

LAND USE COMMISSION
MEETING MINUTES
April 26, 2017
10:00 a.m.
Lāna`i Community Center
Eight Street and Lāna`i Avenue
Lāna`i City, Hawai`i, 96763

COMMISSIONERS PRESENT: Gary Okuda
Arnold Wong
Kent Hiranaga
Nancy Cabral
Edmund Aczon
Linda Estes
Dawn Chang

COMMISSIONERS EXCUSED: Jonathan Scheuer
Aaron Mahi

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

COURT REPORTER: Cynthia Murphy

CALL TO ORDER

Chair Aczon called the meeting to order at 10:00 a.m.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the April 12, 2017 minutes. Commissioner Estes moved to approve the minutes and Commissioner Wong seconded the motion.

The minutes were unanimously approved by voice vote (7-0- Commissioners Mahi, and Scheuer were not present).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

- MAY 18-19- A94-706 Ka Ono Ulu Ranch- FEIS acceptance and A89-649 Lanai Remand (if needed on 19th)
- MAY 24-25- SP09-403 Waimanalo Gulch-
- JUN 14- A94-706 Ka Ono Ulu Ranch- Motion to Amend
- JUN- 15- Closing Arguments-A16-800 Island School and A16-801 University of Hawai`i Community Colleges (Kaua`i) and Presentation-A17-802 County of Kaua`i Housing Agency- 201H Project Lima Ola
- JUN-28-29 A17-802 Lima Ola continued
- JUL-Big Island Motions

Any questions or conflicts, please contact LUC staff.

There were no questions regarding the tentative meeting schedule.

Chair Aczon stated that the next agenda was a Hearing and Action meeting on A89-649 Lāna`i Resort Partners. .

HEARING AND ACTION

A89-649 LĀNA`I RESORT PARTNERS

To hear and consider Exceptions and argument of the parties on Hearings Officer's Recommended Findings of Fact, Conclusions of Law, and Decision and Order on further matters relating to an Order to Show Cause as to whether certain land located at Mānele, Lāna`i, should revert to its former Agricultural and/or Rural land use classification due to Petitioner's failure to comply with Condition No. 10 of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Conclusions of Law, and Decision and Order filed April 16, 1991, Tax Map Key No. 4-9-002:049 (por.), formerly Tax Map Key No. 4-9-002:001 (por.)

APPEARANCES

Benjamin Kudo, Esq. and Sarah Simmons, Esq., Counsel for Lāna`i Resort Partners (LRP)

Harrilyn Kameenui, Representative LRP

Caleb Rowe, Esq. and Michael Hopper, Esq., Deputy Corporation Counsels for County of Maui (County)

William Spence, Director, Planning Department (County)

Danny Dias, Planner, Planning Department (County)

David Kopper, Esq., Native Hawai`ian Legal Corporation (NHLC),-Counsel for Lāna`ians for Sensible Growth (LSG)

Butch Gima, Representative LSG

Bryan Yee, Esq., Deputy Attorney General, State Office of Planning (OP)

Chair Aczon updated the record .

EXECUTIVE SESSION

Commissioner Wong moved for an Executive Session to consult with Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to the procedures involved in this docket.

Commissioner Cabral seconded the motion.

There was no discussion.

By unanimous voice vote (7-0), the Commission voted for an Executive Session. The Commission entered Executive Session at 10:10 a.m. and reconvened in regular session at 10:28 a.m.

REGULAR SESSION

Chair Aczon asked if there was a motion to accept, for further action and discussion, the Hearings Officer's Recommended Findings of Fact, Conclusions of Law and Decision and Order as the Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Wong moved and Commissioner Cabral seconded the motion for the Commission to accept, for further action and discussion, the Hearings Officer's Recommended Findings of Fact, Conclusions of Law and Decision and Order as the Commission's Proposed Findings of Fact, Conclusions of Law, and Decision and Order. By a unanimous voice vote (7-0), the Commission approved the motion.

Chair Aczon stated that the meeting was to hear exceptions based on the treatment of the Hearings Officer's Recommended Findings of Fact, Conclusions of Law and Decision and Order by the Commission as its Proposed Decision and Order and asked the Parties to confirm agreement.

Mr. Kudo acknowledged that he understood and agreed to the treatment of the Hearings Officer's Recommended Findings of Fact, Conclusions of Law and Decision and Order by the Commission as its Proposed Decision and Order.

Mr. Hopper requested clarification of what the Chair was proposing and then acknowledged that he understood and agreed to the treatment of the Hearings Officer's Recommended Findings of Fact, Conclusions of Law and Decision and Order by the Commission as its Proposed Decision and Order.

Mr. Yee and Mr. Kopper also acknowledged that they understood and agreed to the treatment of the Hearings Officer's Recommended Findings of Fact, Conclusions of Law and Decision and Order by the Commission as its Proposed Decision and Order.

DISCLOSURES

Chair Aczon asked if there were any disclosures that the Commissioners wished to make for the record.

Commissioner Okuda stated that he wished to disclose that he had represented Alan Murakami of NHLC in the past, and has known Mr. Kudo and represented his cousin Robin Akahoshi; but that he felt that he could remain impartial during proceedings on Docket No. A89-649. There were no objections to Commissioner Okuda's continued participation.

Commissioner Hiranaga stated that he wished to disclose that his wife has been a vendor for the Manele Bay Hotel, but that he could remain impartial during proceedings on Docket No. A89-649. Mr. Kopper objected to Commissioner Hiranaga's continued participation in the proceedings and stated his reasons and concerns.

Chair Aczon called for a recess at 10:32 a.m. and reconvened the meeting at 10:33 a.m.

Commissioner Hiranaga stated that he would recuse himself from the proceedings. Upon his recusal, Commissioner Hiranaga left the meeting. (With Commissioner Hiranaga's recusal, there were 6 Commissioners still participating in the proceedings).

Commissioner Chang stated that she wished to disclose that Pulama Lāna`i had used her services to address some cultural issues in the past, but that she felt that she could remain impartial during proceeding on Docket No. A89-649.

Mr. Yee requested and was granted permission to provide his perception of why Commissioner Hiranaga should have been allowed to continue to participate. Chair Aczon acknowledged his comments. Commissioner Hiranaga remained recused.

Mr. Kopper inquired whether Commissioner Chang was still an active attorney. Commissioner Chang acknowledged that she was. Mr. Kopper raised his objections to Commissioner Chang's continue participation in the proceedings and provided additional reasons as to why he felt Commissioner Chang should not participate.

EXECUTIVE SESSION

Commissioner Cabral moved for an Executive Session to consult with Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to the procedures involved in this docket.

Commissioner Wong seconded the motion.

There was no discussion.

By unanimous voice vote (6-0), the Commission voted for an Executive Session. The Commission entered Executive Session at 10:38 a.m. and reconvened in regular session at 10:47 a.m.

REGULAR SESSION

Ms. Erickson stated that for the audience's information, Commission Hiranaga had previously consulted with her and the Ethics Commission and had been advised by the Ethics Commission that there was no need to recuse himself, but that Commissioner Hiranaga had weighed the situation and chose to recuse himself after hearing Mr. Kopper's objections.

Chair Aczon stated that he would like to hear the opinions of Petitioner, County and OP regarding Commissioner Chang's continued participation in the proceedings.

Mr. Kudo commented that there might be some conflict and stated that he would prefer to be cautious and not have her participate.

County stated that they would agree with the LUC's decision in the matter.

Mr. Yee stated that OP usually took a broader view on allowing Commissioner participation and described why Commissioner Chang should be allowed to continue to participate.

Chair Aczon declared a recess at 10:53 a.m. and reconvened the meeting at 10:55 a.m.

Commissioner Chang provided additional clarification to her disclosure.

Chair Aczon stated that Commissioner Chang would be allowed to continue to participate based on his assessment of the situation; and described the procedures for the day and called for public witnesses.

PUBLIC WITNESSES

1. Kepa Maly

Mr. Maly provided written testimony and summarized why he supported Pulama Lanai in this matter.

Mr. Kopper requested clarification on Mr. Maly's work status. Mr. Maly responded that he was an employee of Pulama and described his work situation and personal involvement with the Pulama Lanai company's community efforts, as well as his own contributions.

There were no further questions for Mr. Maly.

2. Pua Manuel

Ms. Manuel provided written testimony and described why she supported Pulama Lanai in this matter.

There were no questions for Ms. Manuel.

3. Margaret "Fudge" Villario

Ms. Villario submitted written testimony and summarized her support for Pulama Lanai.

There were no questions for Ms. Villario.

4. Larry Plunkett

Mr. Plunkett provided written testimony and described why he supported Pulama Lanai.

Mr. Kopper requested clarification on Mr. Plunkett's work status. Mr. Plunkett described his employment by Pulama Lanai.

There were no further questions for Mr. Plunkett.

5. Naomi Barbodillo

Ms. Barbodillo submitted written testimony and described why she supported Pulama Lanai.

There were no questions for Ms. Barbodillo.

6. Kendric Kimizuka

Mr. Kimizuka stated that he was the head pro at the golf course and shared his reasons for supporting Pulama Lanai.

There were no questions for Mr. Kimizuka.

7. Tammy Sanches

Ms. Sanches described why she supported Pulama Lanai's efforts on Lanai.

There were no questions for Ms. Sanches.

8. Ella Yumol

Ms. Yumol shared her reasons for supporting Pulama Lanai.

There were no questions for Ms. Yumol.

9. Lynn McCrory

Ms. McCrory submitted written testimony and summarized her position for the Commission.

Commissioner Cabral requested clarification on the island population and the number of residents who worked for Pulama Lanai. Ms. McCrory estimated the island population to be approximately 3,200 with about 300 working for Pulama Lanai.

Commissioner Chang requested clarification on how public meetings were promoted and whether the Lanaians for Sensible Growth (LSG) were included. Ms. McCrory described how most public meetings were promoted and replied that LSG was involved to the public meetings too.

Mr. Kopper requested clarification on how many Lanai residents were employed by the Hotels. Ms. McCrory responded that the hotels employed approximately 700 people.

There were no further questions for Ms. McCrory.

10. Lesley Kaneshiro

Ms. Kaneshiro provided written testimony and summarized why she supported Pulama Lanai's efforts in the community.

There were no questions for Ms. Kaneshiro.

11. Tome Roelens

Mr. Roelens submitted written testimony and described why he supported Pulama Lanai.

Mr. Kopper asked if Mr. Roelens was aware that closure of the golf course was not an issue in this case. Mr. Roelens acknowledged Mr. Kopper's remarks.

.

12. Roger Alconcel

Mr. Alconcel provided written testimony and shared why he supported the Pulama Lanai in this matter.

There were no questions for Mr. Alconcel.

13. John Bernia

Mr. Bernia stated that he supported the use of brackish water for golf course use and described why he supported Pulama Lanai.

There were no questions for Mr. Bernia.

14. Winifred Basques

Ms. Basques volunteered to provide public testimony and described her role in the community.

There were no questions for Ms. Basques.

There were no other public witnesses.

Chair Aczon stated that the Public Testimony portion of the meeting was formally closed and declared a recess.

The Commission went into recess at 11:35 a.m. and reconvened at 1:00 p.m.,

Chair Aczon stated that oral arguments would be heard and that the Parties would be limited to 30 minutes each.

Mr. Kudo provided his oral argument and stated that he agreed with the Hearings Officer's Findings, but had additional Findings of Fact as stated in his filings that he wished to have included; and would like to have the proposed order adopted as it had been modified by Petitioner.

Mr. Hopper argued why County supported the Hearings Officer's Findings with Pulama Lanai's exceptions and joined in arguing that the order adopted as modified.

Mr. Yee argued OP's position and described how Findings of Facts supporting Condition 10 could be strengthened; and stated that OP supported adopting the Hearings Officer's Findings subject to changes made to strengthen the document.

Mr. Kopper stated that he had 6 issues with the Hearings Officer's Findings and argued why they were valid and should be considered in rejecting the Hearings Officer's Recommended Findings.

REBUTTAL

Mr. Kudo argued why Mr. Kopper's comments were not credible and why it was important to keep the year 1991 in mind during deliberations as directed by the Supreme Court.

Chair Aczon asked if any of the Parties wished to make comment on the rebuttal.

County replied that it had no comment.

Mr. Yee provided additional comments regarding the high-level aquifer and argued why the Hearings Officer's Findings with his suggested changes should be adopted.

Mr. Kopper argued why the Petitioner bears the burden to provide evidence to support its argument and why his position was correct.

Commissioner Okuda inquired whether there was a citation that could be provided. Chair Aczon declared a recess at 2:16 p.m. and reconvened the meeting at 2:23 p.m. to allow the Parties time to review their notes.

Commissioner Okuda continued his questioning and the Parties provided their opinions and references for Commissioner Okuda's consideration.

Commissioner Estes requested additional clarification on the water used for the golf course from Mr. Kopper. Mr. Kopper provided his perception of the water used for the golf course.

Commissioner Okuda questioned the scope of review considered in the case. The Parties shared their perceptions of what the Intermediate Court of Appeal had defined to be the scope of the remand hearing.

Commissioner Chang requested clarification on how the Parties perceived the Hearing Officer's Minute Orders. Mr. Kopper shared his perception of what Minute Order #6 involved. Mr. Kudo shared how Minute Orders #2 and #3 attempted to define the scope of the remand and how the 2004 order and the ICA provided additional boundaries. Mr. Rowe shared how Minute Orders #2, #4 and #6 affected his perspective of the scope of review. Mr. Yee shared how the definition of the scope of review had been helpful to him.

Commissioner Okuda asked whether the Parties could provide additional details related to wells #1 and #9. Mr. Kopper provided citations to the various exhibits and transcripts where he thought Commissioner Okuda could find the information. Mr. Yee referenced the

Hearing Officer's findings of Fact 85-91. Mr. Kudo and Mr. Kopper offered additional references and citations.

Commissioner Okuda requested additional clarification on the potability or non-potability of wells #1 and #9. Mr. Kudo, Mr. Yee and Mr. Kopper provided information on how their arguments on the wells were supported by their submissions.

EXECUTIVE SESSION

Commissioner Wong moved for an Executive Session. Commissioner Cabral seconded the motion to consult with Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to the procedures involved in this docket. There was no discussion. By a unanimous voice vote, the Commission elected to enter Executive Session at 2:56 p.m. and reconvened at 3:23 p.m..

Chair Aczon asked if the Commissioners had any further questions. There were none.

Chair Aczon asked if the Commissioners were ready to deliberate. The Commissioners unanimously answered that they were ready to deliberate. Chair Aczon stated that the Commission would recess and reconvene at 9:30 a.m. on April 27, 2017 to begin deliberations then. Chair Aczon declared the recess at 3:23 p.m.

