the LUC grant their waiver in the case relating to the fees for the February 21, March 6 and 7 hearings.

Mr. Yee noted that the OP had no comments on this matter.

Commissioner Wong moved to grant the applicant's motion to waive fees. The motion was seconded by Commissioner Contrades.

Ayes: Wong, Contrades, Chock, Devens, Piltz, Teves, Kanuha, and Judge.

The motion passed with 8 yes, 1 absent.

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:20 a.m.

Commissioner Lezy attended the meeting at this time.

DR08-36 KO`OLINA DEVELOPMENT LLC (Oahu)

Chair Judge stated that this was a meeting on Docket No. DR08-36 Ko`olina Development's petition for declaratory order filed on March 24, 2008.

Chair Judge entertained a motion to amend the agenda to consider the motion to intervene filed by the Office of Planning on April 17, 2008.

Commissioner Contrades moved to amend the agenda to consider the motion for intervention filed by the OP. The motion was seconded by Commissioner Lezy.

Commissioner Wong asked to be recused, as he has a client who may have a financial interest on this matter. Commissioner Wong left the meeting at this time.

Ayes: Contrades, Lezy, Chock, Devens, Piltz, Teves, Kanuha, and Judge.

The motion passed with 8 yes, 1 absent/recused.

APPEARANCES

Wyeth Matsubara, Esq., represented Petitioner
Curtis Tabata, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning

Public Witness

1. Creighton Chang

Mr. Chang summarized his written testimony and noted his objections concerning the 24/7 use of the Phoenicians boat ramp as a public boat ramp facility. Mr. Chang commented on Finding of Fact No. 33 and referenced the November 7, 1986 DLNR document regarding the Construction and Right of Way and Grant Easement at West Beach, Honouliuli, Ewa, Oahu, that was attached to his written testimony.

Commissioner Lezy posed questions regarding the discussions that Mr. Chang had with the representative from Ko`olina, and the number of fishermen who used to launch at the Ko`olina boat ramp.

Mr. Chang stated that he is a member of and speaking on behalf of the Coalition for Public Access. He personally knew of 20-25 fishermen who used the ramp at Ko`olina. Mr. Chang added that the Waialua Boat Club also has the same interests as his group. Mr. Chang commented that the Phoenicians ramp is too dangerous for the boaters to use and it is not a public boat ramp. Mr. Chang noted that a few years ago, approximately 150-200 fishermen met with representatives from Ko`olina at Mililani High School but nothing was resolved at that meeting. These fishermen were not active members of any particular group, however, they were all in agreement with what Mr. Chang's group has been trying to achieve today.

There were no further questions posed for Mr. Chang.

2. Ronald Tam

Mr. Tam stated that he was testifying specifically to address some of the concerns expressed by Commissioner Lezy and in the interest of the other boaters. Mr. Tam noted that a significant number of boaters would express their concerns should the LUC

hold a public hearing on this matter. Mr. Tam commented that he is a member of a fishing club of 19 members who were all former users of the Ko`olina boat ramp and have strong desires to having it re-open. Mr. Tam added that he has never used the Phoenicians ramp.

There were no questions posed for Mr. Tam.

Mr. Matsubara stated that based on the facts provided in their application and on their prior representations that petitioner will construct the proposed improvements at the new ramp, he believed that the petitioner was in substantial compliance.

Mr. Yee stated that although the OP does not represent the boaters, they have an interest in ensuring public access to the ocean and its resources. Mr. Yee added that by allowing the intervention, OP would have time to analyze the information from the Department of Transportation Harbors Division to look at the proposed improvements and whether these improvements at the Phoenician launch ramp would be sufficient.

Vice Chair Kanuha commented that in the order, petitioner is contending that they have fulfilled their responsibilities by providing a 24-hour ramp facility. However, it also appears that the compliance has not been totally fulfilled until the new proposed improvements are in place. Vice Chair Kanuha added that by providing a substitute facility to meet the requirements of 24/7 use, but not having that facility improved to the extent that it can actually be used for that purpose safely is not what the petitioner is representing in their conclusion.

Commissioner Lezy then moved to set this matter for contested case hearing. The motion was seconded by Commissioner Chock.

Commissioner Devens stated that he believed that the issues would be the same whether the LUC had a hearing on an order to show cause or by this petition for DR. However, Commissioner Devens noted that the LUC should keep in mind that the remedies that the LUC may be considering would be based on whether there is substantial compliance with the conditions.

Chair Judge noted that she would support setting this matter for hearing and suggested that the LUC schedule a site visit to see the actual facilities.

Ayes: Lezy, Chock, Contrades, Devens, Piltz, Teves, Kanuha, and Judge.

The motion passed with 8 yes, 1 recused/absent.

Chair Judge entertained a motion to grant or deny the Office of Planning's motion to intervene.

Commissioner Chock moved to grant the OP's motion to intervene. The motion was seconded by Commissioner Devens.

Ayes: Chock, Devens, Contrades, Lezy, Piltz, Teves, Kanuha, and Judge.

The motion passed with 8 yes, 1 recused/absent.

A recess break was taken at 11:50 a.m. The meeting reconvened at 12:05 p.m.

Commissioner Wong returned to the meeting at this time.

A85-595 KUILIMA DEVELOPMENT, CO. (Oahu)

Chair Judge stated that this was a meeting to consider Defend Oahu Coalition's Motion for Issuance of an Order to Show Cause Why the Boundary Classification of Kuilima Development Company Should Not Be Revoked for Failure to Perform Conditions, Representations and Commitment by Kuilima Development Company in Docket No. A85-595 filed on April 1, 2008.

APPEARANCES

Shyla Cockett, Esq., represented Kuilima Development
Robert Harris, Esq., represented Defend Oahu Coalition
Bob Nakata, Co-Chair of Defend Oahu Coalition
Mark Cunningham, Co-Chair of Defend Oahu Coalition
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning

Chair Judge entertained a motion to set this matter for hearing at the next Oahu meeting due to the additional filings that were just received yesterday. Chair Judge noted that the LUC would then consider all the filings pertaining to this matter. All

filings are requested two weeks prior to the hearing date to allow the LUC to fully digest the information.

Commissioner Contrades moved to set this matter to hearing at the next Oahu meeting. The motion was seconded by Commissioner Wong.

Chair Judge clarified that if the hearings were to be held on June 5 and 6, the first motions should be filed with the LUC no later than on May 9. Responses to these filings should be filed no later than May 23.

Vice Chair Kanuha questioned whether the hearing was being set on the motion for the issuance of an order to show cause.

Chair Judge stated that the LUC would be considering the motion filed for the issuance of the order to show cause.

Ayes: Contrades, Wong, Chock, Devens, Lezy, Piltz, Teves, Kanuha, and Judge.

The motion passed with 9 yes.

Chair Judge noted that there were no public witnesses.

REVIEW OF PROCEDURES FOR DECLARATORY ORDERS AND CRITERIA FOR ACCEPTANCE OF ENVIRONMENTAL IMPACT STATEMENTS

Chair Judge stated that this agenda item would be deferred to the next meeting.

LEGISLATION

Mr. Maile briefly summarized the legislative spreadsheet and discussed HB 2523 which is now ACT 026, and HB 2450.

Commissioner Teves questioned whether any bills were introduced by any government agency or private entity pertaining to LEED.

Mr. Maile stated that he was not aware of any LEED bills introduced.

There were no further questions for Mr. Maile.

Chair Judge commented that this would be her last meeting with Mr. Maile and expressed her deep appreciation for his dedicated service and assistance to the LUC during his interim appointment.

The meeting adjourned at 12:15 p.m.

(Please refer to LUC Transcript of April 24, 2008 for more details on this matter.)