

LAND USE COMMISSION
MEETING MINUTES

August 22, 2013 – 9:30 a.m.
Airport Conference Center
400 Rodgers Boulevard, Suite 700, Room #3,
Honolulu, Hawai`i, 96819

COMMISSIONERS PRESENT: Lance Inouye
Sheldon Biga
Ernest Matsumura
Dennis Esaki
Carol Torigoe
Chad McDonald
Ronald Heller
Kyle Chock

COMMISSIONERS EXCUSED: Jaye Napua Nakasone

STAFF PRESENT: Daniel Orodenker, Executive Officer
Scott Derrickson, Staff Planner
Patricia Ohara, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Heller called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Chair Heller asked if there were any corrections or additions to the August 8, 2013 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (8-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The September 5-6, 2013 meeting will be on Maui for the beginning of Docket No. A13-797 CMBY 2011 Investment LLC and to establish the LUC as the accepting authority for its revised EIS. There will also be a Public Hearing (but not a LUC meeting) on Proposed Amendments to the LUC Administrative Rules at 3 p.m. on the 5th.
- There are currently no items for the second LUC meeting in September which had been combined with the HCPO Conference in Kona on the 18th, 19th and 20th. There will be a Public Hearing (but not a LUC meeting) on Proposed Amendments to Administrative Rules on the 18th at 1 p.m. at the conference.
- There will be a brief LUC videoconference meeting on Friday, October 4, 2013 to address the approval of advancing the proposed amendments to the LUC administrative rules to its next stage.
- On October 17th, continued hearings are planned on Maui for Docket No. A10-787 Maui R&T and October 18th is to be determined.
- A hearing on Defend Oahu's motion for an order to show cause for Docket No. A84-595 Kuilima Development is scheduled for November 7 -8, 2013, in Honolulu.
- Any questions or conflicts, please contact LUC staff.

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

Commissioner Esaki noted that due to potential conflict with his relationship to Goodfellow Brothers in Docket No. 13-797, he would be recusing himself from those proceedings. Chair Heller acknowledged Commissioner Esaki's recusal.

ACTION - Docket No. A 92-683 Halekua Development Corporation (Oahu)

Chair Heller announced that this was an action meeting on Docket No. A 92-683 to consider Petitioner's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law and Decision and Order filed October 1, 1996 ("Motion for Order to Amend")

APPEARANCES

Curtis Tabata, Esq., and Wyeth Matsubara, Esq., represented Petitioner Canpartners IV Royal Kunia Property, LLC ("Petitioner")

Stanford Carr, Petitioner Representative

Dawn Takeuchi-Apuna, Deputy Corporation Counsel, represented the City and County of Honolulu, Department of Planning and Permitting ("DPP")

Bryan Yee, Deputy Attorney General, represented State Office of Planning ("OP")

Rodney Funakoshi, OP

(Please refer to LUC Transcript for more details on these matters)

August 22, 2013 Meeting Minutes

Gary Ashikawa, State of Hawaii Department of Transportation ("DOT")

Chair Heller updated the record, described the procedures to be followed for the day and disclosed that his firm represents clients in tax cases adverse to the City and County of Honolulu, but that he did not believe that this representation would interfere with his decision-making in this matter and was disclosing this information to allow the Parties an opportunity to comment and object to his continued participation.

There were no questions, comments or objections to the procedures and the continued participation of Chair Heller.

Chair Heller asked if Petitioner had been advised of the Commission's policy of reimbursement for hearing expenses and whether Petitioner would comply with the policy. Mr. Wyeth Matsubara replied that the Petitioner had been advised and would comply.

Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

There were no Public Witnesses.

Chair Heller called for the Parties to make their presentations.

PRESENTATIONS

Petitioner

Mr. Wyeth Matsubara described why Petitioner decided to initiate the Motion for Order to Amend for Docket No. A92-683 and provided the history and background of the original Petition and how its evolution now required the Motion for Order to Amend to clarify that the interchange area south of Cane Haul Road is a regional transportation area so that Petitioner may finalize its plans to break ground in 2014..

DPP

Ms. Takeuchi-Apuna stated that DPP had no objection to the Motion for Order to Amend since the motion involved a State roadway and that the DOT and Petitioner had reached an agreement on the matter.

OP

Mr. Yee stated that OP had no opposition to the proposed modifications to Condition No. 2 as stated in Petitioner's Second Supplement to the Motion for Order to Amend provided that the amendments to the Findings of Fact proposed by DOT and OP were incorporated in the amended Decision and Order and described why OP thought the Motion for Order to Amend with the proposed DOT and OP amendments was appropriate. Mr. Yee referred to the Petition Area map and also noted how the Cane Haul Road served as a convenient demarcation for designating where regional

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August 22, 2013 Meeting Minutes

traffic improvements would be shared among the various parties involved and where the local traffic improvements by Petitioner would be; and what types of interim traffic measures would be implemented; and how the proposed conditions would be updated, and indicated when the Traffic Impact Study and Kunia Interchange Alternative Analysis would be done to answer public concerns about the matter.

Chair Heller had questions relating to what parties would be involved in the regional improvements. Mr. Yee offered Mr. Ashikawa, DOT representative, to respond to the questions.

OP Witness

Gary Ashikawa

Mr. Ashikawa stated that Canpartners IV and the Ho`opili Project would be involved in the regional fair-share contributions to the Kunia Interchange Improvements; and that there were others within the region extending out to Kapolei that would also be participating; and described how fair-share portions were determined through analysis of the TIAR impacts that the project generated at a certain point.

Commissioner McDonald requested clarification on what all the proposed regional improvements would be. Mr. Ashikawa responded that the regional analysis and the alternative layouts for the interchange had not been completed yet; and that the alternative layouts would be based on conditions anticipated for 2025 for Royal Kunia; and that the Ho`opili's determination was based on a few years past that.

Mr. Yee requested clarification on whether various improvements being done were regional or local improvements. Mr. Ashikawa responded that the 3 north-bound lanes would be regional up to the Cane Haul Road demarcation line, and costs for improvements past Cane Haul Road would be borne by Petitioner since it would be considered local. Mr. Yee noted how intersections north of the Cane Haul Road interchange would be impacted by the proposed project; and that the northbound lanes and right-turn lane would be considered local.

REBUTTAL

Mr. Matsubara thanked LUC, OP and the DOT for their efforts and stated that he had no rebuttal.

There were no further comments or questions regarding the Motion for Order to Amend.

Commissioner Inouye moved to approve both the change in Parties and the clarification on the provision on what was a regional responsibility and what was the responsibility of the Petitioner. North of Cane Haul Road would be the responsibility of Petitioner and that south of Cane Haul Road would be a regional responsibility. Commissioner Chock seconded the motion.

(Please refer to LUC Transcript for more details on these matters)
August 22, 2013 Meeting Minutes

There were no comments or questions.

The Commission voted as follows:

Ayes: Commissioners Inouye, Chock, Matsumura, Biga, Torigoe, McDonald, Esaki and Chair Heller.

Nays: None

The Commission voted unanimously (8-0) to grant the motion.

Chair Heller asked if there was any further business.

Mr. Yee requested clarification on whether the motion included the proposed amendments to the finding of fact from OP. Discussion ensued to clarify the content of Commissioner Inouye's motion. Mr. Yee restated OP's proposed findings of fact 160A and 161 that had been proposed to be included in the motion. Commissioner Inouye asked if Petitioner or DPP had objections to Mr. Yee's representation of what the motion's content was. Ms. Takeuchi-Apuna and Mr. Matsubara stated that they had no objections to OP's request for including the proposed findings of fact.

Commissioner Inouye moved to approve the restated Motion for Order to Amend with the amendments to the Findings of Fact proposed by DOT and OP for Condition No. 2 incorporated in the amended Decision and Order, and that Canpartners IV Royal Kunia Property LLC's standing to seek and obtain the relief requested within the motion be recognized. Commissioner Chock seconded the restated motion. There was no discussion.

Chair Heller stated that due to the confusion on the initial motion, the Commission would vote again to ensure its accuracy.

The Commission unanimously voted (8-0) to grant the restated Motion for Order to Amend.

Chair Heller thanked the Parties and LUC staff; and announced that the hearing would resume at 9:00 a.m., August 23, 2013 for the remainder of the items scheduled on the agenda; and asked for a motion to recess. Commissioner Biga moved and Commissioner Inouye seconded the motion to recess. The Commission unanimously voted by voice vote to recess (8-0).

There being no further business, Chair Heller recessed the meeting at 9:58 a.m.