

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
February 09, 2021

Draft

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Donna Apisa at 9:03 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 115 848 0234# The following Commissioners were present:

Ms. Donna Apisa
Ms. Glenda Nogami Streufert
Mr. Melvin Chiba
Ms. Helen Cox
Mr. Francis DeGracia
Ms. Lori Otsuka

Absent/Excused
Roy Ho

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romeo Idica, Kenneth Estes, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai; Office of Boards and Commissions – Administrator Ellen Ching, Support Clerk Arleen Kuwamura

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Ms. Donna Apisa: Called the meeting to order at 9:03 a.m.

ROLL CALL

Chair Apisa: I will call the meeting to order. Roll call please.

Planning Director Kaaina Hull: Roll call, Madame Chair. Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Apisa.

Chair Apisa: Here.

Mr. Hull: Madame Chair, Commissioner Ho is excused from the meeting, you have a quorum. Six present.

APPROVAL OF AGENDA

Chair Apisa: Thank you. Approval of the agenda. Do we have the motion to approve the agenda as submitted? There are no changes, Kaaina?

Mr. Hull: The Department has no recommended changes.

Ms. Nogami Streufert: I to approve move the agenda as presented.

Ms. Cox: I second the motion.

Chair Apisa: All in favor. Aye. (Unanimous Voice Vote).

Ms. Cox: Aye.

Ms. Nogami Streufert: Aye.

Mr. Chiba: Aye.

Ms. Otsuka: Aye

Mr. DeGracia: Aye.

Chair Apisa: Any opposed? None. Motion carries. 6:0. Kaaina, any receipt of items or hearings?

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Next on the Agenda, there are no Minutes for the record.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next on the Agenda, there are no Receipt of Items for the record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: At this time, the members of the public have called in; we are on agenda item F., Public Testimony. We have no additional written testimony that was submitted. I will call out the phone numbers of those that have called in. If you would like to testify on any agenda item, now, would be the time. Please identify yourself and you will have a three-minute window to speak your testimony. Calling first, area code [REDACTED]. Would you like to testify on any of the agenda items? Again, I will call out area code [REDACTED]. Would you like to testify on any agenda item? Hearing none. Moving on to area code [REDACTED] would you like to testify on any of the agenda items?

Man: No.

Mr. Hull: Thank you. Area code [REDACTED], would you like to testify on any of the agenda items?

Woman: No.

Mr. Hull: Thank you. Area code [REDACTED] Would you like to testify on any of the agenda items?

Woman: No.

Mr. Hull: Thank you. Area code [REDACTED], would you like to testify on any of the agenda items? Calling out again, area code [REDACTED], would you like to testify on any of the agenda items? Hearing none. Madam Chair, we have no additional callers on the line. We have no Agency Hearings, no New Agency Hearings, and no Public Hearings.

I apologize. If we could actually go back to the original agenda as passed. Sorry, Laura, you might have to correct me if I am doing something out of step here. We do have one agenda item, that we have the representative for the appellant on line, so I would ask if we could amend the Agenda to hear General Business Item I.1., prior to the executive session. I believe a motion would be necessary to amend the agenda in that manner.

Chair Apisa: Do we have a motion to amend the agenda to hear the General Business Matter? Go ahead.

Ms. Nogami Streufert: As requested, I move to approve the agenda for General Business Matters I.1., before the executive session.

Ms. Cox: I second the motion.

Chair Apisa: Any discussion on that? All in favor? Aye. (Unanimous voice vote).

Ms. Otsuka: Aye.

Mr. Chiba: Aye.

Ms. Nogami Streufert: Aye.

M. DeGracia: Aye.

Ms. Cox: Aye.

Chair Apisa: Any opposed? None. Motion carried. 6:0. We will move General Business Matter I.1., to preceding the executive session.

Continued Agency Hearing

New Agency Hearing

GENERAL BUSINESS MATTERS

Petition to Appeal of the Decision of the Planning Director; Exhibits “1”-“2”; Certificate of Service by Maun kea Kea Trask of Cades Schutte, Attorney for Appellants *Charles M. Somers Trust and West Sunset Phase 1 LLC*, in the matter of the Application of Charles M. Somers Trust and West Sunset Phase 1 LLC appealing Notice of Violation & Order to Pay Fines executed on December 7, 2020 for properties located at 1957 Kahili Quarry Road, Kilauea, Hi, Tax Map Key No(s): (4) 5-2-012:035 & 047, Hanalei District Kahili, Kilauea, Kauai, Hawaii.

- a. Clerk of the Commission’s Recommendation to Refer an Appeal of the Planning Director’s Decision Related to the Planning Director’s Notice of Violation & Order to Pay Fines for the illegal development within the Special Management Area of Kilauea, *Charles M. Somers Trust and West Sunset Phase 1 LLC*, Tax Map Key (4) 5-2-012:35 and 47, Hanalei District Kahili, Kilauea, Kauai, Received on December 28, 2020, for referral to Board and Commissions as Contested Case no. CC-2021-1.

Mr. Hull: Okay, with that, Amendment I.1., Petition to Appeal the Decision of the Planning Director Exhibits “1” – “12”; Certificate of Service by Mauna Kea Trask of Cades Schutte, Attorney for Appellants, Charles M. Summers, trust and West Sunset Phase 1, LLC in the matter of the application of Charles M. Summers trust and West Sunset Phase 1, LLC appealing notice of violation and order to pay fine as executed on December 7, 2020, for properties located at 1957 Kahili Quarry Road, Kilauea, Tax Map Key 5-2-012:035 and 47, Hanalei District Kahili, Kilauea, Kauai, Hawaii. Ultimately, there is appeal of one of our violation notices. The Department is ultimately recommending that this matter be referred to a hearings officer. The applicant, or appellant, has representative on line if you would like to have any discussion with him.

Chair Apisa: I guess would you want to offer any comment or discussion. Mauna Kea, do you want to offer comment on this as the appellant?

Mr. Mauna Kea Trask: Yes, thank you. Sorry, I was having a little connection problem. So as the Director correctly noted, we have filed this appeal pursuant to the notice of violation ordered to pay fines dated December 7, 2020. We note that petition to appeal was filed pursuant to Chapter 6 and 9, of the rules of practicing Planning Commission, and Section 13.0, of the SMA rules of the County of Kauai, and further notice of violation itself. However, I did want to raise, in order to preserve the record an objection. It appears that although the appeal was properly filed, or the petition to appeal does follow the rules of the Planning Commission and SMA rules, the Kauai County Charter was amended...

Chair Apisa: Mauna Kea.

Mr. Trask: ...2016 to create the Zoning Board of Appeals. And pursuant to Section 14.13(b) of the Charter, the Zoning Board of Appeals and not the Planning Commission, has the jurisdiction to hear and determine appeals of the Planning Director. So, we just make that note for the record. Object to the jurisdiction of the Commission. But, nonetheless, we do want to appeal. And so, I just wanted to make that note. Does that make sense?

Chair Apisa: Thank you. And there seems to be some background noise. Again, Kaaina, maybe we could just, or I will ask everyone to please mute thier phones, if you are not speaking. There is a lot of background noise.

Deputy County Attorney Laura Barzilai: Madam Chair?

Chair Apisa: Yes?

Ms. Barzilai: Excuse me if I may. May I ask a question of Mr. Trask?

Chair Apisa: Yes, please.

Ms. Barzilai: Mr. Trask, are you intending to withdraw your petition to appeal?

Mr. Trask: No. I actually, we do want to appeal. I just want to note that it appears that under the Commission, I mean, the Charter, I am sorry, the Zoning Board of Appeals has jurisdiction to hear this appeal. However, it is my understanding that there is no zoning board of appeals. And so the rules of the SMA rules and the rules of the Planning Commission provide that the Commission appeals for the Planning Director go to the Commission. So I wanted to note the discrepancy just to preserve the issue should it be, an issue later in any subsequent Circuit Court appeal or thereafter. Or even in the hearing itself. Because as you know jurisdiction is always in question. It's a relatively new Charter provision and that's all.

Ms. Barzilai: Thank you, Mr. Trask. Thank you, Madam Chair.

Chair Apisa: Commissioners, does anyone have any questions? We I have the petition to appeal

in our packet, and I think we've all read through it. I am not hearing any questions. The recommendation has been to refer it to a hearings officer. Any comments or a motion to that effect?

Ms. Barzilai: Madam Chair, if I may, the appeal is timely, and the form is proper. So you may entertain a motion at this time to accept the Director's recommendation to refer it to a hearings officer.

Chair Apisa: So without a motion I will just...

Ms. Cox: I make a motion to accept the recommendation and move it to the hearings officer.

Ms. Nogami Streufert: I second.

Chair Apisa: Thank you. Any discussion on this? All in favor? Aye. (Unanimous voice vote).

Ms. Otsuka: Aye.

Ms. Nogami Streufert: Aye.

Mr. DeGracia: Aye.

Ms. Cox: Aye.

Mr. Chiba: Aye.

Chair Apisa: Any opposed? None. Hearing none. The motion passed. 6:0. It will be referred to a hearings officer.

Man: Thank you all very much.

Chair Apisa: Thank you.

Continued Public Hearing

New Public Hearing

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing.

COMMITTEE REPORTS

Subdivision

Mr. Hull: Thank you, Madame Chair and members of the Commission. I apologize; I am a little bit off today. Recognizing that some of the people that are have called in are actually waiting to see if there are actions or questions on the Subdivision Report, if you would indulge me one additional amendment to Agenda. I would request the motion for the agenda to be amended so that Agenda Item K., Subdivision Committee Reports, be moved to be heard prior to the executive session.

Chair Apisa: I will entertain a motion to that affect.

Ms. Cox: Aye. I move that we move Item K., before the executive session.

Ms. Otsuka: I second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote).

Ms. Otsuka: Aye.

Mr. DeGracia: Aye.

Ms. Cox: Aye.

Ms. Nogami Streufert: Aye.

Mr. Chiba: Aye.

Chair Donna Apisa: Hearing none. None. The Agenda is further amended to move Committee Reports to precede the executive session, which we will go into now. Committee Report. Chair, do you have that report?

Mr. DeGracia: Yes, Madam Chair. Today's, Subdivision Committee was attended myself, and Vice Chair Chiba. There were four items. Item one was tentative subdivision map approval, Application Number S-20-21-3. Allan and & Karen Nesbitt, Trust, this was approved and passed. There was also tentative subdivision extension request. Subdivision application S-2019-8, Stephanie Fernandes, that was approved and passed. Final subdivision map approval for subdivision application S-2019-1 Alexander & Vivian Youn, Trust, that was approved and passed. Finally, recertification of final map approval, subdivision application number S-2007-1, State of Hawaii Department of Transportation, that was approved and passed as well. That concludes my Report.

Chair Apisa: Thank you very much. Thank you. Do we have a motion to accept the Committee Report?

Ms. Cox: I move we accept the Committee Report.

Mr. Chiba: I second.

Ms. Otsuka: I second.

Chair Apisa: Thank you. All in favor? Aye. (Unanimous voice vote).

Ms. Otsuka: Aye.

Mr. DeGracia: Aye.

Ms. Cox: Aye.

Ms. Nogami Streufert: Aye.

Mr. Chiba: Aye.

Chair Apisa: Any opposed? None. Motion carried. Thank you very much, Chair DeGracia. Then do we move into, is there, Kaaina?

EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes Sections 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters pertaining to the annual evaluation of the Planning Director. This session pertains to the evaluation of the Planning Director's work performance where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director.

Mr. Hull: Chair, there is no further agenda items with the exception of the Executive Session. So I can turn it over to you, Chair, to read the actual language as Laura as kind of recommending earlier. Then if a motion could be made to ultimately go into executive session with adjournment thereafter, that way, we will not have to come back into the main Planning Commission line.

Ms. Barzilai: Excuse me.

Chair Apisa: Okay.

Ms. Barzilai: Excuse me, Madam Chair. I believe that it would be proper at this time for Madam Chair to consider a motion to move into executive session and state the purpose. And if this motion passes then I will read the notice.

Mr. Hull: Sorry, okay.

Ms. Barzilai: No problem. Then, Madam Chair, also, you may entertain a motion to invite Director Hull into this executive session as a resource regarding his evaluation. So two motions.

Chair Apisa: So how specific does the purpose?

Ms. Barzilai: Just as stated in the agenda item H.1, would be appropriate.

Chair Apisa: Okay, thank you.

Ms. Barzilai: Thank you, Madam Chair.

Chair Apisa: Thank you. Pursuant to Hawaii Revised Statute Section 95-5(a) (2 and 4), the purpose of this executive session is to discuss matters pertaining to the annual evaluation of the Planning Director. This session pertains to the evaluation of the Planning Director's work performance or consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges and/or liabilities of the Planning Commission as it relates to evaluation of the Planning Director. Do we have a motion to move in to executive session?

Ms. Cox: I move that we move in to executive session with that stated purpose.

Ms. Otsuka: Second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote).

Ms. Nogami Streufert: Aye.

Ms. Otsuka: Aye.

Ms. Cox: Aye.

Mr. Chiba: Aye.

Mr. DeGracia: Aye.

Chair Apisa: Any opposed? None. Motion carried. 6:0. I would like a second motion to invite Planning Director Hull to join us in executive session.

Ms. Cox: I will make a motion to invite Planning Director Hull into our executive session.

Chair Apisa: Do we have a second?

Ms. Otsuka: Second.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote).

Ms. Cox: Aye.

Mr. Chiba: Aye.

Mr. DeGracia: Aye.

Ms. Nogami Streufert: Aye.

Ms. Otsuka: Aye.

Chair Apisa: Motion carries. 6:0. We will move in to executive session with Director Hull joining us. So we log out and then log in to executive session, correct? Correct?

Ms. Barzilai: Yes that is correct, Madam Chair.

Ms. Cox: Do we have to do something if we are not going to come back? Like, say, we are not coming back officially.

Chair Apisa: I thought we do have to officially, come back after executive sessions.

Ms. Cox: I thought Kaaina was suggested you do not have to. If we have to that is fine.

Ms. Barzilai: If I may, I believe that we should return to open meeting to properly adjourn.

Chair Apisa: Okay. We will...

Ms. Barzilai: Thank you, Madam Chair.

Chair Apisa: ...leave this meeting and adjourn to executive session. Thank you all for attending.

The Commission moved into Executive Session at 9:21 a.m.

The Commission returned to Open Session at 10:05 a.m.

Chair Apisa: Call the meeting back to order after Executive Session.

Kaaina, do you want to go on thorough, there is no Unfinished Business?

UNFINISHED BUSINESS (For Action)

Mr. Hull: Moving on, there is no Unfinished Business.

NEW BUSINESS

Mr. Hull: We have no New Business as we handled the New Business; we took the action on New Business.

For Action- See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on March 09, 2021. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Mr. Hull: Moving on to Topics for Future Meetings. Coming next month, we have an application for housing in Koloa Town. We also have some administrative rules coming your folks' way concerning guesthouses and housing. We also have the Hanalei Bay Resort appeal or declaratory action request, which could be lengthy. So that is coming up as well as in the next proceeding months we've got a couple housing applications. A series of administrative rules that will be agenized. If there is anything else that any Commissioners would like put on the agenda, the (unintelligible) is all yours.

Chair Apisa: All right. Kaaina, next month is there was one I think reference Kilauea. Next month?

Mr. Hull: Correct. There is a Kilauea, the Old Mill application.

Mr. Apisa: Okay. Thank you. Vice Chair Cox, that Kilauea Old Mill and the HBR are the two agenda items that, I will be turning the meeting over to you.

Ms. Cox: Okay.

ADJOURNMENT

Mr. Apisa: So, I guess that is it. I cannot think of anything else. Anyone else have anything to add? Otherwise, we could have a motion for adjournment.

Ms. Cox: I have a question for Kaaina. I definitely am going to want to meet with Laura, before the meeting. However, how far in advance do you think that would make sense? I mean, how soon do we, because we usually get, the packet on about a Wednesday for the following Tuesday. So would it make sense that Laura and I get together sometime between those two dates?

Mr. Hull: We can get the packet comes a week before. On any agenda items, you want to discuss with Laura or myself, please feel free to give us a call. With the HBR one, of course, because of the litigious nature of it and because of the potential of the contested case, indeed, we should not meet. However, you and the attorney, whether you want to meet before that time, or during that week period completely I'd have to leave it to you folks to kind of work out.

Ms. Cox: Okay. There is nothing, no reason that we would have to wait 'til right before.

Mr. Hull: No.

Ms. Cox: Okay.

Mr. Hull: But then...

Ms. Barzilai: I do not think so. I think we can meet anytime.

Ms. Cox: Laura, I will probably get in touch with you, and see what makes sense for both of us.

Ms. Barzilai: Sure, that sounds fine, Commissioner Cox. And I don't think we'll be receiving any additional documents on this. So, really, the file is complete, and we could meet any time.

Ms. Cox: Okay. Thank you.

Ms. Barzilai: Thank you.

Ms. Cox: I will be in touch. Thank you.

Chair Apisa: Great prep work there. Helen, I am sure it will be fine. No, you are doing all the right things. Anyone else have any comments or questions? Otherwise, I'll entertain a motion for adjournment.

Ms. Nogami Streufert: I move to adjourn.

Ms. Cox: I second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote).

Ms. Otsuka: Aye.

Ms. Nogami Streufert: Aye.

Mr. DeGracia: Aye.

Ms. Cox: Aye.

Mr. Chiba: Aye.

Chair Apisa: Any opposed? None. Meeting is adjourned. 6:0. Thank you.

Chair Apisa adjourned the meeting at 10:11 p.m.

Respectfully submitted by:

Arleen L. Kuwamura

Arleen Kuwamura,
Commission Support Clerk

- () Approved as circulated (add date of meeting approval)
- () Approved as amended. See minutes of _____ meeting.