

LAND USE COMMISSION
MEETING MINUTES

December 3, 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
Thursday, December 3, 2020
Meeting Link for Thursday, December 3, 2020

https://us02web.zoom.us/webinar/register/WN_7rdX2C42RAOpeDPYdu3WPO

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

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

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Melissa Goldman, Deputy Attorney General
(DAG)
Bill Wynhoff, DAG
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus
(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 the first agenda item was the approval of the November 18, 2020 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 Cabral moved to approve the minutes. Commissioner Ohigashi seconded the motion. There was no discussion. By a roll call vote, the November 18, 2020 minutes were approved unanimously (7-0)

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

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the tentative meeting schedule from December 30, 2020 to March 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.

Commissioner Giovanni requested confirmation on whether the future meetings in 2021 would be using a virtual or live format. Mr. Orodenker responded that it would depend on the government proclamations issued in response to the pandemic conditions in the coming months. Commissioner Giovanni commented on how useful the virtual meetings had been and encouraged using that format whenever possible. Chair Scheuer requested that LUC staff have a future agenda item scheduled to address virtual, live and "hybrid" future LUC meeting needs and how it relates to the Office of Information Practices' new legislation addressing Chapter 91 and 92 issues. Mr. Orodenker affirmed that the topic will be included on the agenda for a future LUC Meeting.

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

ACTION – A11-791 HG Kaua`i 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 – Consider Likoolani Martin, Wailua-Kapa`a Neighborhood Association and Sierra Club Kaua`i s Petitions To Intervene in Docket No. A11-791 and any other Petitions to Intervene that may be timely filed

Chair Scheuer stated that this was an action meeting on Docket No. A11-791 Kapa`a Highlands Phase II (HoKua Place LLC) to Consider Likoolani Martin, Wailua-Kapa`a Neighborhood Association and Sierra Club Kaua`i s Petitions To Intervene in Docket No. A11-791 and any other Petitions to Intervene that may be timely filed

APPEARANCES by:

William Yuen, Esq., HG Kaua`i Joint Venture LLC's (HG) Representative
Chris Donahue, 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
Liko Martin, Potential Intervenor

Chair Scheuer updated the record, described the procedures for the hearing and asked if Mr. Yuen had been advised of the LUC reimbursement policy and whether his client would comply with it. Mr. Yuen acknowledged that he had been advised and that his client would abide by it. There were no questions or comments on the procedures.

Chair Scheuer asked if there were any Public Witnesses who wished to testify on the Potential Intervenor's Petition to Intervene.

PUBLIC WITNESSES

1. Rayne Regush

Ms. Regush stated her support for Potential Intervenor Liko Martin.
There were no questions for Ms. Regush.

2. Briget Hammerquist (testified using audio only)

Ms. Hammerquist voiced her support for Potential Intervenor Liko Martin and shared how she felt Mr. Martin could help bring attention to her concerns about water delivery to the Petition Area and how the EIS for the proposed project had failed to disclose additional planned development nearby.

There were no questions for Ms. Hammerquist. Chair Scheuer disclosed that he knew Ms. Hammerquist from work he had done before. There were no objections raised to this disclosure.

There were no other public witnesses.

Chair Scheuer stated that Liko Martin was the only Intervenor who had filed documents with the Commission and called for Mr. Martin to make his presentation.

PRESENTATIONS

Intervenor

Intervenor Martin described his motivation for filing his Petition to Intervene in this docket matter and argued why he should be allowed to participate in the proceedings as an Intervenor.

Commissioners Chang, Giovanni, Wong, Cabral, Okuda and Chair Scheuer requested clarification on Mr. Martin's familial connection to the Petition Area, his participation in the Environmental Impact Statement (EIS) preparation process, his concerns about traffic, water, cultural issues and other topics of concern with the development of this proposed project in the area, what information resources would be relied upon to provide information during the proceedings if he was admitted as an Intervenor, his willingness to cooperate with the public testifiers Ms. Regush and Ms. Hammerquist on mounting an intervention effort, how "Hawaiian National usage" could be defined and applied to the proposed intervention, what cultural practices might be involved; and whether he would accept the assistance offered by the representatives of the Sierra Club and Neighborhood Association. Chair Scheuer also disclosed that he knew Mr. Martin's mother from earlier work he had performed. (There were no objections to this disclosure.)

Chair Scheuer declared a recess at 9:55 a.m. and reconvened the meeting at 10:05 a.m.

There were no further questions or comments for Mr. Martin. Chair Scheuer called for Petitioner's presentation.

Petitioner

Mr. Yuen stated his objection to the Potential Intervenor and argued why Mr. Martin's Petition to Intervene should not be granted by the Commission.

Commissioners Chang, Okuda, Ohigashi and Chair Scheuer requested clarification on what Mr. Yuen's position was on the Intervenor's rights and privileges; what Petitioner's objections were in regards to Native Hawaiian rights, the legal

applicable standards of review and intervention that should be applied in this matter, the limits of the areas of intervention that would be involved if Mr. Martin were admitted, whether Petitioner felt that Intervenor would not follow the direction of the Chair, whether Petitioner felt that County would not adequately represent the concerns that were mentioned in the filed Petition to Intervene, and how Petitioner might address issues of Constitutionality, sovereignty and title issues with the proper documentation.

Mr. Yuen described why Petitioner was concerned about the breadth of the Petition to Intervene and shared the areas of that he felt Intervenor should not be allowed to contest if admitted. Mr. Yuen did not feel that Mr. Martin would disrupt the proceedings and argued that if admitted, Intervenor should be limited to matters that were within the Commission's jurisdiction.

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

County

County stated that it had no objection to the Petition to Intervene.

Commissioner Cabral questioned if County was open to all aspects of the proposed intervention. Mr. Donahue responded that County was.

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

OP

Ms. Apuna stated that OP had no objections to the Petition to Intervene, described the areas of concern that OP thought the intervention would cover, and questioned how much time the Intervenor would need to prepare its case for the proceedings, if admitted.

Commissioner Chang requested clarification on how OP expected the proceedings to operate if the Intervention was granted. Ms. Apuna described the areas of contention that OP thought the Intervenor would include in its case and discussed how the LUC Chair could govern the meeting to control the scope and direction of the proceedings, as needed.

Chair Scheuer sought clarification from Mr. Martin on how much time he would need to prepare his case. Mr. Martin responded that it might take him until February/March 2021 to be ready, particularly because he would still need to find and retain legal counsel, if possible.

Commissioner Ohigashi voiced his concerns about how the Intervenor's time demands for preparation might affect the Commission's schedule of proceedings in the matter. Mr. Martin argued that he needed time to communicate and coordinate his efforts with the Sierra Club and Wailua Neighborhood Association and to review the Petitioner's documents (which he had not yet received).

Commissioner Wong moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities with regards to granting an extension of time for the Intervenor if the Petition to Intervene is to be granted. Commissioner Ohigashi seconded the motion.

There was no discussion. By a roll call vote, the Commission unanimously voted to enter Executive Session (7-0-1 excused).

The Commission entered Executive Session at 10:43 a.m. and reconvened the public meeting at 11:25 a.m.

Chair Scheuer asked if there were any final questions.

Commissioner Chang asked Petitioner to clarify the areas that it did not want the Intervenor to include in its intervention.

There were no further questions.

DISCUSSION

Chair Scheuer sought the pleasure of the Commission.

Commissioner Ohigashi moved to both grant the Petition to Intervene and also that Mr. Martin should file his motion to continue if an extension of time is still required, at the January 6-7, 2021 LUC meeting on this matter. Commissioner Chang seconded the Motion.

Commissioner Okuda spoke in favor of the Motion and expressed his confidence in Chair Scheuer's ability to manage the proceedings.

Commissioner Ohigashi agreed with Commissioner Okuda and noted that the Parties should keep in mind the limited jurisdiction that the Commission has; Commissioner Ohigashi then restated that his Motion contained the expectation that Intervenor would file a Motion for Continuance at the January 6-7, 2021 meeting and instructed the (potential) Intervenor to check with LUC staff for further details.

Commissioner Chang commented that the Intervenor should remember that if admitted, Intervenor would be held to the same standards as the Parties even if no counsel was engaged to represent him.

Commissioner Wong stated his reluctant support for the Motion and shared his expectation for a better presentation from Intervenor.

Commissioner Giovanni stated his support and shared his reasons why.

Commissioner Cabral expressed her concerns about not limiting the areas of intervention and how the proceedings could be negatively impacted without those restrictions.

Commissioner Wong described the concerns that LUC staff had with the filing schedule for documents and to properly prepare the agenda for the January 6-7, 2021 meeting if the Petition to Intervene were granted.

Chair Scheuer called on Mr. Orodener to provide the document filing schedule involved if intervention were granted. Mr. Orodener noted that in order for the agenda notice for the January 6-7, 2021 meeting to be timely distributed, documents needed to be filed by no later than December 28, 2020.

Chair Scheuer stated his support for the Motion and suggested that the Intervenor consider obtaining counsel to assist him during the proceedings.

There were no further comments.

VOTE

Chair Scheuer had Mr. Orodener poll the Commission.

The Commission voted as follows:

Ayes: Commissioners Ohigashi, Chang, Wong, Okuda, Giovanni and Chair Scheuer.

Nays: Commissioner Cabral

The Motion passed (6 ayes -1 nay -1 excused)

Chair Scheuer noted that a written order on this matter would be forthcoming.

Mr. Yuen requested clarification on whether the document filing schedule would be altered. Mr. Orodener responded that the original deadlines that were issued would still apply until the Intervenor's expected Motion for Continuance is heard in January.

Commissioners Giovanni and Cabral expressed their thanks and appreciation to Petitioner and Intervenor.

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

The meeting was adjourned at 11:47 a.m.