KAUA'I PLANNING COMMISSION
CONTESTED CASE CALENDAR
June 27, 2017

The contested case calendar of the Planning Commission of the County of Kaua'i was called to order by Vice Chair Ho at 9:51 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Vice Chair Roy Ho
Ms. Donna Apisa
Mr. Wade Lord
Mr. Sean Mahoney
Ms. Glenda Nogami Streufert

Absent and Excused:
Chair Kimo Keawe
Ms. Heather Kanoe Ahuna

The following staff members were present: Planning Department – Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Peter Morimoto; Office of Boards and Commissions – Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Vice Chair Ho called the Contested Case Calendar to order at 9:51 a.m.

CALENDAR

Status and Scheduling of the following matters on the Planning Commission Contested Case Calendar of 12/13/16, 2/28/17, and 5/9/2017 pertaining to:

Hoff, et al. v. County of Kaua'i Planning Dept.	CC-2016-18 and CC-2016-19
Fischer, et al. v. County of Kaua'i Planning Dept.	CC-2016-9 and CC-2016-10
Schirm v. County of Kaua'i Planning Dept.	CC-2015-24
Nishimoto et al. v. County of Kaua'i Planning Dept.	CC-2015-23
Guyer, et al. v. County of Kaua'i Planning Dept.	CC-2015-1
Diamond & Robeson intervenors	
Chandler v. County of Kaua'i Planning Dept.	CC-2016-4
Wark, et al. v. County of Kaua'i Planning Dept.	CC-2016-5
Kaiser, et al. v. County of Kaua'i Planning Dept.	CC-2015-15
Sutherland, et al. v. County of Kaua'i Planning Dept.	CC-2016-8
Levy, et al. v. County of Kaua'i Planning Dept.	CC-2015-14 and CC-2016-1

Barden v. County of Kaua'i Planning Dept.	CC-2013-83
Henry, et al. v. County of Kaua'i Planning Dept.	CC-2016-11
Cowern, et al. v. County of Kaua'i Planning Dept.	CC-2015-17 and CC-2016-2
Allen, et al. v. County of Kaua'i Planning Dept.	CC-2015-4
Brooks, et al. v. County of Kaua'i Planning Dept.	CC-2017-1

Vice Chair Ho: First off, Mr. Morimoto, I will introduce him and he will have a discussion for us.

Deputy County Attorney Peter Morimoto: For the record, Peter Morimoto, Deputy County Attorney. I understand that the parties have agreed to the scheduling of the submission of the proposed D&O's.

Jonathan Chun: Good morning. Jonathan Chun on behalf of some of the petitioners. Also, I have been in contact with the other attorneys from O'ahu, specifically Mr. Barry Edwards and Greg Kugle. They both give their apologies. Mr. Kugle is on vacation in some country somewhere in the South Pacific and Mr. Edwards just came back from his vacation and is not able...but they both authorize me to speak for them in terms of the reason why they would request a continuance.

Deputy County Attorney Mark Bradbury: For the record, Deputy County Attorney Mark Bradbury on behalf of the Planning Department.

Mr. Morimoto: My understanding is that there was some confusion about who was listed in the stip that was submitted.

Mr. Chun: I gather so. I'm not sure, but that is what I have heard and Mr. Edwards did talk to me about that and other procedural things. I mean, just to let the Commission know, from my understanding, what was going on is as we were getting close to the original deadline – thirty (30) days from the date of the transcripts – Mr. Edwards gave me a call from the mainland and wanted to...because he said he didn't get the email so I forward the email to him, and then I got another email from him saying I'm in the mainland. (Inaudible) okay, so he called me up and he said would I agree to a continuance. Basically, I said Barry, you got to ask the County Attorneys first on that and also, I would highly recommend that you also prepare a stipulation or have your office prepare a stipulation for everybody to sign because that is what the Commission and the Department probably would want to see, just for the record. So I gather he did that because the next thing I got from an email was a stipulation; I just signed it and sent it over to his office. And that is about all from what I understand was happening, and then I got the request for continuance. I understand the request from the Department today because my understanding...and Mark can correct me if I'm wrong. I don't think anybody has forwarded it over to the Planning Commission formally, yet. I don't know that, but that's...that was brought to my attention. I looked at the copy that I signed and I didn't see anything for signature of the Planning Commission. So that is my understanding of what was happening. If that's correct, I apologize for that.

Mr. Morimoto: So will there be a corrected stip that is going to be submitted, or…? Mr. Bradbury, can you–

Mr. Bradbury: Well, we could prepare another stipulation, but then we will have to circulate it all around again and get the signatures. We could delete the reference to Sutherland if–

Mr. Morimoto: Yeah, that's fine. Whatever works, whatever is most expedient, as long as it doesn't interrupt the scheduling.

Mr. Bradbury: No, it shouldn't.

Mr. Morimoto: Okay.

Mr. Chun: We don't have any…for myself, Mr. Kugle, Mr. Edwards, I don't believe they will have any problems of re-executing something. I don't know what the proper format would be, but we have no problems of re-executing. We still are looking at submitting, as per the original agreement between the parties of the 30th of June–

Mr. Morimoto: As set forth in the draft stipulation.

Mr. Chun: Yeah, so I don't believe anybody has any intent of not following through on that deadline.

Mr. Morimoto: Okay.

Mr. Chun: That is my understanding.

Mr. Bradbury: That is the understanding of the County, too. Could we propose an order that the Commission accept the stip so we don't have to come back here again?

Mr. Morimoto: Yes.

Mr. Bradbury: Okay. I so propose an order of that nature.

Mr. Morimoto: And what is the proposed order?

Mr. Bradbury: Well, that the stipulation, as it is signed, but on file–

Mr. Morimoto: Oh, I see. Okay.

Mr. Bradbury: That it has been received by the Commission; that way we won't have to come back here again.

Mr. Chun: If I may, Mr. Chair, I did note on the last page, which wasn't my signature page – that's why I didn't see it – but the last signature page, there is an approved and so ordered

signature place for the Chair of the Planning Commission to sign. I just don't know if, formally, it was ever submitted to the Commission.

Mr. Morimoto: No, it hasn't been signed. But if we can get a motion to accept the schedule as stipulated to by the parties in their proposed draft stipulation.

Ms. Apisa: I would...go ahead.

Vice Chair Ho: Commissioners, do you have any discussion on this? Ms. Streufert.

Ms. Nogami Streufert: Exactly what is it that we are stipulating or not stipulating? What part of it is on here?

Mr. Morimoto: The draft stip has not been circulated to the Commission, I take it.

Mr. Bradbury: Well, the draft stip has been signed by everybody but the Commission Chair.

Mr. Morimoto: Okay. Maybe, Mr. Bradbury, if you don't mind reading to the Commission what the proposed schedule is, as far as submitting the D&O's.

Mr. Bradbury: Sure.

Ms. Nogami Streufert: Could we speak in English? What is D&O?

Mr. Morimoto: Decision and Order.

Mr. Bradbury: Okay. The parties' counsel stipulate to continue the date for submittal of their proposed Findings of Fact and Conclusions of Law regarding the matters at issue in the several motions to disqualify Hearing Officer Harlan Y. Kimura last heard on May 9, 2017 before the Kaua'i Planning Commission. The original submittal date was two (2) weeks after receipt of the minutes of the hearing. The minutes were received on May 31, 2017. The new submittal date for all parties' proposed Findings of Facts and Conclusions of Law is June 30, 2017. This stipulation is at the request of Mr. Edwards who is off-island on vacation from May 17 until June 14, 2017.

Mr. Chun: If I may, and I apologize for Mr. Edwards, I also was informed that the Intervenors did not have a signature place and I don't think anybody contacted the Intervenors either, so I would like to maybe ask...allow them to come in and put their statement or position. Again, I apologize for Mr. Edwards. I don't know if he was aware that that needed to be done.

Mr. Morimoto: Can the representative for the Intervenors step forward?

Caren Diamond: Good morning, Commissioners. Caren Diamond for the Intervenors.

Barbara Robeson: Barbara Robeson, Intervenor.

Mr. Morimoto: Do you have any issue with the proposed schedule?

Ms. Diamond: Not as long as it doesn't delay things.

Ms. Robeson: My concern about delaying things is these operations of vacation rentals and B&B's that may be illegal continue to be able to operate. That is my concern about this delay, so I hope it does move forward quickly.

Mr. Morimoto: Did you hear the proposed schedule that Mr. Bradbury read?

Ms. Diamond: Yes.

Mr. Morimoto: Do you have any problem with that? Or is that acceptable to you?

Ms. Diamond: That is acceptable. Yes, that is fine.

Mr. Morimoto: So if the Commission…if we could get a motion to accept the proposed scheduling of the submission of the proposed Decisions and Orders.

Ms. Nogami Streufert: And that is now 30 June? Is that correct?

Mr. Morimoto: Yes, correct.

Ms. Nogami Streufert: So that is coming up, not…

Mr. Morimoto: In three (3) days.

Ms. Apisa: So it is extended only to June 30th?

Mr. Morimoto: For the submittals, correct, yes.

Ms. Nogami Streufert: I move to accept the stipulations as stated.

Vice Chair Ho: A motion has been made. Can I have a second?

Mr. Lord: Second.

Vice Chair Ho: Made and seconded. Any further discussion, Commissioners? All in favor? (Unanimous voice vote) Seeing the motion carried 5:0, done.

Mr. Morimoto: Thank you.

ADJOURNMENT

Vice Chair Ho: This will be an adjournment of the Contested Case Calendar. We will resume our agenda at 10:15 a.m. Thank you.

Vice Chair Ho adjourned the Contested Case Calendar at 10:02 a.m.

Respectfully submitted by:

Darcie Agaran,
Commission Support Clerk

( ) Approved as circulated (add date of meeting approval)

( ) Approved as amended. See minutes of _____ meeting.