

LAND USE COMMISSION  
MEETING MINUTES

**February 10, 2016 – 8:30 a.m.**

State Office Tower, Leiopapa A Kamehameha, Room 405  
Honolulu, HI 96813

COMMISSIONERS PRESENT: Edmund Aczon  
Linda Estes  
Kent Hiranaga  
Chad McDonald  
Jonathan Scheuer  
Arnold Wong

COMMISSIONERS EXCUSED: Aaron Mahi  
Nancy Cabral

(There are currently 8 Commissioners seated out of 9 positions.)

STAFF PRESENT: Daniel Orodener, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

**CALL TO ORDER**

Chair Aczon called the meeting to order at 08:33 a.m.

**HEARING & APPROPRIATE ACTION (if necessary)**

**DR08-36 KO `OLINA DEVELOPMENT, LLC**

- Status/Update Report-Boat Launch Ramp

Chair Aczon announced that this was a meeting to receive a status update/report from Petitioner on Docket No. DR08-36 Ko `Olina Development Company and take appropriate action, if any.

**APPEARANCES**

Curtis Tabata, Esq. and Benjamin Matsubara, Esq., represented Petitioner, Ko `Olina Development Company (KODC)  
Ken Williams, Petitioner's Representative

Don Kitaoka, Esq., Deputy Corporation Counsel, Department of Planning and Permitting, City and County of Honolulu (“DPP”)  
Kathy Sokugawa, Chief Planner, DPP  
Bryan Yee, Deputy Attorney General, represented State Office of Planning (“OP”)  
Rodney Funakoshi, OP

Chair Aczon updated the record and explained the procedures to be followed for the proceedings. There were no questions on the proposed procedures.

Chair Aczon called for Public Witnesses.

PUBLIC WITNESSES:

1. Warren Von Arnswaldt

Mr. Von Arnswaldt stated that he had sent a letter to the LUC, and thanked the Commission for its efforts on the “boat ramp” matter; and provided his perspective of the Ko `Olina Boat Ramp’s operating practices and the changes made to better accommodate the needs of the fisherman community.

There were no questions for Mr. Von Arnswaldt.

2. Creighton Chang

Mr. Chang submitted written testimony and summarized his meetings and discussions with the Ko `Olina Community Association (KOCA) and its representatives regarding boat ramp rules and regulations, parking spaces and insurance requirements.

There were no questions for Mr. Chang.

3. Rodney Ajifu

Mr. Ajifu described his concerns about the contract with fishermen used by KOCA and why he felt it was so “one-sided” in favor of KOCA.

There were no questions for Mr. Ajifu.

There were no other Public Witnesses.

Commissioner Wong moved for an Executive Session to discuss the Commission’s powers, duties, privileges, immunities, and liabilities with the Commission’s Counsel. Commissioner McDonald seconded the motion. By a voice vote, the Commission voted

unanimously in favor of the motion (6-0-2 excused). The Commission entered Executive Session at 8:47 a.m. and reconvened at 9:04 a.m.

PRESENTATIONS:

Petitioner

Mr. Matsubara provided a brief update and described how the Commission's Decision and Order on November 5, 2015 had prompted him to file his Motion for Reconsideration.

There were no questions for Mr. Matsubara.

MOTION FOR RECONSIDERATION

Mr. Matsubara argued that Motion for Reconsideration should be granted since the Commission had exceeded its authority when it issued its November 5, 2015 Decision and Order. Mr. Matsubara also described how Petitioner had complied with the order despite disagreeing with it, and had met with the fishermen and sought solutions to the fishermen's issues raised during the LUC hearings.

County

Mr. Kitaoka stated that County took "no position" on the motion only; and offered Ms. Sokugawa to the Commission for questioning. Ms. Sokugawa affirmed her testimony to be truthful and responded to Commissioner questions.

Commissioner McDonald requested clarification on what County level permits were in force for the boat ramp and what they allowed. Ms. Sokugawa responded that there were multiple permits in force and described what the Conditional Use Permit (CUP) did and did not allow. Ms. Sokugawa also stated that the Petition Area was a shoreline management area (SMA) and described the public access concerns and County responsibilities involved for such areas.

Commissioner Wong requested clarification on how hours of operation restrictions were enforced. Ms. Sokugawa described what enforcement authority the CUP allowed the DPP and how it was applied.

Commissioner Scheuer requested a definition of what the term "open to the public" meant. Ms. Sokugawa described different scenarios and situations as examples of how "open to the public" could be interpreted; and described how complaints helped to bring different concerns to attention of the DPP.

Commissioner Hiranaga requested clarification on the term “quiet hours”. Ms. Sokugawa provided her understanding of what the term implied.

Commissioner McDonald requested clarification on how a CUP could be amended and what processes were involved. Ms. Sokugawa described how the DPP’s Director had authority to hold public meetings to address concerns raised by the public as a CUP was under consideration for approval by her department.

There were no further questions for Ms. Sokugawa.

OP

Mr. Yee acknowledged Mr. Matsubara’s status report and stated that OP opposed the Motion for Reconsideration and argued why the LUC’s decision should be final and why the DPP should have jurisdiction over the continued operation of the boat ramp and should be considering the detailed concerns that the fishermen were presenting to the LUC. Mr. Yee recognized the collaborative efforts of Petitioner to comply with the LUC’s decision and order; and stated his appreciation for the cooperative gestures.

There were no questions for Mr. Yee.

#### Final Questions and Comments

Commissioner Wong shared his understanding of the intent of the original Declaratory Order and questioned Petitioner on whether it was an accurate assessment. Mr. Matsubara provided additional historical background and described how seriously Petitioner had considered the original DR08-36 order and made efforts to comply with the construction of a boat ramp; but had filed the Motion for Reconsideration when the LUC had appeared to exceed its authority in the November 5, 2015 decision and order.

Mr. Kitaoka requested and was granted permission to comment on remarks made by OP regarding DPP’s role in this matter. Mr. Kitaoka described the limits of what DPP was currently authorized to do within the scope of its CUP and how DPP would seek compliance with the conditions expressed within the permits. Mr. Kitaoka commented that that Mr. Yee’s perception of what DPP’s authorities were not currently in force and described the kind of action that was necessary by the DPP Director to initiate such changes.

Commissioner Wong requested clarification on what Petitioner's perception of the intent of the October meeting on this docket was; and asked for additional background information regarding the declaratory order. Mr. Matsubara recollected that the Petitioner had appeared before the Commission in October to notify the Commission that it had complied with the Declaratory Order and to verbally advise that the boat ramp construction had been completed as reported in correspondence to the Commission; and described the activities that had transpired to initiate the construction process and comply with the LUC's ruling. Mr. Matsubara also described why he felt that the LUC had exceeded its authority beyond what the Declaratory Order specified.

Mr. Kitaoka provided additional responses to OP's comments and noted that a CUP was in place, however, it had the enforcement authority that needed to be "triggered" by a complaint to be initiated.

Mr. Kitaoka also commented that the DPP would ensure compliance with the representations it made in 2005 LUC Decision and Order, but would not engage further in this matter unless a CUP violation occurred in matters involving public access and the hours of operation (dawn to dusk).

There were no further questions or comments or discussion .

Chair Aczon entertained a motion on this matter.

Commissioner McDonald move to deny the Motion for Reconsideration.  
Commissioner Scheuer seconded the motion.

Discussion on the Motion to deny the Motion for Reconsideration.

Commissioner McDonald clarified that he would like to also address the entire Declaratory Order once the Motion for Reconsideration was decided. Chair Aczon affirmed that he would take up that matter next.

There was no further discussion.

The Commission unanimously voted to deny the Motion for Reconsideration (6-0-2 excused).

## STATUS REPORT AND ACTION

Chair Aczon called for Mr. Matsubara to provide a status report .on the discussions and progress that had been made since the November 5, 2015 order. Mr. Matsubara stated that he had responded to Commissioner questions received via LUC correspondence and that he had advised that the hours of the boat ramp were from dawn to dusk, and that discussions had occurred between the fishermen and the Ko`Olina Development management group regarding launch fees, insurance requirements, and the allowable boat lengths for the facility.

Mr. Kitaoka stated that he had no further comments.

Mr. Yee stated that he appreciated DPP's comments and noted that OP still felt that this matter was a DPP issue.

There were no further questions or comments.

Chair Aczon declared a recess at 09:45 a.m. and reconvened the meeting at 09:50 a.m.

Chair Aczon entertained a motion on this matter.

Commissioner McDonald moved that the LUC acknowledge completion of the boat ramp and end its requirement for construction status reports. Commissioner Wong seconded the motion.

### Discussion

Commissioner Scheuer stated that he would be voting in favor of the motion and provided his perspective on the constraints posed by the scope of the Declaratory Order and how the term "public access" was not well defined.

There was no further discussion.

The Commission unanimously voted in favor of the motion (6-0-2 excused),

There being no further business, the Commission adjourned at 09:54 a.m.