

LAND USE COMMISSION
MEETING MINUTES

February 24, 2021 – 9:00 a.m.

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

PLACE: Zoom Webinar Virtual Meeting
Meeting Link for Wednesday, February 24, 2021

https://us02web.zoom.us/webinar/register/WN_uaM4mMeOT3eZCfjj6itgg

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) Gary Okuda
Jonathan Scheuer
Arnold Wong
Dawn N. S. Chang
Lee Ohigashi
Dan Giovanni
Nancy Cabral
Edmund Aczon

COMMISSIONERS EXCUSED:

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

STAFF PRESENT:

(Attending via ZOOM conference media) Daniel Orodener, Executive Officer
Lauren Chun, Deputy Attorney General
Scott Derrickson, Chief Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha A. Quiñones, Program Specialist

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 all the Commissioners acknowledged their presence and that they were able to communicate via the ZOOM program.

APPROVAL OF MINUTES

Chair Scheuer stated that the first agenda item was the approval of the Feb 10-11, 2021 minutes and asked if there had been any public testimony submitted and if there were any corrections to be made. There was no public testimony and no corrections to be made. Commissioner Nancy Cabral moved to adopt the minutes. Commissioner Wong seconded the motion. There was no discussion.

By a show of hands, the February 10-11, 2021 minutes were approved unanimously (8-0).

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

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the tentative meeting schedule from March to June 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- A18-806 BARRY TRUST (HAWAII)

Chair Scheuer stated this was an action meeting to Consider Amended Petition to Amend the Land Use District Boundary of Certain Lands Situated at Keaau, Puna, County and State of Hawaii, Consisting of 0.51 acres from the Conservation District to the Agricultural District Tax Map Key No. (3) 1-5-059:059

APPEARANCES by:

Derek Simon, Esq., and Alicia Fung, Esq. represented Petitioner (Barry Trust)

Mrs. Monica Barry, Barry Trust

Brian Yee, Esq., Deputy Attorney General represented the Office of Planning (OP)

Rodney Funakoshi, Land Use Administrator, OP

Aaron Setogawa, Planner OP

John Mukai, Deputy Corporation Counsel County of Hawai'i (COH)
Zendo Kern, Planning Director, COH
Maija Jackson, Division Managers COH

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

Chair Scheuer asked Mr. Simon if he had reviewed HAR 15-15-45.1 with regard to the reimbursement of hearing expenses. Mr. Simon responded that Petitioner was aware of the policy on reimbursements and agreed to abide by it.

Chair Scheuer asked if there were any disclosures.

Commissioner Cabral disclosed that approximately 20yrs ago she was appointed by 3rd Circuit Court Judge Nakamura to handle a temporary master receivership and was the property manager for 8,635 lots in Hawaiian Paradise Park for approximately 6 years but felt that she could be fair and impartial in this docket.

Chair Scheuer asked if there were any objections. There were none.

Chair Scheuer asked if any written public testimony had been submitted. There was none.

Chair Scheuer asked if there were any meeting attendees who wished to testify. There were none.

Chair Scheuer asked if there were any further Exhibits in addition to the written filings. There were none.

PRESENTATION BY PETITIONER

Chair Scheuer asked Mr. Simon to proceed with the Petitioner's Presentation.

Mr. Simon provided the background and history of the Hawaiian Paradise Park subdivision where the petition area is located and why the District Boundary Amendment Petition was being requested.

Mr. Simon called on Mrs. Barry to provide more information on how the Petition Area would be developed and used for agriculture.

Chair Scheuer asked the Commission if there were any questions for the Witness.

Commissioner Chang requested clarification on the Public's right of access to the shoreline and how lateral access to the shoreline would be affected.

Chair Scheuer declared a recess at 9:59 a.m. and reconvened the meeting at 10:10 a.m.

Commissioner Okuda sought clarification on the Barry's application of due diligence in acquiring the property, what their understanding was of its Conservation district land use designation and whether other properties in the area had agricultural activities or if they appeared to be single family dwellings.

Commissioner Okuda also expressed his concerns about the lack of County enforcement regarding agricultural use in the area.

Chair Scheuer asked the Witness if they had considered representing themselves on this matter. Ms. Barry responded that her preference was to have professional legal representation.

Redirect

Mr. Simon had Ms. Barry provide additional information on the access to the shoreline from her property, the suitability of the Petition Area for agricultural use and how she would pursue agricultural activities if the boundary amendment was approved.

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

County of Hawai'i.

Mr. Mukai stated County's position and offered COH Director Kern to provide additional information on the Petition Area for the Commission.

Mr. Kern clarified how a 40ft shoreline setback would protect the lateral movement along the coast for the public where the Barry property was located.

Questions for Mr. Kern.

Commissioners Okuda and Chang requested clarification on how the County enforced commercial agricultural requirements and whether the shoreline setback and a provision for unobstructed lateral movement along the shoreline needed to be included as a condition to prevent obstruction of public access.

Commissioner Cabral shared her experiences in accessing the shoreline in and around the Petition Area.

Commissioners Ohigashi, Okuda and Chair Scheuer requested clarification on the agricultural activity in the surrounding area and how it was monitored and enforced, what the County permitting process involved, and how LUC conditions would be overseen by the County.

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

Office of Planning

Mr. Yee stated that OP had erred and requested to admit several Exhibits into the record before beginning OP's presentation.

Chair Scheuer asked if there were any objections. There were none.

Mr. Yee waived his opening statement and offered Mr. Funakoshi as a witness.

Mr. Funakoshi described how OP had recommended approval of the Petition with two conditions.

Questions for Mr. Funakoshi.

Commissioner Okuda requested clarification on OP's definition of a farm dwelling and how related applicable laws were interpreted.

Chair Scheuer asked if there were any further questions. There were none.

Chair Scheuer declared a recess at 10:57 a.m. and reconvened the meeting at 11:07 a.m.

Chair Scheuer asked the Commissioners and the parties if they had any objections to entering the corrected Exhibits to the record. There were none.

Closing arguments.

Mr. Simon thanked the Commission and summarized why the LUC should grant the Amended Petition to Amend the Land Use District Boundary from the conservation district to the agricultural district.

Commissioner Wong asked Mr. Simon if the Petitioner agreed with the conditions set by the Office of Planning. Mr. Simon affirmed Petitioner's agreement with the OP conditions.

Commissioner Okuda sought further explanation from Mr. Simon about what he thought were some conflicting points on the use of the land.

Mr. Simon clarified Petitioner's testimony and reaffirmed their commitment and understanding of the representations made to the Commission.

Commissioner Cabral stated her position on this matter.

Chair Scheuer asked if there were any other questions. There were none.

Mr. Mukai had no further comments to add.

Mr. Yee provided OP's closing argument in support of the reclassification.

Mr. Simon had no rebuttal.

Chair Scheuer concluded the evidentiary portion of the proceeding and provided the document filing timetable to the Parties .

Chair Scheuer declared the meeting adjourned at 11:28 a.m.