

LAND USE COMMISSION
MINUTES OF MEETING

July 12, 2007

Hilton Kauai Beach Resort
4331 Kauai Beach Drive
Lihue, Kauai, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Duane Kanuha
Ransom Piltz
Nicholas Teves
Vladimir Devens

COMMISSIONERS ABSENT: Howard Hamamoto
Lisa Judge
Reuben Wong

STAFF PRESENT: Anthony Ching, Executive Officer
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Presiding Officer Formby called the meeting to order at 2:10 p.m.

Presiding Officer Formby welcomed Vladimir Devens, newest commissioner to serve on the Land Use Commission.

ADOPTION OF MINUTES

Presiding Officer Formby noted that a copy of the minutes was provided to the Commission and entertained any comments or changes. Hearing none, the minutes of June 21, 2007 was approved by voice votes.

A05-761 ERIC A. KNUDSEN TRUST

Presiding Officer Formby stated that this was an action meeting to consider Petitioner's Motion to Withdraw Petition.

APPEARANCES

Walton Hong, Esq., represented Petitioner

Stacey Wong, Eric A. Knudsen Trust

James Tagupa, Esq., represented County of Kauai Planning Department

Rosa Flores, County of Kauai Planning Department

Abe Mitsuda, State of Hawaii Office of Planning

Public Witness

1. Kalanikumai Kamaka Ona Alii Hanohano

Mr. Hanohano stated that although the landowner has withdrawn the rezoning request, he would like to see a mandate placed on this development, in light of the discoveries made during this application's process.

There were no questions posed for Mr. Hanohano by the parties or the Commission.

2. David Whatmore

Mr. Whatmore stated that he was in support of the testimony given by the previous witness.

There were no questions posed for Mr. Whatmore by the parties or the Commission.

3. Ken Taylor

Mr. Taylor concurred that he also supported the remarks of the first witness and noted his concerns for continued construction activity taking place on the site.

There were no questions posed for Mr. Taylor by the parties or the Commission.

4. Terrie Hayes

Ms. Hayes noted her concerns for the ongoing activities of Goodfellow Brothers' base yard operation in the project area. Ms. Hayes referenced photos from her laptop regarding the project site which she attributed to the Goodfellow Brothers' construction activity.

Mr. Wong commented that the activity alluded to by the witness was not occurring on the area that is being withdrawn.

There were no further questions posed for Ms. Hayes by the parties or the Commission.

5. Cheryl Lovell Obatake

Ms. Obatake testified that she was concerned that the corrections that she had suggested be made to the TMKs should still be made and incorporated in the cultural archaeological report conducted by Cultural Surveys Hawaii for this project.

There were no questions posed for Ms. Lovell Obatake by the parties or the Commission.

6. Rupert Rowe

Mr. Rowe expounded on his continued concern for drainage water from the withdrawn petition area flowing into the *Kane i olo uma* site. Mr. Rowe commented that they need an answer from the developer before the LUC withdraws this petition.

There were no further questions posed for Mr. Rowe by the parties or the Commission.

Petitioner's Presentation

Mr. Hong stated that he was not prepared to make a presentation. However, after hearing from the public witnesses today, Mr. Wong from the Knudsen Trust was available to answer any questions that the LUC may have had.

Commissioner Kanuha posed questions regarding the public witness statements of ongoing construction activities in the area and also on the status of the *Kane i olo uma* site, although he understood that this area was off-site and not within what had been the proposed petition area.

Mr. Wong stated that both sites have no connection to the proposed petition area. Goodfellow Brothers are using an adjacent site for their temporary base yard.

Mr. Hong added that the petition is being withdrawn, however, if this project were to proceed, there would have been a diversion of the surface water leading to the *heiau* that would have lessen the water flow. However, without the project, the development in the surrounding area would proceed and would meet all engineering requirements. Also, there would not be an increase in the surface water flow.

There were no further questions posed by the parties or the Commission.

Mr. Tagupa stated that the County did not object to the petitioner's motion for withdrawal of their petition.

Mr. Mitsuda noted that the State had no opposition to the petitioner's motion for withdrawal.

Presiding Officer Formby noted that this dismissal is with prejudice.

Mr. Hong replied in the affirmative and understood that the petitioner could not re-apply for a one-year period.

Commissioner Contrades then moved to approve petitioner's motion to withdraw their petition with prejudice. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Contrades, Piltz, Teves, Kanuha, Devens, and Formby.

The motion passed with 6 yes, 3 absent

A recess break was taken at 2:43 p.m. The meeting reconvened at 2:55 p.m.

SP05-399 KAUAI ATV, LLC (Kauai)

Presiding Officer Formby stated that this was an Order to Show Cause hearing of the Land Use Commission on Docket No. SP05-399 KAUAI ATV, LLC (Kauai).

APPEARANCES

Walton Hong, Esq., represented Petitioner

Marleny Cotrin, Kauai ATV

James Tagupa, Esq., Deputy Corporation Counsel, County of Kauai

Presiding Officer Formby noted that the State Office of Planning was not a party to this special permit.

Mr. Hanohano (public witness) requested that the hearing procedures be taken out of order to have staff's report heard first so that the public can have the benefit of receiving staff's report before the public witness testimony.

Presiding Officer Formby noted that Mr. Hanohano's request was approved for the purposes of this hearing only and not to set any future precedence. Staff would first present their video presentation followed by the oral presentation. The public witness testimony would then be received after the staff's report.

Staff's Report

1. Anthony Ching

Mr. Ching provided staff's oral report and supplemented staff's original report with additional facts and a description of recent events. Mr. Ching then presented a video of staff's site visit to the project area held earlier in the day.

There were no questions posed for Mr. Ching by the parties or the Commission.

Public Witnesses

1. Robert Herkes

Mr. Herkes stated that he was in favor of Kauai ATV and commended the applicant on their involvement in the community. Mr. Herkes added that Kauai ATV has helped the Koloa Youth program, providing a safe venue for local youths to participate in Hawaiian canoe paddling and for their families to better understand this cultural activity.

There were no questions posed for Mr. Herkes by the parties or the Commission.

2 Kalani Kumai Kamaka O Na Alii Hanohano

Mr. Hanohano noted his concern and support for the prevention of degrading both waterfalls at the Kauai ATV site. Mr. Hanohano referenced photos taken on July 4 of a staircase and the grading of a ledge to create a new pathway. Mr. Hanohano also described his concerns relating to erosion of the site. Mr. Hanohano then shared a letter from Beryl Bliach who was unable to testify today.

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

3. David Whatmore

Mr. Whatmore stated that he was a farmer of tropical fruit trees for over 20 years in Kilauea, Kauai. Mr. Whatmore expressed his support for agri-tourism, agri-business, and stated that he was an advocate for agricultural lands. He noted his concerns of non-agricultural activities on the agricultural zoned lands and his opposition to this special permit, the county's after the fact permits, and concern for the public's health and safety.

Mr. Hong asked whether Mr. Whatmore had entered the Grove Farm property without Grove Farm's permission.

Mr. Whatmore replied that he did not.

After a brief discussion, there were no further questions posed for Mr. Whatmore.

Presiding Officer Formby commented that in the future public witnesses should commit their concerns in writing and allow the examination to review the subject prior to their presentation. They could then briefly summarize their testimony for efficiency.

4. Cheryl Lovell Obatake

Ms. Obatake stated that she is the Chair of the Nawiliwili Watershed Council and commented on her personal concerns regarding the impaired waters in the project area. Ms. Obatake also questioned whether the proper ownership of these lands had been determined, the royal patent numbers, and the land commission awards, if any.

There were no questions posed for Ms. Obatake by the parties or the Commission.

Mr. Hong noted that the applicant would like an opportunity in the future to respond to the public testimony heard today.

Admission of Exhibits

Mr. Hong described the applicant's exhibits A-F. As there were no objections expressed by the parties or the Commission, the Applicant's exhibits A-F were admitted into evidence.

Mr. Tagupa stated that the County had 1 exhibit. There were no objections to the County's Exhibit 1. Said exhibit was admitted into the record.

Commissioner Contrades commented on the testimony brought forward today and noted that the LUC definitely needs more time to digest this. Commissioner Contrades requested the opportunity to personally visit the site.

Presiding Officer Formby questioned staff whether a site visit could be arranged prior to the continued hearing and whether there were any time limitations on the special permit.

Mr. Ching noted that he did not believe that the applicant had any time restrictions and could possibly arrange for a site visit prior to the continued hearing on this matter.

Commissioner Teves added that he would also like to afford the witnesses a chance to attend the site visit with the LUC.

Presiding Officer Formby noted that the LUC would continue this hearing based on the recommendations of Commissioner Contrades. In addition, a public site visit would be scheduled so all those interested in the matter could attend. A follow-up hearing would also be held.

Mr. Tagupa commented that he had the understanding that this order to show cause hearing was based on the illegal structure. Mr. Tagupa questioned if the additional alleged violations that surfaced today would be included in the order to show cause, as the County had not had a chance to investigate these allegations.

Presiding Officer Formby stated that the current order to show cause was regarding the staircase. However, the LUC needs more time to review the photos given today and other credible evidence that have been accepted into the record to possibly issue an order to show cause that would cover all these issues.

Mr. Hong noted his concern of potential liabilities should the public attend the site visit.

Presiding Officer Formby commented that the petitioner and staff could arrange for the appropriate documentation or waiver of liability to be secured prior to public participation in the LUC site visit.

The meeting adjourned at 4:35 p.m.

(Please refer to LUC Transcript of July 12, 2007 for more details on this matter.)