

LAND USE COMMISSION
MEETING MINUTES
April 28-29, 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
Meeting Link for Wednesday, April 28, 2021

(https://us02web.zoom.us/webinar/register/WN_u3GuTHXjQZ6NBFMt3a-27A)

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 (arrived at 9:49 a.m.)
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) Julie China, Deputy Attorney General (DAG)
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha Quinones, Program Specialist

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

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:43 a.m. after technical videoconferencing capacity issues were resolved (7 Commissioners present).

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 although the first agenda item was the approval of the April 14-15, 2021 minutes, LUC staff was unable to have them ready for approval due to the high volume of public testimony intake for the IAL agenda item today. The minutes are expected to be ready by the next LUC meeting.

Commissioner Giovanni joined the meeting at 9:49 am. (8 Commissioners present)

Chair Scheuer moved to the next agenda item and called for Mr. Orodener to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

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

A07-772- A&E PROPERTIES, INC. (MAUI)- MOTION FOR EXTENSION

Chair Scheuer stated that the next agenda item was an action regarding Docket No. A07-772 A&B Properties, Inc. (Maui) To Consider Motion for Order to Extend Time in Docket No. A07-772 in which the Commission granted the reclassification of approximately 94.352 acres of land from the Agricultural District to the Urban District at Waiakoa, Maui, for single- and multi-family residential units, and commercial services at TMK Nos. 3-8-04: por. 2, por. 22, and por. 30.

Chair Scheuer asked if there was any written testimony in this matter. There was none.

APPEARANCES:

Benjamin Matsubara & Curtis Tabata, Esq., representing A & B Properties Hawaii, LLC
Michael Hopper, Deputy Corporation Counsel, County of Maui Dept. of Planning
(County)

Jordan Hart, Deputy Director, County
Michelle Mc Lean, Director, County (joined the meeting at 10:39am.)
Brian Yee, Esq., Deputy Attorney General, Office of Planning (OP)
Alison Kato, Esq., Deputy Attorney General (OP)
Rodney Funakoshi, Land Use Administrator, (OP)

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. Matsubara if Petitioner had reviewed HAR 15-15-45.11 with regards to reimbursement of LUC expenses. Mr. Matsubara acknowledged that he had, and that Petitioner would comply.

Chair Scheuer asked if there was any written testimony. There was none.

Chair Scheuer asked if there were any members in the audience who wished to testify.

PUBLIC TESTIMONY

1) Grant Chun

Mr. Chun provided comments about the need for rental housing on the island of Maui.

Questions for the Witness

Commissioner Cabral thanked Mr. Chun for his dedication to housing in Maui.

There were no questions for the Witness.

PETITIONER'S PRESENTATION

Mr. Matsubara argued why A&B properties Hawaii, LLC should be recognized as a successor petitioner to A& B properties Inc. and why an extension to conditions 22 &23 of the Docket No. A11-790 Decision and Order from 2009 was necessary.

Petitioner Witnesses

Mr. Matsubara called his witnesses.

- 1) Natalie Kiehm – Kamalani's Project Team Leader for A&B Properties Hawaii, LLC. Ms. Kiehm described the difficulties that the project encountered with the conforming to the County community plan amendment and zoning requirements.

Questions for Ms. Kiehm

County and OP had no question for the witness.

Commissioner Okuda sought confirmation of successor Petitioner's financial solvency to carry out the promises made to the community.

There were no further questions for Ms. Kiehm.

Mr. Matsubara offered his next witness, Mr. Michael Hamasu .

2) Michael Hamasu- Market and Economy Analyst

Mr. Hamasu provided a summary on the impacts of the COVID pandemic on Maui's residential housing market and how Maui's economy was expected to recover in the future.

Questions for Mr. Hamasu

County and OP had no questions for the witness.

Commissioner Giovanni requested clarification on the applicability of the Collier market study to the rest of the state of Hawaii.

Commissioner Ohigashi sought further details on the delays encountered by the project and on the request for extension.

Chair Scheuer inquired on the percentage of units acquired by Maui and Hawaii residents.

Commissioner Ohigashi had further questions on the amount of additional time needed for this project.

There were no further questions for Mr. Hamasu and Mr. Matsubara had no further witnesses.

Mr. Matsubara continued his argument on how Petitioner's proposed changes to Condition 23 were intended to make the decision and order language consistent with recent changes in statute 205-4G and case law.

Commissioner Okuda shared his concerns about undermining the doctrine of finality of orders requested additional clarification on the reasons for requesting this change.

There were no further questions.

Chair Scheuer called on the County for its presentation.

COUNTY'S PRESENTATION

Mr. Hopper stated that the County supported the time extension and the amendment of Condition 22 and had no position regarding to Condition 23.

Questions from Commissioners

Commissioner Ohigashi asked if the County had objections to an additional extension of time from February 20, 2029 to 2031. Mr. Hopper did not offer a position.

Commissioner Cabral asked if the county had recognized the ongoing housing problem in relation to delays with the County permitting process.

Ms. McClean joined the meeting at 10:39am.

Chair Scheuer sought clarification on County's position regarding Commissioner Ohigashi's question on granting more than the requested additional extension of time. Ms. McClean responded that County had no objection.

There were no further questions for the County.

Chair Scheuer declared a recess at 10:42am and reconvened the meeting at 10:52am.

OP'S PRESENTATION

Chair Scheuer called on Office of Planning for its Presentation.

Mr. Yee stated that although OP supported the Motion and had no objections to the proposed Condition 22 and the extension to 10 years, OP had a strong position based on the concept of finality of an order and did not support Petitioner's proposed change to Condition 23.

Questions from Commissioners

Commissioner Okuda requested clarification on the standard of review to grant Petitioner's request for extension of time and to grant the change in language for Condition 23.

Commissioner Chang shared her concerns on the ramifications of accepting the proposed changes in Condition 23.

There were no further questions.

PETITIONER'S FINAL COMMENTS

Mr. Matsubara provided his final comments and argued how the witnesses and Exhibits submitted had provided sufficient evidence to grant the motion for extension and to support the changes to Condition 23.

There were no further questions.

FORMAL DELIBERATIONS

Chair Scheuer explained the procedure of deliberation and confirmed with all the Commissioners by a roll call that they were prepared to deliberate on this matter.

Commissioner Ohigashi moved to authorize the substitution of parties as requested by Petitioner, to grant the time extension to April 28, 2031, to amend Condition 23 as proposed by OP, to authorize LUC staff to make non-substantial changes to order as needed and to authorize Chair to sign the order. Commissioner Cabral second the motion.

Commissioner Ohigashi spoke to the motion.

Commissioners Wong, Okuda, Aczon, Giovanni, Chang and Chair Scheuer provided their comments.

Chair Scheuer asked Mr. Orodener to poll the Commission by roll call. The Motion passed unanimously with 8 affirmative votes.

Chair moved to the next agenda item.

C&C OF HONOLULU IAL RECOMMENDATION

Chair Scheuer stated that the next Agenda item was an Action regarding the CONFORMANCE OF C & C OF HONOLULU IMPORTANT AGRICULTURAL LANDS (IAL) RECOMMENDATION TO APPLICABLE STATUTORY AND PROCEDURAL REQUIREMENTS To consider whether the City and County of Honolulu recommendations for the designation of Important Agricultural Lands on the Island of Oahu complies with the requirements of Sections 205-47, 205-48 and 205-49 Hawaii Revised Statutes and whether the proper procedural, legal, statutory and public notice requirements were met in developing the recommendations.

APPEARANCES:

Dawn Apuna, Deputy Director, Department of Planning (DPP)
Raymond Young (DPP)
Dina Wong, (DPP)
Alison Kato, Esq., Deputy Attorney General, Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator (OP)
Earl Yamamoto, Planner, Department of Agriculture (DOA)

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures.

Ms. Apuna had a question about the procedures. There were no more questions.

Chair Scheuer asked if there were any disclosures from the Commissioners.

Commissioner Okuda stated that due to his firm representing landowners whose properties were subject to the IAL petition, he was recusing himself from the IAL matter to avoid any appearance of potential bias.

Commissioner Chang opined on the issue of quorum and conflict of interest on this matter.

There were no further disclosures.

PUBLIC TESTIMONY

Chair Scheuer stated that he would first follow the written testimony list and later allow the other public participants to provide verbal testimony.

For brevity, the minutes will provide a list of the witnesses in the order they testified. "Supports" notation indicates that testimony was in support of the County's IAL process. "Opposes" notation indicates that testimony was against the County's IAL process. "Other" notation indicates that the testimony was unclear. (Parentheses indicate organizational representation)

1. Wendy Yee- Blue Ivory Hawaii, Corp. Opposes
2. Bronson Azama (Kainoa), landowner. Supports
3. Sylvia Chiappetta, landowner. Opposes

Chair Scheuer declared recess at 12:11 p.m., reconvened the meeting at 12:40 p.m. and continued with Public Testimony.

4. Mieko Yamamoto, landowner. Opposes
5. Linda Baptiste, landowner. Opposes
6. Yvonne Watarai, landowner. Opposes
7. John Foti, landowner. Opposes
8. Diana Young, landowner. Opposes
9. Robert Cherry, landowner. Opposes
10. Michelle Correia, representing landowner. Opposes
11. Joshua Ramos & Caridad Leiva, landowner. Opposes
12. Nodie Namba, landowner. Opposes

Chair Scheuer declared recess at 1:41 p.m. and reconvened the meeting at 2:51 p.m.

Commissioner Aczon excused himself from the meeting with the Chair's permission after the break. (6 Commissioners present)

13. Alexander Garber, landowner. Opposes
14. Joann Robello, landowner. Opposes

15. Nicholas Ernst, attorney. Opposes
16. Jennifer Ballera, landowner. Opposes
17. Michael Wright, landowner. Opposes
18. Jennifer Ballera, landowner. Opposes
19. Michael Wright, landowner. Opposes
20. Shirley Simao, landowner. Opposes
21. Randall Sakumoto, attorney. Opposes
22. Ana Murray, landowner. Opposes
23. Gene Dumarán, landowner. Opposes
24. Racquel Achiu, landowner. Opposes

Chair Scheuer declared recess at 2:55 p.m. and reconvened the meeting at 3:05 p.m. and continued Public Testimony.

25. Mary Tubbs and Ron Tubbs, landowner. Opposes
26. Tameria Kelley-Cobbin, landowner. Opposes
27. Sharlette Poe, Neighborhood Board (“NHB”) Chair. Opposes
28. Mahealani Cypher, landowner. Opposes
29. Jeff Bloom, farmer. Opposes
30. Samuel Campbell, landowner. Opposes
31. Michael Pietsch, landowner. Opposes
32. Melissa Ginella, landowner. Opposes
33. Sean Anderson- landowner. Opposes
34. Ken Church- public. Opposes
35. Alisa Keamo- landowner. Opposes
36. Sandra Van- landowner. Opposes
37. Bruce Hart- landowner. Supports
38. Primrose Leong- property manager of HIDC Poamoho Camp. Opposes
39. Charles Kelley- landowner. Opposes
40. Gordon Aken- landowner. Opposes
41. Phillis Dudoit- landowner. Opposes

Commissioner Giovanni and Chang thanked the Chair for efficiently managing the large volume of Public Testimony in this matter.

Chair Scheuer thanked all the witnesses for participating in this matter, restated the purpose for this meeting and declared recess at 4:29 p.m. until 9:00 a.m. on April 29, 2021.

LAND USE COMMISSION
MEETING MINUTES

April 28-29, 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
Meeting Link for Thursday 29, 2021

https://us02web.zoom.us/webinar/register/WN_7B5qmx9WTBu5zbNdaC6xhQ

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
Arnold Wong
Dawn N. S. Chang
Dan Giovanni (arrived at 9:35 a.m.)
Lee Ohigashi
Edmund Aczon (left at 12:48 p.m.)

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

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

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

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:02 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program. (6 Commissioners present)

Chair Scheuer confirmed with Commissioners Wong and Aczon that they have reviewed the record for the portions of the meeting that they had missed.

Chair Scheuer stated that this was a continuation of the meeting for City and County's Recommendations for the IAL and that the Public Testimony portion of the meeting had closed. He also described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

APPEARANCES:

Dawn Apuna, Deputy Director, Department of Planning (DPP)

Raymond Young (DPP)

Dina Wong, (DPP)

Alison Kato, Esq., Deputy Attorney General, Office of Planning (OP)

Rodney Funakoshi, Land Use Administrator (OP)

Earl Yamamoto, Department of Agriculture (DOA)

C&C OF HONOLULU'S PRESENTATION

Ms. Apuna provided a Power Point presentation about the meaning, significance, benefits and process requirements of the City and County of Honolulu's Recommendation of IAL. She further explained the focus group meetings, 3 priority criteria and notices to landowners.

Commissioner Giovanni joined the meeting at 9:35 am (7 Commissioners in attendance).

Questions from Commissioners

Commissioners Wong and Chang requested clarification on the dates of the IAL meetings and reports, percentage of landowner objections, County's versus the LUC's role on the IAL matter, the total number of acres and the overall objective of IAL designation. Commissioners also expressed their concerns about the landowner notifications, the process to opt out, the lack of site visits by the County, lands that exceed 20% slope and parcels which were too small being included.

Chair declared a recess at 10:15 a.m. and reconvened the meeting at 10:25 a.m.

Commissioner Giovanni, Aczon, and Ohigashi requested further clarification on the criteria applied to the IAL designations, the process of opting in and out and the Technical

Advisory Committee (TAC) group's role in assembling and production of the Final IAL Recommendation to the Planning Commission.

Commissioner Cabral expressed her concerns about how the notification letters were distributed.

Chair Scheuer declared a recess at 11:33 a.m. and reconvened the meeting at 12:15 p.m.

Commissioner Giovanni requested clarification on the development of the criteria and why the interpretation of the criterion was exclusionary instead of inclusionary and what County enforcement actions would be for noncompliance.

Commissioner Chang requested clarification on the two ways for IAL designation process (voluntary designation or the county recommendation); the public involvement process used (TAC meetings, community meetings, publications, postcards, landowner notifications, city council meetings, focus group meetings, website); the 5% return rate of the mailouts; the requirement of either posting or mail notification; and the misunderstanding that IAL may create a higher requirement for farming.

Chair Scheuer inquired about the current County Leadership's support of the IAL process, the law firm's letter to landowners and the actual effects of IAL on people's property rights.

Chair Scheuer declared a recess at 1:22 p.m. and reconvened the meeting at 1:34 p.m.

Commissioner Wong requested clarification on plantation camps, CPR inclusion, and the various State agricultural lands

Commissioner Giovanni lost access to the virtual meeting due to a power outage in the island of Kauai at 1:44 p.m. (5 Commissioners present).

Discussion followed to clarify what the effects of denying this recommendation would be and about the City merely complying with the statute requirements versus doing a proper outreach to the community.

OP'S PRESENTATION

Chair Scheuer call for the Office of Planning presentation.

Mr. Funakoshi explained OP's position on the IAL designation, the State Sustainability Plan, and described the concerns that OP had expressed in its IAL recommendation.

Questions from the Commissioners

Commissioner Wong requested clarification on how IAL could be used as a planning tool to help with food sustainability.

Mr. Yamamoto (DOA) described DOA's position on the C&C of Honolulu's IAL submittal and why his department felt the process of notification was thorough, though some lands were less than 2 acres.

Commissioner Ohigashi questioned what the date of the last TAC meeting was, if any concerns had been raised and whether any clarification had been provided on tax map key parcels that were less than two acres that had been dedicated to agriculture.

Commissioner Giovanni rejoined the meeting at 2:24 p.m. (6 Commissioners present)

Discussion ensued to assess the proceedings and make determinations on leaving the evidentiary portion of the meeting open for Commissioners to review the record before deliberating and scheduling an Executive Session regarding this matter on a future agenda.

There being no further business to discuss, Chair Scheuer adjourned the meeting at 2:44 p.m.

