

LAND USE COMMISSION
MEETING MINUTES

January 27, 2016– 9:00 a.m.

The Meeting was held at the following Video Conference Centers simultaneously:

O`ahu- Kalanimoku Building, 1151 Punchbowl St., Room B10, Honolulu, Hawai`i, 96813

Kaua`i – Lihu`e State Office Bldg., 3060 `Eiwa Street, Basement, Lihu`e, Hawai`i, 96766

Maui- State of Hawaii Department of Transportation District Office, 650 Palapala Dr., Kahului, Hawai`i, 96732

Hawai`i- Hilo State Office Bldg., 75 Aupuni Street, Hilo, Hawai`i, 96720

COMMISSIONERS PRESENT: Edmund Aczon (on Oahu)
Aaron Mahi (on Oahu)
Chad McDonald (on Oahu)
Arnold Wong (on Oahu)
Jonathan Scheuer (on Oahu)
Nancy Cabral (on Hawai`i)
Kent Hiranaga (on Maui)
Linda Estes (on Kaua`i)

COMMISSIONERS EXCUSED: (There are currently 8 seated Commissioners and 1 vacant Commissioner position.)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer (on Oahu)
Diane Erickson, Deputy Attorney General (on Oahu)
Scott Derrickson, Staff Planner (on Oahu)
Riley Hakoda, Staff Planner/Chief Clerk (on Oahu)

COURT REPORTER: Holly Hackett (on Oahu)

CALL TO ORDER

Chair Aczon called the meeting to order at 9:08 a.m. Commissioner Cabral requested and was granted a moment of silence for the Commission to observe Senator Gilbert Kahele's passing.

MOTION TO CORRECT AGENDA

Chair Aczon entertained a motion to correct the SP title on the agenda from "SP15-54 Solarcity PV, LLC to SP15-407 Solarcity Corporation".

Commissioner Mahi moved to correct the SP title. Commissioner Wong seconded the motion. By a voice vote the motion unanimously approved (8-0 excused).

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the January 13, 2016 minutes. There were none. Commissioner Estes moved to approve the minutes. Commissioner Mahi seconded the motion. By a voice vote the minutes were unanimously approved (8-0 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The February 9, 2016 meeting will be held in Kona to address SP92-381 Waikoloa Development Company's application.
- The February 10, 2016 meeting will be held in Honolulu at the LUC conference room for DR08-36 Ko'olina Development LLC.
- February 24, 2016's meeting will be on Maui to hear DR15-54 Pu'unoa Home Owners Association's Petition.
- The March 8, 2016 meeting will be in Honolulu at the airport for a status report on SP99-403 Waimanalo Gulch Sanitary Landfill.
- March 23-24 is planned for A89-646 Queen Liliuokalani Trust in Kona at the West Hawaii Civic Center.
- The April 2016 meetings are planned for hearings on the Ma'alaea Plantation docket.
- Any questions or conflicts, please contact LUC staff
- Above dates represent the tentative calendar of meetings and are subject to change

There were no questions and comments regarding the tentative meeting schedule.

ADOPTION OF ORDER

SP15-407 SOLARCITY CORPORATION (Kaua'i)

To consider a Special Permit for real property situated at Kapai'a, Hanamaulu, Lihu'e, Kaua'i, Hawai'i, identified by Kaua'i Tax Map Key No. (4) 3-8-002:002 (por).

APPEARANCES

Curtis Tabata, Esq. and Benjamin Matsubara, Esq., Solarcity Corporation's Representative (on Oahu)

Kaua`i County Planning Department (County) had reported that it would not be appearing.

Brian Yee, Esq. for State of Hawaii Office of Planning (OP) (on Oahu)

Lorene Maki, Planner (OP) (on Oahu)

Chair Aczon asked if there were any Public Witnesses who wished to testify.

PUBLIC WITNESSES

There were no witnesses.

ADOPTION OF ORDER

Chair Aczon updated the record, and described the procedures for the hearing. There were no questions or comments on the procedures.

Commissioner Scheuer expressed his concerns regarding a comment letter from the Office of Hawaiian Affairs (OHA) requesting that the LUC ask for additional information from the County of Kaua`i Planning Department in order to discern whether all of the proper procedures had been followed related to SHPD's opportunity to review and comment on the proposed project and whether the AIS for the proposed project was adequate.

Commissioner Scheuer moved for an Executive Session to discuss the Commission's powers, duties, privileges, immunities, and liabilities with the Commission's Counsel. Commissioner Wong seconded the motion. By a voice vote, the Commission voted unanimously in favor of the motion (8-0). The Commission entered Executive Session at 9:16 a.m. and reconvened at 9:38 a.m.

Chair Aczon asked if the Applicant had any comments in regards to the OHA letter.

Mr. Tabata responded that he had only received the OHA letter at the start of the proceedings and had briefly reviewed it; but commented that the 2 sites mentioned in the OHA letter were located within a tax map key area of approximately 5,300 acres and were not in the 50 acre portion that was the Petition Area. Mr. Tabata elaborated on

why this was significant and why the late OHA letter should not affect the LUC's decision and continuing to adopt the form of the order.

Chair Aczon entertained a motion to adopt the form of the order. Commissioner Scheuer had a procedural question on how the proceedings would move forward that was acknowledged and resolved. Commissioner Estes moved to approve the form of the order subject to the proposed conditions by OP and County and as modified by LUC staff. Commissioner Cabral seconded it.

Discussion on the Motion

Commissioner Hiranaga asked if OP had any comments. Mr. Yee commented that he had also only been made aware of the OHA letter prior to the start of the LUC meeting and noted that Kaua'i Planning Commission (KPC) may not have been made aware of the OHA letter as well; and that the County's decision had been based on the determination that an archeological inventory survey (AIS) was sufficient.

Commissioner Hiranaga requested clarification on whether KPC should have included OHA in its review on this matter. Mr. Tabata noted that KPC relied on the "Walmart Case" and did not seek a SHPD review. Commissioner Hiranaga asked what might happen if SHPD has an issue with the special permit. Commissioner McDonald commented that OHA had submitted the letter, not SHPD, and OHA would be the party having the issue with the special permit.

Chair Aczon questioned who notifies OHA about LUC meetings. Mr. Orodener clarified the Special Permit process for the benefit of the Commission and described how various individuals, agencies, departments and organizations were notified by the LUC. Mr. Orodener verified with Mr. Hakoda that OHA was included on the agenda notice list used by the LUC.

Commissioner Scheuer stated that he would be voting against the motion and noted OHA's pattern of making late submittals on LUC matters. Commissioner Scheuer requested that the Executive Officer reach out to OHA and request that they make more timely submittals. Mr. Orodener acknowledged Commissioner Scheuer's request. Commissioner Scheuer commented further that the record from KPC was silent to the issues raised by OHA and was concerned about the lack of findings in the KPC record regarding cultural practices and traditions.

Chair Aczon questioned whether KPC or the County had received the OHA letter. Mr. Orodenker responded that he did not know since the OHA letter arrived via email to the LUC at 4:30 p.m. on January 26th and there was no “cc” including them.

Commissioner Estes stated that she was satisfied with KPC’s submittal and had initiated her motion accordingly.

Commissioner Wong stated his concerns about the late OHA letter and opined that perhaps the matter should be further discussed with OHA. Commissioner Wong then offered a friendly amendment to add a condition to inform SHPD and respond to the OHA letter before the Special Permit was granted.

Chair Aczon asked if Commissioners Estes and Cabral would accept the friendly amendment. Commissioner Estes rejected it. Commissioner Cabral responded that she was open to accepting the friendly amendment but stated her concerns for the need to set time limits to SHPD’s response and reaction to the OHA letter in a specific condition in order that the Special Permit could move forward.

Commissioner Hiranaga asked if KPC had the right to determine whether or not to notify SHPD; and what timeline and deadlines needed to be observed by the LUC. Ms. Erickson described how County and the Commission should procedurally handle Special Permits and what authorities each entity had. Mr. Orodenker also described how the Commission needed to address Special Permits within a 45 day period or an automatic approval with standard conditions would be granted to the Applicant.

Commissioner Estes questioned if a motion for reconsideration was being put forward. Chair Aczon responded that only the motion for approval of the form of the order was being addressed.

Further discussion occurred and Commissioner Estes commented that she could withdraw her motion. Commissioner Cabral called for the question if the motion for approval was being addressed. Commissioner Scheuer clarified his reasons for opposing the motion and described why he felt that the KPC record was not sufficient and lacked adequate findings.

Chair Aczon reaffirmed with Commissioner Estes that she had not withdraw her motion and asked if there was any further discussion on the motion adopting the form of the order.

Commissioner McDonald stated that although he understood Commissioner Scheuer's concerns, County and KPC had accepted the Applicant's AIS and were authorized to do so; and that he felt the record was complete and that the Special Permit should be moved forward.

Commissioner Wong added that he understood that County had additional AIS requirements before grading on the Petition Area site could occur and agreed with Commissioner McDonald in supporting the motion.

Commissioner Hiranaga stated that he was an advocate for county home rule and would be voting in favor of the motion since his understanding was that any OHA/SHPD issues would be taken to County/KPC and not the LUC.

Commissioner Mahi stated that he would be voting against the motion.

Chair Aczon stated that he supported the motion and shared his disappointment at how OHA's late participation in the proceedings was disruptive and did not allow for adequate consideration of OHA concerns during the Special Permit process.

There was no further discussion or comments.

DECISION MAKING

(As the Commission was set to be polled, audio/visual contact from the videoconferencing site on Kaua'i was lost at 10:10 a.m. and restored at 10:11 a.m.)

Discussion occurred to determine who was in attendance at the Kaua'i videoconference meeting site. Chair Aczon discovered that Michael Belles, attorney for Solarcity during its County proceedings was in attendance. Commissioner Estes apologized for inadvertent conversation with Mr. Belles. Commissioner Mahi stated his displeasure with the communication that had occurred between Commissioner Estes and Mr. Belles. Chair Aczon acknowledged the incident and had the Commission polled.

The Commission voted as follows:

Yea: Commissioners Estes, Cabral, Wong, McDonald, Hiranaga and Chair Aczon.

Nay: Commissioners Scheuer and Mahi.

The Motion passed 6-2 (8 seated Commissioners, 1 vacant seat).

Commissioner Scheuer requested that LUC staff ensure that future agendas provide for addressing any legislative action that the LUC might need to take during the 2016 Hawaii Legislative Session. Mr. Orodener acknowledged Commissioner Scheuer's request.

With no further action or other business, Chair Aczon declared the meeting adjourned at 10:17 a.m.