

LAND USE COMMISSION

Minutes of Meeting

Conference Room 405
State Office Tower, Leiopapa A Kamehameha
235 South Beretania Street
Honolulu, Hawaii

March 21, 1997

COMMISSIONERS PRESENT:

Trudy K. Senda
Merle A.K. Kelai
M. Casey Jarman
Lawrence N.C. Ing (Portion of
Proceeding)
Herbert Kaopua, Sr.
Rupert K. Chun
JoAnn Mattson
Lloyd Kawakami (Portion of Proceeding)

*approved
4/25/97*

COMMISSIONERS ABSENT:

Eusebio Lapenia, Jr.

STAFF PRESENT:

Esther Ueda, Executive Officer
Jon Itomura, Deputy Attorney General
Leo Asuncion, Jr., Staff Planner
Bert Saruwatari, Staff Planner
Darlene Kinoshita, Chief Clerk

Holly Hackett, Court Reporter

Chairperson Senda called the meeting to order.

ACTION

A90-662 - LANAI RESORT PARTNERS (Koele)

Chairperson Senda announced that the Commission would take action to consider Petitioner's Motion for Order Amending Condition No. 1 of Decision and Order filed August 28, 1991 which reclassified approximately 63.526 acres of land from the Agricultural District into the Urban District, approximately 4.382 acres of land from the Conservation District into the Urban District, and approximately 10.885 acres of land from the Agricultural District into the Conservation District at Koele, Lanai for residential use.

Appearances

James T. Funaki, Esq., Attorney for Petitioner

John Rapacz, Esq., Deputy Corporation Counsel, County of Maui

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Arguments were heard from Mr. Funaki, Mr. Rapacz, and Ms. Ogata-Deal. After hearing arguments, questions were asked by the Commissioners.

Commissioner Mattson moved to approve Petitioner's Motion for Order Amending Condition No. 1 of Decision and Order filed August 28, 1991. The motion was seconded by Commissioner Ing and unanimously carried by voice votes.

A93-701 - KAUPULEHU DEVELOPMENTS (Hawaii)

Chairperson Senda announced that the Commission would take action to consider whether the Executive Summary of the report entitled "Identification of Potential Traditional Cultural Properties, Beach Safety Improvements Project at Hualalai Resort" warrants the re-opening of the evidentiary hearing, pursuant to Judge Ibarra's February 13, 1997 Order on Appellants' KA PA'AKAI O KA'AINA's Motion to Supplement Record on Appeal.

Appearances

R. Ben Tsukazaki, Esq., Attorney for Petitioner

Richard Wurdeman, Esq., Corporation Counsel, County of Hawaii

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Michael Matsukawa, Esq., Attorney for Intervenors, or Intervenors were not present to proceeding at this time.

John Powell, Esq., Attorney for Plan to Protect was not present to the proceeding at this time.

Commissioner Kelai moved to go to into executive session to consult with the Commission's Deputy Attorney General to discuss legal matters concerning procedural requirements for the partial remand. The motion was seconded by Commissioner Kawakami and unanimously carried by voice votes.

A Motion to Strike was orally requested by R. Ben Tsukazaki, Esq, Attorney for Petitioner. Arguments on the Motion to Strike were heard from R. Ben Tsukazaki, Mr. Wurdeman, and Ms. Ogata-

Chairperson Senda granted Petitioner's Motion to Strike with respect to the three pages immediately following the one-page executive summary in the Exhibit A of Intervenor-Appellant Ka Pa'akai O Ka 'Aina, et al's memo in support of reopening of evidentiary hearing.

Commissioner Mattson moved to adopt the following procedures: a) hear oral arguments in support of any pleadings submitted as to the issue of whether the matter should be reopened or not; b) if not reopened, this matter is closed and the appellant may then request a hearing dated from the Third Circuit Court pursuant to Judge Ibarra's February 12, 1997 order; and c) if reopened, this matter will be continued for further hearing at a later date. The motion was seconded by Commissioner Kawakami and unanimously carried by voice votes.

Arguments on the Court's partial remand were heard from Mr. Tsukazaki, Mr. Wurdeman, and Ms. Ogata-Deal.

Commissioner Kelai moved to deny Intervenor's' request to reopen the hearing. The motion was seconded by Commissioner Chun and unanimously approved by voice votes.

Commissioner Kawakami was absent from the proceeding at this time.

DR97-20 - PONO, ET AL. (Molokai)

Chairperson Senda announced that the Commission would take action to consider whether "The Great Molokai Ranch Trail" Project, consisting of a complex of fourteen (14) commercial "overnight campgrounds" 1) are permissible uses in the Agricultural District; 2) would, at least require a Special Permit; and 3) would require a district boundary amendment from the Commission.

Appearances

Isaac Hall, Esq., Attorney for Petitioner

John Rapacz, Esq., Deputy Corporation Counsel, County of Maui

Joseph Wolsztyniak, Esq., Deputy Corporation Counsel, County of Maui

Paul Mancini, Esq., Attorney for Molokai Ranch

Kenneth Kupchak, Esq., Attorney for Molokai Ranch

Leo Asuncion, staff planner, oriented the Commission as to the petition area for the Declaratory Ruling on the Land Use District Boundaries and tax maps.

Commissioner Chun moved to set matter for contested case hearing. The motion was seconded by Commissioner Mattson.

Commissioner Jarman moved to defer action on the pending motion to set this matter for contested case hearing. The motion was seconded by Commissioner Kaopua.

Arguments on setting the case for hearing were heard from Mr. Hall.

The motion to defer action on the pending motion to set case for contested case hearing was polled as follows:

Ayes: Commissioners Senda, Jarman, Kaopua, and Mattson

Nays: Commissioners Ing, Chun, Kelai

The motion to defer action on the pending motion to set case for contested case hearing did not pass.

The motion to set matter for contested case hearing was polled as follows:

Ayes: Commissioners Chun, Ing, Kelai, Senda, and Mattson

Nays: Commissioner Jarman and Kaopua

Commissioner Ing was absent from the proceeding at this time.

PUBLIC WITNESSES

1. John Rapacz
2. Ken Kupchak
3. Wayde Lee
4. Walter Ritte
5. Karen Holt

6. Colette Machado
7. Degray Vanderbilt

A lunch recess was taken at 12:55 p.m. to reconvene at 2:00 p.m.

- 2:00 p.m. -

Commissioner Chun moved to reconsider the Commission's earlier motion to set case for contested case hearing. The motion was seconded by Commissioner Kelai and polled as follows:

Ayes: Commissioners Kaopua, Kelai, Jarman, and Chun

Nays: Commissioners Senda and Mattson

The motion to reconsider the Commission's earlier motion to set case for contested case hearing did not pass.

PUBLIC WITNESSES (Continued)

8. Dana Naone Hall
9. Alan Murakami
10. Halona Kaopuiki
11. Gary Patel

Commissioner Mattson announced that there were three issues pending before the Commission at this time. 1) Whether the overnight campgrounds are permissible uses in the Agricultural lands, C, D, E, and U; 2) whether the activities and uses require a Special Permit; and 3) whether they would require a district boundary amendment from the Commission. Commissioner Mattson moved to rule on the first issue and reserve decision on the second and third issues.

Commissioner Mattson moved to go into executive session to consult with the Commission's Deputy Attorney General regarding procedural matters for the Declaratory Ruling. The motion was seconded by Commissioner Kelai and unanimously approved by voice votes.

Commissioner Mattson withdrew her motion to rule on whether the overnight campgrounds are permissible uses currently pending before the Commission. The motion was seconded by Commissioner Kaopua.

Commissioner Mattson moved to reconsider the Commission's action to set proceeding for contested case hearing. The motion was seconded by Commissioner Jarman and unanimously carried by show of hands.

PUBLIC WITNESSES

1. John Rapacz, Esq.
2. Paul Mancini, Esq.
3. Kenneth Kupchak, Esq.
4. Marylou Kobayashi

Commissioner Chun moved that the Declaratory Ruling be set for a contested case hearing on all issues on the matter. The motion was seconded by Commissioner Mattson and polled as follows:

Ayes: Commissioners Senda, Kelai, Chun, Kaopua, and Mattson.

Nays: Commissioner Jarman

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Commissioner Kaopua moved to defer this proceeding until the next Commission's meeting. The motion was seconded by Commissioner Mattson and unanimously carried by voice votes.

MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Mattson moved to approve the minutes for the following meeting date: February 28, 1997. The motion was seconded by Commissioner Kaopua and unanimously approved by voice votes.

The meeting was adjourned at 5:15 p.m.