

LAND USE COMMISSION
MEETING MINUTES

September 6, 2018 – 9:30 a.m.

**Natural Energy Laboratory Hawai`i Authority (NELHA)
73-987 Makako Bay Drive Kailua Kona, Hawai`i 96740-2637
Hale `Iako Training Room #119**

COMMISSIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Lee Ohigashi
Dawn Chang
Edmund Aczon
Arnold Wong

COMMISSIONERS EXCUSED: Nancy Cabral
(8 Seated Commissioners) Aaron Mahi

LUC STAFF PRESENT: Daniel Orodenker, Executive Officer
Randall Nishiyama, Deputy Attorney
General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief
Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the August 8, 2018 meeting minutes. There were none. Commissioner Wong moved to approve the minutes and Commissioner Ohigashi seconded the motion.

The minutes were unanimously approved by voice vote (6 ayes-0 nays- 2 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 for the following dates and docket numbers.

SEP 13- (Maui) at MACC

- A05-755 Hale Mua OSC (Maui)

SEP 27- (Hawai`i) at NELHA

- SP90-374 PR Mauna Kea (Hawai`i)- Motion to Extend Time

October 24-25 (Hawai`i) at Kailua-Kona

- A06-767 Waikoloa Mauka LLC (Hawai`i) - Continued Proceedings

November 14, 2018- at Honolulu International Airport Conference Room

- A06-763 Kapolei Development- (O`ahu) – Extend Time
- November 15, 2018- (Maui) at Maui Arts and Culture Center (MACC)

- A07-773 Emmanuel Lutheran- (Maui) – Motion to Extend, Approve 201H, Motion to Bifurcate

November 28, 2018 (Hawai`i) at NELHA

- Status Reports- A10-788 HHFDC and A00-730 Lanihau
- OSC A06-770 Shopoff Group
- A18-805 Church – Motion to Accept FONSI

November 29, 2018 – Maui at MACC

- Continued/unfinished Maui business

December 12, 2018- (Maui) at MACC

- A94-706 Ka`ono`ulu Ranch status report
- Any questions or concerns- please contact LUC staff.
There were no questions or comments on the schedule.

Chair Scheuer stated that the next agenda item was a hearing and action on A06-767 Waikoloa Mauka (Hawai`i).

ACTION

A06-767 WAIKOLOA MAUKA LLC, (HAWAI`I)

Consideration and action on A06-767 Waikoloa Highlands, Inc.'s Motion to Continue Hearing On Order To Show Cause

APPEARANCES

Steven Lim Esq. represented Petitioner Waikoloa Highlands Inc. (WHI)

Natalia Batichtcheva, WHI

Joel La Pinta, WHI

Jeff Darrow, Program Manager, County of Hawai`i Planning Department (County)

Ron Kim Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

DISCLOSURES

Commissioner Ohigashi stated that he wished to disclose that he had a social relationship with Petitioner's attorney Steven Lim, but that he felt that he could remain fair and impartial during proceedings on this matter, and that his relationship would not impact his decision making. There were no objection to Commissioner Ohigashi's continued participation in the proceedings.

Chair Scheuer called for Public Witnesses

PUBLIC WITNESSES:

1. Cindy Kestner

Ms. Kestner read testimony submitted by Julia Alos in support of the motion to continue.

Mr. Lim requested clarification on where Ms. Alos resided and for specifics on the issues or concerns that Ms. Alos had. Ms. Kestner replied that Ms. Alos resided in the Waikoloa area and was concerned about infrastructure construction delays related to installation of a traffic roundabout.

There were no further questions for Ms. Kestner.

Chair Scheuer called Petitioner to make their presentation.

Mr. Lim provided background information on why Petitioner had filed a Motion to Continue before the Commission and provided details for the Commission to consider while deciding to grant the continuance. Mr. Lim recollected various events and circumstances which affected the progress of development of the Petition Area since the initial Decision and Order had been issued; and described measures that he was assisting the Petitioner with to advance matters.

Mr. Lim provided copies of printed materials of a draft stipulation that he was working on to the County, OP and the LUC Deputy Attorney General and Chair Scheuer for their review as he made his oral presentation.

Mr. Lim described the various difficulties that he had encountered in finding essential documents and explanations for past decisions by Petitioner and expressed how the additional requested time would be helpful to him in providing better information to the Commission and achieving the various objectives he had listed in his printed materials.

Chair Scheuer noted that since Mr. Lim had not properly filed his printed materials to the Commission, the printed materials would not be part of the record.

Chair Scheuer asked if County or OP had any questions or comments.

Mr. Kim stated that County had no questions or comments.

Ms. Apuna stated that she had no questions but did want to comment that OP would not sign or agree to printed materials that Mr. Lim had submitted based on her initial review of the draft.

Chair Scheuer asked if the Commissioners had any questions.

Commissioner Questions

Commissioner Ohigashi requested clarification on whether County would agree to the draft proposed stipulation. Mr. Kim expressed his reservations and described how the general concept might need work.

Commissioner Chang requested hearing more information from OP to assist her in better understanding why OP was reluctant to agree to Petitioner's draft proposed stipulation. Ms. Apuna stated that the focus of OP was on the Motion to Continue and described the expectations that OP had of the immediate proceedings; and how the printed materials submitted by Mr. Lim just before the start of proceedings were not anticipated.

Commissioner Wong requested clarification on what OP and Petitioner's perspectives were on what actions constituted "substantial commencement". Ms. Apuna and Mr. Lim shared their understandings of what "substantial commencement" involved. Commissioner Wong also requested clarification on how WHI ownership and management was organized and conducted; and whether past EIS studies might be impacted by the new WHI plans for the proposed development. Mr. Lim provided details on the documents that authorized those in the WHI management/ownership control group and shared how new plans by the Petitioner might require new EIS studies.

Commissioner Okuda requested clarification on issues that he felt applied to the Motion to Continue; more specific information on who the WHI decision-makers were; and what differentiated shareholders of the current WHI entity and the past Waikoloa Mauka, LLC entity. Mr. Lim described the standards he thought should be applied to deciding on granting the motion to continue and provided the names of the WHI decision-makers and his understanding of the ownership/management structure of the past and present entities involved in the docket.

Commissioner Wong requested clarification on the status of Mr. Martirosian, who had been identified by Mr. Lim as the person allegedly responsible for the operational problems that Waikoloa Mauka, LLC had experienced. Mr. Lim provided details on Mr. Martirosian's whereabouts and status; and offered to provide the Commission with official proof that Mr. Martirosian was no longer associated with the

current ownership/shareholder group. Commissioner Wong responded that he would like to have the documents provided to the Commission as soon as possible.

Chair Scheuer requested clarification to discrepancies in Petitioner's Exhibit 5 which conflicted with remarks made about Mr. Martirosian's ownership position. Mr. Lim responded that his client's had documentation that would support the representations that he had made to the Commission.

Commissioner Chang requested clarification on the printed materials that Mr. Lim had provided to Chair Scheuer and Deputy Attorney General Nishiyama and shared what her concerns would be if had been officially filed as a stipulation. Mr. Lim provided his estimates of the amount of time he would request for in his official filing.

Chair Scheuer declared a recess at 10:24 a.m. and reconvened the meeting at 10:31 a.m.

Commissioner Ohigashi moved for an Executive Session to consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities as they pertained to the terms and conditions of the printed materials Mr. Lim had submitted and their effect on the proceedings. Commissioner Chang seconded the Motion. By voice vote, the Commission unanimously (6-0-2 excused) voted to enter Executive Session at 10:31 a.m.

The Commission exited Executive Session at 10:45 a.m. and reconvened into regular session at 10:47 a.m.

Chair Scheuer resumed proceedings with the continued questioning of Mr. Lim by Commissioners.

Commissioner Okuda requested clarification on what offer of proof Mr. Lim hoped to provide if the Motion to Continue was granted from sources within and outside of the United States. Mr. Lim described the types of documents, plans, and proposals he hoped to obtain during the continuance period to demonstrate that Petitioner had substantially commenced on the proposed development.

Commissioner Wong requested clarification on whether the representations made to the Commission by Petitioner were binding. Mr. Lim responded that he was authorized by Petitioner to proceed in the manner he had described to the Commission.

Commissioner Ohigashi requested clarification on the printed material that Mr. Lim had provided to the Commission Chair and Deputy Attorney General. Mr. Lim described how the printed materials reflected the proposed plan and stipulation that he had been working on with Petitioner; and how he intended to utilize the stipulation if OP and County signed on to help his client move forward on the proposed project.

Commissioner Chang reconfirmed with Mr. Lim that Petitioner's Motion had requested a 60-day continuance. Mr. Lim acknowledged that he had requested 60 days.

Chair Scheuer requested clarification on what powers Ms. Batichtcheva was authorized to exercise by the WHI group and how the Petitioner would be bound by the representations made to the Commission. Mr. Lim described how Ms. Batichtcheva could make authorized representations to the Commission that would bind the Petitioner's ownership group.

Chair Scheuer requested clarification on how the printed materials represented as a proposed stipulation might be factored into the proceedings; and noted that the location description for the Petition Area was incorrect. Mr. Lim responded that matters were still evolving due to the short span of time that the new ownership group had been involved with matters and described why he felt the motion to continue was necessary; and how he thought a proposed stipulation might help the situation; and acknowledged his location description error.

There were no further questions.

Chair Scheuer called on County to make its presentation.

COUNTY

Mr. Kim stated that County would not object to the requested Motion to Continue.

Chair Scheuer asked if there were any Commissioner questions.

Commissioner Questions

Commissioner Wong asked if the time period that the County was referring to was the 60-day extension request; and what issues County might have with re-zoning requests and other approvals that might need to be made relative to the proposed project. Mr. Kim responded that 60 days was the time period he was referring to and described how County would assess Mr. Lim's re-zoning requests and what time periods might be involved in different scenarios.

Commissioner Ohigashi requested to be excused to make his return flight to Maui. Chair Scheuer excused Commissioner Ohigashi at 11:03 a.m. (Quorum of 5 Commissioners remained.)

Commissioner Chang inquired if County had been cooperating with Petitioner's efforts to reconcile its records and move forward with its plans. Mr. Kim stated that County had been cooperating.

Commissioner Wong inquired if County was comfortable with Petitioner and the representations that it had made. Mr. Kim responded that County was comfortable, but understood why the Commission had the concerns it did about what had been presented to them.

There were no further questions.

Chair Scheuer called on OP to make its presentation.

OP

OP had no further statements.

There were no questions for OP.

REBUTTAL

Mr. Lim urged the Commission to allow the proposed project to proceed and summarized the troubles that had interrupted Petitioner's progress; and the reasons for allowing development efforts to continue.

Commissioner Chang requested clarification on when Petitioner's "new development team" was brought on board and whether the ownership/shareholder group understood the complexities of the pending Order to Show Cause (OSC) action.

Mr. Lim stated that the new team was established after the OSC action was initiated and described how he became involved and had educated the ownership on the OSC consequences.

There were no further questions or comments.

Chair Scheuer entertained a motion.

Commissioner Wong moved to have the LUC OSC meeting on October 24-25, 2018. Commissioner Okuda seconded the motion and requested clarification on the date scheduling. Chair Scheuer stated that the motion was to conduct the OSC meeting as scheduled on October 24-25, 2018.

Commissioner Wong commented that he would like Petitioner to provide specific organizational information identifying the management individuals and their roles; documentation to authenticate who could bind Petitioner to its representations; proof that Mr. Martirosian was no longer affiliated with Petitioner, and that any stipulation by the Parties be provided to the Commission with ample time to review it.

Commissioner Okuda shared his reasons for seconding the motion and why he supported the motion.

Commissioner Chang described her concerns regarding the impending OSC action and stated her support for the motion.

Chair Scheuer stated his support for the motion.

There was no further discussion.

Chair Scheuer had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion. (5-0-3 excused).

There being no further business to address, Chair Scheuer adjourned the meeting at 11:20 a.m.