

LAND USE COMMISSION
MEETING MINUTES

October 9, 2019 – 9:00 a.m.
Airport Conference Center
400 Rodgers Blvd. Suite 700, Room #3
(In Hawaiian Airlines Terminal Building)
Honolulu, Hawai`i 96819

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Dan Giovanni
Gary Okuda
Jonathan Scheuer
Dawn N. S. Chang
Arnold Wong
Lee Ohigashi

COMMISSIONERS EXCUSED: None
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
Lori Tanigawa, 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 9:07 a.m.

APPROVAL OF MINUTES

Chair Scheuer stated that the minutes were not ready for adoption and moved on to the next agenda item.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.

LUC meeting Schedule

- OCT 10- continuation of SP09-403 Waimanalo Gulch Sanitary Landfill Special Permit on O`ahu
- OCT 24-25 DR19-67 Kanahahele -Mauna Kea (Hilo) on Hawai`i
- OCT28-if needed DR19-67 continued on Hawai`i
- OCT 31- video conference- adoption of order for DR19-67- Kanahahele & A02-737 U of N Bencorp at respective video conference centers
- NOV 6-7- SP19-410 Sacred Earth Assembly (Maui) on Maui
- NOV 20- mtg for DR19-66 Poma`ikai Partners IAL, & A87-610 Waiawa on O`ahu at airport
- NOV 21-A17-804 Hawaiian Memorial Life Plan on O`ahu at SOT 2nd floor
- DEC 4-5- on Maui- A04-751 C. Brewer (continued)
- DEC 18-19 Kauai – A11-791 Hokua Place
- JAN 8- Kona for A02-737 U of N Bencorp & A90-660 HHFDC status reports
- JAN 9- TBD
- JAN 22-23 on Oahu for A17-804 Hawaiian Memorial Life Plan (JAN 22 at Koolau Ballroom/ JAN 23 at HNL airport)

Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (WAIMANĀLO GULCH SANITARY LANDFILL- "WGSL"), (O`ahu)

APPEARANCES

Kamilla Chan, Esq., represented City and County of Honolulu, Department of Environmental Services (ENV)

Calvert Chipchase, Esq. and Chris Goodin, Esq., represented Intervenors-the Ko Olina Community Association and Senator Maile Shimabukuro (KOCA)

Richard Wurdeman, Esq., represented Intervenor Hanabusa (HNB)
Ian Sandison, Esq. represented Schnitzer Steel (SCHN)
Bryan Yee, Esq., represented State Office of Planning (OP)
Mary Alice Evans, Director, OP
Aaron Setogawa, Planner, OP
Dina Wong, City and County of Honolulu, Department of Planning and Permitting (DPP)

Chair Scheuer updated the record and described the procedures to be followed for the hearing.

There were no comments or questions regarding the procedures.

DISCLOSURES

Commissioner Okuda disclosed that he knew Mr. Chipchase as a fellow attorney and had represented a client in a case against DPP but felt that he could remain fair and impartial during proceedings.

Commissioner Chang disclosed that she had been involved in a case with DPP in the distant past and could not recall the specifics of it. She stated that she also felt that she could remain fair and impartial during proceedings.

Chair Scheuer disclosed that his wife had worked for ENV in the past and knew Senator Maile Shimabukuro but felt that he could remain fair and impartial during proceedings.

There were no objections to any of the Commissioners continuing to participate in the proceedings.

Chair Scheuer called for Public Witnesses.

PUBLIC TESTIMONY

1. Thomas Ryan Cleek

Mr. Cleek submitted written testimony and described his objections to the landfill in his district.

Commissioner Cabral thanked Mr. Cleek for his testimony.

Chair Scheuer shared the criteria for a Special Permit (“SP”) and how the potential to affect the surrounding properties factored into whether a permit would be granted or not.

There were no further questions or comments for Mr. Cleek,

2. Cynthia Rezendes

Chair Scheuer disclosed that he knew Ms. Rezendes from his past work. There were no comments or objections to Ms. Rezendes continuing her testimony.

Ms. Rezendes described her familiarity with the landfill and shared her concerns with allowing it to continue to operate.

Commissioner Okuda requested clarification on what community benefit “trade-offs” were initially received which provided for non-profit social welfare type funding and parks in exchange for allowing the landfill. Ms. Rezendes shared the information she had and described how the “trade-off benefit funding” ceased after time.

Chair Scheuer declared a recess at 09:34 a.m. and reconvened the meeting at 09:37 a.m.

PRESENTATIONS

DEPARTMENT OF ENVIRONMENTAL SERVICES, C&C HONOLULU (ENV)

Ms. Chan provided a historical recap of how the Special Permit application had been processed at the Planning Commission level and argued why the ENV consolidated application should be granted.

Commissioner Wong shared his concern over the amount of time that had passed before the Planning Commission returned the consolidated application to the LUC and requested clarification on how landfill capacity concerns had changed based on technological improvements and better waste diversion methods; and what alternate site review timelines could be expected. Ms. Chan described how ENV had operated while the Planning Commission considered the remanded application and how

monitoring the “fill” rate of landfill showed that the new technology and waste diversion were helping to increase the longevity of the facility.

Commissioner Ohigashi questioned how landfill capacity estimates were established and calculated. Ms. Chan provided her understanding of the methods used to calculate capacity and why the longevity of the landfill kept changing over time.

Commissioner Ohigashi requested clarification on whether the evidence supported the current Findings of Fact and what might happen if the LUC were to remand the application back to the Planning Commission. Ms. Chan opined on the sufficiency of the Findings of Fact and possible outcomes of a remand.

Commissioner Cabral commented on how the cubic measurements used to describe the landfill capacity might be difficult for the public to understand.

Chair Scheuer declared a recess at 10:09 a.m. and reconvened the meeting at 10:19 a.m. with continued questioning of Ms. Chan.

Commissioner Okuda requested clarification of and intentions/justifications for the Planning Commission’s actions during its consideration of the Special Permit application. Ms. Chan provided her understanding of how the Planning Commission performed to arrive at its decision.

Commissioner Chang requested clarification on the consolidated proceedings that addressed Condition No. 3 and determined the use of a 2017 date in the application; and on the updated information used for the record. Ms. Chan described how Planning Commission proceedings had used the evidence to produce their final decision.

Commissioner Cabral requested clarification on what preparations were being made for the future closure of the landfill and how operations would be monitored and updated during the period leading up to the closures. Ms. Chan provided her understanding of how ENV tracked the fill rate and was seeking alternate landfill sites.

Commissioner Giovanni requested clarification on the expected date that capacity might be reached based on current fill rates. Ms. Chan responded that it might take 20 years from 2019 to reach capacity.

Commissioner Chang shared her concerns about the relevancy of the 2022 date that had been the basis of past discussions on this matter. Ms. Chan described how challenging it was to estimate achieving capacity and opined how 2022 was once considered a valid and relevant date.

Commissioner Okuda questioned why a District Boundary Amendment (DBA) had not be sought instead of an SP by ENV. Ms. Chan described how a DBA that had been sought initially, had been withdrawn.

Chair Scheuer commented that Ms. Chan's reference to the disposal of whale carcasses could be culturally objectionable to some and sought additional clarification to Commissioner Okuda's question regarding the use of a DBA. Chair Scheuer also sought clarification on the impact of the 2010/2011 flooding that occurred at the landfill site and on ENV's position on Condition 14. Ms. Chan apologized for her remarks about whale carcasses and described how the ENV had addressed an SP use instead of pursuing a DBA; and how the volume of the 2010/2011 natural disaster debris was not in the record; and opined why Condition 14 was struck down.

Commissioner Giovanni questioned how normal landfill operations might be adversely affecting the neighboring community and asked if Ms. Chan was aware of the site attracting a nuisance pigeon population. Ms. Chan shared her understanding of the situation and stated that she was unaware of the pigeon problem.

Chair Scheuer declared a recess at 11:21 a.m. and reconvened the meeting at 11:34 a.m. and acknowledged Mr. Chipchase.

Mr. Chipchase suggested a change in the order of presentations for better continuity to the proceedings by having Schnitzer Steel present next.

There were no objections to Mr. Chipchase's suggestion and Chair Scheuer called for Mr. Sandison to make his presentation.

INTERVENOR SCHNITZER STEEL (SCHN)

Mr. Sandison described how his client relied on the landfill facility and argued why the Applications should be granted to the applicant.

Mr. Sandison suggested that the Parties be allowed to brief a standard of review.

Commissioner Chang questioned the usefulness of a standard of review since the LUC was limited to the Planning Commission's application.

There were no further questions for Mr. Sandison and Chair Scheuer called for Intervenor KOCA/Shimabukuro to make its presentation.

INTERVENOR KOCA/SHIMABUKURO (KOCA)

Mr. Chipchase used a PowerPoint presentation (assisted by Mr. Goodin) to present his argument on why the WGSL should be closed.

Mr. Chipchase provided background and history on why KOCA became involved as an Intervenor and described how KOCA's Motion to Deny the Application filed on December 3, 2008 and the Application filed on June 28, 2011 (Applications) and remand of the Applications to the Honolulu Planning Commission for further proceedings had resulted in having to appear before the Commission again for consideration of City and County of Honolulu's Planning Commissions request to approve ENV's application for a new Special Use Permit to supersede the existing Special Use Permit to allow expansion and a time extension for the WGSL.

Chair Scheuer assessed the time requirements needed to the remainder of the KOCA presentation and declared a recess at 12:24 p.m.

Chair Scheuer reconvened the meeting at 1:02 p.m. and called for KOCA to continue its presentation.

Mr. Chipchase continued to describe KOCA's efforts with dealing with the Planning Commission without achieving any desired results.

Commissioner Chang asked if the record supported KOCA's presentation and whether ENV could file a DBA instead of requesting a Special Permit for the WGSL. Mr. Chipchase acknowledged that the record did.

Commissioner Okuda requested clarification on how “stale” evidence impacted the Planning Council’s decision-making on this matter and how KOCA perceived what might happen if the LUC made certain decisions. Mr. Chipchase shared his opinion on how new evidence could help the situation and what actions the Parties might take depending on the Commission’s actions.

Commissioner Ohigashi moved for an Executive Session to consult with the Board’s attorney in regard to questions and issues pertaining to the Board’s privileges, duties, privileges, immunities and liabilities if the LUC denied the ENV’s application. Commissioner Wong seconded the motion. There was no discussion. By a unanimous voice vote, the Commission voted to enter Executive Session at 1:45 p.m. and reconvened at 2:22 p.m.

Chair Scheuer recapped the progress of the proceedings and asked if the Commission had any questions for KOCA.

Commissioners Wong, Cabral, Giovanni and Chair Scheuer requested clarification on the estimated timeline for WGS� closure, confirmation of reference dates contained in the record, how the proposed plan for WGS� phased closure would operate, what remediation/restoration plans were in place, and on how the adverse effects of having the WGS� in the area could be mitigated and balanced during the time it continues to operate till its closure. Mr. Chipchase confirmed the timeline and dates that were cited in the records and described how he envisioned the phased closure might operate, what mitigation efforts might be worked out; and stated that no remediation/restoration evidence was in the record. Ms. Chan agreed and confirmed that the record did not contain any remediation effort requirements.

There were no further questions for KOCA. Chair Scheuer called for Intervenor Hanabusa’s presentation.

INTERVENOR HANABUSA (HNB)

Mr. Wurdeman described the actions that Intervenor Hanabusa had performed while dealing with the ENV application and argued how the record and the Waianae Coast Neighborhood Board decision supported the denial of the ENV application and closure of the WGS�; and why a DBA and a new landfill site selection was necessary.

Commissioners Chang, Ohigashi, Wong and Chair Scheuer requested clarification on how HNB thought the current landfill operation should be dealt with, why a DBA was a more desirable course of action for WGSL to take, the role of the Department of Health (DOH) in this matter if no special permit was in place; and what harm HNB might incur if the KOCA modifications were granted and if the ENV sought a DBA. Mr. Wurdeman opined on how and when the DOH might become involved in the landfill closure; and on how HNB would be impacted by the adoption of KOCA's modifications or other various LUC actions.

There were no further actions. Chair Scheuer called for OP's presentation.

OP

Mr. Yee stated that OP supported the Planning Commission's Decision and Order subject to conditions and described the alternatives that OP had considered in its decision-making- allowing the landfill to continue to operate and expand, closing the landfill, and starting to shut down the landfill after denying the permit application. Mr. Yee also argued how a permit denial by the LUC would need sound justification and that unusual and reasonable "continued use" guidelines might factor into allowing the extended use of the landfill facility; and provided his perspective on how OP had assessed the DBA process, landfill capacity issue, site selection, and sufficiency of information based on the record.

Commissioners Okuda, Giovanni, Chang and Wong requested clarification from Mr. Yee on how OP determined the sufficiency of the record provided, how current the information contained in the record was, what "social justice" considerations were made, how the failure to follow the Commission's remand instructions was considered, how DBA and SP requirements were weighed and applied, whether DOH should be involved, and on KOCA's presented conditions.

Mr. Yee deferred to ENV to respond to questions regarding site selection and offered his perspective of how OP assessed the Planning Commission's failure to accurately respond to the LUC's remand instructions, DOH involvement, and any DBA/SP considerations. Mr. Yee stated that OP had no position on the KOCA modifications presented by Mr. Chipchase and on the legality of the landfill operation and commented on how it was a City and County of Honolulu function to enforce the health measures involved with the landfill.

Chair Scheuer assessed the state of the proceedings and stated that Commission still had questions for OP and ascertained from the Parties if there were any concerns about the continued proceedings that needed to be addressed before taking a recess for the day.

Mr. Wurdeman asked if his attendance for the remainder of the proceeding was necessary and Ms. Chan and Mr. Sandison commented that they had rebuttal to present.

Chair Scheuer shared why HNB should attend, and entertained discussion on how the time for rebuttal would be distributed; and declared a recess at 3:45 p.m.



