

LAND USE COMMISSION
MEETING MINUTES

June 16, 2010

King Kamehameha's Kona Beach Hotel
Ballroom 1 & 2
75-5660 Palani Rd.
Kailua- Kona, Hawai'i 96738

COMMISSIONERS PRESENT:

Kyle Chock
Lisa Judge
Duane Kanuha
Thomas Contrades
Normand Lezy

COMMISSIONERS ABSENT:

Reuben Wong
Nicholas Teves, Jr.
Ransom Piltz
Vladimir Devens

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:

Walter Mensching

CALL TO ORDER

Acting Chair Judge called the meeting to order at 9:38 a.m.

APPROVAL OF MINUTES

(Please refer to LUC Transcript for more details on this matter.)

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Acting Chair Judge asked if there were any corrections or additions to the minutes. There were none. Commissioner Lezy moved to adopt the minutes. Commissioner Contrades seconded the motion. The minutes were unanimously approved by a voice vote (5-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2010 was distributed in the handout material for the Commissioners.
- The next meeting will be on July 1 and 2 on Oahu.
- The balance of LUC meetings have been scheduled through September but will be reviewed due to the recent announcement of the City and County furlough plan schedule and adjusted if necessary.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

CONTINUED HEARING

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

Acting Chair Judge announced that this was a continued hearing on Docket No. A07-774 NORTH KONA VILLAGE, LLC, to consider Petition to reclassify Conservation Land District to Urban District and explained the planned procedures for the hearing.

Mr. Yee noted that the Office of Planning's witness, Dept. of Transportation Director Brennon Morioka, was not available as a witness and that arrangements had been made with the National Park Service to adjust the order of witnesses so that the National Park Service witness could appear before the Commission ahead of schedule. Acting Chair Judge confirmed the order of witnesses with the parties and there were no objections to the proposed order of appearances.

APPEARANCES

(Please refer to LUC Transcript for more details on this matter.)

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

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

Brandon Gonzalez, Esq., represented Hawaii County Planning Department

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

Phyllis Fujimoto, Hawaii County Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, Director, State Office of Planning (arrived 10:18 a.m.)

Gregory Lind, Esq., Solicitor's Office represented National Park Service

Melia Lane-Kamahele, National Park Service

Sally Beavers- Buchal, National Park Service

ADMISSION OF EXHIBITS

Petitioner

Ms. Benck had no exhibits.

OP

Mr. Yee requested that OP's Amended List of Witnesses and Exhibits 29 and 30 be admitted into evidence. Mr. Yee noted that there were originally seven witnesses listed but OP would only be calling four after adjusting the witness list to include Ronald Blair of NELHA. Mr. Yee described Exhibits 29 and 30. There were no objections.

National Park Service (NPS)

Mr. Lind requested that NPS Exhibit 31 be admitted into evidence and noted that the NPS had listed two witnesses but only would have Ms. Buchal testifying. There were no objections.

(Please refer to LUC Transcript for more details on this matter.)

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PETITIONER'S WITNESSES

1. Ann Bouslog

Ms. Benck noted that the parties had stipulated to Ms. Bouslog being an expert witness.

Ms. Bouslog provided expert witness testimony on market conditions, and economic and fiscal analyses. Ms. Bouslog described the background of her company and its relation to the Petitioner, the methodology and considerations made in preparing her studies, and what her findings were.

Ms. Bouslog provided the reasoning used to determine that the proposed project was viable and described how the uniqueness of the proposed project had posed challenges during the course of her work. She shared the details on the adjustments she made in arriving at her conclusions for its residential and commercial components.

Ms. Bouslog described how an economic recovery would affect the proposed project, its surrounding areas, the region and Hawaii Island; what type of job market she anticipated and the differences between the proposed project and other projects that she had experience with in previous years.

Ms. Bouslog expressed her opinions on Mr. Ebisu's earlier testimony regarding noise impacts and explained how the noise concerns might affect the marketability of living units in the proposed project and why she felt the type of housing offered in the Petition Area would make it an attractive and viable consumer choice.

Mr. Yee asked whether the effect on sales of the close proximity of NELHA's neighboring light industrial area had been considered. Ms. Bouslog explained her perspective of how customers might react to the close proximity to the airport and the light industrial area activity and described what provisions might need to be made in marketing the project.

Hawaii County and the National Park Service had no questions.

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Commissioner Lezy asked if any assessment had be done for marketing the property as “a pure commercial project” and whether the sales pricing had taken into account “noise easements” for the residential properties that would prevent future claims against the State. Ms. Bouslog responded that she had not done a “pure commercial” assessment and described the assumptions that were made regarding the noise factors in her study and how they would impact the marketability of the proposed project.

Commissioner Kanuha requested clarification on how the Petition Area components had been analyzed. Ms. Bouslog explained the methodologies and considerations that she used to study the proposed project components and determine their contributions to the proposed project’s financial feasibilities. Discussion ensued over what results might occur if the various project components were rearranged or relocated.

Commissioner Judge requested clarification on the current entitled residential units in the study area and the estimated future supply. Ms. Bouslog stated that she estimated as of March, 2009 that 12,500 more units had been identified in the competitive residential market area based on her census tract data and described the parameters of the census tract and her reasoning on why the unit number had decreased to 9,200. Discussion ensued to determine how the market for entitled units might be affected by what had or had not been included in the study.

Ms. Benck requested clarification on the impact that including Kamakana Village would have on market absorption. Ms. Bouslog replied that she expected a deficit of over seven thousand units over the study period and there would be a need for the types of housing that the proposed project offered since the target markets for the properties were different.

There were no further questions for Ms. Bouslog.

The Commission went into recess at 10:35 a.m. and reconvened at 10:53 a.m.

2. Tom Schnell

Mr. Schnell provided his work background in planning and described his relationship with the project and involvement with preparing its environmental impact statement (EIS). Mr. Schnell provided information on studies that were

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included in the EIS that expert witnesses would not be appearing to testify on and described the soil conditions, natural hazards, flora, fauna, and air quality studies that were done for the Petition Area.

Mr. Schnell described the various components of the proposed project and referred to Figure 1 of the EIS (Petitioner's Exhibit 3B) to help identify the five main areas that were under discussion. He also noted that the project had received a design award from the local American Planning Association chapter and acknowledgments from Placemakers, the consultant group for the Kona Community Development Plan (Kona CDP).

Mr. Schnell provided his assessment of how the proposed project conformed to the urban area growth management plan and its guiding principles. Mr. Schnell explained the zoning requirements for transit oriented designed (TOD) and traditional neighborhood designed (TND) developments in the Kona CDP and identified how he felt the project had satisfied the various required sections of the Kona CDP, the Hawaii County general plan, and the Hawaii State Plan.

Mr. Schnell shared his opinion of the Kahala Capital project and why it had not been successfully completed, and described the Mamalahoa Trail and its proposed buffer zone within the Petition Area using the Figure 1 EIS map. He explained why he felt that the Petition Area met the various LUC standards for land use reclassification and was consistent with the coastal zone management program. Mr. Schnell noted that the project had received support from various entities after they had reviewed the Petitioner's agreement with the National Park Service and that Petitioner's Exhibit 89 and 75 reflected this concurrence.

Mr. Schell described the types of land that comprised the Conservation District and identified the types of resource and conservation sub-zone areas that existed in the Petition Area and provided his perception of why the reclassification of the conservation district should be allowed and referenced Petitioner's Exhibit 90 to describe how the proposed project would be a "low carbon community".

The Commission went into recess at 11:43 a.m. and reconvened at 11:54 a.m.

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Mr. Gonzalez requested clarification on the role that Placemakers had as consultants to the Kona CDP and how accessibility and beach park facilities would be accommodated in the proposed project. Mr. Schnell identified the companies that had worked on the Kona CDP and described the access and beach park facilities planned for the proposed project.

Mr. Yee asked if the project qualified as a TND and requested definitions for TOD and TND. Mr. Schnell replied that TOD referred to "Transit Oriented Design" and TND referred to "Traditional Neighborhood Design". He asserted that the proposed project qualified as a TND community and provided his perception of how the details of the suggested EIS mitigation measures would be implemented, and how the requirements for coastal zone management (CZM) would be met. Mr. Schnell stated that he was not familiar with DLNR's request to amend the National Park Service agreement conditions to include the DLNR when providing information, but was aware that the county general plans included provisions that provide for the support and continued improvement of the Kona International Airport at Keauhou. Mr. Schnell acknowledged that he was aware of discussions between OP and Petitioner regarding conditions related to the Kona airport but was not aware if any formal agreement between the two parties that had been reached.

The National Park Service had no questions.

The Commission went into recess at 12:03 p.m. and reconvened at 1:41 p.m.

Commissioner Kanuha asked how involved Mr. Schnell was in developing the master plan. Mr. Schnell explained how PBR Hawaii handled the master plan and that his involvement began approximately mid-way when the EIS started to be developed.

Commissioner Judge requested clarification on the Kona CDP. Mr. Schnell stated that he had not participated in the Kona CDP meetings and was aware of the results of the meetings but did not know if the proposed project had been discussed during the Kona CDP meetings. Discussion ensued over Mr. Schnell's understanding of the Kona CDP and the map that reflected the planned development for the area.

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Commissioner Judge requested clarification on why an “all-industrial” use had not been considered as an alternative in the EIS. Mr. Schnell could not recall why it had not been included as an alternative and provided his opinions on what the area might look like with industrial use and questioned if there would be a demand for it.

Commissioner Judge inquired what the reasoning was for rejecting the “no action existing zoning alternative”. Mr. Schnell provided his perception of why “no action” was not acceptable based on the Kona CDP. Commissioner Judge referred to guiding principle #3 of the Kona CDP and inquired how the range of housing choices provided for special needs and if the issue of “homelessness” had been addressed. Mr. Schnell described how he felt the proposed project met this guiding principle.

Ms. Benck requested clarification of the various dates when the draft EIS had been completed, when the Kona CDP was adopted, and the distinction between a TOD and TND. Mr. Schnell noted that the draft EIS had been completed in May, 2008; the Kona CDP was adopted in September, 2008, and read the Kona CDP village descriptions of TOD and TND units.

There were no further questions for Mr. Schnell.

3. Warren Yamamoto

Mr. Yamamoto described the work that he had performed on the proposed project as an employee of AECOM in the field of traffic management and explained how his traffic impact analysis report (TIAR) had been prepared, what his findings were, and what various traffic controls and mitigation measures for the Petition Area were expected to be implemented according to the concurrency planning requirements of the county.

Mr. Gonzalez asked if an updated TIAR would be submitted to the county for approval if the Petition for land use reclassification was granted. Mr. Yamamoto acknowledged that an updated TIAR would be submitted.

Mr. Yee requested clarification on the timetable for Petitioner’s contributions for the Makai Frontage Road if the proposed project was approved.

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Mr. Yamamoto replied that he assumed the timetable would be determined by the County of Hawaii.

There were no further questions for Mr. Yamamoto.

4. Dennis Moresco

Mr. Moresco explained how he became involved in the proposed project and provided his perception of why “it was the right project, in the right place, at the right time”. He shared his personal and company backgrounds and explained his reasons for choosing the courses of action that he did and described the goals that he had for the Petition Area and how he intended to obtain financing to achieve them.

Mr. Moresco described the role and interests that Cliff Morris had in the proposed project and stated that Mr. Morris did not have any decision-making capacity. Mr. Moresco explained how the various components of the proposed project would be constructed and noted that there would be no changes to the master plan.

Hawaii County had no questions.

Mr. Yee requested clarification on 8 Department of Transportation conditions that Petitioner had agreed to. Mr. Moresco identified the various items that had been agreed to and discussion ensued over what other agreements had or had not been made. Mr. Moresco provided his understanding of the concerns and mitigation plans for the neighboring NELHA property and what the risk was for failing to comply with the possible proposed conditions that the State Office of Planning (OP) had brought to his attention. Mr. Moresco indicated that he did have an issue with the LEED conditions proposed by OP and shared his opinions of how the proposed project would be “green” by necessity and not by mandate.

The Commission went into recess at 2:51 p.m. and reconvened at 3:04 p.m.

Mr. Yee requested clarification on the length of time it would take to complete the proposed project and the entire Petition Area. Mr. Moresco replied

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that he anticipated that the entire project would take approximately 20 years and that he expected to complete work on the Petition Area within 10 years.

Mr. Lind requested clarification on the National Park Service agreement and whether or not the Petitioner would comply with the conditions of the agreement. Mr. Moresco replied that he was aware of what needed to be done and agreed to meet all the conditions of the NPS agreement. Discussion over the location of the planned desalinization plant ensued.

Commissioner Lezy asked Mr. Moresco how he would respond to the concerns voiced by various community opponents to keep the Petition Area as conservation. Mr. Moresco replied that he was not sure what the concerns were since the proposed project plan represented a compromise to promote harmony among the entities and described the considerations that had been made during the planning process to accommodate the issues that were brought to the Petitioner's attention. Mr. Moresco represented that the area that would be developed was currently unused and that he suspected that the increased sharing of beach access with the proposed project homeowners might be the reason for the public's objections.

Commissioner Lezy inquired if a condition to encumber the property with a provision that would prevent the sale of the property after it was entitled would be a problem. Mr. Moresco responded that it would depend on how the condition was written and would keep an open mind to it.

Commissioner Kanuha requested clarification on what was intended by the use of the term "density" with the proposed project. Mr. Moresco explained how the financial calculations were made to determine the economic feasibilities to compete in the local market based on estimated costs for development and the various constraints involved with the existing land within the Petition Area. Mr. Moresco described how the proposed project was unique in its offering of housing opportunities and location and noted the differences between the Petition Area and surrounding developments. Mr. Moresco identified the existing rim lots as being the most expensive on the ocean-side portion of the Petition Area, and verified that the projected values for the proposed project were estimates based on the reclassification of the land use to urban. Mr. Moresco noted that the LEED conditions were an issue and would review the language of what had been agreed to.

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Commissioner Judge requested clarification on what would be considered acceptable energy conditions. Mr. Moresco stated his familiarity with the “energy star” program and indicated that it was less onerous than LEED and was more commercially viable.

Commissioner Judge also requested clarification on the loan to value details of Petitioner’s Exhibit 92. Mr. Marico described the methodology and assumptions used in determining his calculations and explained how he used them for the various elements of the proposed project described in Petitioner’s Exhibit 95.

Commissioner Judge requested clarification on the plans and contingency plans for providing water to the proposed project. Mr. Moresco represented that other projects were currently using desalinization plants to provide water to their facilities and that a clear permitting process existed but if he was unable to obtain approval for a desalinization plant, he would need to drill a well on the mauka portion of the proposed project.

Commissioner Judge inquired if Mr. Moresco was aware that the land use was conservation when he began his participation in the proposed project. Mr. Moresco replied that he was aware of the conservation classification.

There were no further questions for Mr. Moresco.

The Commission went into recess at 3:28 p.m. and reconvened at 3:40 p.m.

OP’S WITNESS

1. Ronald Baird- CEO NELHA

Mr. Baird identified OP Exhibit 29 as his written testimony and a report prepared under his supervision and described the background and objectives of his organization. Mr. Baird stated the concerns that NELHA had if the Petition Area were reclassified and proposed project was built since there were many existing, on-going industrial activities that might be incompatible with an adjoining residential neighborhood and described the potential problems that

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might occur if a desalinization plant were constructed in close proximity to the NELHA property.

Ms. Benck asked if NELHA was going through a master plan process and if a draft EIS would be available. Mr. Baird responded that a master plan was being prepared but that it was unknown when a draft EIS would be available due to uncertain funding by the State Legislature and it was uncertain when NELHA might appear before the Land Use Commission.

Ms. Benck requested clarification on the type of setback requirements and the type of land uses that NELHA was interested in obtaining. Mr. Baird responded that at least a 100' setback was being sought and that Group 70 was doing the master plan that proposed that the NELHA area would be all industrial but details were not available at present.

Ms. Benck requested clarification on the location of future injection wells on the NELHA property. Mr. Baird responded that the locations could not be determined at this time since the property had not been subdivided and sites would be determined after the subdivision process. Mr. Baird described his perception of what the NELHA area adjoining the Petition Area might look like based on the preliminary NELHA master plan and noted that he was not aware of any discussions with the National Park Service in relation to the master plan.

Mr. Gonzalez requested clarification on which NELHA staff members had prepared OP Exhibit 29 and where the 83 acres mentioned in the exhibit were located. Mr. Baird replied that he and his administrative staff members had collaborated on preparing the documents and used OP Exhibit 30 to indicate where the 83 acres were located.

Mr. Gonzalez requested clarification on whether current or future tenants would be affected by the restrictions for injection wells and disposal trenches relative to a feed source well identified on OP Exhibit 29. Mr. Baird responded that it might impact present tenants that had plans for expanding their facilities, as well as future tenants.

Mr. Gonzalez inquired if the 83 acres identified in OP Exhibit 29 took into consideration a 1000' setback from the shoreline. Mr. Baird acknowledged that the acreage already was in close proximity to a large archaeological historic

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preserve and that the setback requirement would be met by NELHA if the distance was not sufficient.

Mr. Gonzalez requested clarification on the educational facilities located on the NELHA property. Mr. Baird described the type of school programs that existed and noted the characteristics and academic accomplishments of the student population.

Mr. Lind requested clarification of the current planning process that NELHA was involved in. Mr. Baird provided his perception of the current status of the planning work being done and described his perception of the injection well activity and stormwater drainage that was occurring on NELHA's property; and the restrictions that feed wells posed in future NELHA development plans. Mr. Lind referenced OP Exhibit 30 and requested clarification on potential property line setbacks for feed well sources and on the impacts of groundwater. Mr. Baird provided his assessment of what actions might be needed to comply with the setback requirements and noted that he was not aware of an environmental analysis being done in regards to the ground water replacing the feed water source and had not been approached to provide ocean water to the Petition Area. Discussion ensued over the business objectives of NELHA and how they related to providing water to neighboring properties.

Commissioner Kanuha referred to OP Exhibit 29 and requested clarification on what Mr. Baird's perspective was regarding the main land uses for NELHA. Mr. Baird described the various businesses on NELHA's property and the types of products that they produced. Commissioner Kanuha asked if "mixed use" might be a more appropriate description of the land use that was occurring. Mr. Baird acknowledged that it was a "fair statement".

Commissioner Judge requested clarification on the difference between the terms "feed source" and "injection well" ; and what the respective concerns that NELHA had in regards to them. Mr. Baird explained the differences between the terms and how NELHA would be impacted by their location and restrictions.

Mr. Yee requested clarification on the use of terms "aquaculture" and "agriculture" that were used during the testimony and on the types of activities that were occurring on the NELHA site. Mr. Baird explained how he may have

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misspoken during his testimony and described the retail business activities that were occurring to increase revenue for the tenants on the NELHA site.

There were no further questions for Mr. Baird.

Acting Chair Judge announced that the hearing would conclude for the day and resume on June 17, 2010 at 9:30 a.m. in the same locale. Acting Chair Judge noted that due to the progress being made on testimonies, public witnesses that were present on the 17th might be heard if they were present and time allowed before the 1:30 p.m. scheduled start for public testimony to best utilize time. The meeting recessed at 4:15 p.m.

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