

LAND USE COMMISSION
MEETING MINUTES

August 12, 2020 – 9:00 a.m.

Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting
Wednesday August 12, 2020 Meeting

https://us02web.zoom.us/webinar/register/WN_tzOB4nfpOeqCgolftAoUGA

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform . Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Edmund Aczon
(Attending via ZOOM conference media) Nancy Cabral
Gary Okuda
Jonathan Scheuer
Arnold Wong
Dawn N. S. Chang
Lee Ohigashi
Dan Giovanni

COMMISSIONERS EXCUSED:
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Cindy Young, Deputy Attorney General
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner (attended SP98-390 portion only)
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus
(Attending via ZOOM conference media)

CALL TO ORDER

LUC Meeting Minutes
August 12, 2020
See LUC Meeting Transcripts for further details

Chair Scheuer called the meeting to order at 9:09 a.m.

Chair Scheuer had Mr. Orodener verbally do a roll call to confirm Commissioner attendance for the record. The 8 Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

APPROVAL OF MINUTES

Chair Scheuer stated that the first agenda item was the approval of the July 22-23, 2020 minutes and asked if there had been any public testimony submitted and if there were any corrections to be made. There were no public testimony and no corrections to be made. Commissioner Cabral moved to approve the minutes. Commissioner Aczon seconded the motion. There was no discussion. By a roll call vote, the July 22-23, 2020 minutes were approved unanimously (8-0)

Chair Scheuer called for Mr. Orodener to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from August to December for the Commissioners and cautioned that it was subject to change based on the pandemic impacts. Commissioners were advised to contact LUC staff if there were any questions or conflicts.

There were no questions or comments regarding the tentative meeting schedule.

Chair Scheuer moved on to the next agenda item.

ADOPTION OF ORDER

SP97-390 COUNTY OF MAUI (CENTRAL MAUI LANDFILL)

Adopt Form of the Order for Amendment to State Special Permit (SP97-390) for the Proposed Central Maui Landfill Facilities project at TMK (2) 3-8-003:019 (por) and 020, Pu`unene, Maui, Hawai`i

Chair Scheuer inquired to the LUC staff whether any written testimony on the docket had been received. No written testimony was reported received and no members of the attending audience signified that they wished to testify.

Chair Scheuer verified that all Commissioners were prepared to participate in the proceedings. All Commissioners responded that they were ready to participate.

There was no discussion. Chair Scheuer entertained a Motion to approve the form of the order.

Commissioner Wong moved and Commissioner Aczon seconded the motion to approve the form of the order.

Chair Scheuer opened the floor to discussion on the Motion.

Commissioner Ohigashi stated that he would vote in favor of the form of the order but noted that he had voted against the granting of the Petition.

Chair Scheuer described how he had also voted against granting the Petition and echoed Commissioner Ohigashi's sentiments.

Commissioner Okuda stated that he agreed that the order correctly described and reflected the events of the hearing on SP97-390 but would be voting against the adoption of the order.

There was no further discussion.

Chair Scheuer called for Mr. Orodener to poll the Commission.

The Commission voted as follows:

Ayes: Commissioners Wong, Aczon, Cabral, Ohigashi, Giovanni, Chang, Chair Scheuer.

Nays: Commissioner Okuda.

The motion passed 7-1 (8 sitting Commissioners)

Chair Scheuer moved on to the next agenda item.

CONTINUED HEARING AND ACTION

A17-804 Hawaiian Memorial Life Plan, Ltd.

To consider Docket No. A17-804 Petition To Amend The Conservation Land Use District Boundary Into The Urban Land Use District for Approximately 53.449 acres of Land at Kāneʻohe, Island of Oʻahu, State of Hawaiʻi TMK (1) 4-5-033: por. 001

APPEARANCES (Attending via ZOOM conference media)

Curtis Tabata, Esq. and Benjamin Matsubara, Esq., represented Hawaii Memorial Life Plan, Ltd., (“HMP”)

Duane Pang, Deputy Corporation Counsel, DPP

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Rodney Funakoshi, Land Use Administrator, OP

Lorene Maki, Planner, OP

Grant Yoshimori- Spokesperson for Intervenor Hui O Pikoiloa (“HOP”)

Rich McCreedy, HOP

Chair Scheuer updated the record and reviewed the procedures for the meeting.

There were no objections to or questions on the procedures.

Chair Scheuer noted that the public testimony portion of the Meeting had been closed and that any other written testimony submitted on this matter had been filed and made part of the record. Chair Scheuer announced the names of the public written testifiers for the record.

Chair Scheuer moved on to call for Intervenor’s presentation.

PRESENTATIONS

Intervenor

Mr. Yoshimori described how his remaining presentation for the Commission would not include the appearance of Intervenor’s expert witness, Dr. Lee Goff, due to a schedule conflict. Chair Scheuer acknowledged Intervenor’s witness appearance schedule change.,

INTERVENOR’S WITNESSES (continued-- earlier Intervenor witnesses appeared at the July 22, 2020 hearing on this matter)

1. Nate Yuen

Mr. Yuen described his education and involvement with local conservation and preservation efforts and discussion ensued to clarify what Mr. Yuen's expertise was. Mr. Yoshimori described how Mr. Yuen was expected to provide information on the Sierra Club's position on Forest Conservation and Environment. Mr. Yuen shared how he had acquired knowledge through his association with groups like the Sierra Club and had become a certified Urban Forester.

Mr. Tabata confirmed he had no objections to Mr. Yuen testifying on the subject matter areas that had been described to the Commission.

Mr. Pang requested confirmation on whether Mr. Yuen was testifying on behalf of Sierra Club.

OP had no objections.

Commissioner Giovanni requested clarification on whether Mr. Yuen would be addressing climate change matters. Mr. Yuen responded that he would be focusing more on forestry.

Chair Scheuer, after consideration of Mr. Yuen's background and qualifications and the opinions of the Parties, determined that Mr. Yuen would be qualified as a self-described naturalist.

Mr. Yuen provided his perspective on why additional mitigation measures needed to be considered to protect the damselfly habitat and shared how the Sierra Club determined its position on endangered species and the conservation and preservation of natural areas.

Mr. Tabata requested clarification on why protection of water sources was important, on various comments and entries related to Mr. Yuen's "blog" and its content, and on Mr. Yuen's knowledge of past Intervenor efforts related to the discovery and protection of the damselfly habitat in the Petition Area.

County and OP had no questions.

Commissioners Okuda, Wong, Ohigashi, Chang and Chair Scheuer sought additional information on Mr. Yuen's familiarity with the Memorandum of Understanding between the Petitioner and the Koolaupoko Hawaiian Civic Club, with the obligations and responsibilities involved with protecting a discovered endangered species for the Petitioner, whether Sierra Club would continue its objections to the proposed project if protection of water sources and mitigations that had been discussed were adopted, what type of acceptable oversight authority was being sought, more specifics on what naturalist activities Mr. Yuen was involved in, whether compensation for testimony was involved and whether additional community engagement to facilitate protection and preservation efforts regarding the damselfly could be helpful.

There were no further questions or redirect for Mr. Yuen.

Chair Scheuer declared a recess at 10:16 a.m. and reconvened the meeting at 10:26 a.m.

Mr. Yoshimori called his next witness, Dr. Steven Businger, Meteorologist.

2. Dr. Steven Businger- expert witness on Meteorology/Atmospheric Sciences

Dr. Businger was qualified and accepted as an expert witness on Meteorology/Atmospheric Sciences and summarized his written testimony for the Commission on how increasing frequencies and intensities of severe weather events could impact the proposed project.

Mr. Tabata requested clarification on whether the testimony provided was that the design specifications for proposed retention/detention basins were not in compliance with County standards. Dr. Businger stated that it was not and described how current data suggested that future severe storm intensities and frequencies might overwhelm the standards currently used.

County and OP had no questions.

Commissioners Wong, Okuda, Chang, Ohigashi, and Chair Scheuer requested clarification on whether leaving the landscape in place untouched might be preferable, on rainfall duration and intensity levels effect on design standard requirements, what County might need to do to address the new climate data being reported, the benefits of adapting County design standards in anticipation of more extreme weather events than in reaction to them, the definition applied to “recurrence interval” and rainfall standards, the benefits of tree cover and other mitigation efforts to reduce flooding and how local efforts to reduce carbon emissions and address climate change and global warming contributed to world-wide efforts.

There were no further questions and no redirect.

Mr. Yoshimori stated that he had no further witnesses. Discussion ensued to address procedural matters. Mr. Tabata made a motion to strike the testimonies of the Intervenor witnesses who did not appear and testify, and Commissioner Giovanni inquired whether he could ask additional questions to the Intervenor.

Chair Scheuer declared a recess at 11:23 a.m. and reconvened the meeting at 11:36 a.m.

Chair Scheuer acknowledged Commissioner Giovanni’s request to question Intervenor.

Commissioner Giovanni requested clarification on how Intervenor intended to apply Dr. Businger’s comments on retention/detention basins. Mr. Yoshimori clarified how leaving the landscape “as is” instead of altering it with man-made structures was the focal point of the testimony.

Chair Scheuer announced that Petitioner would have the opportunity to address the striking of testimonies after the final appearance of Petitioner’s witness, Jay Morford. Mr. Matsubara acknowledged Chair’s remarks and offered Mr. Morford.

PETITIONER WITNESSS

1. Jay Morford – HMP representative

Mr. Morford summarized his past testimony and expanded on how HMP had adopted the recommendations of the County and OP for the proposed project and performed extensive community outreach to share information about HMP's intentions. Mr. Morford also described the mitigation and preservation efforts that HMP had extended to protect the endangered damselfly after discovery of its habitat in the Petition Area.

County and OP had no questions.

Mr. Yoshimori requested clarification on HMP stewardship efforts in the Petition Area and on HMP offerings of its professional services and plans to the public.

Commissioners Okuda, Chang, Giovanni, Ohigashi, Aczon, and Chair Scheuer requested clarification on "what if" scenarios regarding flooding and rockfalls, HMP stewardship intentions if the Petition was not granted, the use of PVT for landfill, how HMP would react to the testimony regarding the expected future increase in severe weather storms and their severity, how aware HMP was of restrictions and requirements regarding runoff and flooding, and how HMP might consider volunteering to exceed County design standards, extend and improve community engagement efforts to protect the endangered damselfly, and consider using an accredited land trust entity to assist with its conservation easement efforts.

Mr. Matsubara vigorously argued how it was premature to address certain "what if" scenarios since it seemed more appropriate for HMP to undertake that after the Petition had been granted and how further details to finalize agreements could be done once HMP was assured that the Petition would be granted. Mr. Morford shared how HMP would adapt to the information and experience it had gained during the LUC proceedings on this matter to more keenly pursue its objectives if the Petition were granted and how HMP might react if it was denied.

There were no further questions and no redirect.

Chair Scheuer announced that the Commission would next address the striking of witness testimonies motion that Mr. Tabata had made.

Mr. Tabata argued why his motion to strike the testimonies of Intervenor's witnesses Dr. Leo Goff and Dr. Dana Alden should be granted.

Chair Scheuer offered Mr. Yoshimori the opportunity to object. He argued that the respective testimony of both witnesses should be considered and conceded that Dr. Alden had earlier provided notice that he would not be able to participate in proceedings on this docket.

Discussion ensued to weigh how the non-appearance of the witnesses and their testimony should be treated.

County and OP had no objection to striking the witnesses and retaining their testimonies as written public testimony.

Chair Scheuer sought confirmation that he, as Chair, could solely decide on the motion. Mr. Orodener affirmed that the Commission Chair was authorized to rule on the motion. Chair Scheuer granted Petitioner's Motion to Strike the Witness Testimonies as Intervenor Expert Witnesses and noted that their written testimony would remain in the record as public testimony.

Chair Scheuer announced that the evidentiary portion of the proceedings was closed and instructed the Parties on the filing schedule for documents for future hearings on this matter. Mr. Tabata requested that an alternate later date be used for the initial filings. Chair Scheuer deferred to Mr. Orodener to respond to questions regarding the filing schedule.

Mr. Orodener described how the LUC hearing schedule did not allow for deviation from the proposed schedule and needed to be followed to ensure that the deadline associated with hearing this docket was met.

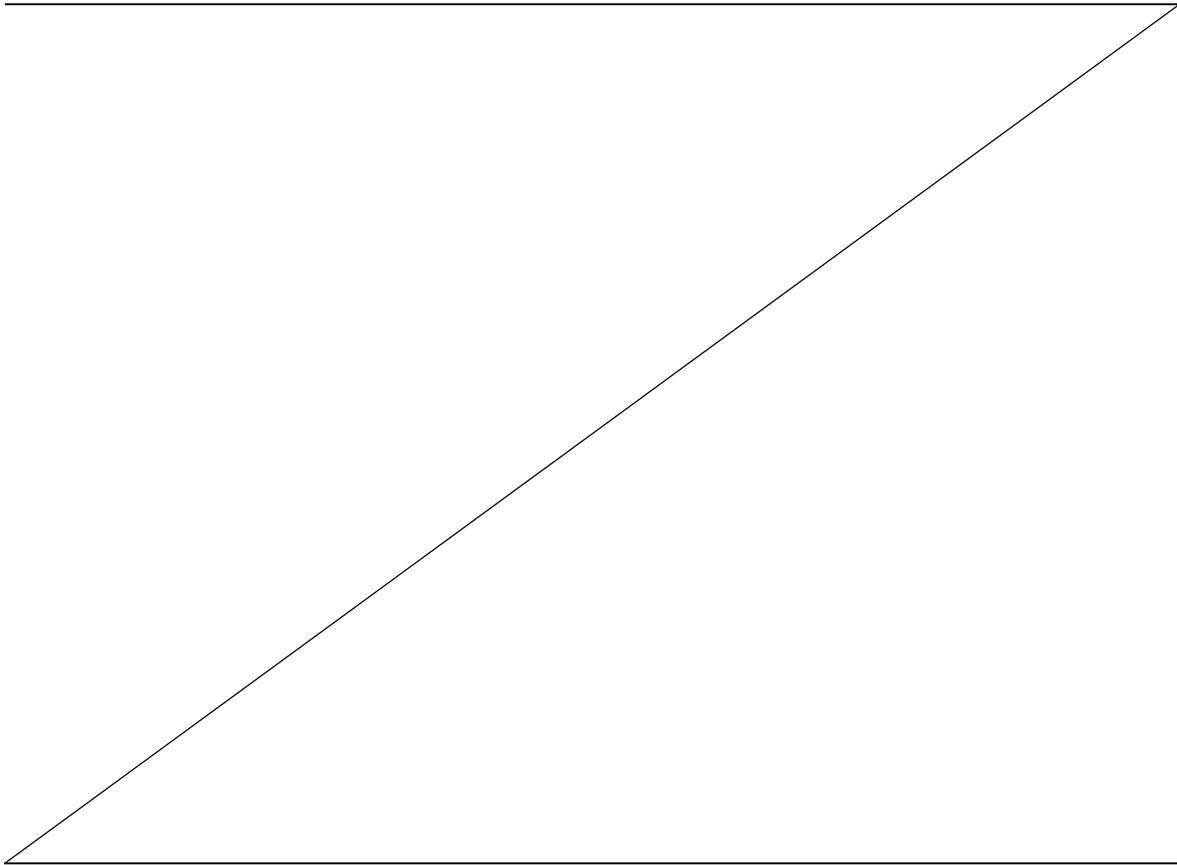
Mr. Tabata acknowledged Mr. Orodener's comments and would comply with the Chair's directives.

Mr. Pang noted that County also had issues with the filing schedule but would comply.

OP had no questions or comments.

Mr. Yoshimori stated that he agreed with the suggested dates.

Chair Scheuer noted that there was no further business and stated that the Commission would resume proceedings on August 13, 2020 at 9:00 a.m. via ZOOM and adjourned the meeting at 12:47 p.m.



LAND USE COMMISSION
MEETING MINUTES

August 13, 2020 – 9:00 a.m.

Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting registration-use link below

Thursday August 13, 2020 Meeting

https://us02web.zoom.us/webinar/register/WN_KkICkiIVQ1mYTCW8kky5Iw

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform . Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT:

(Attending via ZOOM conference media)

Edmund Aczon

Nancy Cabral (joined meeting at 9:54 a.m.)

Gary Okuda

Jonathan Scheuer

Arnold Wong

Dawn N. S. Chang

Lee Ohigashi

Dan Giovanni

COMMISSIONERS EXCUSED:

(8 seated Commissioners as of 10/1/19)

STAFF PRESENT:

(Attending via ZOOM conference media)

Daniel Orodener, Executive Officer

Cynthia Young, Deputy Attorney General

Scott Derrickson, Staff Planner

Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER:

(Attending via ZOOM conference media)

Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:00 a.m. and had Mr. Orodenker verbally do a roll call to confirm that all Commissioners were in attendance for the record. All Commissioners except Commissioner Cabral acknowledged that they were present and able to communicate via the ZOOM program. (Commissioner Cabral joined the meeting at 9:54 a.m. and experienced technical difficulties with remaining connected to the meeting till 10:38 a.m. Commissioner Cabral was provided a copy of Mr. Chipchase's presentation that was made during the span of time that she had linkage problems to ensure that she had all the necessary information required for her to vote on Docket No. DR20-69 and DR20-70.)

Chair Scheuer called for the next agenda item.

CONTINUED ACTION

DR20- 69 COUNTY OF HAWAII and DR20-70 LINDA ROSEHILL et al

Consider Petitioners County of Hawaii's and Linda Rosehill et al's Petitions for Declaratory Orders regarding Short Term Vacation Rentals as Farm Dwellings

APPEARANCES (Attending via ZOOM conference media)

Cal Chipchase, Esq., represented Linda Rosehill et al, ("LR")

Michael Yee, Director, County of Hawaii Planning Department (County)

April Surprenant, Deputy Director, County

Diane Mellon-Lacey, Esq. Deputy Corporation Counsel, represented County

John Mukai, Esq., Deputy Corporation Counsel, represented County

Dawn Apuna, Esq., Deputy Attorney General represented OP

Chair Scheuer described how the Commission had earlier completed the public testimony portion of the hearing and had procedurally moved on to hear the presentations of the parties and then updated the record and recognized additional written public testimony that the LUC had received and reviewed the procedures for the meeting.

There were no objections to or questions on the procedures.

Chair Scheuer called for Petitioner Rosehill et al to make its presentation.

ROSEHILL et al PRESENTATION

Mr. Chipchase argued why the Commission should issue a Declaratory Order that farm dwellings may be used as short-term vacation rentals (STVR) in areas designated for agricultural use.

Commissioner Okuda requested clarification on Mr. Chipchase's perspective of the LUC administrative rules and State statutes involved in the Rosehill et al Petition and on portions of the PowerPoint presentation that had been made to the Commission.

Chair Scheuer suspended the questioning of Mr. Chipchase by Commissioner Okuda and declared a recess at 10:02 a.m. Chair Scheuer reconvened the meeting at 10:12 a.m. and Commissioner Okuda resumed his questioning.

Commissioners Wong, Chang, Ohigashi, Cabral and Chair Scheuer also requested clarification on portions of Mr. Chipchase's argument and perspective on HRS §205 and sought details on what the Rosehill et al Petition was specifically seeking, who the Rosehill et al clients were, whether they were Hawaii residents, whether they derived any income from farming, and how the rental time duration and use of the structure on the property factored into the situation.

There were no further questions for Mr. Chipchase.

Chair Scheuer assessed the progress of the proceedings. Commissioner Cabral reported on what portions of the meeting she had been able to attend, and discussion ensued to determine what information Petitioner could provide to enable her to "catch up". Mr. Chipchase was instructed to provide Petitioner's PowerPoint presentation for Commissioner Cabral to review during the upcoming recess.

Mr. Mukai noted that he had not been able to review the City and County of Honolulu's written testimony. Discussion ensued to resolve how County could review the testimony during the upcoming recess.

OP commented that it was available for questions.

Chair Scheuer declared a recess at 11:20 a.m. and stated that the Commission begin final arguments upon resuming proceedings.

Chair Scheuer reconvened the meeting at 12:15 p.m. and called for final arguments.

CLOSING ARGUMENTS
COUNTY

Mr. Mukai argued why STVRs were not a permissible use for a farm dwelling and described how County's Petition and presentation had supported that position.

Commissioners Cabral, Wong, Chang, Ohigashi, Aczon, Giovanni, and Okuda requested clarification on the County's definition of STVRs, what County was requesting that the LUC do in this case, how the June 4, 1976 date factored into the arguments by the Petitioners, how the use of the structure on the property factored in the arguments, how applications for non-conforming use could be made with the County, further details on the County's definition and regulatory codes for farm dwellings as opposed to STVRs, when Special Permits might be applied for certain situations, how owners with no intentions of performing agriculturally related activities on their property would be treated and how recognized agricultural farm operations would qualify for certain breaks on water or tax rates. Mr. Mukai, Director Yee, and Deputy Director Surprenant provided County's responses.

There were no further questions for County. Chair Scheuer called for Mr. Chipchase to make his final argument.

ROSEHILL et al

Mr. Chipchase argued why his Petition should prevail and summarized how his presentation had provided support for his position.

Chair Scheuer declared a recess at 1:16 p.m. and reconvened the meeting at 1:26 p.m. and called for any questions for Mr. Chipchase by Commissioners.

Commissioners Chang and Wong requested clarification on Mr. Chipchase's perspective of what the LUC's jurisdiction was regarding HRS§205 matters and on Petitioner Rosehill et al's response to OP's supplemental submittal.

Commissioner Okuda asked if OP could provide any additional information for the LUC to consider in this matter. Chair Scheuer acknowledged the request and called on Ms. Apuna to comment.

Ms. Apuna stated that OP's recommendation for the LUC was to deny the Rosehill et al Petition and grant the County's Petition and provided OP's argument why its recommendation should be accepted by the Commission based on past LUC decisions on similar matters and on OP's interpretations of State statutes and rules.

Commissioner Okuda requested clarification on the legal citations and LUC decisions the Ms. Apuna had cited.

Commissioner Cabral requested clarification of County's building permit issuance process and on what representations were required.

There were no further questions and Chair Scheuer stated that the Commission would enter formal deliberations on this docket.

Chair Scheuer confirmed that each Commissioner was ready to deliberate and entertained a Motion on the matter at hand. Commissioner Okuda moved and Commissioner Cabral seconded a Motion to deny the Rosehill et al Petition without prejudice and grant the County's Petition.

Discussion

Commissioner Okuda spoke in favor of his Motion and described how he felt the record supported County's position

Commissioner Chang spoke in favor of the Motion but questioned the need to add "without prejudice" to the denial of the Rosehill et al Petition. Commissioner Okuda stated that he had made the Motion in the manner he stated in an abundance of caution with respect to the declaratory ruling proceedings.

Discussion ensued to determine whether LUC's declaratory ruling proceedings required the inclusion of "without prejudice" in its decisions. Mr. Orodener commented that Petitioner was not restricted from pursuing further action with the LUC. Chair Scheuer acknowledged Mr. Orodener's remarks and stated that Petitioner Rosehill et al. could return to the Commission in the future if it desired.

Commissioner Okuda stated that he would delete the “without prejudice” portion of his Motion and noted that his Motion would now be to deny Petitioner Rosehill et al’s Petition and grant County’s Petition. Commissioner Cabral accepted the change to the Motion.

Chair Scheuer asked if there was further discussion on the Motion.

Commissioner Cabral stated that she was in favor of the Motion and shared why she supported it.

Commissioners Giovanni, Chang and Chair Scheuer added their reasons for supporting the Motion.

Chair Scheuer called for Mr. Orodener to poll the Commission.

By a roll call vote the Commission unanimously voted in favor of the Motion (8-0).

Chair Scheuer asked if there was any further business to discuss. There was none.

Chair Scheuer adjourned the meeting at 2:23 p.m.