

LAND USE COMMISSION  
MEETING MINUTES  
May 19, 2022 – 9:00 a.m.

In Person Meeting at: University of Hawaii at HILO  
Campus Center Facility, Room 301  
200 W. Kawili St., Hilo, HI, 96720

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.

COMMISSIONERS PRESENT: Dan Giovanni (Vice-Chair and Presiding Officer)  
(Attending in person) Edmund Aczon  
Nancy Cabral  
Dawn Chang  
Kū‘ike Kamakea-‘Ōhelo  
Lee Ohigashi  
Gary Okuda  
Arnold Wong

COMMISSIONERS EXCUSED Jonathan Scheuer (Chair)

(9 seated Commissioners as of 05/01/22)

STAFF PRESENT: Daniel Orodener, Executive Officer  
(Attending in person) Julie China, Deputy Attorney General (DAG)  
Scott Derrickson, Chief Planner  
Riley Hakoda, Staff Planner  
Martina Segura, Staff Planner  
Natasha Quiñones, Chief Clerk

COURT REPORTER: via Naegeli Deposition and Trial  
(from recorded ZOOM conference media)

**CALL TO ORDER**

Presiding Officer Giovanni called the meeting to order at 9:04 a.m. Chair Scheuer was excused for this meeting. (8 Commissioners present)

**APPROVAL OF MINUTES**

The first agenda item was the approval of the Minutes for May 11-12, 2022. Presiding Officer Giovanni asked if any public testimony had been submitted and if any corrections needed to be made. There was none.

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

Presiding Officer Giovanni asked Mr. Orodener to poll the Commission. The minutes for May 11-12, 2022, were approved unanimously (6-0-2 abstained-1 excused).

Presiding Officer Giovanni called for Mr. Orodener to provide the Tentative Meeting Schedule.

### **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the tentative meeting schedule from May 2022 to July 2022. The Commissioners were cautioned to hold the tentative meeting dates until Staff released them.

Presiding Officer Giovanni moved to the next agenda item.

### **ACTION- DOCKET No. DR21-72 Church/Hildal (Hawaii)**

To Consider Petitioner's Motion for Reconsideration of Order Denying Petition for Declaratory Order and Reimbursement and Waiver of Fees filed March 15, 2022. Pursuant to Hawai'i Administrative Rules ("HAR") section 15-15-84.

### **APPEARANCES:**

Kenneth S. Church, Petitioner

Joan E. Hildal, Petitioner

Commissioner Wong moved to go into Executive Session. Commissioner Aczon seconded the motion.

Commissioner Okuda requested clarification on whether the Executive Session was only to discuss the legal standards to be applied in this case and not to discuss the merits of the motion to be presented.

Presiding Officer Giovanni confirmed that purpose of the Executive Session was to address the legal standards to be applied.

Mr. Church commented on a letter he had received from Mr. Orodener in response to Petitioner's letter regarding a contested case hearing.

Presiding Officer Giovanni urged Mr. Church to keep his comments to the issue at hand (Executive Session). There were no further comments.

Mr. Orodener polled the Commission. The motion to go into Executive Session passed unanimously (8-0-1 excused).

The Commission entered Executive Session at 9:15 a.m. and reconvened into public session at 9:37 a.m.

Presiding Officer Giovanni updated the record, described the procedures for the hearing and asked if there were any questions on the procedures.

Petitioner Mr. Church had concerns with missing items on the record for February 2021.

Mr. Church was advised that the record update began from the last proceeding in March 2021.

Presiding Officer Giovanni asked Mr. Church if he had reviewed and agreed HAR § 15-15-45.11 with regards to reimbursement of LUC expenses. Mr. Church acknowledged that he had and agreed to comply.

### **PUBLIC TESTIMONY**

Presiding Officer Giovanni asked Ms. Quiñones if any written public testimony was received on the matter.

Ms. Quiñones acknowledged that no public testimony was received.

Vice Chair Giovanni then opened the room for public testimony. There was no public testimony on this matter.

Presiding Officer Giovanni declared for the record that Office of Planning and Sustainable Development (OPSD) and County of Hawaii had no further comments from previous hearing and had chosen not to appear.

### **GUIDANCE FOR PRESENTATION**

Presiding Officer Giovanni confirmed that Commissioners had reviewed the record and described the standards that the Commission would use in reconsidering this matter. Mr. Church and Ms. Hildal were advised that their presentation should focus on new information that was not already in the record and that they would have an hour to make their presentation.

Commissioner Okuda requested for someone to read the Standards from the Administrative Rules.

Presiding Officer Giovanni read aloud HAR § 15-15-84(b).

Mr. Church argued that one hour was not enough time and that his presentation included new evidence, staff memorandum errors, declaratory order errors, transcripts of 1969 of LUC hearings and points regarding HRS § 205-2 and objected to the time limitation.

Presiding Officer Giovanni responded that all Petitioner filings had been reviewed by the Commissioners and was ready to hear his presentation within the allotted time.

### **PETITIONER'S PRESENTATION**

Ms. Hildal provided an opening statement with a list of objections to the previous hearing and summarized her points in the areas of:

- property's apparent redistricting in 1969
- Exhibit 2- Boundary Interpretation No. 07-19 (Muragin)
- Exhibit 3- Boundary Interpretation No. 92-48 (McCully)
- Comparison with Docket No. DR99-21 Stengle
- Hamakua Coast as prime agricultural land
- HRS § 205-2
- Exhibit 6- 1969 Boundary Review Report
- Exhibit 9- Quadrangle Maps

Commissioner Chang shared her sentiments about the 1969 Boundary Review report and reminded Petitioner that this was a Motion for Reconsideration and not a reopening of the original hearing and asked Petitioner to focus her presentation to identify what was either an error or an unreasonable or unlawful decision from the last hearing.

Presiding Officer Giovanni called for a recess at 10:29 a.m. and reconvened the meeting at 10:39 a.m.

Ms. Hildal alleged there were errors in law with this case for two specific reasons:

- Petitioner's video feed cut off in the last hearing
- legality of the 1969 Boundary Review

Presiding Officer Giovanni clarified that the disruption problems with the video feed were attributed to Petitioner's poor internet connection and that Petitioner was able to continue with audio to provide and complete their argument.

Ms. Hildal continued with her argument on how the property had incorrectly been put into the Conservation District and described how they had attempted to file a DBA and request for a Boundary Interpretation to resolve the situation.

Commissioner Chang reaffirmed the need for Ms. Hildal to identify the grounds where LUC ruling in error, unlawful or unreasonable.

Ms. Hildal continued to describe why she believed the LUC decision was erroneous.

Mr. Church interjected to provide additional information as Ms. Hildal spoke.

Commissioner Aczon requested that only one of the Petitioners speak the presentation and suggested that Commissioners hold their questions till after the presentation.

Ms. Hildal concluded her presentation by showing agricultural and slope maps, referring to 1969 transcript testimony by William Dagenhart and shared her authoritative HRS, HAR and US Constitution 14<sup>th</sup> Amendment references.

Commissioner Okuda asked Petitioner to confirm that all the evidence that the Commission would need for the Motion for Reconsideration had been provided.

Ms. Hildal asked for clarification about the standard of review for the case, whether it was HAR § 15-15-100 or HRS § 91-10?

Commissioner Okuda asked if she believed that the Commission was biased.

Ms. Hildal stated that she believed that the Commission was misled.

Commissioner Okuda discussed his intent to make a motion to take more time to review the record, applicable statutes, and appellate cases to determine whether a reconsideration should be granted.

Commissioner Cabral confirmed with the Petitioner that the record was complete.

Commissioner Okuda moved to make a three-part motion to include:

1. Defer the Motion for Reconsideration to allow more time for Commissioners to review the record.
2. Petitioner to have the opportunity to submit the statements made during the hearing by c/o/b next Monday May 23, 2022.

3. Staff to schedule an additional hearing for this matter before three of the Commissioners concluded their term on June 30, 2022.

Commissioner Cabral seconded the Motion.

Commissioners Ohigashi, Aczon and Chang stated the reasons why they would vote no to the motion.

Commissioner Okuda spoke further on his motion in an attempt to gather support for his motion.

There was no further discussion on the motion.

Presiding Officer Giovanni stated he would vote no on the motion and asked Mr. Orodener to poll the Commission.

Mr. Orodener took a roll call vote on the motion as stated by Commissioner Okuda. The motion failed to pass (3- 4 -1 excused).

Presiding Officer Giovanni asked if the Commissioners had any other questions or comments. There were none.

#### FORMAL DELIBERATIONS

Presiding Officer Giovanni acknowledged that he and the Commissioners had reviewed the record and were prepared to deliberate.

Commissioner Wong moved to deny the Motion for Reconsideration. Commissioner Aczon seconded the motion.

Commissioner Wong and Aczon spoke to the motion for denial.

Commissioners Ohigashi, Chang, Giovanni and Cabral shared their reasons for supporting the proposed motion.

Presiding Officer Giovanni asked Mr. Orodener poll the Commission. The motion to deny Motion for Reconsideration passed unanimously (8-0-1 excused).

Presiding Officer Giovanni declared recess at 12:12 p.m., reconvened the meeting at 12:17 p.m. and moved to the next agenda item.

EXECUTIVE SESSION

To consult with Commission's attorney regarding 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.

Presiding Officer Giovanni asked Ms. Quiñones if any testimony had been received. There were four testimonies received on this agenda item and Ms. Quiñones confirmed that they were posted to the website.

Commissioner Ohigashi moved to go into Executive Session to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in regard to the Rosehill matter.

Presiding Officer Giovanni asked all Commissioners in favor to raise their hand and say aye. The motion to go into Executive Session passed unanimously (8-0-1 excused).

The Commission entered Executive Session at 12:22 p.m. and exited and reconvened into public session at 1:00 p.m.

Vice Chair Giovanni adjourned meeting at 1:01 p.m.

