

LAND USE COMMISSION MEETING MINUTES

November 13, 2014

9:00 a.m.

Airport Conference Center

400 Rodgers Blvd. Suite 700, Room #3

(In Hawaiian Airlines Terminal Building)

Honolulu, HI 96819

COMMISSIONERS PRESENT:

Chad McDonald

Arnold Wong

Edmund Aczon

Kent Hiranaga

Brandon Ahakuelo

Jonathan Scheuer

Aaron Mahi

Sandra Song

COMMISSIONERS EXCUSED:

None (There are 8 Commissioners currently serving)

LUC STAFF PRESENT:

Daniel Orodenker, Executive Officer

Russell Suzuki, Deputy Attorney General

Bert Saruwatari, Staff Planner

Scott Derrickson, Staff Planner

Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER:

Holly Hackett

AUDIO TECHNICIAN:

Walter Mensching

CALL TO ORDER

Chair McDonald called the meeting to order at 9:01 a.m.

ACTION

A87-610 TOM GENTRY AND GENTRY-PACIFIC, LTD. (O`ahu)

Chair McDonald stated that this was a continued hearing and action meeting to Consider Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order (FOF, COL, D&O) dated May 17, 1988 to:

- (1) Issue an order modifying the Commission's FOF, COL, D&O dated 5/17/1988 as amended by Commission's November 30, 1999 *Order Amending Condition No. 6 of the D&O dated 5/17/1988* to expressly authorize the use of portion of the KS Property for solar farm development for an interim period not to exceed 35 years

Chair McDonald updated the record and described the procedures for the day for this docket. There were no objections, comments or questions regarding the procedures. Chair McDonald called for public witnesses and began proceedings.

PUBLIC WITNESSES

None

APPEARANCES

Jennifer (Benck) Lim, Esq., Kamehameha School's (KS) Representative

Matthew Higashida, Planner, DPP

Richard Lewallen, Esq., Deputy Corporation Counsel, DPP

Bryan Yee, Esq., Deputy Attorney General, OP

Rodney Funakoshi, Land Use Administrator, OP

Chair McDonald asked the Parties if they had any final remarks regarding the stipulated proposed Findings of Fact, Conclusions of Law and Decision and Order (FOF, COL, D&O).

Petitioner

Ms. Lim thanked the Commission for its efforts in hearing the Petition and the DPP and OP staff members who contributed their efforts to producing the final stipulated FOF, COL, D&O. Ms. Lim described the difficulties and time constraints that had to be overcome and what the Commission could expect as the Petitioner moved forward on its proposed project.

OP

Mr. Yee expressed his apologies to the Commission for being late in responding the established schedules and described how OP was still able to contribute to the on time delivery of the stipulated FOF, COL, D&O.

DPP

Mr. Lewallen stated that DPP had no objections to the stipulated FOF, COL, D&O, but did have minor concerns over some of the details in the language of the agreement that would need to be worked out at the County level.

Chair McDonald thanked the Parties and the LUC staff for their work on this docket and asked if the Commissioners had any questions or comments.

Commissioner Questions

Commissioner Scheuer echoed Chair McDonald's appreciation and commented that he intended to vote in favor of the Petition; and that he hoped that the Findings of Fact of the

stipulated FOF, COL, D&O would include information to better detail the KS Master Plan and how the Strategic and Regional Plans for the future would evolve

Commissioner Hiranaga requested clarification on what impact the proposed project might have on hoary bats and waterfowl; and commented how the urgency to meet the established deadlines made it difficult for him to be comfortable with decision-making without time for a more thorough review of the materials presented to the Commission.

Chair McDonald stated that he accepted the responsibility for the tight schedule and noted Commissioner Hiranaga's remarks for planning future schedules for the Commission.

Chair McDonald noted that all Commissioners present with the exception of Commissioners Song and Mahi had acknowledged that they were prepared to deliberate on this matter. Commissioner Song responded that she was not prepared to participate in deliberations and Commissioner Mahi stated that he was.

Chair McDonald commended KS for its efforts to address Hawaii's energy needs and participate in the Clean Energy Initiative movement and stated his support for the Petition.

There were no further questions or comments or further deliberation.

Commissioner Wong moved to grant the Motion in this case, with applicable conditions, based on the record and Petitioner's representations, and that the conditions should include

- Petitioner and OP's proposed conditions as may be amended by staff for clarity;
- The LUC's standard conditions where applicable;
- A condition limiting the interim use to utility scale solar development;
- The interim use shall not exceed 35 years;
- The use shall only be allowed on the areas described by the Petitioner and a metes and bounds description will be required;
- That the facilities will be responsibly decommissioned at the end of 35 years and any subsequent use of the property will be subject to environmental review and approval of this commission through a properly filed Motion to Amend.

Commissioner Aczon seconded the motion.

There was no discussion. The Commission voted as follows:

Ayes- Commissioners Wong, Aczon, Mahi, Scheuer, Hiranaga, Ahakuelo, Chair McDonald.

Nays- none

Abstain- Commissioner Song

The motion passed 7-0 with 1 abstention.

The Commission went into recess at 9:21 a.m. and reconvened at 9:38 a.m.

A92-683 HALEKUA DEVELOPMENT CORPORATION (O'ahu)

Chair McDonald announced that this was a continued hearing and action meeting on A92-683 Halekua Development Corporation (O`ahu) and asked if there were any Public Witnesses who wished to testify.

PUBLIC WITNESSES

None

APPEARANCES

Steve Lim, Esq., Ho`Ohana Solar LLC's Representative
Onaona Thoene, Esq., Ho`Ohana Solar LLC's Representative
Richard Lewallen, Esq., Deputy Corporation Counsel, DPP
Mike Watkins, Planner, DPP
Bryan Yee, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator, OP

Commissioner Disclosures

Commissioner Scheuer stated that he wished to disclose that his wife was employed by Group 70, and that one of the scheduled expert witnesses in the proceedings was from that organization, but that he did not feel it would influence his decision-making. Chair McDonald asked the Parties if they had any objections to Commissioner Scheuer's continued participation in the proceedings. There were no objections.

PROCEEDINGS

Chair McDonald asked Mr. Lim if he was prepared to move forward with the proceedings. Mr. Lim acknowledged that he was ready and apologized for the confusion and delays the Commission had experienced in waiting to hear his Petition. Mr. Lim described the difficulties that he had to overcome to prepare his Petition for the Commission and shared how Condition 19 of the Amended FOF, COL D&O dealing with the off-site infrastructure development for the Petition Area had been an obstacle to his efforts.

Commissioner Hiranaga excused himself from the proceedings at 09:42 a.m. and returned at 09:45 a.m.

Chair McDonald asked if Mr. Lim was going to present his evidence. Mr. Lim responded that he would present evidence later and was providing preliminary information for his case.

Commissioner Song requested clarification from Mr. Lim on what he was making his argument on. Mr. Lim responded that unlike the single landowner involved with the A87-610 Petition, his petition involved 6 landowners with varying interests; as well as issues with the DOA concerning an agricultural park. (Ag park); and stated that he would like to make an oral motion to consolidate both of his motions and present evidence on this date in order to move forward and return on November 21, 2014 to resume his case. Mr. Lim argued that this

procedure would allow the Parties to present their evidence to the Commission today and allow more time to continue negotiations on the remainder of the points that still needed to be resolved between them; and provide for cross examination at the later date to conclude matters.

Chair McDonald inquired if the Parties had objections to Mr. Lim's oral motion. Mr. Lewallen stated that DPP had no objections and commented that Mr. Lim's motion had been part of the arrangement that had been agreed upon on at the November 12, 2014 meeting between the Parties.

Mr. Yee stated that OP had no objections to the oral motion to consolidate motions and described how the Parties had met to discuss matters and decide how to best proceed; and provided his perception of how the Parties would perform if the oral motion was granted.

Chair McDonald asked if the Commissioners had any questions regarding Mr. Lim's motion. A gentleman identifying himself as a representative of 3 of the landowner entities involved in the Petition area, Delwynn Wong, came forward before the Commission.

Chair McDonald recognized Mr. Wong and questioned why he was making an appearance. Mr. Wong stated that he represented HRT Realty, LLC, 300 Corporation, and Honolulu Limited and argued why no evidence should be presented today and why he should be allowed to participate in the proceedings going forward.

Chair McDonald entertained a Motion for Executive Session. Commissioner Wong moved and Commissioner Ahakuelo seconded the motion for an Executive Session. By a unanimous voice vote, the Commission elected to enter into Executive Session at 9:54 a.m. and reconvened at 10:31 a.m.

Chair McDonald asked Mr. Wong to further clarify his position in this matter. Mr. Wong described why he was appearing before the Commission to protect the interests of the 3 landowners that he represents and shared his perspective of how conflicting representations made to him regarding the motions contained in the proceedings had prompted him to become involved in this matter.

Chair McDonald requested clarification from Mr. Lim on how the landowners had been contacted and why the representations made did not agree with Mr. Wong's statements. Mr. Lim described the outreach program used to involve the other Petition Area landowners during the preparation of his Petition; and how pressing deadline pressures and non-response to his communication attempts had factored into moving forward on his Petition.

Chair McDonald requested further information from Mr. Wong to better assess the circumstances described in the arguments of both Parties. Mr. Wong described the authority that he possessed to represent the 3 entities and shared what sequence of events had brought

him to the proceedings; and argued why the proceedings should not be allowed to move forward as the Petitioner, DPP and OP had agreed upon. Chair McDonald admitted Mr. Wong as a Party to the proceedings.

Mr. Yee argued why the Commission should move forward despite Mr. Wong's objections and described how the Commission could still hear evidence since no questioning would occur till November 21st.

Chair McDonald asked if the Commission had any questions.

Commissioner Scheuer requested clarification on why Mr. Wong was joining the proceedings at such a late date. Mr. Wong described the circumstances of his involvement in further detail.

Commissioner Song requested clarification from Mr. Lim on the actions of the Parties prior to Petitioner's making its filing. Mr. Lim described how the Parties had been involved with the Petition and with the discussions between various entities and agencies.

Commissioner Song asked Mr. Wong if he was prepared to move forward in the day's proceedings. Mr. Wong responded that he was not and argued why he could not proceed.

Commissioner Song stated her concerns about moving forward despite Mr. Wong's objections and requested clarification from Mr. Lim on how the Parties could agree to proceed. Mr. Lim responded that Mr. Wong had been unable to communicate with his clients and argued how any imposed time element involved with filings for the Petition should require Mr. Wong to submit his filings in time for the November 21, 2014 meeting date.

Commissioner Song shared her concerns about possible procedural errors occurring if the Commission failed to allow Mr. Wong to participate in the proceedings. Mr. Wong argued how the initial motion to amend conditions had not been an initial concern; and how the motion for order bifurcating the amended FOF, COL D&O; and OP's opposition to it had created a tenuous situation that he needed to address.

Commissioner Wong requested clarification on what relief from Conditions Mr. Wong was seeking and why participating in the day's proceedings was difficult. Mr. Wong described the various issues that made him reluctant to proceed and what possible actions would be necessary to help him prepare for moving forward.

Commissioner Mahi shared his perspective of how he felt the Parties should work together before continuing their efforts before the Commission.

Commissioner Scheuer requested clarification on how the representations made by Petitioner to the Commission had changed overnight and why Mr. Wong's concerns needed to be addressed and settled. Mr. Lim responded that he was not aware of the representations made to the Commission on the 12th and expressed how DOA's interests in the Petition Area were being addressed and how Mr. Wong could be included in the negotiations.

Mr. Yee described the manner in which the Petition evolved and how OP's position in the matter developed. Mr. Yee also argued why the time element should be a consideration for the Commission when deciding upon this matter.

Commissioner Wong requested clarification on how much time Petitioner needed to obtain approval from the Commission. Discussion ensued to determine if a decision made by December 10, 2014 would be sufficient. Mr. Lim acknowledged that December 10th might be possible. Mr. Wong responded that he needed to check with his clients since he had no settlement authority at the present time.

Chair McDonald commented that he perceived the situation to be a procedural issue and offered that the Parties continue their discussion further and attempt to resolve their issues if Mr. Lim withdrew his oral motion and allow the Commission to proceed with the original agenda items as scheduled and hear the Motion to Bifurcate. Mr. Yee argued how OP was not prepared with witness testimony if that action was taken; and suggested how the Commission could just hear evidence from Petitioner's witnesses with no cross examination for today. Mr. Lim requested a recess to discuss hearing the Motion to Bifurcate with his client.

Chair McDonald declared a recess at 11:00 and reconvened the meeting at 11:22 a.m.

Mr. Lim expressed that the Parties had appeared to make some progress during the recess and had collectively agreed to defer proceedings till November 21, 2014. Mr. Lim offered that the Parties would submit any filings for the November 21st proceedings by Tuesday, November 18, 2014 to allow the Commission time to review the material. Petitioner, Mr. Wong, DPP and OP all concurred that November 21st was suitable. Chair McDonald reaffirmed that filings would be done no later than the 18th.

Commissioner Scheuer requested clarification on the identities of the landowners and expressed his concerns that two days had lapsed with no progress on this matter. Discussion ensued to establish the identities of the six landowners and Mr. Lim apologized for the delay and gave his assurance of making his best effort to get underway as planned.

Chair McDonald determined that the Commission would defer proceedings till November 21st as discussed. There were no comments or discussion. There being no further action or other business, Chair McDonald declared the meeting adjourned at 11:29 a.m.