

LAND USE COMMISSION
MEETING MINUTES

January 6, 2021 – 9:00 a.m.

Pursuant to Exhibit F of the Governor’s Seventeenth Proclamation Related to the COVID-19 Emergency, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting
Wednesday, January 6, 2021
Meeting Link for Wednesday, January 6, 2021

https://us02web.zoom.us/webinar/register/WN_Ya2rDT0cT3GGJXRWn2LlKw

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

COMMISSIONERS EXCUSED: None
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Colin Lau, Deputy Attorney General (DAG)
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha Quinones, Program Specialist

COURT REPORTER: Rita King
(Attending via ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:00 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

APPROVAL OF MINUTES

Chair Scheuer stated that LUC staff had advised that the December 30, 2020 minutes were not ready yet and asked if there had been any public testimony submitted. There was no public testimony.

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

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from January 2021 to April 2021 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.

ACTION – A11-791 HG Kauai Joint Venture, LLC– HoKua Place (Kaua`i) Petition To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kaua`i, State of Hawai`i, Consisting of 97 Acres from the Agriculture and Rural District, to the Urban District, Tax Map Key No. (4) 4-3-03:POR 01 –

Chair Scheuer stated that this was an action meeting on Docket No. A11-791 Kapa`a Highlands Phase II (HoKua Place LLC) to:

- Consider Intervenor Liko-o-Kalani Martin's Motion To Continue Contested Case Hearing Dates in Docket No. A11-791
- Consider Intervenor Liko-o-Kalani Martin's Motion for Leave to File Response to Applicant's Motion for Protective Order
- Consider Petitioner HG Kauai Joint Venture, LLC's Motion for Protective Order

APPEARANCES by:

William Yuen, Esq., HG Kauai Joint Venture, LLC's (HG) Representative

Chris Donahoe, Deputy County Attorney representing Kaua'i County Planning Department (County)
Jody Higuchi Sayegusa, Deputy Director, County
Dawn Takeuchi-Apuna, Esq., Deputy Attorney General, Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator, OP
Bianca Isaki, Esq. and Lance Collins, Esq., representing Intervenor Liko Martin (Intervenor)
Liko Martin, Intervenor

Chair Scheuer updated the record and described the procedures for the hearing. There were no questions or comments on the procedures.

Chair Scheuer asked if any of the Commissioners had any disclosures to make. There were no disclosures.

Chair Scheuer stated that he had a disclosure regarding his business relationship with Intervenor's newly acquired attorney, Ms. Isaki, and described how he had previously disclosed his professional relationship with Ms. Isaki at a previous LUC meeting and, since then, another business transaction had again involved him with Ms. Isaki but there still was no financial interest involved as defined by the Ethics Code. Chair Scheuer stated that he felt he could be fair and impartial in this matter and asked the Parties and his fellow Commissioners if there were any objections.

Mr. Yuen requested clarification on the contractual financial arrangement involved between Chair Scheuer and Ms. Isaki and had no objections to Chair Scheuer's continued participation in the proceedings. County, OP, Intervenor, and the other Commissioners had no objections.

Chair Scheuer asked if there were any Public Witnesses who wished to testify on the motions to be considered by the Commission.

There were no responses to Chair Scheuer's call for Public Witnesses.

Chair Scheuer moved on to have the Commission consider Intervenor Liko-o-Kalani Martin's Motion To Continue Contested Case Hearing Dates in Docket No. A11-791.

INTERVENOR MOTION TO CONTINUE

Mr. Collins argued why the Commission should grant Intervenor's Motion to Continue and described how Intervenor would cooperate on the initial filing dates set for the proceedings.

Petitioner, County and OP had no objections to Intervenor's Motion.

Chair Scheuer had Mr. Orodener state the established filing schedule for the A11-791 docket and had the Parties state their positions on the schedule. All Parties understood and agreed with the stated schedule:

- January 6, 2021- Hearing date for the Petitioner's Motion for protective order, and Intervenor's Motion for continuance on hearing
- January 25, 2021 filing of witness and exhibit lists
- February 10, 2021 filing of exhibits and including OP's and County's testimony
- February 17, 2021 Rebuttal witnesses and rebuttal testimony for all parties
- March 10-11, Hearing dates

Commissioner Wong moved to grant the Motion. Commissioner Giovanni seconded the motion to grant the Motion.

Chair Scheuer opened the floor to discussion.

Commissioner Wong shared why he decided to make his motion to grant Intervenor's Motion. Commissioner Giovanni added his support for Commissioner Wong's motion.

There was no further discussion and Chair Scheuer directed Mr. Orodener to poll the Commission. By a roll call vote, the Commission unanimously voted to grant Intervenor's Motion (8-0).

Chair Scheuer moved on to have the Commission consider Intervenor Liko-o-Kalani Martin's Motion for Leave to File Response to Applicant's Motion for Protective Order

INTERVENOR MOTION FOR LEAVE

Mr. Collins argued why the Commission should grant Intervenor's Motion for Leave to File Response to Applicant's Motion for Protective Order.

Chair Scheuer requested clarification on whether Intervenor's argument on this Motion was contained in the other material on record with the Commission. Mr. Collins described how Intervenor's motion for leave included a proposed memorandum addressing the protective order as part of the filing in support of his motion.

The Commissioners had no questions for Mr. Collins.

Petitioner, County and OP had no objections to the Motion.

Chair Scheuer inquired if LUC staff needed any further clarification on Mr. Collin's presentation. Mr. Orodenker responded that there were no questions.

DAG Lau asked for confirmation that there was no public testimony on this matter. Chair Scheuer again verified with the ZOOM audience whether public testimony witnesses were waiting to be recognized. There were no responses to Chair Scheuer's call for public testimony.

Chair Scheuer declared a recess at 9:27 a.m. and reconvened the meeting at 9:29 a.m. Chair Scheuer commented that during the recess, he detected a virtual "raised hand" that he had overlooked and made accommodations in the proceedings to recognize the public testifier.

PUBLIC WITNESSES

1. Rayne Regush

Ms. Regush stated her support for Potential Intervenor Liko Martin in the Motion for Protective Order. Chair Scheuer clarified that the Commission was considering the Intervenor's Motion for Leave and hadn't started on the Petitioner's Motion. A discussion ensued and Chair Scheuer determined that Ms. Regush could continue her early testimony on the Protective Order motion in light of the internet connectivity issues that she had experienced earlier.

Ms. Regush provided her perspective on how the Petitioner had not met its "burden of proof" to justify the Protective Order being requested and how the need for transparency should factor in denying the Motion.

There were no questions for Ms. Regush.

Deliberations

Commissioner Chang requested procedural clarification on how the hearing schedule might be arranged if an additional hearing was required for the Motion for Protective Order. Mr. Orodenker responded that the matter could be heard on January 27, 2021 if it could not be resolved today.

Upon request by the Chair regarding the scheduling, DAG Lau noted that the matter may proceed without delay as Intervenor had indicated he had nothing further to file.

Mr. Yuen stated that he did not need any additional time and County and OP stated that they had no objections.

Commissioner Chang thanked the Parties for their cooperation and stated her readiness to move on to consider the Intervenor's Motion.

Commissioner Wong moved to grant the Intervenor's Motion for Leave. Commissioner Cabral seconded Commissioner Wong's motion.

Chair Scheuer opened the floor to discussion.

Commissioner Wong shared why he decided to make his motion to grant Intervenor's Motion for Leave. Commissioner Cabral added her support for Commissioner Wong's motion.

There was no further discussion and Chair Scheuer directed Mr. Orodener to poll the Commission. By a roll call vote, the Commission unanimously voted to grant Intervenor's Motion (8-0).

Chair Scheuer moved on to have the Commission Consider Petitioner HG Kauai Joint Venture, LLC's Motion for Protective Order and called for Petitioner to make its presentation.

PETITIONER MOTION FOR PROTECTIVE ORDER

Mr. Yuen argued why his Motion for Protective Order should be granted by the Commission and described the security and confidentiality concerns that his client had over the financial data being provided to the Commission that would become public information.

Commissioner Okuda extensively requested clarification on why a Protective Order was necessary and what the legal basis was involved that would empower the Commission to approve its use.

Chair Scheuer declared a recess at 9:57 a.m. and reconvened the meeting at 10:10 a.m. and allowed Commissioner Okuda to resume his questioning.

Commissioner Okuda requested additional clarification on the legal authorities involved that would allow the LUC to impose the Protective Order.

Commissioners Ohigashi, Chang and Wong requested clarification on how Mr. Yuen would redact information on his filings, how critical financial information related to the viability of the project could be studied or reviewed, and how the Commission was expected to participate in protecting or withholding information during the proceedings on this docket.

There were no further questions for Petitioner. Chair Scheuer called for County.

COUNTY

Mr. Donahoe described how County would appreciate a clear description of how the proposed project would be financed and argued why County was interested in reviewing the financial data and inquired how providing the financial information could be detrimental to Petitioner.

Commissioner Okuda and Chang requested clarification on whether the County had signed a stipulation on this matter and what County's position was. Mr. Donahoe responded that he was not aware of County's agreeing to a stipulation on the Protective Order and that County was interested in how the proposed project would be financed.

There were no further questions for County. Chair Scheuer called for OP's presentation.

OP

Ms. Apuna stated that OP had originally agreed to the stipulation but was withdrawing its support for the Protective Order after hearing the newly presented arguments and took no position.

Chair Scheuer sought clarification on how OP perceived the gravity of the Petitioner's financial ability to meet its representations and the public's interests and "right to know" in assessing the viability of the proposed project.

Commissioner Okuda requested clarification on what amount of information needed to be provided to the Commission and to the Public and sought the legal references that might apply to require those disclosures.

There were no further questions for OP.

Chair Scheuer declared a recess at 11:04 a.m. and reconvened the meeting at 11:15 a.m. and entertained final statements from the Parties and comments/questions from the Commission.

Commissioner Giovanni asked to verify that public testimony on the Motion for Protective Ordered had been completed. Chair Scheuer acknowledged that it was and opined how the Office of Information Practices might consider offering training classes to prepare/educate citizens on how to participate in virtual meetings.

CLOSING STATEMENTS

Petitioner

Mr. Yuen summarized his argument for his Motion and described how it was in the LUC's discretion to grant the Protective Order and how it was still premature to provide information on construction financing to the Commission and that additional testimony would be presented at subsequent hearings on this matter.

County

Mr. Donahoe argued and cited the legal authorities that supported County's interests in receiving the Petitioner's financial information in order to better assess the proposed project.

OP

Ms. Apuna stated that she had nothing further to add.

Intervenor

Mr. Collins argued how the financial information under discussion was highly relevant in evaluating the proposed project and opined how the duty of the Commission, OP and County authorities should include ensuring that such vital information be publicly accessible.

DELIBERATION

Commissioner Giovanni moved to deny the Motion for Protective Order. Commissioner Cabral seconded the Motion.

Commissioners Giovanni and Cabral shared their reasons for denying the Motion.

Commissioner Okuda stated that he would support Commissioner Giovanni's motion and shared how the Petitioner had not convinced him with the evidence presented.

Commissioner Wong commented that he was still weighing the privacy issues presented by Petitioner against the public's right to know.

Chair Scheuer stated that he also shared Commissioner Wong's predicament.

Commissioner Chang shared her concerns about how other similar proposed project representations had failed to be honored and how full disclosure and gaining the community's trust was important to successful projects; and stated her support for the motion.

Commissioners Ohigashi and Aczon described how their concerns were similar to Commissioner Wong's and how difficult it was to achieve a suitable "balance" on this issue.

Commissioner Okuda described why he felt a Protective Order was not warranted and how alternate methods to ensure project completion such as a performance bond might be considered. Discussion ensued on the use of a performance bond or re-visiting the Commission with updated information. Chair Scheuer sought and received acknowledgement from DAG Lau on the propriety of the discussion as it related to the original motion.

Commissioner Giovanni clarified his intentions with making the original motion and provided further details on how concerns about financial ability could be addressed if his motion carried.

Chair Scheuer commented that he saw no harm with the denial of Petitioner's Motion and noted that Petitioner could always re-visit this issue with the Commission in the future if necessary.

VOTE

There was no further discussion and Chair Scheuer directed Mr. Orodener to poll the Commission. By a unanimous roll call vote, the Commission unanimously voted to deny Petitioner's Motion for Protective Order (8-0).

Chair Scheuer stated that OP had an announcement to make.

Ms. Apuna commented that she had accepted a new assignment and would no longer be appearing before the Commission anymore.

All the Commissioners expressed their Aloha and Mahalo to Ms. Apuna and wished her the best on her new assignment.

Chair Scheuer asked if there was any further business for the Commission to address. There was none.

The meeting was adjourned at 11:58 a.m.