

LAND USE COMMISSION
MEETING MINUTES
April 27, 2017
9:30 a.m.
Lāna`i Community Center
Eight Street and Lāna`i Avenue
Lāna`i City, Hawai`i, 96763

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

COMMISSIONERS EXCUSED: Jonathan Scheuer
Aaron Mahi
Kent Hiranaka (recused)

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 9:30 a.m.

CONTINUED 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 stated that Public Testimony had concluded on April 26, 2017 and that the Commission would now begin formal deliberations on Docket No. A89-649; and asked for the pleasure of the Commission.

Commissioner Cabral moved to adopt the Commission's Proposed Findings of Fact, Conclusions of Law and Decision and Order as its Final Decision. Commissioner Estes seconded the motion.

Discussion ensued on how the Commission should assess and evaluate the various portions of the Hearings Officer's Order during the deliberation process. Various suggestions were made and considered; and opinions offered.

Chair Aczon asked if Commissioner Cabral would like to withdraw her motion. Commissioner Cabral moved for an Executive Session. Commissioner Wong seconded the motion. There was no discussion. The Commission unanimously voted to enter Executive Session (6-0) at 9:44 a.m. and reconvened at 9:50 a.m.

Discussion resumed and addressed the completeness of the record as had been reviewed and the issues that the Commission would consider during its review under the motion as stated by Commissioner Cabral. Additional discussion ensued and Chair Aczon asked if the Commission would like to act on Commissioner Cabral's motion or have it withdrawn. Commissioner Estes requested clarification on what options were available to the Commission. Commissioner Chang requested clarification on Commissioner Cabral's motion.

Additional discussion over how deliberations on the original motion could proceed continued.

Commissioner Cabral stated that her motion was open to amendment and Commissioner Estes also agreed (as having seconded the original motion).

Commissioner Wong suggested that the Commission address specific exceptions or certain portions of the recommended order to move forward. Commissioner Chang opined how LSG's exceptions could be used to amend the original motion.

Commissioner Wong requested and was granted a recess for the Commission by Chair Aczon at 10:07 a.m.. The Commission reconvened at 10:15 a.m.

Chair Aczon summarized the state of the deliberations and suggested continued Commission discussions move forward by focusing on the exceptions to the recommended order.

Commissioner Cabral commented that she was still agreeable to having her motion amended.

With the Chair's approval, Commissioner Wong addressed a list of Findings of Facts and Conclusions of Law that had been identified as exceptions and respectively offered each of them for the Commission to deliberate upon.

The Commission deliberated till taking a recess at 10:52 and reconvened at 11:02 a.m.

The Commission continued deliberations till taking a recess at 11:36 a.m. and reconvened at 11:48 a.m.

The Commission continued deliberations till taking a recess at 11:59 a.m. and reconvened at 12:40 p.m.

Commissioner Wong offered the following friendly amendments to Commissioner Cabral's motion.

List of Commissioner Wong's Friendly Amendments to Hearing Officer's Findings of Fact (FOF) and Conclusions of Law (COL #s.

1. **FOF 69- Hardy testimony on potable water- No Change but add additional three FOFs as proposed by Petitioner's Exceptions**
 - a. **New FOF#- Re: Tom Nance testimony- define potable based on EPA Secondary standards; less than 250 ppm**
 - b. **New FOF#- Re: Hardy and Nance- that County water departments would not accept Wells 1 and 9 as potable**
 - c. **New FOF#- Re: Tom Nance testimony- above 250 ppm taste issues, pipe corrosion**
2. **FOF77- Seto testimony on DOH definition of potability- No change but add additional two FOFs as proposed by Petitioner's Exceptions**

- a. New FOF#-Seto testimony- potable not defined in State or Federal regulation
- b. New FOF#- Seto testimony-definition of potable not in Fedefal SDW Act or defined by DOH SDW branch
3. FOF 90- Jamile testimony on primary contaminants- correct reference to administrative rules to HAR§ 11-20-4
4. FOF 93- Condition 10 meaning of potable- Contrary to common sense meaning – Replace reasonable with Plausible; replace 2nd sentence to show Condition 10 not using common definition of potable
5. FOF 137- Delete
6. FOF 138- Delete
7. FOF 142- Gima Testimony- Amend finding to directly quote Mr. Gima’s testimony from hearing transcript dated November 16, 2016, and place in quotes.
8. FOF 143- Delete
9. FOF 144- Delete
10. FOF 10- Delete
11. FOF 11- Transcript- Correct transcript date to May 13, 1993
12. COL 17- Delete
13. COL 18- Delete
14. COL 21- Delete
15. Accept OP’s Response to Petitioner’s Exception dated April 27, 2017 OP FOF142A

Commissioner Cabral and Commissioner Estes agreed to accept the friendly amendments.

Commissioner Chang requested clarification on the details of the amended motion. Discussion ensued to provide additional clarity on the specifics of the amended motion.

Chair Aczon asked Mr. Orodenker to poll the Commission.

Commissioners Cabral, Estes, Wong, Chang, and Chair Aczon voted in favor of the amended motion. Commissioner Okuda vote against the amended motion. The motion passed 5-1 with 1 recused (Commissioner Hiranaga) and 2 excused (Commissioners Mahi and Scheuer).

Commissioner Wong moved for an Executive Session. Commissioner Cabral seconded the motion. There was no discussion. By voice vote, the Commission unanimously voted (6-0) to enter into Executive Session at 12:51 p.m. and reconvened at 1:00 p.m.

Chair Aczon summarized the voting results and announced that staff was directed to prepare the final Decision and Order for the Commission’s review, and that decision making on adopting the form of the order would occur at the May 31st meeting at Kahului, Maui.

With the Chair's permission, Commissioner Wong addressed the audience and clarified that the action taken by the Commission was in support of the Hearings Officer's recommendation and that the final order would reflect the deliberations of the Commission on the matter.

There being no further business to discuss, Chair Aczon adjourned the meeting at 1:02 p.m.