

LAND USE COMMISSION
MEETING MINUTES

March 4, 2010

Waikoloa Beach Marriott Resort
69-275 Waikoloa Beach Drive
Waikoloa, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha
Ransom Piltz
Kyle Chock (arrived at 9:22 a.m.)
Nicholas Teves, Jr.
Normand Lezy
Lisa Judge
Thomas Contrades

COMMISSIONERS ABSENT: Vladimir Devens
Reuben Wong

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney
General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Acting
Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walt Mensching Jr.

The Commission reconvened at 9:15 a.m.

HEARING

**A07-774 NORTH KONA VILLAGE , LLC (O'oma 2nd – Kaloko, North Kona,
Hawaii)**

Chair Piltz announced that this was a continued hearing on Docket No. A07-774 NORTH KONA VILLAGE, LLC (O`oma 2nd – Kaloko, North Kona, Hawaii) to consider the reclassification of approximately 181.169 acres of land currently in the Conservation District into the Urban District at O`oma 2nd Kaloko, North Kona, Hawaii, Tax Map Key Nos.: (3) 7-3-009:004 (portion), and 7-3-009 (portion of State Right-of-Way) for beachside residential community with mixed uses and that public testimony would be accepted at the next hearing of this docket.

APPEARANCES

Jennifer Benck, Esq., represented Petitioner O`oma Beachside Villages LLC (North Kona Village, LLC)

Steven Lim, Esq., represented Petitioner O`oma Beachside Villages LLC (North Kona Village, LLC)

Brandon Garcia, Esq., represented Hawaii County

B.J. Leithead-Todd, Hawaii County Planning Department

Phyllis Fujimoto, Hawaii County Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Gregory Lind, Esq., Office of the Solicitor, United States Department of Interior represented National Park Service

Sally Beavers, National Park Service

PRESENTATIONS

LUC Map Orientation –

LUC Staff Planner Scott Derrickson provided a map orientation of the Petition Area. Commissioner Kanuha requested that certain features be identified in relation to the Petition Area. There were no other questions for Mr. Derrickson.

ADMISSION OF EXHIBITS TO THE RECORD:

Petitioner

Ms. Benck offered Petitioner's Exhibits #1-93 for the record. There were no objections to admission of Petitioner's exhibits.

County of Hawaii

Mr. Garcia offered County's Exhibit #1 for the record. There were no objections to admission of County of Hawaii's exhibit.

OP

Mr. Yee offered OP's Exhibits # 1, 2, 4, 5, 9, 10, 12, 13, 17-22, and 24-26. He stated that Exhibits # 6, 7, 11, 14, and 15 had been withdrawn, and that four Exhibits were still outstanding. There were no objections to admission of OP's exhibits.

National Park Service (NPS)

Mr. Lind offered NPS' Exhibits #1-16 for the record. There were no objections to admission of the NPS Exhibits.

HEARING

PETITIONER'S WITNESSES

Ms. Benck stated that the Parties had agreed to stipulate on the qualification of the expert witnesses to streamline the proceedings. The Commission agreed with the stipulations.

1. Tom Witten

Ms. Benck offered her first witness, Tom Witten-PBR Hawaii, as an expert witness in planning based on his submitted resume. Chair Piltz acknowledged Mr. Witten as an expert witness in that field. Mr. Witten used a PowerPoint presentation (Exh.#80) to provide the history and background of the Project and described the methodology and reasoning that went into the planning process and provided the results of his firm's work.

Ms. Benck requested clarification on shoreline access for the public, the location of residential units in relation to the noise contour map 60 DNL line and the number of units planned for the proposed development (530-650) would be built and sold by 2020. Mr. Witten stated that shoreline access would not be blocked, that residential units would not be within the 60 DNL line and that the estimated units to be built were anticipated to be sold by 2020.

Mr. Garcia requested clarification on the dedication plans for the coastal preserve park if the Petition was granted. Mr. Witten indicated that he was not sure whether the park would be dedicated to the county or would be maintained by a homeowner's association.

Mr. Yee requested clarification on the number of residential units that would be constructed in the Petition Area; provisions for beach access, Department of Education impact fees, and maintaining the Mamalehoa Trail. Mr. Witten described the visual features and management plans of the proposed Project and explained how it conformed to the Kona Community Development Plan, and the various sustainability measures and noise considerations involved with the Project. Mr. Witten provided his perception of why the residential development was appropriate for the area and identified zoning designations of surrounding properties.

The Commission went into recess at 10:42 a.m. and reconvened at 11:01 a.m. Commissioner Judge rejoined the hearing at 11:02 a.m. and Commissioner Contrades rejoined the hearing at 11:04 a.m.

Chair Piltz announced that another opportunity for public testimony would occur at the next hearing.

Mr. Yee resumed his request for clarification on details of Mr. Witten's testimony regarding the timetable for infrastructure components and residential units. Mr. Witten provided his opinions on how the proposed project would be completed.

The National Park Service had no questions for Mr. Witten.

Commissioner Kanuha requested clarification on Project costs. Mr. Witten deferred to witnesses Martin Nakasone and Dr. Bouslog to provide this information.

Commissioner Lezy requested clarification on the encumbered coastal preserve portion of the area. Mr. Witten responded that the Petitioner did not have plans to urbanize the coastal area and had no uses for the Petition Area other than what was represented on the conceptual plan.

Commissioner Kanuha requested clarification on the location site for the desalinization plant. Mr. Witten explained that the specific location had not been determined and that State land acquisition or other off-site property outside the Petition Area may need to be considered.

Commissioner Judge requested clarification on how the noise issues for the Project would be resolved. Mr. Witten provided his understanding of the

noise contour maps and deferred to witness Yoichi Ebisu to answer more specific questions on this matter.

Commissioner Chock requested clarification of the term “low carbon community” and how Mr. Witten would respond to the description of the Project being a “great project in the wrong place”. Mr. Witten provided his opinion of the description and his perception of what “low carbon community” meant.

Commissioner Contrades inquired if other subdivisions near airports had been studied. Mr. Witten responded that no such studies had been done relative to the proposed Project.

Commissioner Judge requested clarification of how future changes in noise contours might impact the Project, and how beach access might be achieved. Mr. Witten provided his perspective on these matters and deferred to Mr. Ebisu to respond to specific noise issues.

There were no further questions for Mr. Witten.

2. Tom Nance

Mr. Nance was offered as an expert witness in hydrology and ground water resources by Ms. Benck. Chair Piltz acknowledged that the parties had agreed to accept Mr. Nance as an expert witness. Mr. Nance provided the methodology and scope of his studies and reported on his findings.

Mr. Yee requested clarification on details of the water studies, the proposed desalinization plant and the hydrologic aspects of the NPS agreement with the Petitioner.

Mr. Lind requested clarification on the source of feed water for the Petition Area.

Commissioner Contrades excused himself at 11:45 a.m. and returned at 11:47 a.m.

Commissioner Judge requested clarification on dry wells and mitigation measures for nitrogen and phosphorous material in the water, and salinity in injection wells. Mr. Nance explained the alternatives for treating water and his experience with shoreline runoff water.

Ms. Benck requested that Mr. Nance describe the monitoring of water that would be done to comply with the agreement with the NPS. There were no further questions for Mr. Nance.

The Commission went into recess at 11:52 a.m. and reconvened at 1:12 p.m.

3. Dr. Steve Dollar

Dr. Dollar testified as an expert in water quality and marine biology. Chair Piltz acknowledged that the parties had stipulated to Dr. Dollar's appearance as an expert witness. Dr. Dollar described the scope, reasoning and methodology of his studies and reported on his findings.

Commissioner Kanuha excused himself at 1:20 p.m. and returned at 1:22 p.m.

Mr. Yee requested clarification on the impacts of the proposed Project upon water quality to the Petition Area and neighboring coastline. Dr. Dollar provided his recommendations for mitigation and explained the details of his findings and criticism of the University of Hawaii study and explained the role that water quality had in the NPS agreement.

Mr. Lind asked if other developments were incorporated into the report. Dr. Dollar responded that no other developments were and explained the scope of his work.

Commissioner Judge requested clarification on her concerns regarding the water flow in the area, the effects of nitrates and phosphates to the water and "impaired water".

Ms. Benck requested clarification on water discharge within the Petition Area. Dr. Dollar described his estimates for water flow from the proposed Project.

Mr. Lind requested clarification on "natural variability", establishing "baselines" and on concerns he had regarding water quality assessment methods. Dr. Dollar defined the terminology used and described the factors involved in making these assessments.

4. Martin Nakasone

Mr. Nakasone was offered as an expert in waste water engineering and water systems. Chair Piltz acknowledged that the Parties had stipulated to Mr. Nakasone's appearance as an expert witness. Mr. Nakasone described the extent of his research, findings and recommendations and reported on the results of his studies on the proposed Petition Area development plan (Petitioner's Exhibit #78).

Ms. Benck indicated that part of what Mr. Nakasone was speaking about was the Water Board resolution that was included in the Final EIS. Ms. Benck requested clarification on potable water demand and on the proposed implementation for the project's water system. Mr. Nakasone provided his understanding of these matters.

Mr. Yee requested clarification on stormwater runoff. There was discussion to clarify the specifics of what Mr. Yee was asking. Mr. Nakasone explained his findings regarding stormwater runoff on the Petition Area and the proposed detention basin system design. Mr. Yee asked how long it would take to construct a wastewater treatment plant and the proposed desalinization plant. Mr. Nakasone described the process involved in constructing a wastewater plant and provided his estimates for both facilities.

Mr. Lind requested clarification on the proposed stormwater retention and drywell discharge. Mr. Nakasone provided his perception of how the infrastructure was designed to accommodate these concerns.

Commissioner Kanuha requested clarification on how infrastructure requirements were calculated, what standards were used, and how the plans for infrastructure would be implemented. Mr. Nakasone described the system's conceptual plans and the methodology used to determine its capacities.

Chair Piltz requested clarification on provisions for drainage and utilities in the Petition Area. Mr. Nakasone provided his understanding of the infrastructure's design features.

Commissioner Lezy requested clarification on plans for a desalinization plant and estimated potential costs for the Project's infrastructure. Mr. Nakasone estimated that it might require \$110- \$120 million.

Commissioner Judge requested clarification on what would be included in the \$110- \$120 million costs. Mr. Nakasone indicated that the figures represented the total estimated costs.

Ms. Benck asked Mr. Nakasone if he had any indication that the Petitioner would not comply with the NPS agreement. Mr. Nakasone replied that he had no indication.

There were no further questions for the witness.

The Commission went into recess at 2:25 p.m. and reconvened at 2:36 p.m.

Ms. Benck requested that the Commission reference Mr. Witten's PowerPoint Exhibit #80 on Noise during the presentation of her next witness, Yoichi Ebisu.

5. Yoichi Ebisu

Mr. Ebisu was offered as an expert witness on Acoustics Assessment. Chair Piltz acknowledged that the Parties had stipulated to Mr. Ebisu's qualifications as an expert witness. Mr. Ebisu described the methodology for

charting Noise Contour Maps, provided the current status of maps for the Petition Area and expressed his opinions on the limitations involved with building in areas with excessive noise levels and what needed to be done to construct residential homes in the Petition Area.

Mr. Yee requested clarification on noise mitigation measures. Mr. Ebisu provided his understanding of how noise could be managed.

Commissioner Lezy requested clarification on how noise contour maps might need to be modified over the passage of time and if noise exposure for other communities had been performed. Mr. Ebisu explained how he perceived the situation would be addressed and described the noise contours in the Ewa area.

Commissioner Teves inquired about the distance between the southern portion of the runway and the Petition Area. Mr. Ebisu estimated that the distance was about a mile.

Commissioner Judge requested clarification on the term “thermal ducting effects”. Mr. Ebisu explained the factors that caused the condition and explained how airport expansion might impact surrounding land areas over time. There were no further questions for Mr. Ebisu.

Chair Piltz announced that the Legislative Update portion of the agenda would be deferred due to time constraints. There being no further business to discuss, the hearing was adjourned at 3:20 p.m.