

LAND USE COMMISSION
MEETING MINUTES

November 21, 2019 – 8:30 a.m.

Leiopapa A Kamehameha, Conference Room 204, Second Floor
235 South Beretania Street, Honolulu, Hawai`i 96813

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Gary Okuda
Jonathan Scheuer
Dan Giovanni
Arnold Wong
Dawn N. S. Chang (arrived at 8:56 a.m.)

COMMISSIONERS EXCUSED: Lee Ohigashi
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
Lori Tanigawa, Deputy Attorney General
William Wynhoff, Deputy Attorney General
Linda Chow, Deputy Attorney General
Bert Saruwatari, Staff Planner
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 8:33 a.m. announced that the Commission would be continuing proceedings on Agenda Item VII- Docket No. A87-610- Motion for Modification of Decision and Order and Time Extension.

ACTION

A87-610 Tom Gentry and Gentry Pacific, Ltd. (Successor Petitioner- Kamehameha Schools), (O`AHU)

Motion for Modification of Decision and Order and Time Extension

APPEARANCES

Jennifer Lim, Esq. and Onaona Thoene, attorneys for Successor Petitioner- Kamehameha Schools (“KS”)

Dina Wong, Acting Planning Division Chief- City and County of Honolulu
Department of Planning and Permitting (DPP)
Ray Young, Planner, DPP
Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)
Rodney Funakoshi, Land Use Administrator, OP
Lorene Maki, Planner, OP

Chair Scheuer acknowledged Mr. von Allmen’s presence and asked if there were any further questions for him.

There were no further questions for Mr. von Allmen.

Chair Scheuer asked if Ms. Lim had anything further to present. Ms. Lim responded that she had one witness, Dan Ford – Environmental Risk Assessment, available and reserved the right to call him if needed.

Ms. Lim offered Petitioner’s Exhibits 1-48 for acceptance into the record. There were no objections to accepting the exhibits. Chair Scheuer called for County to make final comments.

County

Ms. Wong stated that County had no objections to the extension date of 2059.

There were no questions for County.

OP

Ms. Apuna stated that OP recommended the approval of Petitioner’s Motion for Modification and Time Extension subject to a condition requiring that Petitioner shall complete construction of the backbone infrastructure of Phase A of the proposed project within 10 years from the Commission’s Order approving the Motion.

Commissioners Cabral, Okuda and Giovanni requested clarification on what OP’s support was based on, what evidence was needed to quantify the condition being required, and what constituted “backbone infrastructure”. Ms. Apuna offered Mr. Funakoshi to respond to the questions. Mr. Funakoshi described the major features that he felt constituted “backbone infrastructure”. Discussion ensued to determine the relevancy of the exhibits and how an order to show cause might be impacted by allowing a portion of the Petition Area to move forward without including the condition.

County had no questions.

Chair Scheuer asked if Commissioner Okuda's concerns about the OP condition could be further clarified. Mr. Funakoshi described how the OP condition was attached to its recommended approval to address the overall long-term development schedule for the Petition Area.

Commissioner Giovanni asked what the driving interest was for the OP condition was. Mr. Funakoshi described how the timing of the installation of the "backbone infrastructure" was important to development of the Petition Area.

Ms. Lim argued why the Motion to Modify was limited in scope and specific to allowing a solar facility in the Petition Area and how the attachment of the OP condition would be detrimental to Petitioner's efforts.

Commissioner Cabral requested clarification on the details for extending the PPA and whether KS would assume ownership of the facility. Ms. Lim responded that it was unlikely that KS would act to own the facility and described how the PPA agreement terms provided for an extension of time.

Chair Scheuer commented on whether this meeting was the proper venue for OP to consider order to show cause ("OSC") matters.

Commissioner Wong moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities related to considering *res judicata* matters. Commission Aczon seconded the motion. By voice vote, the Commission unanimously voted (7-0-1 excused) to enter Executive Session.

Chair Scheuer stated that the Commission would enter Executive Session at 9:32 a.m., and reconvened the regular meeting at 9:48 a.m. Chair Scheuer acknowledged Ms. Apuna and had her respond to Petitioner's comments and concerns.

Ms. Apuna stated that OP was not pursuing an OSC but had evaluated the information provided by the Petitioner and determined that including the condition was necessary when considering the Motion relative to the initial Decision and Order.

Chair Scheuer asked if there were any final comments. Ms. Lim responded that she had none.

Chair Scheuer announced that the Commission would be entering deliberations.

Commissioner Okuda moved to continue the proceedings to Thursday, January 9, 2020 to a time and place to be determined to obtain a status report and continue action on Docket No. A87-610. Commissioner Giovanni seconded the Motion.

Discussion on the Motion

Commissioner Okuda expressed his concern for obtaining a complete record and shared why he would like to hear more about the master plan for the Petition Area.

Commissioner Giovanni stated his support for the Motion and described why he felt the continuance till January would not jeopardize the solar project.

Commissioner Cabral stated her support for the Motion and commented on how more information on this matter would be useful.

Chair Scheuer stated that he also supported the Motion and described how not having more information on the master plan was a disadvantage.

Commissioner Giovanni suggested that the Commission hear the status report first before continuing proceedings on the Motion for Modification of Decision and Order and Time Extension. Commissioner Okuda was agreeable and clarified his Motion to ensure that the status report for Docket No. A87-610 was heard before continuing proceedings on the Motion. Commissioner Giovanni concurred with the clarification. There was no further discussion on the Motion. Chair Scheuer had Mr. Orodenker poll the Commission.

The Commission unanimously voted to continue the two agenda items on January 9, 2020.

Chair Scheuer declared a recess at 9:59 a.m. and reconvened the meeting at 10:05 a.m.

Chair Scheuer called for the next agenda item.

ACTION

A17-804 HAWAII MEMORIAL LIFE PLAN, LTD (O`AHU) Petition for district boundary amendment

Consider HUI O PIKILOA, an unincorporated Association, LIANNE CHING, BETTYE HARRIS, RICHARD MCCREEDY, JULIANNE MCCREEDY, JESSE REAVIS and GRANT YOSHIMORI 's Petition To Intervene

APPEARANCES

Curtis Tabata, Esq. represented Hawaii Memorial Life Plan, Ltd., (“HMP”)

Jay Morford, President, HMP

Scott Ezer, HHF Planners for HMP

Dina Wong, Acting Division Chief, Department of Planning and Permitting (“DPP”)

Ray Young, Planner, DPP

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Rodney Funakoshi, Planning Program Administrator, OP

Lorene Maki, Planner, OP

Grant Yoshimori- Spokesperson for Proposed Intervenor Hui O Pikiloa (“HOP”)

Richard McCreedy, HOP

Julie McCreedy, HOP

Chair Scheuer apologized for the late start due to concluding business from the previous day’s meeting and updated the record and provided the procedures for the docket.

There were no questions on the procedures.

DISCLOSURES

Commissioner Chang disclosed that she had done work for the Petitioner in the past but felt that it would not affect her decision-making and her ability to remain fair and impartial during the proceedings.

There were no objections to Commissioner Chang’s continued participation.

Commissioner Wong disclosed that his family had plots at Hawaiian Memorial Park but that he felt it would not impact his decision making and that he could remain impartial during the proceedings.

There were no objections to Commission Wong’s continued participation.

Chair Scheuer disclosed that he had an association with the Hawaii Islands Land Trust organization that had prior discussions that he was not a party to with HMP regarding a conservation easement.

There were no objections to Chair Scheuer’s continued participation.

Commissioner Okuda disclosed that his family had plots at Hawaiian Memorial Park but that he felt it would not impact his decision making and that he could remain impartial during the proceedings.

There were no objections to Commission Okuda’s continued participation.

There were no other disclosures.

Chair Scheuer called for Public Witnesses.

PUBLIC WITNESSES

None

PRESENTATIONS

Proposed Intervenor

Chair Scheuer called for Proposed Intervenor HOP to make its presentation.

Mr. Yoshimori stated that he was the designated spokesperson for HOP and described why his group had organized and decided to intervene due to the adverse impacts that the proposed project would have on neighboring properties and native gathering practices, with the unnecessary expansion and lack of proposed alternatives for development.

Commissioners Cabral, Okuda, Wong, Chang and Chair Scheuer requested clarification on how HOP became aware of the proceedings for A17-804, how HOP had been recognized by the State Legislature for its achievements, what the scope of HOP's intervention entailed, why HOP was choosing to proceed as an Intervenor *Pro se*, what had happened during the initial intervention proceedings and the background research that HOP had performed in preparation for its intervention.

HMP

Mr. Tabata stated that Petitioner did not object to the proposed intervention but wanted to limit the scope of the intervention and reserved the right to object.

County

County had no objections to the Petition to Intervene and the proposed scope of Intervention.

OP

OP had no objections to the Petition to Intervene and the proposed scope of Intervention.

Commissioner Wong moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities related to considering the proposed additional areas of

intervention and possible future consequences. Commission Cabral seconded the motion. By voice vote, the Commission unanimously voted (7-0-1 excused) to enter Executive Session.

Chair Scheuer stated that the Commission would enter Executive Session at 10:28 a.m., and reconvened the regular meeting at 10:37 a.m.

Chair Scheuer asked if there were any final questions. There were none.

Chair Scheuer sought the pleasure of the Commission. Commissioner Wong moved to grant the HOP Petition to Intervene with the scope of intervention requested by Intervenor with Mr. Yoshimori as the designated speaker assisted by Richard McCreedy. Commissioner Cabral seconded the Motion.

Deliberations

Commissioner Wong thanked the Intervenor for coming forward.

Commissioners Okuda and Cabral and Chair Scheuer stated that they would be voting in favor of the Motion.

There was no further discussion. Chair Scheuer had Mr. Orodenker poll the Commission. The Commission unanimously voted in favor of granting the Motion (7-0-1 excused) .

There was no further business to address and Chair Scheuer stated that the LUC site visit was at 1:00 p.m. later in the day at the Hawaiian Memorial Park in Kaneohe and declared the meeting adjourned at 10:43 a.m.

LAND USE COMMISSION
LAND USE COMMISSION SITE VISIT
A G E N D A
November 21, 2019 – 1:00 p.m
Hawaii Memorial Park, Ocean View Garden Area
45-425 Kamehameha Hwy, Kaneohe, HI 96744

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

COMMISSIONERS EXCUSED: Arnold Wong
(There are currently 8 seated Lee Ohigashi
Commissioners)

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

Chair Scheuer called the site visit to order at 1:00 p.m. and Mr. Orodener provided a briefing explaining the purpose of the site visit and the protocol to be observed during the tour of the Petition Area. There were personal introductions and the members of the site visit group departed the rendezvous area and toured the Petition Area. Mr. Tabata, attorney for the Petitioner and Jay Morford, Petitioner's representative and designated Hawaiian Memorial Life Plan staff responded to various Commissioner questions about the geographic and environmental characteristics of the Petition Area.

There being no further questions or comments to address, Chair Scheuer concluded the site visit at 1:34 p.m.