

LAND USE COMMISSION
MINUTES OF MEETING

January 25, 2008

Alii Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

COMMISSIONERS PRESENT: Kyle Chock
Vladimir Paul Devens
Lisa Judge
Duane Kanuha
Ransom Piltz
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Thomas Contrades
Normand Lezy
Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Rodney A. Maile, Interim Executive Officer
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 8:40 a.m.

SMA Use Permit Application (SMA 07-000019)

Chair Judge stated that on January 22, 2008, the Commission received a letter from David Harada-Stone, counsel for Villages at Mauna Lani AOA, notifying the Commission of the withdrawal of the Petition to Intervene submitted on January 10, 2008 by the Villages at Mauna Lani AOA. Therefore, there is nothing before the Commission for decision. However, because this item was included in the notice and agenda, Chair Judge asked if there was anyone in the audience desiring to provide public testimony on this matter. Seeing none, this matter was adjourned.

A84-583 MAUNA LANI RESORT, INC. (Hawaii)

Chair Judge stated that this matter would be deferred. However because this item was included in the notice and agenda, Chair Judge asked if there was anyone in the audience desiring to provide public testimony on this matter. Seeing none, this matter would be deferred.

REVIEW OF STAFF PROPOSED ADMINISTRATIVE RULES

Chair Judge stated that the LUC would review and discuss the comments received from Vice Chair Kanuha.

The LUC discussed:

Page 15-8, § 15-15-03 Definitions; it was noted that this section would remain as is.

Page 15-10, § 15-15-03 Definitions; the Executive Officer will search the definition of "lots" in all the counties and this discussion is deferred until the next meeting.

Page 15-10, § 15-15-03 Definitions; there will be no changes to this section.

Commissioner Chock entered the meeting at this time.

The LUC discussed the non-conforming use section related to structures.

Page 15-12, §15-15-06 Chairperson and Vice-Chairperson; Ms. Erickson will add a time frame to subsection c for an election to occur; and amend §15-15-06 and 15-15-60 to be consistent.

Commissioner Devens had a few comments on Definitions in § 15-15-36 and 15-15-37.

Page 15-13, §15-15-07 Executive Officer; the language is underscored.

Page 15-15, §15-15-10 Meetings; Generally; leave as is and poll the full board at the next meeting.

Page 15-16, §15-15-12 Emergency Meetings; leave as is and poll the full board at the next meeting.

After a discussion, a new section 15-15-09 was added.

Page 15-17, §15-15-13 Quorum and number of votes necessary; to be consistent with 205-6; mirror subsection b.

Pages 15-17 and 15-18, §15-15-15 Minutes of meetings (transcripts of proceedings); the transcripts apply to Chapter 91 proceedings; may need to create a new subsection.

A recess break was taken at 9:40 a.m. The meeting reconvened at 10:05 a.m.

The LUC continued to discuss:

Page 15-19, §15-15-18 Standards for determining urban district boundaries;

Page 15-26, § 15-15-25 Permissible uses within the A agricultural district;

Page 15-26, § 15-15-27 Permissible uses within the R rural district;

Page 15-28, § 15-15-29 Nonconforming uses of structures and lands; §15-15-29(c)

Page 15-28, § 15-15-32 Existence of nonconforming use is question of fact;

After a discussion, it was agreed upon to defer these items until the next meeting. Ms. Erickson was instructed to do some research on incremental districting and the language regarding prima facie case.

Page 15-31, §15-15-36 Decision and orders;

Page 15-32, §15-15-38 Format; to amend to three-ring binders, spiral bound, or equivalent.

Commissioner Devens noted that in subsection d, filing date is the date the paper original is filed in the office of the Commission. The same amendment should also be in section 37 Filing of documents on page 15-32.

Page 15-36, §15-15-45 Service of process; the service of the final Decision and Order (the service of papers) does not need to be certified mail, similar to the Hawaii rules of civil procedure.

Commissioner Devens noted an amendment to subsection g, page 15-46, for clarification to include “during the pendency of the petition” at the end of the sentence.

Page 15-77, section c, increment redistricting; the thought was if it is prima facie proof the districting is automatic. There could be a substantial lapse of time and the LUC may want to consider imposing additional conditions. This section will be further discussed at the next meeting.

Commissioner Devens noted an amendment to page 15-84, section 86 regarding the time limits a party could submit exceptions to the decision and order; to extend that from 7 days to 14 days.

Page 15-88, section 2, providing notice to the Commission of any intent to sell, lease, and assign. Ms. Erickson noted that the new language was suggested for incidents where the developer intends to sell the entire development.

Chair Judge requested that Ms. Erickson research §15-15-35 Proceedings before the Commission to clarify the role of public testimony in contested case hearings.

Chair Judge requested for Ms. Erickson to incorporate all the comments as discussed and have it ready for further discussion on the February 7-8 agenda.

Chair Judge noted that the LUC had received written public testimony from Ms. Kunimoto of the Department of Agriculture and Mr. Yuen from the County of Hawaii. There were no public witnesses present.

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:40 a.m.

EXECUTIVE SESSION

Commissioner Teves moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities relating to personnel issues. The motion was seconded by Commissioner Chock and passed with six affirmative votes.

The Commission entered into executive session at 11:40 a.m.

The open meeting reconvened at 12:05 p.m.

A06-770 THE SHOPOFF GROUP, L.P. (Hawaii)

Chair Judge stated that the LUC would continue with the petitioner's witnesses on this matter.

APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner

Jesse Souki, Esq., represented Petitioner

Brooks Bancroft, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

Petitioner's Witnesses

1. Kemble White

Mr. White stated that his written testimony had been admitted into evidence as petitioner's exhibit 13. Mr. White noted a correction to his testimony that he had conducted fieldwork prior to the earthquake, but he had revisited the site this past Monday for changes since the quake. Mr. White summarized his testimony and discussed issues of the property, characterized cave resources, cave biology, and the notable cave animals. Mr. White added that he did not believe that the cave biology on the property is of any protected or endangered species and that there have been minimal changes since the quake. Mr. White commented that his 2006 report is still accurate.

Mr. White noted that he investigated 13 different segments of lava tubes that are part of the same system. Mr. White recommends fencing or cave gating to control access to some of the caves identified for preservation.

Mr. Bancroft questioned whether there were any changes to the lava tubes on the second visit.

Mr. White replied that there were no significant changes, just some fallen rocks but nothing to the dynamics of the cave environment.

Mr. Yee posed questions regarding the three cave areas that had the majority of significant biology and the sub-grade cavities within the petition area.

Chair Judge questioned whether the cave gating was being suggested for all the caves or just the ones identified for preservation.

Mr. White stated that he recommended gating to prohibit access for the caves with active cave biology in the preservation area. Mr. White then referenced petitioner's exhibit 21 and pointed to the significant entrances. Mr. White recommend, as a mitigation measure, to block entrances to the caves not permanently, but with limited access.

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

2. Art Whistler

Mr. Whistler stated that his written testimony was submitted as petitioner's exhibit 10. Mr. Whistler summarized his testimony and discussed issues of the project terrain, the vegetation types present, the native and alien plant species. Mr. Whistler

added that he believed that there would be no significant botanical impediments with the project construction.

Mr. Bancroft noted that the County had no questions for Mr. Whistler.

Mr. Yee posed questions regarding the drought tolerant plants to be used in the landscaping, and other recommendations for the 4.4 acre park and informational materials to be made available to perspective lot purchasers.

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

3. Dick Kaku

Mr. Kaku stated that he was a transportation planner/traffic engineer with Fehr Peers & Kaku Associates in Santa Monica, California. His written testimony was admitted as petitioner's exhibit 33. Mr. Kaku summarized his testimony and referenced exhibit 35, his traffic impact analysis report. Mr. Kaku discussed the six study intersections and four roadway segments, project completion and projection dates, trip generation at AM and PM peak hours, and the minimal levels of acceptable of service.

Commissioner Teves left the meeting at this time.

Mr. Kaku continued with his discussion related to the new highway improvements and referenced exhibit 37. Mr. Kaku also discussed the methodology for the fair share calculation for improvements. Mr. Kaku added that the traffic conditions would not be hindered but improved by the addition of the project and proposed measures.

Mr. Bancroft posed a few questions regarding the year 2020 estimated level of service at the different intersections, the planned roadway improvements by other projects, and the completion of the Holoholo Street access.

Mr. Yee raised questions related to the current plans for signalization at Mamalahoa and Kaiminani Drive, the fair share calculation for mitigative measures, the 6 analyzed intersections, and the levels of service projection at the intersections.

A recess break was taken at 1:15 p.m. The meeting reconvened at 1:25 p.m.

Commissioner Chock commented that the petition area is land locked and questioned whether there was an agreement with the abutting owners. Commissioner Chock also inquired whether the percentage number would change if the developer builds less than the number of units as proposed.

Vice Chair Kanuha posed questions regarding the unacceptable levels of service currently at the intersections of Kaiminani Drive and Queen Kaahumanu, Hinalani and Queen Kaahumanu, and the impacts due to the regional traffic flow.

Commissioner Piltz had a few questions in reference to the extension of Holoholo and Hinalani and the impacts to the traffic flow for the current residents.

Commissioner Devens clarified whether Mr. Kaku was referring to the Koloko Heights development in his testimony regarding the other new developments in the area. Mr. Kaku replied in the affirmative.

Vice Chair Kanuha had a few questions regarding the proposed roadway improvements and the mid-level route to allow some relief for the regional traffic.

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

4. Barry Neal

Mr. Neal stated that his written testimony was admitted as petitioner's exhibit 39. Mr. Neal noted that he was a certified consulting meteorologist in air quality and discussed his evaluation of the project. Mr. Neal discussed the ambient air quality and recommendations. Mr. Neal added that mitigation measures were not needed.

Mr. Bancroft stated that the County had no questions.

Mr. Yee posed a few questions regarding special mitigation measures, and whether Mr. Neal would recommend some form of mitigation during construction of the individual lots by homeowners.

There were no further questions posed for Mr. Neal.

The meeting adjourned at 1:50 p.m.

(Please refer to LUC Transcript of January 25, 2008 for more details on this matter.)