

LAND USE COMMISSION
MEETING MINUTES

June 17, 2010

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

COMMISSIONERS PRESENT:

Lisa Judge
Duane Kanuha
Thomas Contrades
Normand Lezy
Nicholas Teves, Jr.
Ransom Piltz
Vladimir Devens

COMMISSIONERS ABSENT:

Reuben Wong
Kyle Chock

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

Chair Piltz called the meeting to order at 9:37 a.m.

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CONTINUED 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, to consider Petition to reclassify Conservation Land District to Urban District

APPEARANCES

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

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

Sally Beavers- Buchal, National Park Service

HAWAII COUNTY'S WITNESS

1. B.J. Leithead-Todd

Mr. Gonzalez noted that Ms. Leithead-Todd would be referring to Attachment 1 of County's Exhibit 1 that the Commission had been provided

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copies earlier. Ms. Leithead-Todd stated that the position of the County of Hawaii, after reviewing the general plan and the Kona CDP, was to support the request to amend the classification of the land use district for the Petition Area and described the background, reasons and actions that the County of Hawaii had considered to make its decision. Ms. Leithead-Todd described how leaving the area in conservation could remain consistent with the Kona CDP and explained how her department had dealt with that consideration during the evaluation of the proposed project.

Ms. Benck asked whether the Kona CDP was a county or state document and who the primary authority was for making decisions on consistency for the document. Ms. Leithead-Todd responded that the Kona CDP was a county document and that the Planning Director made the decisions.

OP and NPS had no questions.

Commissioner Kanuha requested clarification on how the general plan was adopted. Ms. Leithead-Todd described her understanding of the process and explained the relationship between the general plan and the Kona CDP; and explained what would happen at the County level if the Petition for changing land use was approved.

Commissioner Lezy requested clarification on how open space designations in the Petition Area would be handled under the general plan. Ms. Leithead-Todd identified the different locations of open space areas within the Petition Area and explained how the open space boundaries were determined.

Commissioner Kanuha referred to County Exhibit 1 and requested clarification on why the open space for the shoreline was not shown on the Kona CDP. Ms. Leithead-Todd responded that she did not know and provided her opinion that it might be due to the area already being identified on the general plan.

Commissioner Judge requested clarification on the current county zoning for the Petition Area. Ms. Leithead-Todd provided the zoning information and described the areas in the Petition Area that would require zoning changes if the petition was approved.

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Chair Piltz asked when the general plan and Kona CDP were adopted. Ms. Leithead-Todd replied that the general plan had been adopted in February, 2005 and the Kona CDP was approved in September, 2008. Ms. Leithead-Todd referred to the Kona CDP and explained how requirements for a TND factored into the Planning Department's analysis of the situation.

There were no further questions for Ms. Leithead-Todd.

NATIONAL PARK SERVICE WITNESS

1. Sally Buchal

Ms. Buchal described her educational and work experience with the National Park Service and expressed that NPS concerns over the proposed project that had generated the need for the conditions that the NPS proposed to include in the Decision and Order for the Petition Area in case the petition was granted. Ms. Buchal identified developments that were near the Petition Area and their land uses on Intervenor's Exhibit 1; and explained how the NPS had reacted to other petitions for land use changes in the past.

Ms. Buchal described the NPS concerns for the region and the types of mitigations that were contained in the conditions of the NPS agreement with Petitioner.

Ms. Benck asked if the NPS had any changes to its February 1, 2010 position statement. Ms. Buchal responded that the NPS position was still the same.

Hawaii County had no questions.

Mr. Yee requested clarification on how monitoring and violations would be enforced. Ms. Buchal responded that the monitoring data would indicate when it might be necessary for the NPS to notify proper authorities to take action to remedy a suspected problem and explained how the NPS monitoring system was designed to operate and handle problems.

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The Commission went into recess at 10:46 a.m. and reconvened at 10:59 a.m.

Commissioner Kanuha requested clarification on how the NPS had established its baseline data and determined its validity in regards to the extent of potential impacts to the park area. Ms. Buchal described how the NPS had collected and evaluated an inventory of data to use for monitoring and measuring variations of the natural resources of its park. Commissioner Kanuha referred to NPS's Exhibit 1 map and requested that Ms. Buchal identify various locales of concern. Ms. Buchal described the issues for each locale and how the NPS made its decisions to take action to intervene.

Commissioner Kanuha described the difficulty that the Commission had with trying to determine what considerations needed to be made when evaluating a NPS intervention and asked whether more consistent NPS guidelines could be provided for decision-making purposes using a more generalized template instead of by a project by project basis. Discussion ensued on what efforts the NPS was making to achieve a more standardized approach.

Chair Piltz requested clarification on spring monitoring wells and algae bloom in the area. Ms. Buchal responded with her perceptions of the wells and described the algae bloom and alien species problems that the NPS was dealing with.

Mr. Lind inquired if there were a problem with pollutants in the park resources. Ms. Buchal replied that evidence of contamination in park resources ground water had been detected.

OFFICE OF PLANNING'S WITNESS

1. Gail Suzuki-Jones

Ms. Suzuki-Jones used a PowerPoint presentation (OP Exhibit 20A) to summarize her submitted written testimony (OP Exhibit 5A) and described the reasons why the proposed project market rate housing and commercial components should be required to meet a LEED silver level standard and why the affordable rate housing should use the "green communities" checklist.

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Ms. Benck requested clarification on what the energy goals were for the State and what potential costs could be expected. Ms. Suzuki-Jones identified the different components of what the State was trying to accomplish by requiring the LEED standards/certifications and described how the different components contributed towards the State's goals. Ms. Suzuki-Jones described what the LEED mandates were for State agencies and explained how the agencies were working to achieve their LEED goals; and what expected costs might be involved in incorporating LEED features.

Mr. Gonzalez requested information on the funding sources for the Kaopu affordable housing project and how the land had been donated to build upon. Ms. Suzuki-Jones responded that Federal funds were the funding source and identified the land donor for the project.

Mr. Yee requested clarification on potential costs for energy-saving features for a home. Discussion ensued over what homes Mr. Yee was referring to. Mr. Yee stated that he was referring to the homes being built in the proposed project. Ms. Suzuki-Jones replied that she did not think that home costs would be \$30,000 to \$50,000 more to bring them to a LEED silver standard.

There were no further questions for Ms. Suzuki-Jones.

PUBLIC WITNESSES (prior to 1:30 p.m.)

1. Burke Matsuyama

Mr. Matsuyama stated that he represented the Kohanaiki Business Park Association and read from his submitted written testimony regarding his organization's concerns about traffic and funding for highway improvements in the Petition Area.

Mr. Lim requested clarification on whether the Kohanaiki Business Park had a Land Use Commission condition regarding funding its portion of the highway improvements. Mr. Matsuyama provided his understanding of the Land Use condition and discussion ensued on issues with Department of Transportation and the need to improve traffic conditions in the area before any

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further land use changes were approved. Mr. Matsuyama acknowledged Mr. Moresco's participation in community discussions regarding highway improvements and confirmed that Mr. Moresco would be involved in the future plans for the area.

Hawaii County, OP and NPS had no questions for Mr. Matsuyama.

Commissioner Kanuha requested clarification on the location of the specific areas that Mr. Matsuyama was concerned about. Mr. Matsuyama identified his project's location and its surroundings. There were no further questions for Mr. Matsuyama.

2. David "Bones" Inkster

Mr. Inkster shared his concerns about the impact that the proposed project would have on the community. There were no questions for Mr. Inkster.

3. Marian Wilkins

Ms. Wilkins expressed her concerns about beach access and parking; and the possible traffic that the proposed project might contribute to the area. There were no questions for Ms. Wilkins.

4. George Wilkins

Mr. Wilkins shared his concerns about the water in the Petition Area, runoff and impacts to nearshore waters, and provided his suggestions for dealing with them. There were no questions for Mr. Wilkins.

5. Mark Travalino

Mr. Travalino provided his reasons for supporting the proposed project. There were no questions for Mr. Travalino.

6. Michelle Tomas

Ms. Tomas submitted photographs and information on the Airport Noise

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Act, airport noise regulations and air cargo traffic in/out of Kona Airport; and shared her concerns about noise, pollution, access to the shoreline and the testimonies of Petitioner's witnesses.

Mr. Lim asked if Ms. Tomas was aware that the reason for chaining off the access road to the Petition Area was to prevent waste from being dumped on the site. Discussion ensued about trash removal and working with Petitioner to resolve the problem.

There were no further questions for Ms. Tomas.

The Commission went into recess at 12:24 p.m. and reconvened at 1:31 p.m.

PUBLIC WITNESSES (after 1:30 P.M.)

7. Robert Freitas

Mr. Freitas described his family's historical use of the Mamalahoa Trail and provided his reasons for opposing the proposed project. There were no questions for Mr. Freitas.

8. Jeff Middleton

Mr. Middleton shared his concerns that portions of the Hawaii Revised Statutes were not being observed to protect the existing trail on the Petition Area and provided his assessment of why the proposed project should not be allowed. There were no questions for Mr. Middleton.

9. Wayne Mahi

Mr. Mahi expressed his concerns about beach access and provided his reasons for opposing the Petition. There were no questions for Mr. Mahi.

10. Kathleen McMillen

Ms. McMillen submitted written testimony and provided her concerns regarding noise impacts from airport operations and the proximity of the

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proposed project to the airport; and the failure of long term plans for Kona Airport runway improvements to materialize. Commissioner Judge requested clarification on the documents used in Ms. McMillen's testimony. Ms. McMillen identified them as the State of Hawaii Airports Division's Kona Master Plan and studies contained within it.

There were no further questions for Ms. McMillen.

11. Ulbricht Bonet

Mr. Bonet expressed that he was part of a group called "Friends of NELHA" and shared his concerns about the potential conflicts between NELHA operations and the proposed project due to inadequate buffer space.

Mr. Yee requested clarification on the organization "Friends of NELHA". Mr. Bonet replied that his organization was a separate entity from NELHA.

Commissioner Judge requested information on the amount of buffer space that Mr. Bonet thought might be necessary for the NELHA property. Mr. Bonet provided his estimates of a 1000-2000 foot requirement for buffer space.

There were no further questions for Mr. Bonet.

12. David Carlson

Mr. Carlson represented that he was a retired aviator and shared concerns about noise from aircraft operations and the location of the proposed project.

There were no questions for Mr. Carlson.

13. Winfield Chang

Mr. Chang submitted written testimony, provided his perspective on the testimonies of Petitioner and Petitioner's expert witnesses and explained why he opposed the proposed project.

There were no questions for Mr. Chang.

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14. Roy Beckland

Mr. Beckland expressed his concerns over the loss of coastal lands to development.

There were no questions for Mr. Beckland.

15. Cheryl King

Ms. King provided her perspectives on why conservation land should be preserved.

There were no questions for Ms. King.

16. Charles Flaherty

Mr. Flaherty submitted written testimony and provided his reasons for opposing the proposed development.

Mr. Lim asked if Mr. Flaherty was alleging that the Royal Order of Kamehameha and Alike DeShay had been bribed or “bought” to testify in favor of the proposed project. Mr. Flaherty responded that he had no knowledge of that matter.

There were no further questions for Mr. Flaherty

17. Claire Bajo

Ms. Bajo presented support for granting the Petition.

There were no questions for Ms. Bajo.

18. Shannon Rudolph

Ms. Rudolph shared her concerns over rezoning and re-sale of the Petition Area and disappearing open spaces in the area.

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Mr. Lim requested that Ms. Rudolph indicate on Exhibit 3A (Figure 1 of the EIS) and indicate where she had made use of the Petition Area. Ms. Rudolph demonstrated that most of her activities had been on the beach side of the property and stated that she felt that the area should be owned by the county.

There were no further questions for Ms. Rudolph.

19. Ted Leaf

Mr. Leaf provided his perception of airport noise issues and gave reasons for supporting the Petition.

There were no questions for Mr. Leaf.

20. Melvin Mason Jr.

Mr. Mason expressed his perceptions on the uniqueness of Hawaii and family values and provided his reasons for opposing development.

There were no questions for Mr. Mason.

Commissioner Contrades excused himself at 2:25 p.m. and returned at 2:30 p.m.

21. Solomon Akau

Mr. Akau shared his family history with the Petition Area and knowledge of cultural issues and expressed his reasons for opposing the Petition.

There were no questions for Mr. Akau.

22. Nova Lee

Ms. Lee provided her perception of why development should not occur in the Petition Area.

There were no questions for Ms. Lee.

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23. John Hatchie

Mr. Hatchie expressed his concerns about development in Hawaii and shared his reasons why better planning needed to be done if development were to occur.

There were no questions for Mr. Hatchie.

There being no other public witnesses or business to discuss, the meeting was adjourned at 2:54 p.m.

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