

LAND USE COMMISSION
MINUTES OF MEETING

October 19, 2005

Conference Room 405
Leiopapa A Kamehameha
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Kyong-su Im
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: None

STAFF PRESENT: Anthony Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Sakumoto called the meeting to order at 9:15 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of October 6, 2005 and October 7, 2005. Vice Chair Judge seconded the motion. Commissioner Im commented that he was not present on October 7, 2005 as indicated on the minutes. The minutes of October 6, 2005 and amended minutes of October 7, 2005 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the November 2 field trip to the Kauai ATV site may coincide with the HCPO field tours and polled the Commission on their preference for the Kauai ATV field trip during the early morning or late in the afternoon. Mr. Ching added that the field trip will be a tour to the Waita Reservoir and a drive through the mountain to view, at a distance, the ATV trails and bridge that crosses over the State highway. Mr. Ching noted that the bridge area is not accessible with the van. The tour would take approximately one and a half hour. Staff has previously taken pictures of the site, which could be shared with the Commission. Mr. Ching added that a quorum is not required for the field trip and that the parties would be attending.

After a brief discussion, an afternoon field trip appeared to be preferred. Mr. Ching noted that he would check on HCPO's activity schedule to coordinate a reasonable time for the field trip.

Mr. Ching also reported the following schedule:

- The sole December meetings have shifted to December 1 and 2 in Kona at the Waikoloa Marriott in anticipation of a Big Island filing that would require the LUC to meet in that area.
- January 5 and 6 will be held on Oahu.
- January 19 and 20 will be held on Maui for the Hearings Officer's proposed order for the Kuleana Ku`ikahi docket.

There were no further questions posed by the Commission.

A03-743 HAWAII ELECTRIC LIGHT COMPANY, INC. (Hawaii)

Chair Sakumoto stated that this was an action meeting on Docket No. A03-743 Hawaii Electric Light Company, Inc., to adopt the order reclassifying approximately 15.643 acres of land currently in the Conservation District to the Urban District at Keahole, North Kona, Hawaii, for improvements and upgrades to the Keahole Generating Station and Airport Substation.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

April Cadiz, represented Petitioner

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Ching summarized the substantive changes to the order taken from the Commission's deliberation at their last meeting. Mr. Ching also noted that the parties have received copies of the order via e-mail.

Chair Sakumoto had a few comments to Findings of Fact 27, and also commented on Warren Lee's testimony related to the feasibility of acquiring a new site.

After a brief discussion, Commissioner Kanuha moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A03-743 Hawaii Electric Light Company, Inc. Commissioner Piltz seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Kanuha, Piltz, Contrades, Formby, Im, Judge, and Sakumoto.

The motion passed with 7 ayes, 1 absent.

A recess break was taken at 9:45 a.m. The meeting reconvened at 9:55 a.m.

Vice Chair Montgomery entered the meeting at this time.

A87-617 BRIDGE AINA LE`A, LLC and BANTER, INC. – fka Puako Hawaii Properties (Hawaii)

Chair Sakumoto stated that this was an action meeting to consider Petitioner Bridge Aina Le`a LLC and Banter, Inc.'s Motion To Amend Conditions 1 and 8 of Amended Findings of Fact, Conclusions of Law, and Decision and Order Dated July 9, 1991

APPEARANCES

Bernard Bays, Esq., represented Petitioner

Robert Martin, Esq., represented Petitioner

Joshua Trevey, Esq., represented Petitioner

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii, Department of Planning

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Bays noted some preliminary matters regarding the LUC 's concern about the golf courses in the non-urbanized agricultural area that are also owned by Petitioner. Mr. Bays noted that they have filed a memo discussing the status and legality of the golf course and the permit issued by the County of Hawaii. Mr. Bays added that they have also prepared an amended condition no. 1 which, incorporates the representation by the Petitioner related to the affordable housing requirement. The Petitioner then distributed to the parties and the LUC copies of their latest filing.

Chair Sakumoto asked Mr. Bays if they were offering these submittals as new exhibits. Mr. Bays replied in the affirmative.

Admission of Additional Exhibits

Mr. Bays offered exhibits 16, 20, 21, 25a, 26, and 27. The parties had no objections. Said exhibits were admitted into the record.

Mr. Bays continued with his presentation and discussed the Petitioner's proposal for reduction in affordable housing units, the County's affordable housing requirement, in lieu fees, and the numerous letters of support for this project.

Vice Chair Montgomery asked what is Petitioner's strategy regarding in lieu fees and what is his legal opinion on the LUC condition.

Mr. Bays replied that he was unsure of that answer.

Ms. Leithead-Todd noted that in the past, the County would routinely accept in lieu fees but the County has recently changed its policy and has not been accepting in lieu fees, even in cases where the requirement would have yielded only a few units.

Mr. Chang commented that because it was a LUC condition that required that no less than 1000 units built, the petitioner could not pay an in lieu fee. Mr. Chang added that the condition specifically stated that a required number of units were to be built and that before the petitioner could pay any in lieu fees, they would need to return to the LUC to change that condition.

Commissioner Kanuha noted a disclosure that he served as the Planning Director for the County of Hawaii during the time this petition was initially filed.

Vice Chair Judge had a few questions and concerns relative to the Petitioner's financial capability, Cole Capital and Westwood Heritage, and submittal of financial information for the LUC's review.

Commissioner Im commented that the statute governing the LUC's decision-making criteria, 15-15-77, requires that the LUC find a clear preponderance of the evidence. Commission Im discussed issues of housing opportunities and home rule. Commissioner Im expounded on the need for clear evidence and added that this particular Petition was amended in 1991 and that under 15-15-79, the Petitioner should have made substantial progress within a reasonable time to fulfill the conditions contained in the LUC's order.

Commissioner Im also raised questions and concerns related to the Petitioner's recent filing regarding the development of the golf courses on agricultural land and the passage of time from the 1991 amendment and specific county requirements that 3 golf courses are developed by 2011.

Commissioner Formby posed questions relative to in lieu fees and any attempts by the Petitioner to satisfy that condition, credits, and the 107 units on another property.

A recess break was taken at 11:00 a.m. The meeting reconvened at 11:20 a.m.

Chair Sakumoto noted that the disclosure from Commissioner Kanuha, having served as the Planning Director over 15 years ago, is not a standard for disqualification under 15-15-61, HRS, as Commissioner Kanuha is well within another career and no longer affiliated with the County. Chair Sakumoto then asked Commissioner Kanuha if he could be fair and objective while participating in this matter. Commissioner Kanuha replied in the affirmative. There were no objections by the parties.

Mr. Bays noted that in response to Vice Chair Judge's questions on the representation by Mr. Paoa, and the Commission's concern, they will prepare and file an affidavit this afternoon related to the Petitioner's financial capability.

Petitioner's Witness

1. Ann Bouslog

Ms. Bouslog stated that she is a real estate development advisor and provided her experience and education background. A copy of her resume was submitted as exhibit 13. Ms. Bouslog discussed issues of the demographics in market research, housing studies, and her familiarity with the Aina Lea location. Ms. Bouslog also noted that she conducted the Waikoloa employee housing study and discussed the methodology for the housing study, the types of markets, housing produced, costs, preliminary layout and background for the development of these lands. During her discussion, Ms. Bouslog referenced exhibits 10 and 28.

Ms. Leithead-Todd raised a few questions related to Ms. Bouslog's assumptions that were based on underground utilities, the allocated costs for the affordable housing units, and the cost of the infrastructure, not including the golf course and the commercial uses.

Mr. Chang posed questions regarding the estimated sales price, HUD's estimated median income, and the size of these homes.

Commissioner Formby asked if Ms. Bouslog could provide a copy of exhibit 28, Mikiko Corporation's breakdown and assumptions for the LUC to review during the lunch break. Ms. Bouslog replied in the affirmative.

A lunch recess was taken at 12:05 p.m. The meeting reconvened at 1:23 p.m.

Commissioner Im raised a few questions as to the cost of \$600-\$700 per square foot for the affordable housing units as provided by the Petitioner, and noted that the numbers on exhibit 28 appear to be for the entire property. Commissioner Im sought clarity on exhibit 28.

Commissioner Formby also asked for clarification on exhibit 28 and the burden of cost for developing the 384 units and the appropriate size of the units for these families.

Vice Chair Montgomery posed a few questions relative to the affordable housing pent up demand, market changes, and the computations for 40% of affordable housing.

Chair Sakumoto raised questions on what numbers are feasible and the evidence to support it, and the comparison of exhibit 11a and 28 in terms of infrastructure costs.

Commissioner Im asked for clarification on exhibit 28 and its relation to exhibit 11a, and asked Ms. Bouslog to summarize the total construction and development costs. Commissioner Im explained three scenarios that would be useful in comparing those costs and commented that he believes that the LUC does not currently have a clear preponderance of evidence to make a decision here.

Chair Sakumoto asked Ms. Bouslog if she has performed an analysis to reach a conclusion that the project is feasible with a 20% condition and how the market units will carry the burden of developing the affordable units first. Ms. Bouslog replied that she has not done this analysis and added that this is a high risk project.

After a discussion, there were no further questions posed by the parties or the Commission.

A recess was taken at 2:28 p.m. The meeting reconvened at 2:40 p.m.

Admission of Additional Exhibits

Mr. Bays offered into evidence Petitioner's exhibit 29 Bridge Capital LLC and Subsidiaries Combined Financial Statements, and exhibit 30 Affidavit of Hoolae Paoa.

Vice Chair Judge noted that exhibit 29 does not include or mention Bridge Aina Lea and Banter, Inc. in this analysis.

There were no objections by the parties. Exhibits 29 and 30 were admitted into the record.

2. Ed Brown

Mr. Brown discussed the budgetary pricing for conducting parcel grading and infrastructure by his firm.

Ms. Leithead-Todd asked if he was familiar with construction on other islands, and if the hard rock on the Kona side adds to higher construction costs.

Mr. Brown replied that their numbers were based on the similar cost of construction in Hualalai and confirmed its higher cost.

Commissioner Piltz raised a few questions regarding the utilities in the project and if the potable wells are on-site.

Vice Chair Montgomery asked why the golf course grading was so expensive and if the golf courses could utilize the existing terrain.

Vice Chair Judge raised a few questions relative to the timing of beginning of construction for the project, and the pads for affordable housing.

Commissioner Kanuha had a question on the initial grading onsite.

Commissioner Formby asked what the \$259 million represented. Mr. Brown replied total infrastructure cost.

Commissioner Im raised a few questions relative to the relationship with Petitioner and the current configuration of the Project, the cost of the infrastructure for the affordable housing, Petitioner's exhibit 11a, and potable water wells.

Chair Sakumoto asked what is the County's position.

Ms. Leithead-Todd stated that the Petitioner must conform to the affordable housing policy.

Petitioner's counsel requested that the Commission take action at that time. After a discussion, Chair Sakumoto noted that there were numerous exhibits that were filed on October 18 and 19, and the supplemental memo filed on October 19, and that the Commission is dissatisfied with Ms. Bouslog's testimony. Chair Sakumoto suggested that the Petitioner prepare a case that considered the need to address questions that were brought up today by the Commission. Chair Sakumoto adjourned this docket item till the next meeting on November 4, 2005 in Kauai.

Vice Chair Judge left the meeting at this time.

A04-753 AINA NUI CORPORATION (Oahu)

Presiding Officer Montgomery stated that this was a continued hearing on Docket No. A04-753 Aina Nui Corporation (Oahu) to consider the reclassification of approximately 174.209 acres of land currently in the Agricultural District to the Urban District at Ewa, Oahu, Hawaii for residential, golf course, park, and open space uses.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Cameron Nekota, Esq., represented Petitioner

Don Kitaoka, Esq., represented Department of Planning and Permitting

Raymond Sakai, City and County of Honolulu, Department of Planning and Permitting

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Public Witnesses:

1. Ken Williams

Mr. Williams stated that he is the Vice President/General Manager of the Ko Olina Community Association. Mr. Williams stated that they are not opposed to the development of Kapolei West nor its reclassification, but a strong advocate for the proper and appropriate development of this area. Mr. Williams added that his concerns were for loss of regional jobs and industrial lands, the residential development along Industrial Harbor, the stacking of residential projects, the increase in regional traffic impacts, and the industrial traffic through residential and resort areas.

Commissioner Contrades had a few questions regarding the location of the regional jobs and industrial lands.

Commissioner Piltz asked if there is current industrial activity or potential loss of activity.

Chair Sakumoto raised a few questions relative to the regional traffic solutions.

Commissioner Piltz commented that at the last meeting, the \$93 million in mitigative measures and the \$38 million were to be addressed by the Petitioner.

Commissioner Im had questions regarding the negative impacts on the compatibility of uses, residential subdivision built next to the working industrial harbor and resort areas, and impacts to the regional effectiveness of the harbor. Commissioner Im also posed questions regarding the community association's concerns.

Commissioner Formby raised a few questions on the number of slips occupied in Ko Olina.

After a brief discussion, there were no further questions posed by the parties or the Commission.

**Correct amount should be \$193 million and not \$93 million as asked by Commissioner Piltz – paragraph 5.*

2. Ralph Harris

Mr. Harris stated that he is the President of Ko Olina Fairways Association of Apartment Owners, representing 280 of the homeowners at the Ko Olina Fairways. Mr. Harris stated that they are opposed to the approval of the application that takes away industrial lands and employment by facilitating an unsuitable development plan. Mr. Harris noted 4 major areas of “close proximity” to the Fairways. Mr. Harris added that they have recommended that Aina Nui revisit their plan, but that this issue was not directly addressed by their consultant during the EIS proceedings.

Commissioner Im raised questions relative to the location of the golf course to the Fairways project, and the traffic impacts from the intersection that has created a commercial parcel drawing people at all hours, and the residents’ concern that this is not appropriate in a residential neighborhood.

After a brief discussion, there were no further questions posed by the parties or the Commission.

Mr. Kudo commented that Petitioner’s witness, Mr. Mink has passed away, but Ms. Goth is prepared to answer questions on water resources in that area.

Petitioner’s Witness

1. Donna Goth

Ms. Goth stated that she is the President of Aina Nui and discussed the Kapolei Master Plan, regional infrastructure for transportation, water and sewer, Project acreage and uses, relationship between urbanized parcel and petition area, history of urbanized parcel and why it has not been developed, reasons for filing the Petition, and the development costs. Ms. Goth also discussed the Petitioner’s commitment to meet affordable housing requirements, and the six priority transportation projects.

After Ms. Goth ended her testimony, the meeting adjourned at 5:00 p.m.

(Please refer to LUC Transcript of October 19, 2005 for more details on this matter.)