

LAND USE COMMISSION  
MEETING MINUTES  
May 7, 2019- 09:30 a.m.  
**Natural Energy Laboratory Hawai'i Authority (NELHA)**  
73-987 Makako Bay Drive Kailua Kona, Hawai'i 96740-2637  
**Hale `Iako Training Room #119**

COMMISSIONERS PRESENT: Jonathan Scheuer  
Gary Okuda  
Dawn Chang  
Nancy Cabral  
Aaron Mahi  
Arnold Wong  
Lee Ohigashi

COMMISSIONERS EXCUSED: Edmund Aczon  
(8 Seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Randall Nishiyama, Deputy Attorney  
General  
Scott Derrickson, Staff Planner  
Rashmi Agrahari, Staff Planner  
Riley Hakoda, Staff Planner/Chief  
Clerk

COURT REPORTER: Jean McManus

**CALL TO ORDER**

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

LUC Meeting Minutes *(Please refer to LUC transcript for more details on this matter)*

May 7, 2019

## APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the April 23, 2019 meeting minutes. There were none.

Commissioner Mahi moved to approve the minutes and Commissioner Cabral seconded the motion.

The minutes were unanimously approved by voice vote (7 ayes-0 nays- 1 excused).

## TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.
  - MAY 22-23 KOA- OSC action for A06-770 Shopoff and A02-737 U of N Bencorp
  - JUN 5-(reserved)
  - JUN 6- HNL IAL site visit/mtg for DR19-66 Poma`ikai Partners
  - JUN 26-OGG- A94-706 Evidentiary Hearing Ka`ono`ulu Ranch
  - JUN27-KOA-Adoption of Orders- OSC action for A06-770 Shopoff and A02-737 U of N Bencorp
  - JUL 10-(Reserved)
  - JUL 11 -HNL DR19-66 Poma`ikai Partners IAL and A05-758 Charitable Foundation Amend motion
  - JUL 24-TBD
  - JUL 25-Kauai- A17-803 Kealia
  - AUG 14-15- Kauai- Commission Training
  - AUG 28-HNL-A87-610 Waiawa
  - AUG 29- A11-791 Hokua Place
  - HCPO- will be on Maui SEP 11-13- details to follow later this year

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Scheuer stated that the next agenda item was an action item to consider correcting the minutes of March 28, 2019

## **ACTION**

Consider Motion to Correct Minutes of March 28, 2019 for Docket No. A18-805 Church to read as follows:

“Commissioner Okuda moved to approve Petitioner's motion that the Commission was the appropriate accepting agency for Petitioner's compliance with HRS Chapter 343; and, to determine an anticipated finding of no significant impact for the ~~that~~ Petitioner's 2016-draft EA/FONSI accepted by DLNR, was sufficient for purposes of the action proposed in the Petition pursuant to HRS section 343-5(g) and HAR sections 11-200-13(b) and (c); and that Petitioner work with LUC staff to put together the necessary documents required by OEQC for publication and review for an EA.”

Chair Scheuer updated the record and described the procedures to be followed. There were no questions or comments on the procedures.

Chair Scheuer called for Public Witnesses

## PUBLIC WITNESSES:

There were no public witnesses.

Chair Scheuer entertained a motion to make the correction to the minutes. Commissioner Okuda moved and Commissioner Mahi seconded the motion. There was no discussion.

Chair Scheuer had Mr. Orodener poll the Commission. The Commission unanimously voted to correct the March 28, 2019 minutes as stated (7 ayes-0 nays- 1 excused).

Chair Scheuer moved to the next agenda item.

**ADOPTION OF ORDER**  
**A06-767 WAIKOLOA MAUKA LLC, (HAWAI'I)**

**APPEARANCES**

Steven Lim Esq. represented Petitioner Waikoloa Highlands Inc. (WHI)  
Ron Kim Esq., Deputy Corporation Counsel, County of Hawaii Planning Department  
(County)  
Duane Kanuha, Deputy Director, County  
Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

**PUBLIC WITNESSES:**

There were no public witnesses.

Chair Scheuer asked Mr. Lim to confirm he had read the administrative rules and would conform to the LUC's reimbursement policy. Mr. Lim acknowledged that he had read the rules and that he and his client would abide by the reimbursement policy.

Mr. Lim requested and was granted permission to make comments to the Commission before deliberations on the matter commenced. Mr. Lim provided 3 points for the Commission to consider: 1) HRS 91-11 procedural requirements, 2) HAR 15-15-93 (d) considerations and 3) the purported obligatory role of the Commission to compel compliance versus reversion.

Commissioner Okuda stated that he would like more time to consider the WHI order and Mr. Lim's comments.

Commissioner Chang stated that she concurred with Commission Okuda.

Commissioner Ohigashi moved for an Executive Session to consult with the board's attorney on the Commission's duties, rights and privileges regarding

procedures in adopting orders. Commissioner Wong seconded the motion. By voice vote, the Commission unanimously voted to enter Executive Session.

The Commission went into Executive Session at 9:47 a.m. and reconvened at 10:04 a.m.

Commissioner Okuda moved to defer adopting the WHI order to consider Mr. Lim's request; and that Mr. Lim file his request with the Commission, in writing within 48 hours including all the legal references (citations, case law, etc.) to support it. Commissioner Wong seconded the motion.

#### Discussion

Commissioner Okuda shared his reasons for making his motion and provided his proposed deadlines for Petitioner, County and OP to observe for filings and responses; and urged his fellow Commissioners to support his motion.

Mr. Lim requested clarification on the proposed time that he had to file with the Commission. Discussion ensued to determine how much time should be allowed for Petitioner to file. Mr. Lim suggested 72 hours. Commissioner Chang questioned whether 48 hours was adequate. Commissioner Okuda acknowledged that he would consider 72 hours. Commissioner Ohigashi requested clarification on whether the 72-hour time frame would end on Friday, May 10, 2019.

Chair Scheuer suggested clarifying the motion by withdrawing the initial motion and re-stating the motion with the desired timelines to file, submit comments and responses, and respond to comments and responses.

Commissioner Okuda agreed and withdrew his motion. Commissioner Wong withdrew his second.

Chair Scheuer declared a recess to allow Commissioner Okuda time to organize his thoughts.

The Commission went into recess at 10:16 a.m. and reconvened at 10:19 a.m.

Chair Scheuer recognized Commissioner Okuda to have him restate his motion.

Commissioner Okuda moved that:

1. Mr. Lim shall provide the LUC a written statement of the issues he raised in his statements at the hearing held on May 7, 2019. The statement shall include appropriate legal citations to statutes, administrative rules, and court decisions. The written statement shall be due to the LUC and copies provided to and served upon the County and the Office of Planning by close of business (4:30 p.m.) on Friday May 10
2. The Office of Planning and the County will have until close of business (4:30 p.m.) on Friday May 17 to deliver to the LUC and serve on the other parties comments and responses to Mr. Lim's written statement.
3. Mr. Lim will have until close of business (4:30 p.m.) on Monday May 20 to deliver to the LUC and serve on the Office of Planning and the County responses to the Office of Planning and/or County comments.

Commissioner Wong seconded the Motion.

#### Discussion

Commissioner Okuda described how he expected legal references to be incorporated into the filing.

Commissioner Chang asked Mr. Lim why he had not filed any Proposed Findings of Fact, Conclusions of Law and Decision and Order with the Commission. Mr. Lim provided his perspective of what the Commission was responsible for in an Order to Show Cause hearing and stated that the Commission had the burden to draft the document.

Chair Scheuer asked County and OP if they had any comments. County stated that it believed it was the burden of the Commission. OP concurred with County's position.

There was no further discussion.

Chair Scheuer had Mr. Orodener poll the Commission. The Commission unanimously voted in favor of the Motion (7 ayes-0 nays- 1 excused).

Chair Scheuer moved to the next agenda item and stated that he would be recusing himself from the proceedings due to conflict of interest concerns and surrendered to Vice Chair Cabral to preside over the remainder of the meeting at 10:24 a.m.

Vice Chair Cabral immediately began to preside over the hearing.

## **STATUS REPORT**

### **A99-729 NEWTON FAMILY LIMITED PARTNERSHIP (HAWAI'I)**

Tax Map Key: 2-4-08: por. 33 – Original Change Requested: To reclassify approximately 885.40 acres of land currently in the Conservation District into the Agricultural District at Kukuau, South Hilo, Hawaii, for agricultural use.

## **APPEARANCES**

Laura Kaakua, CEO, Hawaiian Islands Land Trust (“HILT”)

Ron Kim Esq., Deputy Corporation Counsel, County of Hawaii Planning Department  
(County)

Duane Kanuha, Deputy Director, County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, Planning Program Administrator, OP

Vice Chair Cabral updated the record and described the procedures to be followed and called Public Witnesses.

## **PUBLIC WITNESSES**

NONE

Vice Chair Cabral called for Petitioner to provide their status report.

Ms. Kaakua provided background information on how HILT had become the new land owner and described how HILT was still assessing the requirements of the conditions and how HILT would be able to deal with them. Ms. Kaakua requested additional time to research the situation and perhaps approach the Commission in the future with a Motion to Amend or other action to suit the objectives of HILT and abide by the imposed conditions for the property and suggested a year to work on its plan and was open to providing updates if requested.

Mr. Kim stated that County was open to allowing HILT additional time and had no objection to allowing for a year.

Ms. Apuna questioned Ms. Kaakua's reference to 1600 acres during her presentation and stated that OP also was open to allowing more time. Ms. Kaakua described how the Newton family's entire property donation consisted of 1600 acres and provided details of how the larger parcel was divided up with the Petition Area being a separate part of the entire land area.

Ms. Kaakua described how HILT welcomed the opportunity to provide the Commission with status updates on their management efforts and plans which might include amending the conditions to better suit her organization's conservation mission.

#### Commissioner Questions

Commissioner Chang requested clarification on how aware HILT was of the LUC conditions on the Petition Area. Ms. Kaakua replied that they accepted the property after performing a "due diligence" review and was aware of the non-compliance issues but that HILT was willing to get in compliance or amend conditions if afforded the opportunity and time.

Commissioner Ohigashi requested clarification on what reporting cycle HILT would be following. Ms. Kaakua replied that HILT would timely file the required annual report.

Commissioner Okuda requested clarification on what HILT's plans for future agriculture were. Ms. Kaakua described HILT's planned efforts to remove invasive species and rejuvenate the existing forests; and abiding by its goal of preserving native forestry.

Commissioner Chang asked if any activity would be performed prior to the assessment of the Petition Area's needs. Ms. Kaakua replied that HILT would do its planning first before taking any action.

#### Deliberations

Commissioner Chang requested County clarify the terminology used to describe the type of zoning allowed for the region. Mr. Kim defined the zoning codes and stated that County had no objection to allowing HILT more time to work on its plans.

Commissioner Ohigashi moved to accept HILT's status report and that another status report be provided in a year and any update reports were to be filed if required. Commissioner Mahi seconded the Motion.

#### Discussion

Commissioner Okuda stated that he preferred a shorter reporting period of 6 or 4 months. Commissioner Wong shared how, based on his experience, projects like HILT's needed at least a year to make headway.

Commissioner Ohigashi stated that he was satisfied with the new landowner using an annual report schedule to report its progress.

Commissioner Okuda stated that he reconsidered his time suggestion and was now in favor of a yearly annual report.

Commissioner Chang described how the Petitioner might consider reporting in 6-month phases on its conservation plan progress and with its annual report; and questioned what impact the Commission's decision might have on County.

Mr. Kim deferred to Deputy Director Kanuha to describe the history of the area and how the County might be impacted. Mr. Kanuha clarified how the County had dealt with the Petition Area when it had "timed out" on its zoning application and described the applicable zoning options that could be imposed if there was no resolution to the situation. Mr. Kanuha confirmed that County would have no problem withholding action till the new landowner had its proposals ready for County review.

There was no further discussion.

Commissioner Ohigashi moved to accept the one-year reporting schedule proposal. Commissioner Mahi seconded the Motion.

Vice Chair Cabral asked Mr. Orodener to poll the Commission. The Commission unanimously voted to adopt the Motion. (6-0- 2 excused, 8 seated Commissioners).

Vice Chair Cabral stated that there being no further business, the meeting would be adjourned. The meeting adjourned at 10:59 a.m.

