

LAND USE COMMISSION
MEETING MINUTES
June 8, 2022 – 9:00 a.m.

Pursuant to Hawai'i Revised Statutes, HRS § 92 as amended, the Commission conducted its meeting in person and remotely by interactive conference technology, with Commission members, Staff and Applicants participating simultaneously online. 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 hybrid meeting using instructions circulated on the meeting agenda.

IN PERSON : State Office Tower, Leiopapa A Kamehameha Building 235 South Beretania Street, Conference Room 405, Honolulu, Hawai'i 96813 noted by (at room # 405, SOT)

VIRTUAL: Zoom Webinar Virtual Meeting. Meeting Link for June 8th, 2022 below:
(https://us02web.zoom.us/webinar/register/WN_ugpwAcfDQyG5ze0w_kF6XA)

COMMISSIONERS PRESENT: Edmund Aczon
(Attending via ZOOM conference media Nancy Cabral
unless indicated otherwise) Gary Okuda (at room # 405, SOT)
Jonathan Scheuer
Arnold Wong (at room # 405, SOT)
Dawn N. S. Chang
Lee Ohigashi
Dan Giovanni
Kū'ike Kamakea-Ōhelo

COMMISSIONERS EXCUSED: None
(9 seated Commissioners as of 05/01/22)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media Julie China, Deputy Attorney General
unless indicated otherwise) Robert Nakatsuji, Deputy Attorney General
(Appellate Division)
Scott Derrickson, Staff Planner (at room # 405, SOT)
Riley Hakoda, Staff Planner (at room # 405, SOT)
Martina Segura, Staff Planner (at room # 405, SOT)
Ariana Kwan

COURT REPORTER: via Naegeli Deposition and Trial
(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. (Seven Commissioners present virtually, and Commissioners Okuda and Wong joined in person.)

APPROVAL OF MINUTES

The first agenda item was the approval of the Minutes for May 25, 2022. Chair Scheuer asked if any public testimony had been submitted and whether any additions or corrections needed to be made. There were no testifiers and no addition or corrections.

Commissioner Cabral moved to adopt the Minutes. Commissioner Wong seconded the motion.

Chair Scheuer asked the Executive Officer to poll the Commission. The Minutes for May 25, 2022 were unanimously approved 8-0-1 abstain (Commissioner Aczon).

Chair Scheuer called for the Executive Officer to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

The Executive Officer described the tentative meeting schedule from June 2022 to September 2022 and cautioned the commissioners to keep the schedule days clear for now, and to contact LUC staff if there were any questions or conflicts.

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

AGENDA ITEM III: DISCUSSION AND ACTION

To appeal Civil No. 3CCV-21-0000178 (Linda K. Rosehill), and the Third Circuit Court's Findings of Fact, Conclusion of Law, Decision and Order Reversing the State of Hawai'i Land Use Commission's Consolidated Declaratory Order.

APPEARANCES:

Julie China, Esq. Deputy Attorney General, Land Use Commission (LUC)

Robert Nakatsuji, Deputy Attorney General, Appellate Division

PUBLIC TESTIMONY

Chair Scheuer was informed by LUC staff that all public testimony received had been posted to the LUC website.

Chair Scheuer identified the public testimony received prior to the hearing, from Contributors:

1. Geri Allison – Support the appeal
2. Cynthia Milani – Support the appeal
3. Steve Lopez – Support the appeal
4. Cindy and Thomas Fisher – Support the appeal
5. Harry M. Pritikin – Oppose the appeal
6. Michael J. Matsukawa – Support the appeal
7. Cory Harden – Support the appeal
8. Richard and Deborah Koval – Oppose the appeal
9. Walter and Kathy Koenig – Support the appeal

Chair Scheuer took virtual public testimony on this matter from:

1. Cory Harden – Support the appeal
2. Merry Anne Stone – Support the appeal
3. Justin Cleveland – Oppose the appeal
4. Tammie Evangelista – Support the appeal
5. David Hefer- Oppose the appeal

Commissioners questioned testifiers to clarify their positions.

Chair Scheuer closed public testimony on this matter.

Commissioner Wong made a motion to go into Executive Session to consult with the commission's attorney on questions and issues pertaining to Civil No. 3CCV-21-0000178 (Linda K. Rosehill). The motion was seconded by Commissioner Ohigashi.

Chair Scheuer asked the Executive Officer to poll the Commission. The motion to go into Executive Session passed unanimously 9-0.

The Commission entered Executive Session at 9:47 a.m. and exited and reconvened into public session at 10:17 a.m.

Chair Scheuer moved on to deliberations.

DELIBERATIONS

Commissioner Wong made a motion to have the LUC's DAGs appeal the reversal of Land Use Commission decision regarding Civil No. 3CCV-21-0000178 (Linda K. Rosehill).

Commissioner Cabral seconded the motion.

Commissioner Wong added a friendly amendment to his own motion to also authorize the Deputy Attorney Generals to seek outside counsel to conduct the appeal.

Commissioner Cabral accepted the friendly amendment.

Commissioners Okuda, Giovanni, Chang, Aczon, and Chair Scheuer commented in support of the motion, and noted the importance of using experienced legal counsel with background knowledge in land use, the need for interdepartmental involvement, and concern regarding the Statewide implications of the matter.

Chair Scheuer asked the Executive Officer to poll the commission. The Motion to instruct the attorney general to move forward with the appeal and retain outside counsel passed unanimously 9-0.

Chair Scheuer proceeded to the next agenda item.

AGENDA ITEM IV DISCUSSION AND ACTION

To file an application for writ of certiorari to appeal the Hawai'i Intermediate Court of Appeals Memorandum Opinion in NOS. CAAP17-0000173 and CAAP-17-0000181. (Ho'omoana Foundation V. Land Use Commission, and Pu'unoa Homeowners Association Inc., and Ross R. Scott.)

APPEARANCES:

Julie China, Esq. Deputy Attorney General, Land Use Commission (LUC)

Robert Nakatsuji, Deputy Attorney General, Appellate Division

Chair Scheuer confirmed with LUC Staff that no written public testimony had been received for this matter and sought public testimony. Seeing none, Chair Scheuer closed public testimony on this matter.

Chair Scheuer asked the Executive Officer to provide background information on this matter.

The Executive Officer described the activities that occurred during the Declaratory Ruling (DR20-70) proceedings and the decisions that led to the current legal action and introduced Deputy Attorney General Nakatsuji.

Commissioner Ohigashi made a motion to consult with Deputy Attorney General Nakatsuji to discuss the boards powers, duties, privileges, immunities, and liabilities related to this appeal.

Commissioner Cabral seconded the motion.

Chair Scheuer asked the Executive Officer to poll the Commission. The motion to go into Executive Session passed unanimously 9-0.

The Commission entered Executive Session at 10:32 a.m., and exited immediately and reconvened into regular session at 10:58 a.m.

DELIBERATIONS

Commissioner Okuda made a motion to recommend, authorize, and direct the deputy attorney general to file a petition or application for writ of certiorari to appeal the Hawai'i Intermediate Court of Appeals Memorandum Opinion in NOS. CAAP17-0000173 and CAAP-17-0000181.

Commissioner Ohigashi seconded the motion.

Commissioner Okuda spoke to the motion and noted the need for clarification created by conflicting legal decisions (Wai'anae Neighborhood Board and Maha'ulepu) cited in the current Intermediate Court of Appeals Decision.

Commissioner Ohigashi spoke in support of the motion and shared why he felt that the Intermediate Court of Appeals Memorandum required an appeal.

Commissioner Giovanni and Chair Scheuer commented in support of the motion.

Chair Scheuer asked the Executive Officer to poll the Commission. The Motion to recommend, authorize, and direct the deputy attorney general to file a petition or application for writ of certiorari to appeal the Hawai'i Intermediate Court of Appeals Memorandum Opinion, passed unanimously 9-0.

There being no further business, Chair Scheuer adjourned the meeting at 11:02a.m.