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BEFORE THE LAND USE COMMISSION

OF THE
 STATE OF HAWAII

2012 NOV 20 A 8 55
 LAND USE COMMISSION
 STATE OF HAWAII

In the Matter of the Application of)	DOCKET NO: A12-795
)	
West Maui Land Co. Inc. and)	INTERVENER'S REPLY TO PETITIONER'S
Kahoma Residential LLC)	AND COUNTY OF MAUI PLANNING
33 Lono Avenue)	DEPARTMENT'S JOINT OBJECTIONS TO
Kahului, HI 96732;)	INTERVENER'S PROPOSED
TMK (2) 4-5-10:005)	FINDINGS OF FACT,
Proposed Reclassification: Agriculture to)	CONCLUSIONS OF LAW, AND
Urban)	DECISION AND ORDER
		CERTIFICATE OF SERVICE

INTERVENER'S REPLY TO PETITIONER'S AND COUNTY OF MAUI PLANNING

DEPARTMENT'S JOINT OBJECTIONS TO INTERVENER'S

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Michele Lincoln, Intervener in the proposed reclassification of Agriculture District to Urban District, to amend the Land Use District Boundary of certain land situated at Lahaina, Island of Maui, State of Hawaii submits the following reply to Petitioner's and County of Maui Planning Department's joint objections to Intervener's proposed findings of fact, conclusions of law, and decision and order to the Land Use Commission of the State of Hawaii.

Haines vs. Kerner, 404 U.S. 519-421: pro se litigants are held to less stringent pleadings standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims.

Platsky v. C.I.A. 953 F2d. 25; the court errs if court dismisses the pro se litigant without instructions of how pleadings are deficient and how to repair pleadings.

Anastassoff v. United States, 223 F.3d 898 (8th Cir. 2000): litigants' constitutional rights are violated when courts depart from precedents where parties are similarly situated. Plaintiffs understand the Court can lose jurisdiction at any time should the Court fail to fulfill their duty as an Officer of the Court.

The ruling of the court in this case held; "*Where a plaintiff pleads pro se in a suit for protection of civil rights, the court should endeavor to construe the Plaintiff's pleading without regard to technicalities.*" In *Walter Process Equipment v. Food Machinery* 382 U.S. 172 (1965) it was held that in a "motion to dismiss", the material allegations of the complaint are taken as admitted."

A. In reply to the Petitioner's general comments of Intervener Lincoln's proposed findings of fact, and decision and order, the Intervener's FOF and COL and D&O were submitted to insure that the LUC deals fully and properly with all issues to be decided in the matter under review, to make reasoned decisions, and enable justifications of that decision.

B. The Intervener's proposed FOF were just that, Findings of Fact from the Exhibits and Testimonies presented by all parties. The Petitioner states that they are improper but that does not make them untrue. The Petitioner's objection is to the proposed findings being recited from testimony or referenced from documents but not actual objection to the truth thereof.

C. The Intervener does advocate a position that opposed the Petitioner's position but that does not make it argumentative. The Petitioner's Proposal is attempting to persuade or advocate their position to the LUC, hence the parties submitting the FOF and COL and D&O support their

positions and are providing evidence to support their conclusions. If the Intervener is ruled to be argumentative then the conclusion would be considered the same of the Petitioner.

D. The Intervener objects to the characterization that the findings of fact are repetitive and therefore should be considered improper. The Intervener's FOF had repetitive findings because the facts were repetitive based on dates and statutes and laws that the LUC must consider. The Intervener had no other way to insure that the Commissioners knew the proposed findings of fact encompassed multiple statutes, laws, objectives and policies.

E. The Intervener provided testimony and exhibit references to support the results from the facts. The LUC attended the meetings and/or received transcripts of the meetings in addition to the Exhibits provided by all the parties. The Intervener's FOF does not limit in anyway the ability of the Commissioners to render a decision. One example of the Petitioner's objection is the Intervener's "opinion" of the County Council transcripts from November 2, 2011, Councilmember Couch: "Well, I think there would be a third option is that the land was zoned Ag and Open Space, community plan, so when the ... your client purchased it he knew that." Petitioner's representative Rory Frampton answered "Correct." taken from Intervener Lincoln's Exhibit 1 page 14. The Petitioner concludes that Intervener Lincoln's FOF "**30. A) The Petitioner acquired the land with full knowledge of the West Maui Community Plan (1996)**" is an opinion but not a factual finding. The Intervener disagrees with the Petitioner and acknowledges that the LUC will be able to render their own determination.

F. The Petitioner concludes that the Intervener is "Redundant" and "Repetition is improper". Intervener will respectfully ask the Commissioners to reference the Intervener's objection E. so

as not to seem repetitive. The Intervener objects to the characterization that the FOF "A. 30" is merely an "inference" and thus improper and not a finding of fact.

G. The Petitioner states that the Intervener's facts are comparative statements thus should be disregarded. The fact is that the Petitioner's FOF lack evidence of the "critical need for affordable housing" or the statement of the Dept. of Watersupply "first come, first serve" does not support their water availability or the ability to farm or not to farm the land is the Petitioner's choice and all the other objections are an attempt to discredit the Intervener's FOF. Intervener Lincoln's FOF being improper because they are comparative does not negate the fact of the truth of the matters and thus the facts should be considered by the LUC.

H. Intervener Lincoln did supply transcripts of witnesses under oath and exhibits that were admitted in the record as evidence, which will allow the Commissioners the ability to determine facts in dispute. The Intervener's FOF are supported by the facts revealed in the evidentiary portion of the proceedings and should not be removed by the LUC based on the Petitioner's objection. The Petitioner's Objection is not supported by facts but on the Petitioner's opinion.

I. The Intervener's Conclusions of Law are valid as they are supported by the results of the Intervener's FOF which addressed the decision making criteria of the LUC. The Intervener went through all the statutes, laws, objectives and policies and addressed the issues of the case with supporting transcripts and exhibits. The Intervener in the COL responded to the FOF evidence and meets the standards that are required. The Intervener is not a lawyer but the law provides for interveners to participate in these proceedings. The Intervener is confident that the COL are appropriate. However, if that is not the case, the Intervener would defer to the Deputy Attorney

General, Sarah Hirakami, Esq., that has been in attendance at the LUC meetings for Docket No. A12-795. The Intervener does not accept the Petitioner's opinion on this matter.

J. The Intervener's Decision and Order stands and opposition by the Petitioner is based on opinions provided by the Petitioner. The proposed reclassification from Agriculture to Urban shall be denied and the land remain within the State Land Use Agriculture District.

K. The FOF and COL submitted by Intervener Lincoln are based on the record presented and provide the LUC insight into the decision making process. The Intervener's FOF and COL must not be rejected based on opinions submitted by the Petitioner because it opposes their position.

In conclusion, the Petitioner did not provide objections to the truth of the findings of fact only the Petitioner's perceived "improper" presentation by the Intervener. The Petitioner's case should be able to stand on its own findings of fact to support the change in the boundary amendment. The Petitioner's Proposal should be able to convince the Commission of its ability to meet all the requirements. The fact that the Petitioner is attempting to discredit the Intervener and the facts presented must compel this Commission to consider all the FOF and COL to render a decision that is just and right. The Intervener has standing in this matter to raise her Constitutional Rights and to plead the cause, for the Commission, to protect each person's right to a clean and healthful environment. The Petitioner contends that the Intervener's FOF and COL should be rejected and a statement to that effect included in the final FOF and COL in this matter. The Intervener trusts that the Commissioners will examine all the facts presented and conclude with a righteous decision and not be dictated by the Petitioner's Objections to Intervener Lincoln's Findings of Fact, Conclusions of Law and Decision and Order.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document(s) was duly served upon upon the following by U.S. Postal Service:

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Dated: 11-18-12 Michele Lincoln 
