

LAND USE COMMISSION
MEETING MINUTES

May 12, 2011

Site Visit- DR11-43 Māhā`ulepū Farm LLC
Līhu`e, Kaua`i

COMMISSIONERS PRESENT: Vladimir Devens
Napua Makua
Normand Lezy
Nicholas Teves, Jr.
Thomas Contrades
Lisa Judge

COMMISSIONERS EXCUSED: Kyle Chock
Ronald Heller
Ernest Matsumura

STAFF PRESENT: Orlando Davidson, Executive Officer
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

Executive Officer Davidson described the protocol for the site visit to the site visitors at 9:38 a.m. and the site visit began thereafter. The site visit concluded at 11:23 a.m.

May 12, 2011
Kaua`i Marriott, Kaua`i Ballroom
3166 Rice Street
Līhu`e, Kaua`i, Hawai`i, 96766

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Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Devens called the meeting to order at 1:11 p.m. and introduced Commissioner Makua .

APPROVAL OF MINUTES

Chair Devens asked if there were any corrections or additions to the April 21, 2011 minutes. There were none. Chair Devens moved to approve the minutes. Commissioner Teves seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2011 was distributed in the handout material for the Commissioners.
- There is a new docket- A11-790 Kula Ridge LLC on Maui that is expected to begin on July 14, 2011.
- The upcoming May 26-27, 2011 meeting in May will involve travel to Lanai.

Any questions or concerns- please contact LUC staff

(Please refer to LUC Transcript for more details on this matter)
May 12, 2011 meeting minutes3

DR11-43 Māhā`ulepū Farm LLC (Kaua`i)

Chair Devens announced that this was a hearing and action meeting on DR11-43 in the matter of the Petition of Māhā`ulepū Farm LLC for declaratory order to designate Important Agricultural Land (IAL) for approximately 1,533 acres at Kōloa, Kaua`i, Hawai`i.

APPEARANCES

Benjamin Matsubara, Esq., and Curtis Tabata, Esq., represented Petitioner Māhā`ulepū Farm LLC

Michael Tressler, Grove Farm Company, Inc.

Michael Dahilig, Interim Director, Kaua`i County Planning Department

Bryan Yee, Esq., represented State Office of Planning

Jesse Souki, Director, State Office of Planning

Chair Devens updated the record and asked if Petitioner was willing to abide by the Commission's policy on reimbursement of hearing expenses. Mr. Matsubara replied that Petitioner would comply

Chair Devens declared that the documents submitted by the Department of Agriculture, Office of Planning, Kaua`i County and Petitioner's response would become part of the record. There were no objections.

Commissioner Lezy disclosed that he had performed legal services for a subsidiary of Grove Farm in the past and stated that he did not believe it would affect his ability to remain impartial in weighing the matters before the Commission. There were no objections regarding Commissioner Lezy's continued participation in the hearing.

PUBLIC WITNESSES

1, Jerry Ornellas

Mr. Ornellas described his agricultural affiliations and stated that he was providing public testimony in support of the IAL designation as an individual and not as a representative of any of those organizations; and provided the reasons for wanting the Petition granted.

There were no questions for Mr. Ornellas.

2. Karol Haraguchi

Ms. Haraguchi stated that her family were long-time farmers in the area and provided the reasons why her family supported the designation of IAL.

There were no questions for Ms. Haraguchi.

3. Joseph Manini

Mr. Manini stated that he represented the Kanaka Hui and submitted an Affidavit of Manini regarding title to land in the Petition Area. He described the details of the Affidavit to the Commission; and how he would contest ownership of the land.

There were no questions for Mr. Manini.

4. Beryl Blaich

Ms. Blaich stated that she represented an organization called Malama Māhā`ulepū and submitted written testimony. Ms. Blaich described the reasons why her organization supported the IAL designation and what its concerns and questions were.

Chair Devens commented that the concerns and questions raised by Ms. Blaich, while important, were outside the scope of what was under review before the Commission.

There were no questions for Ms. Blaich.

Chair Devens announced that the Commission had made a site visit to the Petition Area earlier in the day and thanked the members of the audience who participated.

There were no other public witnesses.

Chair Devens noted that the Petitioner had filed a very detailed and complete IAL Petition, that the Commission had an opportunity to review all of the pleadings filed in the matter and that the Commission had not received any objections or opposition to the Petition.

Chair Devens asked if the Parties had anything further to add to the record. Mr. Matsubara responded that he did not. Kaua`i County and OP replied that they would stand on their written comments.

Commissioner Makua had a question regarding the varieties of kalo grown by Ms. Haraguchi's family. Ms. Haraguchi described the varieties of crops that were grown by her family and how experiments with different types of fertilizer were being conducted.

There were no further questions or discussion.

Commissioner Contrades moved to grant the Petition for Designation of Important Agricultural Lands. Commissioner Teves seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Teves, Judge, Lezy, Makua and Chair Devens.

Nays: None

Excused: Commissioners Chock, Matsumura, and Heller.

The Motion passed 6-0 with 3 excused.

The Commission went into recess at 1:46 p.m. and reconvened at 1:57 p.m.

A83-557 Princeville Development Corporation (Kaua`i)

Chair Devens announced that this was an action meeting to consider a motion for an Order Amending Findings of Fact, Conclusions of Law, and Decision and Order dated March 28, 1985.

APPEARANCES

Benjamin Matsubara, Esq., and Curtis Tabata, Esq., represented Princeville Development Corporation

Abbey Mayer, Vice-President of the Resort Group

Susan Wilson, member of Concerned Citizens of Anini

Teresa Tico, Esq., represented Concerned Citizens of Anini (arrived at 2:16 p.m.)

Michael Dahilig, Interim Planning Director, Kaua`i County Planning Department

Bryan Yee, Esq., represented State Office of Planning

Jesse Souki, Director, State Office of Planning

Chair Devens inquired on the whereabouts of Intervenor's attorney and Ms. Wilson was unable to confirm whether or not Ms. Tico would make an appearance. (Ms. Tico arrived at 2:16 p.m.)

Chair Devens updated the record, stated the procedures for the

hearing; and noted that there were no objections to the exhibits that had been presented in the docket and that the exhibits would be admitted to the record. There were no questions regarding procedures and no objections to the acceptance and admission of the presented exhibits.

Chair Devens asked if Petitioner was willing to abide by the Commission's policy on reimbursement of hearing expenses. Mr. Matsubara replied that Petitioner would comply.

Mr. Saruwatari provided the LUC staff report. There were no questions for Mr. Saruwatari.

Chair Devens made a motion to enter into Executive Session to discuss the legal rights and responsibilities of the Commission. Commissioner Teves seconded the motion. By a voice vote, the Commissioner unanimously voted to enter into Executive Session (6-0) at 2:07 p.m.

The Commission reconvened at 2:16 p.m.

Chair Devens noted that Intervenor's Attorney Teresa Tico had arrived. Ms. Tico requested confirmation that the Commission had received her Motion for Continuance filed on May 9, 2011 via fax. Chair Devens acknowledged that the Commission had received her motion and explained that her Motion had not been filed in time to make the agenda and still needed to be addressed. Chair Devens described the procedures that the Commission intended to follow and requested Ms. Tico's cooperation in the matter. Ms. Tico acknowledged Chair Devens' request.

PUBLIC WITNESS

1. Karin Carswell-Guest

Ms. Carswell-Guest stated that she supported the Petition to Amend Conditions and described how it would benefit her cattle grazing operations.

There were no questions for Ms. Carswell-Guest.

There were no other public witnesses.

Chair Devens stated that it was his understanding that under its rules, the Commission had the authority to place the Intervenor's Motion for Continuance on the agenda and asked if there was a motion.

MOTION FOR CONTINUANCE

Chair Lezy moved to add Intervenor's Motion for Continuance on the agenda. Commissioner Judge seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Lezy, Judge, Contrades, Teves, Makua and Chair Devens.

Nays: None

Excused: Commissioners Chock, Matsumura, and Heller.

The Motion passed 6-0 with 3 excused.

ARGUMENTS

Intervenor

Ms. Tico stated that Petitioner and County of Kaua'i did not take a position on her Motion for Continuance and argued why her motion should be granted. Ms. Tico explained how the passage of time and difficulty in obtaining records and contacting her clients required more time to review the details of the Petition.

Chair Devens inquired if Ms. Tico had been served with Petitioner's motion on or about March 9, 2011 and what additional information she felt she needed. Ms. Tico replied that she recalled being served sometime in March but could not recall the exact date and described her actions and activities since receiving Petitioner's motion. She also stated that she had received information from Petitioner's attorneys as late as May 11, 2011 and stated that she needed more time to review it.

Petitioner

Mr. Matsubara clarified how his office had responded to Ms. Tico's requests and why Petitioner took no position on Intervenor's Motion for Continuance. Mr. Matsubara argued his concerns with granting the Motion for Continuance and how the Petition Area was currently zoned versus how

Intervenor had portrayed it in its motion; and described how the Petition to Amend Conditions was expected to positively contribute to the area. Mr. Matsubara stated that he had no objections to having Petitioner's Motion to Amend Conditions heard as scheduled.

Kaua'i County

Mr. Dahilig stated that County of Kaua'i took no position on the Motion for Continuance and had no objection to having Petitioner's Motion to Amend Conditions heard as scheduled.

State Office of Planning (OP)

Mr. Yee stated that OP took no position on the Motion for Continuance and argued that paragraph 8 in the declarations cited by Intervenor was factually incorrect. Mr. Yee described how OP had participated in discussions with the Petitioner as the specifics of the proposed amendments were crafted and stated that OP would defer to the Land Use Commission in regards to having Petitioner's Motion to Amend Conditions heard as scheduled.

Rebuttal

Ms. Tico recalled how urban zoning was necessary to develop a golf course in the Petition Area in the past and described how Intervenor would use its additional time if the Motion for Continuance were granted.

Commissioner Questions

Commissioner Judge requested clarification on the current status and make up of the Intervenor's "Concerned Citizens of Anini" group. Ms. Tico could not describe the status and make-up of the group and responded that it had consisted of community members who lived in the area. Ms Tico stated she had been contacted by Ms. Wilson in response to the LUC agenda notice for the May 12, 2011 meeting. Ms. Tico offered Ms. Wilson to provide details on the "Concerned Citizens of Anini" group.

Ms. Wilson described the past activities of the group and why she felt additional time was necessary to review the proposed Petition; and stated that there had not been an issue since 1989 that had required their attention. Ms.

Wilson added that there had been no ongoing meetings of Concerned Citizens of Anini or active membership since that time, and that the group had been reactivated in response to the proposed urbanization of the Petition Area.

Commissioner Lezy requested clarification on Ms. Tico's efforts to contact members of the Intervenor and Ms. Wilson. Ms. Tico described how she had been unsuccessful in contacting Ms. Wilson and other members; and how Ms. Wilson had contacted her on Monday, May 9th after receiving the LUC agenda notice.

Commissioner Lezy requested clarification on when Ms. Tico had received copies of the Findings of Fact, Conclusions of Law and Decision and Order from 1985 and 1989. Ms. Tico responded that she had made her request for copies to the Petitioner earlier in the week and that Petitioner had promptly provided her with the requested information.

Commissioner Lezy requested clarification on whether Ms. Tico was prepared to continue in the event that her Motion for Continuance was not granted. Ms. Tico replied that Intervenor was not prepared at all.

Chair Devens asked what the date of service was for the Petition. Mr. Matsubara responded that it had been filed on March 9, 2011, and confirmed the details of its service. He also asked Ms. Tico what she had done to prepare for the hearing since being served with the Petition.

Chair Devens requested clarification on the methodology used in preparing the motion to amend conditions. Mr. Matsubara described how he initially reviewed the original Decision and Order and determined the changes that would need to be made for his motion.

Chair Devens inquired if there was anything further that needed to be addressed. Ms. Tico replied that she had not received a copy of the traffic study that had been circulated but subsequently withdrew her comment.

There was no further discussion or questions.

Commissioner Lezy moved to deny the Motion for Continuance.
Commissioner Teves seconded the motion.

The Commission was polled as follows:
Ayes: Commissioners Lezy, Teves, Contrades, Makua and Chair Devens.
Nays: Commissioner Judge
Excused: Commissioners Chock, Matsumura, and Heller.

The Motion passed 5-1 with 3 excused.

MOTION FOR ORDER AMENDING FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER DATED March 28, 1985.

ARGUMENTS

Petitioner

Mr. Matsubara argued why the Motion to Amend Conditions should be granted and described the anticipated changes to the Petition Area that would occur.

Intervenor

Ms. Tico requested a recess to confer with her clients. Chair Devens granted her request.

The Commission took a recess at 2:50 p.m. and reconvened at 3:01 p.m.

Ms. Tico stated that her clients were reluctant to testify due to the lack of time afforded them and asked if public witness testimony would be allowed. Chair Devens responded that the Public Witness portion of the hearing had been concluded and that the Commission was in the presentation and argument phase.

Ms. Tico requested that two witnesses be allowed to comment on their recollection of past LUC proceedings regarding the Petition Area. Mr. Matsubara commented that the Commission could take judicial notice of the appropriate Decision and Orders and amendments filed and that the witness comments would be superfluous. Ms. Tico argued that her clients were being denied due process. Chair Devens inquired if there was additional information

that the witnesses could provide beyond what was included in the information on past decisions.

Ms. Wilson responded and described the information that she felt would contribute to the hearing regarding the past LUC decisions. Chair Devens commented that he did not believe that the offer or proof -would provide assistance in deciding the matter before the Commission and was not inclined to allow the witness testimony as proffered, but would defer to his fellow Commissioners as to whether they wanted to hear the offered witness testimony.

Chair Lezy stated that he would like to hear what the witnesses had to say.

Ms. Tico responded that she only had one witness- Barbara Robeson.

Intervenor Witness

1. Barbara Robesen

Ms. Robesen submitted a map entitled "II-4 Phase Two Master Plan (Princeville Phase Two)" taken from an EIS from 1981, and provided her recollection of the history and concerns about the area depicted on her map.

Mr. Matsubara requested clarification on what specific LUC dockets Ms. Robesen was referring to in her testimony. Ms. Robesen was not certain about which LUC dockets were involved in the areas depicted on her map. Mr. Matsubara clarified that he was seeking to amend conditions in docket A83-557 and that the map areas Ms. Robesen was referring to were part of LUC docket A83-553- a totally separate docket which not before the Commission.

Ms. Robesen replied that a review of the map would reveal that the areas were in close proximity to each other in Princeville.

Mr. Matsubara had no further questions or comments.

Mr. Dahilig requested clarification on the assertions made regarding transient vacation rentals. Ms. Robesen stated that areas she had made comments on were outside the County's designated destination area.

Mr. Yee requested clarification on the action taken on the areas depicted on the map that Ms. Robesen had submitted. Ms. Robesen

described her recollection of what had occurred in the past and what the Princeville Ranch Agricultural Master Plan involved. She stated that she supported the plan if the area remained agricultural and was against the underlying urban district classification.

Commissioner Lezy inquired what Ms. Robesen's relationship was to the Intervenor. Ms. Robesen replied that she was a past member of the Intervenor group but had not recently participated in any activities till this issue arose; and had been made aware of the Petition hearing by a phone call from Karen Diamond, who is not a member of the Intervenor group.

Commissioner Lezy requested clarification on the last interaction and conversation that Ms. Robesen had with Ms. Wilson and Ms. Tico. Ms. Robesen replied that she saw Ms. Wilson frequently and hardly saw Ms. Tico.

Ms. Tico stated that she had nothing further to present or argue.

Kaua'i County

Mr. Dahilig stated that the County had no opposition to Petitioner's motion and described how Kauai County ordinance 914 would not apply in this case

OP

Mr. Yee stated that OP supported the Motion to Amend Conditions and provided the considerations and provisions involved in its decision making process. Mr. Yee added that OP had been working on a stipulated Decision and Order with Petitioner and asked for its consideration by the Commission.

Chair Devens asked if there were any final comments that the parties wished to make.

Mr. Matsubara had nothing further to add.

Ms. Tico provided her understanding of OP's position and argued how it appeared contrary to the State's policy of keeping agricultural lands in agriculture.

Mr. Yee clarified that the agricultural land area that Ms. Tico was referring to that should be kept in agriculture had a land use designation of urban.

COMMISSIONER QUESTIONS

Commissioner Judge asked if Petitioner would confirm its statement that there was an agreement with OP on the mitigation measures that had been proposed. Mr. Matsubara described the details of the proposed agreement that Petitioner had finalized and how he had attempted to inform all parties and achieve agreement on it.

Commissioner Judge requested clarification on the absolute maximum number of units being proposed for the Petition Area. Mr. Matsubara replied that eighteen sites were being planned.

Commissioner Lezy requested clarification on the exclusion of the proposed subdivision in the Petition Area from the Chapter 343 review process. Mr. Matsubara described how a planning report and the mitigation measures that were part of the stipulated D&O resulted in lesser numbers than what had originally been considered. Mr. Yee stated that OP had more than sufficient information on the environmental impacts to move forward on the Petition. Mr. Dahilig stated that Kaua'i County was satisfied with the inspection results.

Commissioner Lezy asked if Intervenor wished to raise an issue with the Chapter 343 review. Ms. Tico replied that since Intervenor was unsuccessful in its attempt to have its motion for continuance granted, that it wished to reserve whatever they could to further study the issue. Commissioner Lezy asked what substantive points Ms. Tico wished to raise at this juncture. Ms. Tico did not raise any points and described possible actions that Intervenor might or might not pursue in the future.

There were no further questions or comments.

Chair Devens asked Mr. Matsubara if he had any objections to the use of the LUC's standard conditions that are normally imposed in decision and orders. Mr. Matsubara responded that he did not have any as it pertained to the subject property.

Chair Devens noted that the map submitted by Intervenor's witness would be marked for identification as Intervenor's Exhibit "1". There were no objections to accepting Exhibit "1" into evidence.

Commissioner Contrades moved to grant the Motion to Amend Conditions with the staff to prepare the decision and order for approval. Commissioner Teves seconded the Motion. Commissioner Lezy suggested a friendly amendment to adjust the motion's phrasing regarding staff preparing the decision and order. Commissioner Lezy stated that he was making his amendment since OP and Petitioner had indicated that they had an agreed order already prepared. Commissioner Contrades accepted the friendly amendment to rephrase his motion to delete directing staff to prepare the decision and order and Commissioner Teves seconded the amended motion.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Teves, Judge, Lezy, Makua and Chair Devens.

Nays: None

Excused: Commissioners Chock, Matsumura, and Heller.

The Motion passed 6-0 with 3 excused.

Chair Devens asked if there were any further comments that the Parties wished to make for the record.

Mr. Matsubara had no further comments and thanked the Commission for its efforts.

Ms. Tico requested clarification on the number of homes that would be allowed under the Petition. Chair Devens referred the question to the Petitioner to answer.

Mr. Dahilig and Mr. Yee had no further comments.

There being no further business, the meeting was adjourned at 3:38 p.m.