

LAND USE COMMISSION
MEETING MINUTES

October 22, 2009

Leiopapa A Kamehameha
Conference Room 405, 4th Floor
235 S. Beretania St.
Honolulu, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha
Ransom Piltz
Vladimir Devens
Thomas Contrades
Kyle Chock
Nicholas Teves, Jr.
Reuben Wong

COMMISSIONERS ABSENT: Lisa Judge
Normand Lezy

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney
General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Piltz called the meeting to order at 9:34 a.m.

APPROVAL OF MINUTES

Commissioner Wong moved to adopt the September 24, 2009 meeting minutes. Commissioner Kanuha seconded the motion. The minutes were unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The tentative meeting schedule was distributed in the handout material for the Commissioners. The color-coded official State furlough day calendar was explained and details of the furlough's impact on LUC meeting days were discussed.
- The balance of meetings for calendar year 2009 will be one-day meetings. A video conference is tentatively planned on November 13, 2009 between Hilo and Honolulu to hear the Nani Mau Special Permit. In case of technical difficulties, a back-up meeting is planned in Honolulu for November 19, 2009.

There were no questions or comments regarding the tentative schedule.

ACTION

SP09-403 Department of Environmental Services (OAHU)

Chair Piltz stated that this was an action meeting to approve the form of order for the new Special Permit allowing the expansion and continued operation of the Waimanalo Gulch Sanitary Landfill with modifications.

There were no public witnesses.

APPEARANCES

Gary Takeuchi, Esq., represented the Department of Environmental Services, City and County of Honolulu

Jesse Souki, Esq., represented the Department of Environmental Services, City and County of Honolulu

Colleen Hanabusa, Esq. represented the Intervenors (herself, Maile Shimabukuro and the Ko Olina Community Association)

Maile Shimabukuro

James Nagel, Esq., represented State Office of Planning

Abby Mayer-State Office of Planning

Commissioner Wong moved to approve the form of the order.
Commissioner Teves seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Wong, Teves, Contrades, Kanuha and Chair Piltz.

Abstain: Commissioner Devens

Nays: Commissioner Chock

Absent: Commissioners Judge and Lezy

The Motion passed 5 ayes, 1 abstention, 1 nay, 2 absent

ACTION:

A07-777 Hawaiian Memorial Life Plan, Ltd.

Chair Piltz announced that this was an action meeting to consider the reclassification of approximately 56.459 acres of land currently in the Conservation District to the Urban District at Kāne`ohe, Ko`olaupoko, O`ahu, Hawai`i, for cemetery expansion and the preservation of historic sites at TMK: 4-5-33: por. 1. Chair Piltz stated that all parties had submitted their final proposed Findings of Fact, Conclusions of Law, and Decisions and Orders and their respective responses and objections thereto.

APPEARANCES

William W. L. Yuen, Esq., represented Petitioner, Hawaiian Memorial Life Plan, Ltd.

Jay Morford, Petitioner

Jesse Souki, Esq., represented City and County of Honolulu Department of Planning and Permitting

James Nagel, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Scott Derrickson, State Office of Planning

Grant Yoshimori, represented Intervenors

PUBLIC WITNESSES

Rom Duran

Mr. Duran provided his reasons for urging denial of the Petition. Mr. Duran also commented that there had been no significant changes which he felt warranted the re-designation of the Conservation District to another category and provided his reasons why the Conservation District was important to preserve.

There were no questions for the witness.

Moana Lee

Ms. Lee testified that she was an archeologist and provided her perception of why site integrity and the integration of studies were important reasons to consider in denying the Petition.

There were no questions for the witness.

Myrna Arume

Ms. Arume read a letter which she had submitted to the LUC as written correspondence objecting to granting the Petition.

There were no questions for the witness.

Donna Wong

Ms. Wong testified that she was Chair of the Planning, Zoning and Environment Committee of the Kailua Neighborhood Board and stated her reasons for objecting to the granting of the Petition. She indicated that the Kailua Neighborhood Board had adopted a resolution opposing the Petition. [?]

There were no questions for the witness.

Perry Asato

Mr. Asato stated that he was a lifelong Kaneohe resident and provided his reasons why the Petition should be denied to retain the countryside landscape.

There were no questions for the witness.

Pauline McNeil

Ms. McNeil provided her reasons why the Petition should be denied.

FINAL ARGUMENTS

PETITIONER

Mr. Yuen used a Powerpoint presentation to summarize Petitioner's position and argued the legal standards of reclassification and administrative rules that he felt supported the granting of the Petition.

Mr. Yuen explained the details of how the Petitioner would perform if the Petition were granted. Mr. Yuen described how the Petition Area would include a Cultural Preserve and detailed the provisions for a storm drain system that would accommodate a one hour, fifty year storm event. Mr. Yuen explained how the cemetery's proposed expansion area was located adjacent to land that was in the Urban District and stated that Hawaiian Memorial Park was a major employer in Kaneohe. Mr. Yuen described how the topography of the proposed expansion area would be dealt with and how the Petitioner would handle construction issues of slope stability and landscaping.

Mr. Yuen described the Petitioner's plans to address the preservation of cultural, historic and natural resources. Mr. Yuen argued that the Commission may include, within a reclassification, lands which do not conform to the State and County plans when surrounded by or adjacent to, existing urban development; and when these lands represent a minor portion of the district. Mr. Yuen also mentioned water quality and run-off considerations.

Mr. Yuen expressed that OP's recommended plan for the reclassification of Area B was projected to provide a 25 year inventory of burial sites and argued how the Petitioner had estimated that the rate of interments a year would double by 2030 thereby exhausting the proposed acreage before OP's projected time. Mr. Yuen stated that the ten year infrastructure timeline condition was acceptable but objected to the County's proposed condition that would prevent starting construction until after the Koolaupoko Sustainable Communities Plan had been amended because the County controlled the grading permit process.

Mr. Yuen described the measures that the Petitioner would take in dedicating a cultural preserve if the entire Petition Area was reclassified according the agreement with SHPD. Mr. Yuen argued that if there were only a

partial approval of Area B, it would violate the memorandum of understanding with SHPD, and exceed the authority of the LUC, since the historic sites would remain in the Conservation District and the Petitioner could not develop the area without approval from the Dept. of Land and Natural Resources. Mr. Yuen asked that if the plan suggested by the LUC staff report was granted, the cost obligations for the Petitioner be limited to the preparation of the preservation plan and the dedication of the cultural preserve to DLNR.

The Commission went into recess at 10:34 a.m. and reconvened at 10:50 a.m.

There were no questions for the Petitioner from the Commissioners.

CITY & COUNTY OF HONOLULU

Mr. Souki stated that the Department of Planning and Permitting's Position was that the Petition should be denied since it was not consistent with the Koolaupoko Sustainable Communities Plan and argued the reasons why the DPP took this position.

Commissioner Teves excused himself at 11:01 a.m. and returned at 11:06.

OFFICE OF PLANNING

Mr. Nagel noted for the record that after the public testimony was presented and prior to Mr. Yuen's final argument, Mr. Yuen circulated a paper to the Commissioners and to the Parties which contained a cultural preserve condition which had not been seen prior to the hearing. Mr. Nagel stated that this document was materially different from what had been submitted in Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order and should be considered untimely since it would deny due process to review it and that there had been ample time before the hearing to have submitted it. Mr. Nagel objected to admitting Mr. Yuen's "Cultural Preserve" condition.

Mr. Mayer stated that the Office of Planning was recommending approval of the Petition in part with strict conditions and explained why his office took this position. He described the methodology and reasoning used to craft the OP proposed decision and how, if any of the conditions stated in the OP's proposed

decision were not viewed favorably by the Commission and not included in the Decision and Order, the Office of Planning would then recommend denial of the Petition outright. Mr. Mayer clarified the OP conditions that he felt needed more explanation and provided the details involved in constructing them.

Commissioner Kanuha asked how OP was able to reconcile, in light of the county's position that the entire Petition should be denied, granting it in part and denying it in part. Mr. Mayer replied that OP had some sympathy for the Petitioner since the process had to start somewhere and clarified how OP had decided to proceed in handling this Petition.

Commissioner Kanuha asked how OP could legally reconcile conditioning a denial in part. Mr. Mayer explained the reasoning used in arriving at that decision. Commissioner Kanuha asked how OP could impose conditions on the portion of the Petition Area that was to be denied (The Cultural Preserve). Mr. Mayer described the reasoning used to craft that portion of the proposed decision. Commissioner Kanuha requested clarification on how the decision to impose conditions on the denied portions of the Petition area was arrived at. Mr. Mayer clarified the process that OP used to Commissioner Kanuha's satisfaction.

Commissioner Devens asked if there would be a ruling on the objection that was raised by OP with regard to the admissibility of Mr. Yuen's submission and stated that it was his understanding that the period of evidence submission had closed.

Commissioner Kanuha requested permission from the Chair to question the Petitioner in regards to the submittal after the presentation of final arguments. Chair Piltz granted this request.

There were no further questions for the State.

INTERVENOR

Mr. Yoshimori argued that Hawaiian Memorial Life Plan had tried to portray that the project was a community service, and that the development would benefit the community. Mr. Yoshimori provided his reasons why the Commission should deny the Petition and explained how factors like strong community opposition, sufficient existing cemetery spaces, unanswered questions about pollution and runoff, the existing qualities of conservation land contained by the Petition Area, the LUC's decision-making criteria indicating

that the Petition should be denied due to the non-conformance with the City & County and State Plans, that the Petition ignored PASH (Public Access Shoreline Hawaii) rights, and identified past legal decisions that he felt justified denying the Petition.

Commissioner Kanuha commended Mr. Yoshimori on his efforts in participating in the LUC process and for providing the necessary information required during the hearings.

Commissioner Kanuha requested clarification on Mr. Yuen's submittal. Mr. Yuen explained the reasoning for the submission.

Chair Piltz acknowledged Mr. Nagel's objection to the late submittal. Chair Piltz stated that he was looking at the submission as evidence and that the record had been closed; therefore, it would not be entered into the record.

Commissioner Devens identified the document for the record as the "Hawaiian Memorial Life Plan, Ltd, LUC Docket No. A07-777 Cultural Preserve Condition". Chair Piltz confirmed the proper identification.

There were no further comments. Chair Piltz asked the Commission if they were ready to deliberate. All Commissioners present and the Chair unanimously responded that they were ready to deliberate.

Commissioner Wong moved to enter Executive Session and Commissioner Kanuha seconded the motion. By a unanimous show of hands, the Commission entered Executive Session at 11:46 a.m. The Commission exited and reconvened the hearing at 12:09 p.m.

Commissioner Kanuha commented that all the possible decisions were on the floor and stated the choices before the Commission. Commissioner Devens moved to deny the Petition in its entirety. Commissioner Chock seconded the motion.

There was no discussion. The Commission was polled as follows:

Aye: Commissioners Devens, Chock, Contrades, Kanuha, Wong, Teves and Chair Piltz.

Nay: None

The motion passed 7-0 with 2 absent.

The Commission went into recess at 12:19 p.m. and reconvened at 12:23 p.m.

ACTION

ADOPTION OF AMENDMENTS TO ADMINISTRATIVE RULES

Chair Piltz announced that this was an action meeting to consider adoption of amendments to the Administrative Rules Chapter 15-15 HAR.

There was no public testimony.

Commissioner Devens moved to defer this agenda item to allow more time to review the proposed changes. Commissioner Kanuha seconded the motion.

The Commission was polled by voice vote and unanimously voted to defer consideration of the adoption of amendments to the administrative rules.

There being no further business, the meeting was adjourned at 12:30 p.m.