

LAND USE COMMISSION  
MEETING MINUTES

**Kauai State Office Bldg., Conference Rooms A, B, C-2<sup>nd</sup> Floor  
3060 Eiwa Street  
Lihue, Kaua`i, Hawai`i  
December 10, 2014 9:30 a.m.**

COMMISSIONERS PRESENT: Chad McDonald  
Arnold Wong  
Edmund Aczon  
Kent Hiranaga  
Brandon Ahakuelo  
Neil Clendeninn  
Sandra Song

COMMISSIONERS EXCUSED: Jonathan Scheuer  
Aaron Mahi

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

COURT REPORTER: Holly Hackett

**CALL TO ORDER**

Chair McDonald called the meeting to order at 9:33 a.m.

**APPROVAL OF MINUTES**

Chair McDonald asked if there were any corrections or additions to the November 20-21, 2014 minutes. There were none. Commissioner Wong moved to

approve the minutes. Commissioner Aczon seconded the motion. By a voice vote the minutes were unanimously approved (7-0-2 excused).

Chair McDonald introduced Commissioner Neil Clendeninn to the audience.

### **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- January 7, 2014 is planned for A92-683 Halekua Development adoption of order via videoconference.
- January 21-22, 2015 is currently open.
- February 4-5, 2014 is planned for A89-643 McClean Honokohau Properties-(Kona)
- Above dates represent the tentative calendar of meetings and are subject to change.
- Any questions or conflicts, please contact LUC staff.

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

### **STATUS REPORT**

SP87-364 Kahili Adventist School (Kaua`i)

Chair McDonald stated that this was a meeting on Docket No. SP87-364 Kahili Adventist School. to receive a status report from Petitioner on the Petition Area and adherence to other conditions in the Commission's Decision and Order and take appropriate action, if any.

### **APPEARANCES**

Max W. J. Graham, Esq., Eric A. Knudsen Trust's (Trust) Representative

Canen Ho`okano, Property Manager, Trust

Kaua`i County Planning Department (County) advised Commission via fax that it would not be appearing.

Bryan Yee, Esq., Deputy Attorney General, State Office of Planning (OP)

Rodney Funakoshi, Land Use Administrator, OP

Leo Asuncion, Acting Director, OP

Chair McDonald updated the record, described the procedures for the hearing and asked if there were any Public Witnesses who wished to testify. There were no questions or comments on the procedures.

### **PUBLIC WITNESSES**

None

### **PRESENTATION**

Petitioner

Mr. Graham submitted a status update report and a schematic map of the Petition Area and provided his presentation to the Commission. He referred to his submitted material and described how the Special Permit Petition Area evolved and how the Trust was still undecided on future uses for the Petition Area and was still evaluating its options after the termination of the Kahili Adventist School lease. He also described how Knudsen Trust planned to comply with the conditions of the 2010 Decision and Order and requested that the Trust be allowed to update its report to the Commission after July 1, 2015.

There were no questions for Mr. Graham.

### **AGENCY COMMENTS**

County

The County advised the Commission via fax that it had NO POSITION on this matter.

OP

Mr. Yee noted that the Petition Area was still designated agricultural and that future uses would need to comply with the Special Permit conditions and deferred to the Commission regarding future status reports and monitoring. Mr. Yee also stated that if the Trust wished to alter the conditions, it would have to file to amend them with the LUC.

Commissioner Questions

Commissioner Song requested clarification from Mr. Orodener regarding the role and responsibilities of the Commission in regards to status reports and Special Permits. Chair McDonald entertained a motion for an Executive Session. Commissioner Wong moved and Commissioner Ahakuelo seconded the motion for an Executive

Session. By a voice vote, the Commission unanimously (7-0-2 excused) voted to enter into Executive Session.

The Commission entered Executive Session at 9:55 a.m. and reconvened at 10:12 a.m.

#### Commissioner Questions:

Commissioner Wong requested clarification on what the Trust's understanding was that the conditions "run with the land", what types of uses were being currently proposed by various entities and how the County would need to be included in the permitting process to resolve issues if amendments to the Special Permit were desired in the future. Mr. Graham provided further details on the Trust's current activities regarding uses for the Petition Area and represented that the Trust would cooperate if amendments to the Special Permit were sought.

Chair McDonald thanked the Applicant and stated that the Commission would look forward to the Trust's future report in July, 2015. Chair McDonald directed the Applicant to work with LUC staff regarding the details of the future report date.

There were no further questions or comments.

The Commission went into recess at 10:14 a.m. and reconvened at 10:19 a.m.

#### **HEARING & ACTION**

A11-791 Kapa`a Highlands Phase II (Ho`okua Place LLC) (Kaua`i)

Chair McDonald stated that this was an action meeting on Docket No. A11-791 Kapa`a Highlands Phase II (Ho`oKua Place LLC) to:

- Recognize HG Kaua`i Joint Venture (Ho`okua Place) as the successor Petitioner with standing to seek and obtain the relief requested by the Motion;
- To determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, of an environmental impact statement relating to the development and reclassification of approximately 97 acres from the Agricultural and Rural Districts to the Urban District, Tax Map Key Nos. (4) 4-3-03: por. 1; and

- To determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

#### APPEARANCES

William Yuen, Esq., HG Kaua`i Joint Venture LLC's (HG) Representative

Melissa Uhl, Esq., HG Representative

Craig Allen, HG

Kaua`i County Planning Department (County) advised the Commission via fax that they would not be attending

Bryan Yee, Esq., Deputy Attorney General, OP

Rodney Funakoshi, Land Use Administrator, OP

Leo Asuncion Acting Director, OP

Chair McDonald updated the record, described the procedures for the hearing and asked if there were any Public Witnesses who wished to testify. There were no questions or comments on the procedures.

Chair McDonald asked if Mr. Yuen had been advised of the LUC reimbursement policy and whether his client would comply with it. Mr. Yuen acknowledged that he had been advised and that his client would abide by it.

#### PUBLIC WITNESSES

None

#### PRESENTATION

Petitioner

Ms. Uhl made her presentation to the Commission and argued why the Substitute Petitioner should be recognized, why the LUC should be the accepting authority for the Environmental Impact Statement (EIS) and why an EIS was warranted.

#### AGENCY COMMENTS

County

The County advised the Commission via fax that it had NO POSITION on this matter.

OP

Mr. Yee stated that OP had No Objection to HG Kauai Joint Venture Group-LLC's Motion to Substitute Petitioner, and Designate the Land Use Commission as Approving Agency for an Environmental Impact Statement.

## Commissioner Questions

None

There were no further questions.

## DECISION MAKING

Commissioner Clendeninn moved to:

1. To allow the substitution of HG Kaua`i Joint Venture, LLC as the Petitioner of record, for good cause shown;
2. To identify the Land Use Commission as the “approving agency” to process and review applicant’s proposed actions pursuant to Chapter 343, HRS, as the petition to amend land use district boundaries represents the earliest practicable time to determine whether an environmental impact statement (EIS) shall be required; and,
3. Direct the Petitioner to proceed directly to the preparation of an environmental impact statement preparation notice (EISPN) because the Commission has reviewed the Petition and based on its judgment and experience, informs the applicant that under section 343-5(e), HRS, the proposed action may have significant effects requiring the preparation of a full environmental impact statement. The proposed Project requires the use of State or county lands or funds (pursuant to section 343-5(a)(1), HRS) and may have a significant impact on the environment as it may (i) involve an irrevocable commitment or loss or destruction of any natural or cultural resource; (ii) substantially affect the economic or social welfare of the community or State; and, (iii) involve substantial secondary impacts, such as effects on public facilities.

Commissioner Aczon seconded the motion.

There was no discussion.

The Commission voted unanimously (7-0- with 2 excused) in favor of the motion.

Chair McDonald stated that the next item on the agenda was an Executive Session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to various administrative appeals and other appellate proceedings affecting the Commission and entertained a motion.

## **EXECUTIVE SESSION**

Commissioner Wong moved for such an Executive Session. Commissioner Aczon seconded the Motion. By unanimous voice vote (7-0- with 2 excused), the Commission voted to enter Executive Session.

The Commission went into Executive Session at 10:30 a.m. and exited at 11:06 a.m.

The Commission then reconvened and with no further action or other business, Chair McDonald declared the meeting adjourned at 11:06 a.m.