

LAND USE COMMISSION

Minutes of Meeting

Nahele Room
Sandalwood Clubhouse
2500 Honoapiilani Hwy.
Waikapu, Maui

May 6, 1999

Approved
6/23/99

COMMISSIONERS PRESENT: P. Roy Catalani
Rupert K. Chun
Pravin Desai
Isaac Fiesta, Jr.
M. Casey Jarman
Peter Yukimura

COMMISSIONERS ABSENT: Lawrence N.C. Ing
Herbert Kaopua, Sr.
Merle Kelai

STAFF PRESENT: Esther Ueda, Executive Officer
Jon Itomura, Deputy Attorney General
Bert Saruwatari, Staff Planner
Teri Hee, Chief Clerk

Jeannette Iwado, Court Reporter

Presiding Officer Jarman called the meeting to order at
1:10 p.m.

ACTION

A93-696 - KUKUI'ULA DEVELOPMENT COMPANY, INC. (Kauai)

Presiding Officer Jarman announced that the Commission would take action to consider Petitioner's Motion for Order to Release and Discharge Certain Lands From Operation of Conditions of Decision and Order Dated May 18, 1995, As Amended By Supplemental Decision and Order Dated June 22, 1998.

Presiding Officer Jarman announced that the Commission received a letter dated April 28, 1999 from Dee M. Crowell of the County of Kauai Planning Department informing the Commission that they would not be present to the proceeding and had no objections to Petitioner's motion. This letter was entered into evidence by the Presiding Officer.

Appearances

Tom H. Shigemoto, Vice President, Kukui'ula Development Company

Dan Yasui, Project Manager

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

Abe Mitsuda, Land Use Division, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

Bert Saruwatari, staff planner, oriented the Commission to the petition area on the Land Use District Boundaries and tax maps.

Arguments on Petitioner's motion were heard from Tom Shigemoto.

After hearing arguments, Ms. Ogata-Deal stated no objections to Petitioner's motion but requested that the Petitioner indicate how each of the conditions were satisfied and if any of the conditions were not applicable to this portion of Increment I, if Petitioner could explain the non-applicability of the conditions.

Mr. Shigemoto complied with Ms. Ogata-Deal's request and went over the conditions. Questions were then asked by Ms. Ogata-Deal and the Commissioners.

Commissioner Yukimura moved to approve Petitioner's Motion for Order to Release and Discharge Certain Lands From Operation of Conditions of Decision and Order Dated May 18, 1995, As Amended By Supplemental Decision and Order Dated June 22, 1998.

The motion was seconded by Commissioner Fiesta and polled as follows:

Ayes: Commissioners Yukimura, Catalani, Chun, Desai, Fiesta, and Jarman

ACTION

A92-684 - STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION,
AIRPORTS DIVISION (Maui)

Presiding Officer Jarman announced that this matter before the Commission is a continuation of the hearing previously held on April 22 and 23, 1999 to reclassify approximately 210.471 acres of land currently in the Agricultural District into the Urban District at Kahului, Maui for expansion of Kahului Airport and facilities.

At the meeting held on April 22, 1999, the Commissioners deferred action on Intervenors' Motion to Disqualify pending legal opinions from the Attorney General's office and the Ethics Commission.

The following correspondence were entered into the record by Presiding Officer Jarman:

1. Testimony of Dennys Eymard dated April 26, 1999.
2. Facsimile letter dated April 27, 1999 from Gina Aranki requesting to testify.
3. Testimony of Ramani received on April 28, 1999.
4. Testimony of Paul J. Meyer of Maui Land & Pineapple Company, Inc. dated April 27, 1999.
5. Testimony of Mark H.T. Ferguson dated May 1, 1999.
6. Addendum to testimony of David Chevalier of Blue Hawaiian Helicopters dated April 26, 1999.
7. Facsimile letter from Paul J. Meyer of Maui Land & Pineapple Company, Inc. dated April 30, 1999 requesting to testify.
8. Facsimile letter from Tara Lynn Mayer and Summer Wilson dated April 30, 1999 requesting to testify.
9. Signed petition received on May 4, 1999.
10. Letter and testimony of Jackie Pias Carlin dated May 6, 1999.

11. Facsimile letter from Richard Joseph Lafond Jr. dated May 4, 1999 requesting to testify.
12. Facsimile letter from Lee Guthrie dated May 4, 1999 requesting to testify.
13. Facsimile letter from Jason D. Groode received on May 4, 1999 requesting to testify.
14. Facsimile testimony of Kyoko Y. Kimura of Diamond Resort received on May 4, 1999.
15. Testimony of Manuel Kawaha, Jr. dated May 5, 1999.
16. Testimony of Manuel Kawaha, Sr. dated May 5, 1999.
17. Testimony of Don Terry Beitler dated May 5, 1999.

Appearances

Lane Ishida, Esq., Bruce T. Matsui, Esq., Deputy Attorneys General for Petitioner

Gary Zakian, Esq., Deputy Corporation Counsel, County of Maui

Bill Medeiros, Planning Department, County of Maui

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

Lorene Maki, Land Use Division, Office of Planning

Isaac Hall, Esq., Attorney for Intervenor

Presiding Officer Jarman entered the testimony of Margaret Sevilla into evidence.

Presiding Officer Jarman announced that the Commission received confidential memos from the Ethics Commission and the Attorney General's Office regarding participation in this docket. Since the Land Use Commission rules do not provide authority for the Commission to disqualify any one of its members, Presiding Officer Jarman informed the parties that the Commission will

treat this matter as separate requests to each of the identifying commissioners.

Arguments on the Motion to Disqualify were heard from Mr. Hall, Ms. Ogata-Deal, Mr. Zakian, and Mr. Ishida.

Deputy Attorney General Jon Itomura explained to the members of the audience the differences between disclosures, recusals and disqualifications. Mr. Itomura reported that based on the legal opinions received by the Ethics Commission and the Attorney General's Office, Commissioner Kelai was advised not to participate in the proceedings and that Commissioner Kelai has since recused himself from the proceedings. Based on Mr. Itomura's representation, Mr. Hall withdrew the Motion to Disqualify with respect to Commissioner Kelai.

Mr. Hall clarified that he chose not to amend his motion to disqualify to include Commissioners Catalani, Jarman and Fiesta. There were no objections from the parties regarding his clarification.

On behalf of Commissioner Kaopua, Mr. Itomura informed the parties that Commissioner Kaopua is still researching a couple of issues and needed more time to make a determination as to whether or not he will be participating in these proceedings. There were no objections from the parties to giving Commissioner Kaopua more time.

Based on the legal opinions of the Ethics Commission and the Attorney General's Office, Commissioner Desai expressed his position not to be recused. Commissioner Desai was questioned by the parties and by Mr. Itomura.

Further disclosures were made by Commissioner Yukimura.

On advice of Deputy Attorney Jon Itomura, the Commission did not vote on the motion to disqualify. Presiding Officer Jarman stated that Intervenor's Motion to Disqualify should be considered denied as to Commissioners Desai and Yukimura; postponed as to Commissioner Kaopua; and withdrawn as to Commissioner Kelai since Commissioner Kelai has recused himself. Mr. Hall objected to the denial of the motions and to the fact that no vote was taken on the motions.

It was determined by all parties that the Motions to Quash Subpoena Duces Tecum would be deferred subject to Intervenor's

condition that the motion be resolved prior to any of the people testifying who are the subjects of the subpoenas.

CONTINUED HEARING

A92-684 - STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION,
AIRPORTS DIVISION (Maui)

PUBLIC WITNESSES (Cont'd.)

1. Jason Groode
2. Gladys Minchew
3. John Bickley
4. Christopher Dean
5. Ralph Johansen
6. Marc Drehsen

Commissioner Desai excused himself from the hearing at this time.

Commissioner Jarman explained the purpose of the Commission's proceedings due to the many questions asked by members of the audience.

PUBLIC WITNESSES (Cont'd.)

7. Calvin Mobbs
8. Paul Meyer
9. Gabriel Barrett
10. Joe Bertram
11. Sam Vessel
12. Roger Hawley
13. Rene Sylva
14. Masha Isotov

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15. Dave Chenoweth

Presiding Officer Jarman announced that the Commission will be continuing the hearing this evening at 7:00 p.m.

The meeting was adjourned at 5:00 p.m.