

LAND USE COMMISSION
MEETING MINUTES

March 23, 2016 – 1:30 p.m.

West Hawaii Civic Center

74-5044 Ane Keohokalole Highway, Kailua-Kona, HI 96740

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

COMMISSIONERS EXCUSED: Aaron Mahi
(There are currently 8 seated Commissioners out of 9 positions)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Briana Bernardino, Staff Secretary

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 1:30 p.m.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the February 24, 2016 minutes. There were none. Commissioner Estes moved to approve the minutes.

Commissioner Scheuer seconded the motion. The minutes were unanimously approved by voice vote (7-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- April 14, 2016 meeting will be for Adoption of Order for Docket No. A89-646 Queen Lili`uokalani Trust, status report on SP09-403 Waimanalo Gulch Sanitary Landfill, and DR16-55 Petition for Declaratory Order filed by OP & DOA and will require that the LUC provide meals as an integral part of the meeting to accomplish LUC business in the allotted meeting time.
- The calendar is open for the remainder of April, May and June.
- Any questions or conflicts, please contact LUC staff.

HEARING & ACTION

A89-646 Queen Lili`uokalani Trust (Hawai`i)

Motion for Order Modifying Findings of Fact, Conclusions of Law, Decision and Order filed 8/28/91

Chair Aczon announced that this was an action meeting to Consider Docket No A89-646 Queen Lili`uokalani Trust's Motion for Order Modifying Findings of Fact, Conclusions of Law, Decision and Order filed 8/28/91; and stated that Commissioner Scheuer had a disclosure to make.

Commissioner Scheuer stated that he had worked in the Kailua-Kona area as a consultant for the National Park Service and was familiar with the Petitioner's properties; and felt that he could be fair and impartial during the proceedings.

There were no objections to Commissioner Scheuer's continued participation in the hearing.

APPEARANCES

Benjamin Kudo, Esq. and Clara Park, Esq., for (Petitioner) Queen Lili`uokalani Trust's ("QLT")

Amy Self, Esq., Deputy Corporation Counsel, represented County of Hawai`i Planning Department, ("County")

Daryn Arai, Planner, County

Bryan Yee, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, Land Use Administrator, OP

(Intervenor Greater Kona Community Council in original Docket is no longer represented by Mark Van Pernis, and according to public records, was involuntarily dissolved in 1994)

Chair Aczon updated the record, described the procedures for the hearing and asked if Petitioner had been made aware of and was agreeable to the LUC's hearing expenses reimbursement policy. Mr. Kudo acknowledged that Petitioner was aware of the expenses and would comply with the reimbursement policy. There were no questions or comments on the procedures.

Chair Aczon asked if there were any Public Witnesses who wished to testify and called the testifiers before the Commission.

PUBLIC WITNESSES

1. Ken Melrose

Mr. Melrose submitted written testimony and described why he supported the Petition.

Commissioner Cabral requested clarification on Mr. Melrose's involvement with the Community Development Plan? Mr. Melrose replied that he was a community member and described why he was testifying before the Commission.

There were no other questions for Mr. Melrose.

2. Kirstin Kahaloa

Ms. Kahaloa submitted written testimony and stated that she represented the Kona-Kohala Chamber of Commerce; and was testifying in support of the Petition on behalf of her organization.

There were no questions for Ms. Kahaloa.

Chair Aczon asked if there were any other public witnesses. There were none. Discussion occurred to ensure that copies of the written testimonies of the Public Witnesses were submitted to the Commission.

Chair Aczon introduced Briana Bernardino, the new LUC secretary, to the audience.

ACCEPTANCE OF EXHIBITS INTO THE RECORD

Chair Aczon asked if the Parties had any exhibits to be offered for the record. Mr. Kudo offered Petitioner's Exhibits 13 -14. There were no objections and Petitioner's Exhibits 13-14 were admitted.

County stated that it had no exhibits to enter.

OP stated that its exhibits had not been properly identified and offered OP Exhibit 1, a transcript which had been attached to its initial submittal to the Commission, Exhibit 1- a copy of a letter from the Department of Transportation, and Exhibit 1 – an amended copy of a letter from the Department of Transportation. There were no objections and OP's exhibits were admitted.

Mr. Kudo stated that he had overlooked the initial exhibits he had filed and offered Petitioner's Exhibits 1-12. There were no objections and Petitioner's Exhibits 1-12 were admitted.

Ms. Self stated that she had overlooked the initial exhibits that had been filed in response to Petitioner's Motion and offered County Exhibits 1-3. There were no objections and County Exhibits 1-3 were admitted.

PRESENTATIONS

PETITIONER

Mr. Kudo stated that their witness, Richard Gollis, had to return to the mainland due to a family emergency and that a replacement witness, Tim Cornwell, would appear on Thursday morning, March 24, 2016 to provide testimony to the Commission; and requested that an accommodation to the hearing schedule be made to allow for the Mr. Cornwell's appearance.

Chair Aczon asked for clarification of the subject matter that Mr. Cornwell would be presenting to the Commission. Mr. Kudo stated that Mr. Cornwell would be explaining the economic circumstances that had occurred after the original decision and order was granted up to the present that would provide information to the Commission to explain the failure of Petitioner to move forward on its initial plans for the Petition Area.

Chair Aczon acknowledged the accommodation request and noted that he would further assess whether the appearance of the witness was necessary after the balance of the Petitioner's presentation.

Mr. Kudo used a PowerPoint presentation and argued why Petitioner's Motion for Order Modifying Findings of Fact, Conclusions of Law, Decision and Order filed 8/28/91 should be granted.

Petitioner's Witness- LeeAnn Crabbe

Mr. Kudo called his witness, LeeAnn Crabbe, to testify. After being sworn in, Ms. Crabbe described her role within the QLT organization and what its mission and accomplishments in the community's welfare were. Ms. Crabbe also described the difficulties that QLT had with attempting to develop the original Petition Area, and why QLT had decided to submit this Motion to the Commission.

Chair Aczon stated that the witness would be questioned after a short break and declared a recess at 2:47 p.m. The meeting was reconvened at 3:06 p.m.

Questions for Ms. Crabbe.

Ms. Self stated that County had no questions for Ms. Crabbe.

Mr. Yee requested clarification on what government agencies had been consulted in regards to the proposed Makalapua Project District (MPD) development. Ms. Crabbe responded that the DOT, DOE, DOD, DLNR and DOH had been consulted prior to the reclassification of the MPD; and that the DOT had just recently been presented with the proposed MPD development plans.

Mr. Yee asked if the documents of the proposed project contained a traffic map and TIAR. Ms. Crabbe acknowledged that they did. Mr. Yee also asked if Petitioner had any other district boundary amendments before the County. Ms. Crabbe responded that they had none at this time and described how QLT planned to proceed if the Commission granted the Motion.

Commissioner Cabral requested clarification on how Petitioner planned to develop the Petition Area in the future. Ms. Crabbe provided her perception of how QLT would develop the Petition Area and coordinate its efforts with the LUC.

Commissioner Scheuer requested clarification on past and future development in the region and how the Kona Community Development Plan, the County General Plan, and Project District Zoning Plan objectives or requirements were being or would be observed. Ms. Crabbe described how QLT had or would comply with the plans.

Commission Hiranaga requested clarification on the lease and fee simple offerings that QLT was involved with in its land use transactions. Ms. Crabbe described how QLT was restricted from performing certain land deal actions due to its Trust entity status and what business tactics it had to use to remain sustainable.

Chair Aczon requested clarification on how the original 25 conditions would be affected if the Motion was granted. Ms. Crabbe provided her perception of how the original conditions would be affected.

Commissioner Scheuer requested clarification on how "community use" areas, roads and trails would function in the MPD. Ms. Crabbe described how community meetings and performing areas were being considered for the community areas and how the roads and trails would network with other surrounding neighborhoods. Commissioner Scheuer asked what Land Use Commission imposed conditions existed on the portion of the project covered by LUC Docket No. A73-470. Mr. Kudo said he would try to get a copy of the Decision and Order.

There were no further questions for Ms. Crabbe.

Chair Aczon asked County and OP for their estimates of the time requirements for their presentations to the Commission. Ms. Self responded that County intended to rely on its submitted testimony. Mr. Yee replied that OP would not require much time.

Chair Aczon asked if the Commissioners would like to hear Petitioner's Witness Tim Crowell.

Commissioner Estes requested clarification on what entity "NLW" represented in the documents provided to the Commission. Mr. Kudo stated that NLW was the entity that had performed the original market study in the original Petition; and described the role that Concorde Group and Mr. Cornwell had in the current proceedings.

Commissioner Wong stated that he would like to hear Mr. Cornwell's testimony and suggested that the Commission consider moving on to other portions of the agenda.

Commissioner Scheuer stated that he would also like to hear Mr. Cornwell's testimony.

Chair Aczon declared a recess at 3:23 p.m. and reconvened the meeting at 3:35 p.m.

Chair Aczon described how he intended to adjust the meeting agenda items to accommodate the testimony by Petitioner's witness.

Commissioner Hiranaga questioned why hearing the financial projection history was necessary. Mr. Kudo described how he intended to provide important financial information for the record to establish an evidentiary basis with necessary facts relevant to helping the Commission make a decision.

Commissioner Hiranaga requested clarification on what future projections were involved with the Motion. Mr. Kudo described how Mr. Cornwell was expected to demonstrate how the original incremental districting design was not in line with actual and expected market conditions.

Mr. Yee added how OP had considered the reasons for QLT's desire to make changes to its original decision and order during its review of the Petition.

Commissioner Estes stated that she was also interested in hearing from Petitioner's witness and moved to amend the agenda to hear Agenda items 7 and 8 next out of order. Commissioner Wong seconded the motion to adjust the agenda. By unanimous voice vote (7-0), the Commission voted to take Agenda items 7 and 8 next out of order.

2016 LEGISLATION STATUS REPORT

Chair Aczon requested that Mr. Orodener review the LUC legislative items of concern with the Commission. Mr. Orodener summarized the various pending bills that involved the Commission and described the status and anticipated action that LUC was prepared to take if the bills proceeded forward in the legislative process; and responded to various questions the Commission had.

EXECUTIVE SESSION

Commissioner Wong moved to enter Executive Session. Commissioner McDonald seconded the Motion. Discussion occurred to determine whether the Public portion of the meeting had been concluded. Commissioner Wong stated that he felt that all relevant portions of the meeting pertaining to the Public had been concluded and that the Commission was ready to move on to the Agenda item 8- Executive Session portion of the meeting. The other Commissioners concurred and acknowledged they were ready to vote on entering Executive Session.

By a unanimous voice vote (7-0), the Commission voted to enter into Executive Session.

Chair Aczon announced that the Commission was going to enter Executive Session and had the meeting room cleared.

The Commission entered Executive Session at 3:59 p.m. and reconvened at 4:35 p.m.

Chair Aczon announced that the Commission would recess till 08:30 a.m., March 24, 2016 and would reconvene in the same meeting room at the West Hawaii Civic Center.