

LAND USE COMMISSION  
MEETING MINUTES  
**December 13, 2018 – 9:00 a.m.**  
**Airport Conference Center**  
**400 Rodgers Blvd. Suite 700, Room #IIT#2**  
**(in Hawaiian Airlines Terminal Building)**  
**Honolulu, HI 96819**

COMMISSIONERS PRESENT: Jonathan Scheuer  
Gary Okuda  
Lee Ohigashi  
Dawn Chang  
Edmund Aczon  
Nancy Cabral  
Aaron Mahi

COMMISSIONERS EXCUSED: Arnold Wong  
(8 Seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Randall Nishiyama, Deputy Attorney  
General  
Bert Saruwatari, 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 November 28-29, 2018 meeting minutes. There were none. Commissioner Aczon moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (8 ayes-0 nays- 0 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.

- JAN 9- HNL- IAL DR18-64 Robinson-Kunia site visit
- JAN 10- HNL- IAL DR18-63 Malaekahana-site visit
- JAN 23- Hilo @ State Ofc Bldg Meeting Rooms ABC-A18-805 Church & A18-806 Barry Trust
- JAN 24- @HNL- IAL DR18-64 Robinson-Kunia & Legislative updates
- FEB 6-@Courtyard Marriott North Shore- DR18-63 Malaekahana
- FEB 7- Kona, Hawaii-A10-788 HHFDC, A00-730 Lanihau and A06-770 Shopoff status update
- FEB 20-21- Maui overnight- A11-794 Kihei HS- evening status report and A94-706 Ka`ono`ulu Intervenor Motion/Status Report (working on hotel-
- MAR13-14- HNL(seeking Kailua/Kaneohe venue) DBA A17-804 Hawaii Memorial Park
- MAR 27- TBD
- MAR 28-- Kauai DBA A17-803 Kealia
- APR 10-11 TBD
- APR 24-25 TBD

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Scheuer stated that the next agenda item was an action meeting on Docket No. A06-763 Kapolei Property Development, LLC.

### **ACTION –**

#### **A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC -(Oahu)**

Consider Kapolei Properties LLC's Motion for Extension of Time to Complete Project And To Change Petitioner's Name And Amend Caption

### **APPEARANCES**

Jennifer Lim Esq. represented Petitioner Kapolei Property Development, LLC (KPD)  
Steven Kelly, Representative for KPD  
Robby Fields, KPD  
Dina Wong, City and County of Honolulu, Department of Planning and Permitting  
(County)  
Noelle Cole, Representative of County  
Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)  
Rodney Funakoshi, Planning Program Administrator, OP  
Lorene Maki, Planner, OP

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

Chair Scheuer stated that he knew Mr. Kelly socially, but that it would not affect his ability to remain fair and impartial in this case. There were no objections to Chair Scheuer continued participation in the case.

Chair Scheuer called for Public Witnesses.

#### PUBLIC WITNESSES:

None

Chair Scheuer called for Petitioner KPD to make its presentation on Petitioner's Motion for Extension of Time to Complete Project And To Change Petitioner's Name And Amend Caption.

Ms. Lim presented her case and described why KPD was before the Commission and seeking approval of its Motion and offered Mike Hamasu and Mr. Kelly as witnesses.

#### PETITIONER WITNESSES

1. Mike Hamasu

Mr. Hamasu provided his professional background and was qualified as an expert in real estate market analysis. Mr. Hamasu summarized the forecasting work and reporting that he had been engaged to perform for Petitioner and described the

considerations and related factors involved in concluding why an additional 17-year extension till 2035 was necessary for the Petition Area's development.

County had no questions for Mr. Hamasu.

OP requested clarification on the details involved with the financial/real estate market recovery and expected growth in the region; the cost factors that were taken into consideration; the impact that infrastructure development could have on the Petition Area; and anticipated sales activity as the Petition Area development occurred.

Commissioner Cabral requested clarification on the demand for the type of real estate product that Petitioner would be making available and how the produced units would be absorbed by the market place.

Chair Scheuer requested further clarification on how the market would absorb the units being produced and how land sales and future construction of structures were anticipated to occur.

Ms. Lim described how her next witness, Steve Kelly, might better respond to the type of questions and subject matter that the Commissioners were inquiring about.

There were no further questions for Mr. Hamasu.

Chair Scheuer declared a recess at 9:37 a.m. and reconvened the meeting at 9:42 a.m. Ms. Lim called her next witness, Steve Kelly.

## 2. Steve Kelly

Mr. Kelly described his work background and functions with Petitioner's operations and used a PowerPoint presentation to display various exhibits provided to the Commission for the record to summarize the efforts of the James Campbell Company to develop the region surrounding the Petition Area, and the neighboring properties; and what costs and considerations were involved.

Mr. Kelly provided his perspective on the potential impact of avian wildlife to flight safety operations and also shared his organization's perspective on OP's Exhibit "E" - proposed amended language for D&O Condition 8- Notification of

Potential Airport Nuisances. Ms. Lim also provided Petitioner's additional language to Condition 8 for the Commission to consider.

Discussion ensued on whether OP's Exhibit "E" had been admitted into the record due to its late submittal. Chair Scheuer queried if there were any objections to OP's Exhibit "E". There were none. Chair Scheuer admitted Exhibit "E" into the record.

Chair Scheuer declared a recess at 10:36 a.m. and reconvened the meeting at 10:47 a.m.

Chair Scheuer confirmed that Ms. Lim had concluded her initial presentation. Ms. Lim stated that she had.

Chair Scheuer asked if County had any questions for Mr. Kelly.

Ms. Wong inquired how Petitioner expected County to address Petitioner's new proposed Condition 8 language and how the County's final subdivision approval process would need to observe the Petitioner's proposed Covenants, Conditions, and Restrictions (CC&Rs).

Chair Scheuer asked if OP had any questions for Mr. Kelly.

Ms. Apuna requested clarification on onsite drainage channel issues involving various climate/environmental impacts and new permitting requirements that would be needed in the future. Ms. Apuna also inquired on Petitioner's discussions with DOT-Airports and for updates on improvements to "backbone infrastructure" and other features of the Petition Area and surrounding region; for additional history to complement the information that Mr. Hamasu had provided; and how the anticipated transitional phasing would occur.

Commissioners Aczon, Chang, Okuda, Ohigashi, Cabral and Chair Scheuer requested clarification on various aspects of the development plan that Mr. Kelly had described and how Petitioner's Proposed Condition 8 language might apply; and for further justifications on why a 17-year time span was being sought.

Ms. Lim stated that she had no redirect and reserved time for rebuttal.

## COUNTY

Ms. Wong stated that County had submitted testimony and stood by its Position Statement; and that County had no objection to the motion for extension of time to 2035.

Petitioner and OP had no questions for County.

Commissioner Ohigashi requested clarification on how County would respond to Condition 8. Ms. Wong described how CCRs would be applied with the sub-division process; and stated that other entitlements would remain in place.

There were no further questions for Ms. Wong.

Chair Scheuer assessed the progress of proceedings and called for OP to make its presentation.

OP

Ms. Apuna summarized OP's revised Position Statement and argued why the Commission should consider it; and stated that she would have two witnesses, Rodney Funakoshi, OP and Jeffery Chang DOT (Department of Transportation-Airports).

OP Witnesses

1. Rodney Funakoshi

Mr. Funakoshi provided testimony on OP's revised position on the Motion for Extension and described the considerations and analysis of information that OP had used to determine its updated position on the Motion; and revising the language for Condition 8.

Ms. Lim requested clarification on OP's remarks on Petitioner's coordination with DOT and on why the extension should be limited to 10 years and not 17 years. Mr. Funakoshi deferred several questions involving DOT for Mr. Chang to respond to.

County had no questions.

Commissioners Aczon, Okuda, Ohigashi, Chang and Chair Scheuer requested clarification on OP's revised position; and for additional evidence to support OP's revised position.

OP Redirect

Ms. Apuna requested further clarification of whether the "backbone infrastructure" that was in place within the Petition Area could be "substantial commencement." Mr. Funakoshi acknowledged the advanced regional infrastructure work that was already completed was significant and that future infrastructure was pending.

Petitioner Recross

Ms. Lim requested and was granted an opportunity to re-cross exam Mr. Funakoshi.

Chair Scheuer declared a recess at 12:21 p.m. and reconvened the meeting at 12:32 p.m.

Chair Scheuer called for Ms. Lim's re-cross examination of Mr. Funakoshi.

Ms. Lim requested clarification on what "substantial commencement" implied; what the difference between progress and commencement was, and what onsite work should be considered.

Commissioner Chang requested additional clarification on whether substantial commencement was part of the considerations that the Commission was being asked to make.

Ms. Apuna clarified OP's position and Mr. Funakoshi provided further details on his testimony regarding the progress of development within the Petition Area.

There were no further questions for Mr. Funakoshi.

Ms. Apuna called her second witness, Jeffery Chang.

## 2. Jeffery Chang

Mr. Chang provided testimony about the concerns of the DOT about the impact of avian wildlife on flight operations at Kalaeloa and Daniel K. Inouye International Airports.

County had no questions.

Commissioners Okuda and Chang requested clarification on the possible negative consequences of extending the time span to 17 years and not granting the time extension. Mr. Chang provided his perception of what impact granting or denying the motion to extend time might have.

## OP Redirect

Ms. Apuna requested further clarification on DOT's avigation easement concerns.

There were no further questions for Mr. Change.

Chair Scheuer called for final arguments.

## Final Arguments

Ms. Lim argued why a 17-year extension should be granted and summarized her reasons for approving the Petition.

DPP had nothing to add.

Ms. Apuna argued why OP's recommendation of a 10-year extension should be adopted.

## REBUTTAL

Ms. Lim summarized her argument why granting a 17-year extension was appropriate and provided the legal principles that she thought applied to uphold her argument.

Chair Scheuer sought the pleasure of the Commission.

Chair Aczon moved to amend Condition 8 and 17, approve the extension of time till December 31, 2035, and recognize successor Petitioner Kapolei Property Development, LLC and the change in caption for the docket.

Commissioner Mahi seconded the motion.

Chair Scheuer presided over discussion on the motion.

Commissioner Okuda offered a friendly amendment to delete a portion of the motion regarding wildlife (bird) mitigation.

Commissioner Chang seconded the friendly amendment.

Chair Scheuer entertained discussion over the friendly amendment.

Commissioner Okuda provided his reasoning for making the friendly amendment and described why he thought it was constructive to the motion. Commissioner Ohigashi spoke against the amendment and shared his perspective of why the original motion should remain intact.

Chair Scheuer clarified the status of the discussions and stated that the friendly amendment was immediately in front the Commission and needed to be addressed.

Commissioner Chang voiced her reasons for making the second to Commissioner Okuda's friendly amendment.

Commissioner Aczon did not accept the friendly amendment and so Chair Scheuer determined the amendment failed, and the deputy Attorney General concurred with that determination. Further discussion on the original motion continued.

Commissioner Cabral shared why she was in favor of the motion. Commissioner Aczon provided additional reasons to support his motion. Commissioner Okuda stated

that, after reconsideration, he would vote in favor of the motion and shared the factors that altered his initial decision. Commissioner Chang expressed her continued misgivings and stated that she would be voting against the motion. Commissioner Okuda spoke to Commissioner Chang's misgivings and provided his perspective of how, by considering the whole record and the evidence, she might reconsider. Commissioner Mahi stated that although he had considered the friendly amendment, the circumstances of the case convinced him to vote in favor of the motion.

Commissioner Chang restated her concerns about granting the motion and what precedents and future consequences might result from that action. Commissioners Aczon and Ohigashi and Chair Scheuer shared why they would still vote for the motion.

Chair Scheuer had Mr. Orodener poll the Commission. Mr. Orodener stated that a motion had been made and seconded to grant KPD's Motion for Extension, subject to the following:

1) Condition No. 8 shall be amended as follows:

8. **Notification of Potential Airports Nuisances.** Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Project, in accordance with State law, of the potential adverse impacts of aircraft and airport activity from the adjacent airfields at Kalaeloa and Daniel K. Inouye International Airports, such as but not limited to noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, to buyers and lessees and to other future owners, lessees or occupants, to release claims against the State of nuisance relating to aircraft and airport operations.

Petitioner shall coordinate with the Department of Transportation, Airports Division, on practical property management measures within the Petition Area to discourage avian wildlife from interfering with flight safety operations at Kalaeloa and the Daniel K. Inouye International Airports as a result of the development at the Project. Petitioner shall incorporate such property management measures into the Project's Conditions, Covenants, and Restrictions that shall run with the land.;

(2) Condition No. 17 shall be amended (a) to reflect the change in name of Hanua Street to the Harbor Access Road and (b) to extend the deadline to complete buildout of the Project, including the backbone infrastructure, to December 31, 2035; and

(3) KPD shall be acknowledged as the Petitioner in Docket No. A06-763 and the caption in the docket shall be amended accordingly.

The Commission voted as follows:

Ayes: Commissioners Aczon, Mahi, Cabral, Okuda, Ohigashi, and Chair Scheuer.

Nay: Commissioner Chang

There being a vote tally of 6 ayes, 1 nay, and 1 excused, this motion carried.

Chair Scheuer announced the next agenda item:

#### **EXECUTIVE SESSION**

To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding the Sunshine Law and the Office of Information Practices complaint dated November 28, 2018.

Chair Scheuer announced that the Executive Session would be the last item of business to be discussed and no further business would be addressed after the Commission reconvened. The Commission entered Executive Session at 2:00 p.m. and reconvened at 2:13 p.m.

There being no further business to address, Chair Scheuer adjourned the meeting at 2:13 p.m.

