

LAND USE COMMISSION

Minutes of Meeting

Nahele Room  
Sandalwood Clubhouse  
2500 Honoapiilani Hwy.  
Waikapu, Maui

September 23, 1999

Approved  
10/7/99

COMMISSIONERS PRESENT: P. Roy Catalani  
Pravin Desai  
Isaac Fiesta, Jr.  
Lawrence N.C. Ing (Portion of  
Proceedings)  
M. Casey Jarman  
Stanley Roehrig

COMMISSIONERS ABSENT: Merle Kelai  
Peter Yukimura

STAFF PRESENT: James Chang, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Teri Hee, Chief Clerk

Gloria Tavares, Court Reporter (morning)  
Rachelle Primeaux, Court Reporter  
(afternoon)

Vice Chairperson Ing called the meeting to order at  
10:10 a.m.

Commissioner Fiesta moved to go into executive session to  
discuss legal matters with our deputy attorney general. The  
motion was seconded by Commissioner Roehrig and unanimously moved  
by voice votes.

ACTION

SP94-387 - FONG CONSTRUCTION (Maui)

Vice Chairperson Ing announced that this matter before the  
Commission is an action to consider a request for time extension  
in which to establish a construction baseyard on approximately  
31.16 acres of land situated within the Agricultural District at  
Waikapu, Maui.

Appearances

Roderick Fong, for Petitioner

Kelly Cairns, Esq., Deputy Corporation Counsel, County of Maui

Clayton Yoshida, Deputy Director, Planning Department, County of Maui

Bert Saruwatari, staff planner, oriented the Commission to the special permit area on the Land Use District Boundaries and tax maps and gave a summary of the special permit request.

Arguments on the special permit were heard from Mr. Fong and Ms. Cairns.

Ms. Cairns clarified language on page 19 of the Maui Planning Commission's June 22, 1999 Minutes with respect to the first line of condition no. 8 to read, "That the site shall be used primarily for storage of equipment and material, minor servicing of said equipment, and offices appurtenant to such uses."

The Commissioners raised concerns regarding condition nos. 1, 2 and 4. Vice Chairperson Ing deferred action on this petition until after the action of the next agenda item so that Ms. Cairns could work on the language to incorporate the clarification and amendments of the conditions.

ACTION

A99-729 - THE NEWTON FAMILY LIMITED PARTNERSHIP (Hawaii)

Vice Chairperson Ing announced that this matter before the Commission is an action to consider whether the anticipated effects discussed in Petitioner's Draft Environmental Assessment to reclassify approximately 885.40 acres of land currently in the Conservation District into the Agricultural District at Kukuau, South Hilo, Hawaii for an agricultural subdivision constitutes a "significant effect" pursuant to Chapter 343, H.R.S.

On September 20, 1999, the County of Hawaii Corporation Council notified the Commission staff that they will not be attending today's meeting.

MINUTES - September 23, 1999

Page 3

On September 22, 1999, the County of Hawaii Planning Department notified the Commission staff that they will not be attending today's meeting.

Vice Chairperson Ing noted that the Commission received Petitioner's Motion to Continue Action on its Petition to Amend the Land Use District Boundary of the Conservation District Lodged on August 31, 1999.

Appearances

Harvey J. Lung, Esq., for Petitioner

Liane L. Brown, Esq., for Petitioner

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

David Blane, Director, Office of Planning

Bert Saruwatari, staff planner, oriented the Commission to the petition area on the Land Use District Boundaries and tax maps. Questions were asked by Commissioner Roehrig.

Vice Chairperson Ing reported that although the Commission rules require a 48-hour notice for any motions; for good cause, the Commission has waived the 48-hour notice requirement.

Mr. Lung presented his motion requesting a continuance on the action to consider whether the anticipated effects discussed in Petitioner's Draft Environmental Assessment constitute a "significant effect" pursuant to chapter 343, Hawai'i Revised Statutes.

After hearing Petitioner's argument, questions were asked by Vice Chairperson Ing. Ms. Ogata-Deal had no objections to continuance.

Commissioner Roehrig moved to grant the motion for continuance. The motion was seconded by Commissioner Fiesta and approved by voice votes.

CONTINUED ACTION

SP94-387 - FONG CONSTRUCTION (Maui)

The following amendments as shown in ramseyer was read into the record by Ms. Cairns:

1. That the State Land Use Commission Special Use Permit shall be valid until September 30, 2009, subject to further extensions by the Maui Planning Commission and the State Land Use Commission upon a timely request for extension filed at least one hundred twenty (120) days prior to its expiration. The Maui Planning Commission and the State Land Use Commission may require a public hearing on the time extension.
  
2. That the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to [Sections 205-12 and 205-13] Chapter 205, Hawaii Revised Statutes (HRS). Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per violation; that a civil fine not to exceed FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand delivery unless written request for a hearing is mailed or delivered to the Planning Department within said thirty (30) days. Upon receipt of a request for a hearing, the Planning Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Planning Director or the Director's designee in accordance with the provision of Chapter 91, HRS, as amended. Should breaches of the permit continue, the Planning Commission may recommend the revocation of said Land Use Commission Special Use Permit. The

Planning Commission's recommendations shall be promptly transmitted to the State Land Use Commission for appropriate action.

4. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject State Land Use Commission Special Use Permit and shall defend, indemnify, and hold harmless the County of Maui and the State of Hawaii from and against any loss, liability, claim or demand arising out of this Permit. In addition, the applicant, its successors and permitted assigns shall procure at its own cost and expense, and shall maintain during the entire period of this State Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui and State of Hawaii as an additional named insured, insuring and defending the applicant, County of Maui and State of Hawaii against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including, but not limited to:
  - (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and
  - (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. A copy of a policy naming the County of Maui and the State of Hawaii as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order.
  
8. That the site shall be used primarily for storage of equipment and material, [only] minor servicing of said equipment, and offices appurtenant to such uses. No retailing or other sales activities shall be permitted except for limited sales accessory to the principal permitted uses. Pertinent structures may be allowed as appropriate to protect materials and equipment.

Commissioner Roehrig moved to approve the request for time extension as amended. The motion was seconded by Commissioner Fiesta and carried by voice votes.

A lunch recess was taken at 11:40 a.m. to reconvene at 12:40 p.m.

- 12:50 p.m. -

Commissioner Ing was not present to the proceedings at this time.

MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes for the meeting dates of August 26, 27, 1999. The motion was seconded by Commissioner Roehrig and unanimously approved by voice votes.

Commissioner Fiesta moved to approve the minutes for the meeting dates of September 13, 14, 16, 17, 1999. The motion was seconded by Commissioner Roehrig and unanimously approved by voice votes.

2. ADOPTION OF DECISION AND ORDER

Commissioner Roehrig moved to adopt the Order Granting Petition of PHP, L.L.C., to be Substituted as Petitioner for Docket No. A73-367 - Joseph Flores. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

Commissioner Roehrig moved to adopt the Order Granting Petitioner's Motion to Withdraw Land Use Commission Approvals and Revert Land Use District Boundary Classification to Agriculture for Docket No. A73-367 - Joseph Flores. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

CONTINUED HEARING

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 August 26, 27, 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.

Commissioner Kelai was excused from this proceeding due to a previously declared conflict of interest.

Appearances

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

Brian Moto, Esq., Deputy Corporation Counsel, County of Maui

Bill Medeiros, Planning Department, County of Maui

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

David Blane, Director, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

Isaac Hall, Esq., Attorney for Intervenor

PUBLIC WITNESS

1. Jack Crow

Presiding Officer Jarman entered the following exhibits into  
evidence:

1. Petitioner's Ninth Amended List of Exhibits  
(Exhibit Nos. 133, 134, 135, 136).

Commissioner Ing was present at the proceedings at this  
time.

Commissioner Roehrig addressed his concerns regarding the  
progress of proceedings. He suggested that the parties  
voluntarily go into mediation, parallel with the proceedings  
continuing.

It was agreed that all parties will be sending a letter of  
intent with respect to mediation to Deputy Attorney General,  
James Chang, by the close of business on Wednesday, September 29,  
1999.

MINUTES - September 23, 1999  
Page 8

Presiding Officer Jarman entered the following correspondence into evidence:

1. Document received on September 23, 1999, from Majesty Akahi Nui of the Kingdom of Hawai'i.

PETITIONER'S WITNESSES (Cont'd.)

1. Vincent E. Mestre

Presiding Officer Jarman announced that the continued hearing on this petition will be on October 7, 1999. The meeting will begin at 9:45 a.m.

The meeting was adjourned at 4:15 p.m.