

Maha'Ulepu v. Land Use Com'n
Hawaii, 1990.

Supreme Court of Hawai'i.
Malama MAHA'ULEPU, Intervenor-Appellant,
v.

LAND USE COMMISSION, State of Hawaii, Planning Commission, County of Kauai,
Ainako Resort Associates, Grove Farm Properties, Inc., and Planning Department, County of
Kauai, Defendants-Appellees.

No. 13764.

April 9, 1990.

Opponent to grant of a special use permit for construction of golf course on prime agricultural land appealed from decision of State Land Use Commission which approved permit. The Fifth Circuit Court, Gerald S. Matsunaga, J., affirmed. Opponent appealed. The Supreme Court, Lum, C.J., held that local planning commission and the State Land Use Commission possessed authority under statutory provisions governing land use to issue special use permit for golf course uses on A and B rated agricultural lands.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ↪606

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k606 k. Permissions or Certificates, Decisions Relating To. Most Cited Cases

Zoning and Planning 414 ↪622

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k619 Matters of Discretion

414k622 k. Permissions and Certificates, Decisions Relating To. Most Cited

Cases

Review of special permit approvals is limited to discerning whether administrative agencies committed errors of law or abused their discretion in granting permit.

[2] Zoning and Planning 414 ↪374

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General
414k373 Power to Grant

414k374 k. Nature of Power. Most Cited Cases

State Land Use Commission may exercise only those powers granted to it by statute and may not grant special permit unless proposed use is permissible under provisions governing land use. HRS § 205-1 et seq.

[3] Statutes 361 ↪230

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k230 k. Amendatory and Amended Acts. Most Cited Cases

Amendatory language of preexisting parallel provision must ordinarily be read in accord with interpretation given that provision, not in conflict with it.

[4] Statutes 361 ↪158

361 Statutes

361V Repeal, Suspension, Expiration, and Revival

361k158 k. Implied Repeal in General. Most Cited Cases

Generally, repeals by implication are not favored and if effect can reasonably be given to two statutes, it is proper to presume that earlier statute is intended to remain in force and that later statute did not repeal it.

[5] Zoning and Planning 414 ↪387

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General

414k384 Nature of Particular Structures or Uses

414k387 k. Amusements and Restaurants. Most Cited Cases

Local planning commission and the State Land Use Commission possessed authority under statutory provisions governing land use to issue special use permit for golf course uses on A and B rated agricultural lands; amended statutory provision could not be construed as outright prohibition on such permits as amendment merely reiterated provisions of prior statute which provided such authority. HRS §§ 205-2, 205-4.5(b), 205-6.

[6] Zoning and Planning 414 ↪360

414 Zoning and Planning
414VII Administration in General
414k358 Procedure

414k360 k. Determination in General. Most Cited Cases

Local planning commission's reading and application of its procedural rules governing filing

of stipulations and proposed decisions were not clearly erroneous or inconsistent with underlying legislative purpose. HRS § 205-1 et seq.

[7] Administrative Law and Procedure 15A ↪413

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations

15Ak412 Construction

15Ak413 k. Administrative Construction. Most Cited Cases

Deference is accorded administrative agency's interpretation of its own procedural rules unless decision is clearly erroneous or inconsistent with underlying legislative purpose.

[8] Pretrial Procedure 307A ↪36.1

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak36 Particular Subjects of Disclosure

307Ak36.1 k. In General. Most Cited Cases

(Formerly 307Ak36)

Local planning commission, in ruling on petition for special use permit to construct golf course on land zoned for agricultural use, did not abuse its discretion in denying discovery motion by permit opponent concerning issue of whether golf course would be essential to ensure viability and competitiveness of hotel.

****906 *332 Syllabus by the Court**

1. Ordinarily, deference will be accorded a decision of an administrative agency acting within the realm of its expertise, and review of a special permit approval is limited to discerning whether the ****907** agency committed an error of law or abused its discretion.

2. The State Land Use Commission is not authorized to issue a special permit for a use within an agricultural district unless the proposed use is permissible under Hawaii Revised Statutes (HRS) Chapter 205.

3. HRS §§ 205-4.5(b) and 205-6 provide authority for the issuance of a special use permit for a golf course use on agricultural land with soil classified as Overall Productivity Rating Class A or B, provided ***333** the use is “unusual and reasonable” and promotes the objectives of HRS Chapter 205.

4. Interpreting HRS § 205-2 (1985) as an implied repeal of authority to grant a special use permit for the construction of a golf course on agricultural land with soil classified as Overall Productivity Rating Class A or B would bring that section into conflict with HRS § 205-4.5(b), which allows such permits provided the use is “unusual and reasonable” under HRS § 205-6.

5. Repeals by implication are not favored, and if effect can reasonably be given to two statutes, it is presumed that the earlier statute did not repeal the later.

6. The legislative history of the amendment to HRS § 205-2, Act 298 (1985), does not yield evidence that the legislature intended to repeal the authority for a special use permit for a golf course on A or B rated land. Because Act 298 merely reiterated the provisions of HRS § 205-4.5, which authorized such permits, HRS § 205-2 as amended cannot be construed to intend a prohibition on such permits.

7. Deference is accorded an administrative agency's interpretation of its own procedural rules unless a decision is clearly erroneous or inconsistent with the underlying legislative purpose.

***340** Stephen Levine, Lihue, for appellant Malama Maha'Ulepu.

David L. Callies (Dennis M. Lombardi and David Allan Feller, of counsel, Case & Lynch, and Bruce L. Lamon and Carol A. Eblen, of counsel, Goodsill, Anderson, Quinn & Stifel, with him on the brief), Honolulu, for appellees Ainako Resort Associates and Grove Farm Properties, Inc.

Benjamin M. Matsubara and Edsel M. Yamada, of counsel, Matsubara, Lee & Kotake, on the briefs, Honolulu, for appellee State Land Use Comm'n.

Michael J. Belles, County Atty., and Peter M. Wilkens, Deputy County Atty., and Max W.J. Graham, Jr. and Lorna A. Nishimitsu, Sp. Counsel, on the briefs, Lihue, for appellees Planning Comm'n and Planning Dept.

Before LUM, C.J., PADGETT, HAYASHI and WAKATSUKI, JJ., and NAKAMURA, Retired Justice, in Place of MOON, J., Recused.

LUM, Chief Justice.

Appellant Malama Maha'ulepu (Malama), an unincorporated association, challenges a Land Use Commission decision affirming the grant of a special use permit for the construction of a golf course on prime agricultural land in Poipu, Kauai. The question raised in this appeal is whether the provisions of Chapter 205, ***334** Hawaii Revised Statutes (HRS) prohibit the county planning commissions and the State Land Use Commission from issuing special use permits for golf courses on prime agricultural lands classified by the Land Study Bureau as Productivity Rating Class A or B. We hold that Chapter 205 does provide the authority for such permits, and we affirm.

I.

In April 1988, Appellees Ainako Resort Associates and Grove Farm Properties (Ainako) petitioned the Kauai County Planning Commission (KPC) for a special use permit to construct a 210-acre golf course on land zoned for agricultural use and classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class B.^{FN1}

FN1. The overall productivity rating utilized in the statutory land use scheme for determining permissible uses in agricultural districts, *see* HRS § 205-4.5 (1976 &

Supp.1981), evaluates the soil's general productive capacity in agricultural use, the rating of "A" denoting the highest level of productivity and "E" the lowest. *Detailed Land Classification-Island of Oahu*, Land Study Bureau Bulletin No. 11 at 19-20 (1972).

****908** After the KPC announced public hearings, Malama petitioned to intervene in opposition to the permit. The petition stated that members of Malama used the land and adjacent coastal areas. Malama alleged that construction of the golf course would have negative environmental, ecological and aesthetic consequences. The KPC granted the petition to intervene on May 25, 1988.

The KPC held several public hearings on the special permit application between May and August of 1988, and approved the special use permit on August 11, 1988.

HRS § 205-6 (1985) and Hawaii State Land Use Commission (LUC) Rule 15-15-95 require automatic review by the LUC of a special permit granted for a parcel of land greater than 15 acres. The LUC reviews the special permit based upon the record ***335** developed in the planning commission proceeding and upon the memoranda and arguments before the LUC. Pursuant to these provisions, the KPC forwarded the record to the LUC.^{FN2}

FN2. HRS § 205-6 provides in pertinent part:

Special permits for land the area of which is greater than fifteen acres shall be subject to approval by the land use commission

A copy of the decision together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres shall be transmitted to the land use commission within sixty days after the decision is rendered. Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition.

The LUC permitted Malama to appear as a party to oppose the permit. The LUC heard oral arguments on the permit on September 29, 1988. The commission approved the permit, issuing its Findings of Fact, Conclusions of Law, Decision and Order on November 23, 1988.

Malama filed Notice of Appeal to the Fifth Circuit on December 1, 1988. The court affirmed the issuance of the special permit by written order filed March 16, 1989, and this appeal followed.

II.

[1] Ordinarily, deference will be given to decisions of administrative agencies acting within the realm of their expertise, *Outdoor Circle v. Harold K.L. Castle Trust Estate*, 4 Haw.App. 633, 639, 675 P.2d 784, 789 (1983), and review of special permit approvals is limited to discerning whether the administrative agencies committed errors of law or abused their discretion in granting the permit. *Neighborhood Board No. 24 (Waianae Coast) v. Land Use Comm'n*, 64 Haw. 265, 639 P.2d 1097 (1982). However, by arguing that the Kauai County Planning Com-

mission and the LUC *336 exceeded the scope of their authority under HRS Chapter 205, Malama raises an issue of statutory interpretation. Conclusions of law by an administrative agency that do not involve agency rules are reviewed *de novo*. *International Bhd. of Elec. Workers, Local 1357 v. Hawaiian Tel. Co.*, 68 Haw. 316, 322, 713 P.2d 943, 950 (1986).

[2] The LUC's substantive authority to grant a special permit derives solely from the provisions of HRS Chapter 205 governing land use. The LUC may exercise only those powers granted to it by statute, *Stop H-3 Ass'n v. State Dep't of Transp.*, 68 Haw. 154, 706 P.2d 446 (1985), and may not grant a special permit unless the proposed use is permissible under Chapter 205. *Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Comm'n*, 64 Haw. 270-71, 639 P.2d at 1102.

In this case, the authority to issue a special permit to Appellee Ainako derived from HRS §§ 205-4.5 and 205-6 (1985). Section 205-4.5(a) provides that golf courses are not a permitted use on A and B rated agricultural lands.^{FN3} Section 205-4.5(b)**909 nonetheless allows those uses for which special permits may be obtained under § 205-6. Section 205-6 vests in the planning commissions the authority to issue special permits for uses that, while not otherwise *337 permitted within agricultural districts, are nonetheless “unusual and reasonable” uses that promote the effectiveness and objectives of Chapter 205. *Neighborhood Board No. 24 (Waianae Coast) v. Land Use Comm'n*, 64 Haw. at 269-70, 639 P.2d at 1101. The Planning Commission found that the proposed golf course use was an unusual and reasonable use of the land, and Malama does not challenge that finding on appeal.

FN3. HRS §§ 205-2 and 205-4.5 enumerate permissible uses within the agricultural district. HRS § 205-2 outlines permissible uses on lands classified by the Land Study Bureau's Detailed Land Classification as Overall Productivity Rating Class C, D, E or U, while lands classified A or B are restricted to the uses described in HRS § 205-4.5. See HRS §§ 205-4.5(c) and 205-5 (1976).

HRS § 205-4.5(a) provides in part:

Permissible uses within the agricultural districts. (a) Within the agricultural district all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

....

(6) Public and private open area types of recreational uses ... but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps.

Malama contends, however, that the legislature impliedly repealed any such authority under §§ 205-4.5(b) and 205-6 by passing Act 298 in 1985, which amended HRS § 205-2 to read as follows:

Agricultural districts shall include activities or uses as characterized by ... open air recreational facilities, *including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.* (Emphasis added to illustrate amendatory language.)

Malama argues that the plain language of this amendment is prohibitory, and so must be read to deny the local and state planning commissions authority to grant special permits for golf courses on A and B rated lands.

[3][4] Interpreting the amendment to § 205-2 as a proscription against special permits for courses on A and B rated lands would bring § 205-2 into conflict with § 205-4.5(b), which allows such permits under § 205-6 so long as they are “unusual and reasonable.” Amendatory language that merely reiterates the language of a pre-existing parallel provision must ordinarily be read in accord with the interpretation given that provision, and not in conflict with it. Further, the general rule is that “repeals by implication are not favored and that if effect can reasonably be given to two statutes, it is proper to presume that the earlier statute is intended to *338 remain in force and that the later statute did not repeal it.” *State v. Gustafson*, 54 Haw. 519, 521, 511 P.2d 161, 162 (1973). In order to determine the intended relationship between these statutes, we look to their legislative history.

Before 1976, prime agricultural lands rated A and B by the Land Study Bureau were not distinguished from other less productive lands rated C, D, E, and U. HRS § 205-2 (1976), which outlined appropriate uses in agricultural districts, simply provided that “open air recreation facilities” were a compatible permitted use in agricultural districts. In 1976, concern arose that prime agricultural lands were being subdivided for residential use contrary to the design of the zoning plan. The legislature responded by adding HRS § 205-4.5 to restrict prime A and B agricultural lands to certain enumerated uses. Conf.Comm.Rep. No. 2-76 on H.B. No. 3262-76, in 1976 Senate Journal, at 836. HRS § 205-4.5(b), as discussed above, allowed golf courses as a permissible use on A and B soils provided the requirements for a special permit under § 205-6 were met. Relying on the special permit provision of § 205-6, the LUC has granted special use permits for courses on B soils on several occasions since 1975. Malama acknowledges that this has been the practice of the LUC since the passage of § 205-4.5.

Act 298, which amended § 205-2, was adopted in 1985 in response to increasing public demand for golf course development. **910 As originally drafted, the bill proposed to amend § 205-4.5 to permit golf courses on A and B rated lands. While the House committee agreed with the purpose of the bill, it recommended that A and B lands not be used. Stand. Comm.Rep. No. 442, in 1985 House Journal, at 1195. Accordingly, the bill was amended to permit golf courses under the more general provisions of § 205-2, while reiterating their non-permitted status on A and B lands.

[5] The legislative record does not yield clear evidence of an implied repeal of authority. We believe that if the legislature had intended absolute protection from golf course uses for A and B *339 rated agricultural lands, it would have done so unequivocally by prohibiting the issuance of permits for golf courses under the special permit provisions of § 205-4.5(b), or by employing clearly prohibitory language in Act 298. Because the amendment of § 205-2 merely reiterated the provisions of § 205-4.5, which provided authority for special permits for golf course uses on A and B rated lands, § 205-2 cannot be construed as an outright prohibition on such permits. Consequently, the Kauai Planning Commission and the LUC possessed authority under HRS §§ 205-4.5(b) and 205-6 to issue the special use permit to Appellee

Ainako.

III.

[6][7] Malama also contends that it was denied a full and fair hearing before the Kauai Planning Commission. First, Malama argues that the KPC did not comply with its own procedural rules governing the filing of stipulations and proposed decisions. We cannot agree. We grant deference in reviewing an administrative agency's interpretation of its own rules unless a decision is clearly erroneous or inconsistent with the underlying legislative purpose, *Camara v. Apsalud*, 67 Haw. 212, 216, 685 P.2d 794, 797 (1984), and the KPC's reading and application of its rules in this case were not so.

[8] Second, Malama contends that it was denied the opportunity to present relevant evidence when the KPC denied Malama's motion for discovery of documents relating to the Hyatt Regency located near the proposed golf course, including financial records and statements, feasibility studies, and plans and projections for the hotel. Malama made the motion after the managing partner of Ainako testified that the golf course would be essential to ensure the viability and competitiveness of the hotel. Upon a review of the record, we cannot conclude that the KPC abused its discretion in denying discovery of the issue.

Affirmed.

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