

LAND USE COMMISSION
MEETING MINUTES
October 21, 2010

Waikoloa Beach Marriott Resort
Naupaka Rooms V, VI, and VII
69-275 Waikoloa Beach Drive
Waikoloa, Hawai`i 96738

COMMISSIONERS PRESENT: Vladimir Devens
Kyle Chock
Duane Kanuha
Ronald Heller
Normand Lezy
Charles Jencks
Thomas Contrades
Lisa Judge (arrived at 10:22 a.m.)

COMMISSIONERS EXCUSED: Nicholas Teves, Jr.

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 TECHNICIANS: Hotai Zerba

CALL TO ORDER

Chair Devens called the meeting to order at 10:08 a.m.

APPROVAL OF MINUTES

Chair Devens asked if there were any corrections or additions to the October 15, 2010, minutes. There were none. Commissioner Jencks moved to adopt the minutes. Commissioner Kanuha seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

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.
- For the public's benefit, it was announced that this was an expedited hearing and the Commission would be working late into the evening after a dinner that was an integral part of the meeting.
- Any questions or conflicts, please contact LUC staff.

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

ACTION

DR10-39 Queen Lili'uokalani Trust ("QLT")

Chair Devens announced that this was an action meeting to consider QLT's Petition for Declaratory Order

APPEARANCES

Steven Lim, Esq., and Jennifer Benck, Esq., represented Forest City Hawaii Kona LLC
A. Bernard Bays, Esq., Co-Counsel, represented Forest City Hawaii Kona LLC
Craig Iha, Esq., represented Hawaii Housing Finance and Development Corp.,
("HHFDC")

Laureen Martin, Esq., represented Hawaii County Department of Planning
Bobbie-Jean Leithead-Todd, Director, Hawaii County Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Benjamin Kudo, Esq., represented Queen Lili'uokalani Trust

Yuko Funaki, Esq., represented Queen Lili'uokalani Trust

Because opposition to the petition for declaratory order was filed, discussion ensued regarding how the Commission should proceed with DR10-39 and A10-788 and whether both matters should be addressed together or separately.

Mr. Lim stated that Petitioner would object to consolidation and argued his reasons against consolidating the two dockets. Mr. Kudo argued that contract issues would be intermingled into the case in chief and requested an interpretation separate and apart from the merits of the case in chief as to the rule and the statute by the Commission. Mr. Yee expressed that OP had no objection to consolidating both dockets and argued why consolidation was acceptable to him. Chair Devens expressed his concerns regarding the proper handling of both dockets. Mr. Kudo offered that the Commission could admit HHFDC and Forest City to participate in the declaratory action and waive the rule requiring them to file a Petition to Intervene and having a hearing on the matter and stated that he was prepared to argue and address the issues that had been raised in their responses.

Mr. Lim indicated that Petitioner would like to hear QLT's response and have an opportunity for rebuttal. Mr. Lim clarified that Ms. Benck would be arguing on behalf of Forest City and Mr. Iha would be arguing for HHFDC.

Chair Devens moved for Executive Session to discuss the Commission's powers and authorities. Commissioner Lezy seconded the Motion.

The Commission entered Executive Session at 10:23 a.m. and reconvened at 10:42 a.m.

Chair Devens raised the question and asked for QLT's position regarding treating or converting the petition for declaratory order to a motion to be incorporating into the petition for boundary amendment for a ruling to streamline the process since QLT was a party to the boundary amendment proceedings. Mr. Kudo provided his reasoning for keeping the dockets separate. Mr. Lim argued that the Commission should not issue a declaratory ruling and provided his perspective on the situation.

PUBLIC WITNESSES

None

DECISION

Chair Devens deferred the Petition to be placed on the agenda at a future meeting and set the date for additional QLT pleadings to be filed by Wednesday, October 27 and any Petitioner responses by no later than Monday, November 1, 2010.

Discussion ensued for clarification on the participating Parties in the matter and their filing date requirements. Mr. Kudo stated that he had no objections to Petitioner, and OP seeking intervention in DR10-39. Based on there being no objections, Petitioner and OP were admitted as parties in the declaratory proceeding.

The Commission went into recess at 10:50 a.m. and reconvened at 10:53 a.m.

ACTION

A10- 788 HHFDC/Forest City Hawaii, Kona LLC

Chair Devens announced that this was a hearing on Docket No. A10-788 to consider the Petition to amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Keahuolu, North Kona, consisting of approximately 271.837 acres.

APPEARANCES

Steven Lim, Esq., and Jennifer Benck, Esq., represented Forest City Hawaii Kona LLC
A. Bernard Bays, Esq., Co-Counsel, represented Forest City Hawaii Kona LLC
Craig Iha, Esq., represented Hawaii Housing Finance Development Corp., (“HHFDC”)
Laureen Martin, Esq., represented Hawaii County Department of Planning
Bobbie-Jean Leithead-Todd, Director, Hawaii County Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning
Benjamin Kudo, Esq., represented Queen Lili’uokalani Trust
Yuko Funaki, Esq., represented Queen Lili’uokalani Trust

Chair Devens noted that Executive Officer Davidson had a disclosure for the record. Mr. Davidson disclosed that he had been employed by HHFDC and explained his role during the early planning stages of the housing project that eventually became Docket No. A10-788. There were no objections to Mr. Davidson's continued role in the proceedings as Executive Officer of the Commission.

Chair Devens inquired if the Petitioners had been advised and concurred with the LUC's policy on reimbursement of hearing expenses. Mr. Lim acknowledged that the Petitioners were agreeable to the policy.

Chair Devens announced that before taking public witness testimony, the Commission wanted to hear in limine arguments on the notice issue.

INTERVENOR-QLT

Mr. Kudo stated that his intent was to file an oral motion anticipating that the declaratory order would be deferred or denied and orally moved that the Petition before the Commission be found defective for the two reasons stated in his declaratory relief petition- that it is contrary to the intent of the parties involved in the acquisition of the property that comprises the proposed Project; and that the Notice of Intent failed to meet the requirements under Commission rules and the state law. Mr. Kudo provided his perception of how the LUC proceedings should occur.

Mr. Kudo, Ms. Benck, and Mr. Yee concurred that the written arguments made in DR10-39 on the issue could be included in the A10-788 proceedings.

Mr. Kudo argued why the Notice of Intent was defective; what the filing requirements for notices were for the HHFDC; and how due process rights could have been violated by improper notice.

Ms. Benck argued why the Notice of Intent rule could be waived by the Commission and provided her perception of why QLT's arguments were incorrect.

Ms. Martin stated that Hawaii County was not taking a position on the issue.

Mr. Iha argued that in addition to what Ms. Benck had already mentioned, the more important notice to be concerned about was the Notice of Hearing and provided his perspective of how Petitioner's notices satisfied due process concerns.

Mr. Yee stated that the Office of Planning believed there were insufficient grounds to determine that the petition was deficient and argued how he perceived the requirements for government agencies providing public notice and waivers in various situations.

Mr. Kudo argued why he felt two notices were required and what the requirements on government agencies were for expedited proceedings.

Chair Devens inquired if QLT had suffered any substantive prejudice based on the manner in which the notice of intent had been done. Mr. Kudo responded that he was not sure under the circumstances and that if other parties had been involved, QLT's position might need to have been adjusted or amended to reflect the other parties' participation; and that as of now, based on what is known, there was no substantive prejudice that QLT had experienced.

Chair Devens inquired what Ms. Benck's response was to the argument on the jurisdictional standard requirement. Ms. Benck provided her perspective on why the Notice of Intent did not trigger any jurisdictional requirements.

Mr. Iha argued that an agency's jurisdiction is determined by its governing status and shared his reasons for taking that position.

The Commission went into recess at 11:30 a.m. and reconvened at 11:45 a.m.

Chair Devens requested clarification on the area of circulation on the Big Island of the "West Hawaii" newspaper. Ms. Benck provided her perception of what the circulation was for "West Hawaii". Ms. Leithead-Todd shared that "West Hawaii" had no home delivery and was available in stands only on the east side of Hawaii Island and that her understanding was that both "West Hawaii" and "Hawaii Tribune Herald"

were required by the state procurement office rules to qualify for countywide publication.

Commissioner Lezy made the following motion - "To the extent that there may have been any failure on the part of Petitioner to comply with the Commission's rule governing publication of the Notice of Intent to File, there is good cause to waive the rule, as it is not jurisdictional; there's been no showing of actual or apparent harm and that the intent of the rule and the actual practice have been substantially met".

Commissioner Kanuha seconded the Motion.

The Commission was polled as follows:

Ayes: Commissioners Lezy, Kanuha, Chock, Contrades, Heller, Jencks, Judge, and Chair Devens.

Nays: None

Excused: Commissioner Teves

The Motion passed (8-0).

MAP ORIENTATION

LUC staff planner Scott Derrickson provided a map orientation for the Commission. There were no questions for Mr. Derrickson.

PUBLIC WITNESSES

1. Sallie Beavers

Ms. Beavers submitted written testimony on behalf of the National Park Service (NPS) and shared the NPS's concerns regarding groundwater resources and surface runoff water.

Mr. Yee inquired if the NPS had been consulted prior to determining the final proposed conditions in the docket. Ms. Beavers responded that the NPS concerns had been satisfactorily addressed.

2. Jon Miyata

Mr. Miyata represented that he was the President Elect of the Hawaii Island Chamber of Commerce and provided the reasons why his organization supported the Petition.

There were no questions for Mr. Miyata.

3. Mike Yoshimoto

Mr. Yoshimoto provided the reasons why he supported the Petition.

There were no questions for Mr. Yoshimoto.

4. Chris Okamura

Mr. Okamura expressed how he felt the proposed Project could benefit the Kona community.

There were no questions for Mr. Okamura.

5. Wendell DeCoito

Mr. DeCoito provided his perspectives on how the proposed Project could provide much needed affordable housing in the region.

There were no questions for Mr. DeCoito

6. Mike Fujimoto

Mr. Fujimoto represented that he was president and CEO of HPM Building Supply and described why his company supported the proposed Project.

There were no questions for Mr. Fujimoto.

7. Dora Aio

Ms. Aio stated that she was president of the Kaneohale Community Association and provided a resolution to the Commission citing the reasons why her organization supported the Petition.

Chair Devens inquired if Ms. Aio wanted to make the resolution part of the record. Ms. Aio acknowledged affirmatively that she would.

There were no further questions for Ms. Aio.

8. Sam Walker

Mr. Walker described his commitments within the Kona community and described how he supported the resolution described by Ms. Aio and provided his reasons for supporting the proposed Project.

There were no questions for Mr. Walker.

9. Gene Rivera

Mr. Rivera expressed his reasons for supporting the Petition.

There were no questions for Mr. Rivera.

There were no other Public Witnesses.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Lim offered Petitioner's Exhibits 1-108.

There were no objections to Petitioner's exhibits. Exhibits were admitted into evidence

Hawaii County

Ms. Martin offer County's Exhibit 1.

There were no objections to the County's exhibit. Exhibits were admitted into evidence

State Office of Planning (OP)

Mr. Yee offered OP's Exhibits 1-8.

There were no objections to OP's exhibits. Exhibits were admitted into evidence

Queen Lili`uokalani Trust (QLT)

Ms. Funaki offered QLT's Exhibits 1-35.

There were no objections to QLT's exhibits. Exhibits were admitted into evidence

Chair Devens noted that before moving into Petitioner's presentation of its case, that there was an item relating to arguments regarding QLT's Motion for a subpoena and inquired if the Petitioner and OP had received copies of the Motion. Ms. Benck and Mr. Yee indicated that they were ready to argue the Motion.

Mr. Kudo stated that the reason for the subpoena was to question a representative from the Department of Transportation (DOT) and argument ensued to determine whether OP's DOT witness would be able to satisfy the questions that QLT had.

Chair Devens determined that the Motion would be denied without prejudice subject to renewal after hearing from OP's DOT witness. Mr. Kudo acknowledged that the determination was acceptable to him.

The Commission went into recess at 12:25 p.m. and reconvened at 1:37 p.m.

OPENING STATEMENTS

PETITIONER

Mr. Lim described the material and witnesses that he would be presenting and reserved the right to provide rebuttal witnesses after the other parties had presented their cases. Mr. Lim stated that he had submitted the written direct testimony and that Mr. Iha would be examining Mr. Fujimoto. Mr. Lim requested that the parties stipulate to the qualifications of all expert witnesses listed by the Parties at the proceeding.

Mr. Iha concurred with stipulation.

COUNTY

Ms. Martin stated that the County believed that the reclassification to urban was appropriate and that the planning director would be the County's only witness; and that Hawaii County would stipulate to the qualifications of the experts.

OP

Mr. Yee stated that OP would waive opening argument and concurred with the stipulation for the expertise of the witnesses.

QLT

Mr. Kudo described QLT's organization and mission, and cited the concerns that had prompted QLT's intervention. Chair Devens commented that the Commission would maintain an open mind and weigh the evidence presented accordingly.

Mr. Lim noted that QLT had not committed to stipulating to the expert witness qualifications. Mr. Kudo acknowledged that QLT would stipulate to the qualifications.

PETITIONER'S WITNESSES

1. Stanley Fujimoto

Chair Devens inquired what the nature of Mr. Fujimoto's testimony would be.

Mr. Iha responded that Mr. Fujimoto would be standing on his written testimony and would be relating HHFDC's mission and the background of the Project.

Chair Devens noted the need to streamline the proceedings given the time constraints in which a decision must be rendered and clarified what type of testimony was being sought by the Commission from the witnesses.

There were no questions for Mr. Fujimoto.

2. Francis Oda and Joseph "Joey" Scanga

Mr. Lim described the powerpoint presentation that Mr. Oda and Mr. Scanga would be making. Mr. Scanga described the plan and the timeframe for the proposed project, and shared his past experiences of working with Forest City. Mr. Oda described the efforts that his company, Group 70, had made for the proposed Project.

Hawaii County had no questions.

Mr. Yee requested clarification of the term "triple bottom line sustainability". Mr. Oda provided his definition of the term.

Mr. Yee requested clarification on Mr. Scanga's perspective on LEED-ND. Mr. Scanga described how he envisioned LEED-ND goals for the proposed Project.

Mr. Kudo requested clarification on portions Mr. Oda's testimony. Discussion ensued to clarify what areas would be addressed by Mr. Oda and Mr. Scanga.

Mr. Kudo requested clarification on the exemptions that Petitioner had asked for from the County. Mr. Scanga provided his understanding of what exemptions were requested.

Commissioner Kanuha requested clarification on whether the Project was designed to take advantage of the possible exemptions. Mr. Scanga and Mr. Oda responded with their perceptions of how the exemptions affected the Project design. Mr. Scanga provided an update on County involvement with the Project.

There were no further questions for Mr. Oda and Mr. Scanga.

3. Craig "Bo" Kahui- La'i `Opua 2020 Project

Mr. Kahui provided his occupational history and described how Forest City had collaborated with his organization to resolve their concerns. Mr. Kahui provided an update on DHHL efforts to provide affordable housing in the area and described the issues that confronted him.

Hawaii County and OP had no questions.

Mr. Kudo requested clarification on how Mr. Kahui perceived QLT's mission in the community might be impacted by approving the Project. Mr. Kahui responded that he did not think that QLT's mission would be affected.

There were no further questions for Mr. Kahui

4. Jeff Overton

Mr. Overton stated that he would stand on his written testimony (Exhibit 44) and described various elements from his environmental report using a powerpoint presentation.

Hawaii County had no questions.

Mr. Yee requested clarification on the energy efficiency standards that would be used in the proposed Project. Mr. Overton responded with his understanding of what energy standards were used.

Mr. Kudo requested clarification on Mr. Overton's role in the planning process and on the traffic impact analysis reports (TIAR) that had been included. Mr. Overton responded that he had been working with Randy Okaneku on various aspects of the traffic reports. Discussion ensued over the scope of the questions being asked on traffic.

The Commission went into recess at 2:50 p.m. and reconvened at 3:07 p.m.

Chair Devens inquired if Petitioner wanted Mr. Kahui's submittal, La'i 'Opua Community Development, to be marked as the Petitioners' next Exhibit in order. Mr. Lim acknowledged that it should be identified as Exhibit 109.

Mr. Kudo continued with requesting clarification on various aspects of the TIAR and the proposed mitigation measures involved for the Project. Discussion ensued over what Mr. Overton would testify on and how Condition 4-Transportation would be addressed. Mr. Yee argued that the representation of what is or is not the norm before the LUC was not a question and not appropriate as evidence. Chair Devens concurred with Mr. Yee.

Mr. Lim requested clarification on whether the August 9, 2010 TIAR was sufficient to determine the availability of basic services on transportation systems. Mr. Overton responded that it was.

Hawaii County had no questions.

There were no further questions for Mr. Overton.

5. Alan Haun

Mr. Haun provided his findings for the archaeological surveys that he had performed in the Petition Area.

Hawaii County had no questions.

Mr. Yee requested clarification on whether an additional AIS had been done. Mr. Haun acknowledged that an additional survey had been done and described the details involved with it; and provided his opinion and future action plans in regards to the written testimony of Ms. Tanya Souza.

Mr. Kudo requested clarification of Mr. Haun's perception of what QLT's role would be in the development of a preservation plan and what recommendations he would make. Mr. Haun described his understanding of QLT's role and the recommendations that he would be making.

Mr. Lim requested clarification on which specific inventory survey reports were being updated and being reported on.

There were no further questions for Mr. Haun.

6. Helen Wong-Smith

Mr. Lim stated that Ms. Wong-Smith would rest on written direct testimony and reserved the right to ask questions on redirect.

Hawaii County, OP and QLT had no questions.

Mr. Kudo requested clarification on which of Petitioners' witness would respond to traffic questions. Discussion ensued to clarify witness appearances.

There were no further questions for Ms. Wong-Smith.

7. W. Arthur Whistler

Mr. Whistler reported on his botanical survey findings conducted in the Petition Area.

Ms. Martin inquired if the report of no findings of *bidens* on the Petition Area was correct. Mr. Whistler responded that it was.

There were no further questions for Mr. Whistler.

8. Jim Lyon

Mr. Lyon described the various infrastructure elements that were considered for the proposed Project that would be included in its construction.

Hawaii County had no questions.

Mr. Yee requested further clarification on the assumptions that had been made in determining infrastructure requirements and the permitting considerations that needed to be resolved for the proposed Project.

Mr. Kudo requested clarification on the sewer line requirements for the

proposed Project and on construction cost and percentage allocation for its proportionate share considerations. Mr. Lyon stated that he was not involved in traffic cost estimating t.

There were no further questions for Mr. Lyon.

9. Tom Nance

Mr. Nance appeared to testify on hydrology and water resource engineering.

There were no questions for Mr. Nance.

Mr. Lim requested to take a witness out of sequence and described the nature of Lee Sichter's testimony.

There were no objections to Mr. Sichter's testifying out of sequence.

10. Lee Sichter- Belt Collins

Mr. Sichter described his organization's contributions to the Final EIS for the proposed Project.

Hawaii County had no questions.

Mr. Yee requested clarification on the implementation of mitigation measures planned for the proposed Project. Mr. Sichter responded that he could not speak to whether the Petitioner would perform mitigation measures or their equivalent since he had not been involved in those discussions.

Mr. Kudo requested clarification on the extent of Mr. Sichter's involvement with the preparation of the EIS and the extent of his knowledge regarding the responses to DOT concerns. Mr. Sichter described his involvement with the EIS preparation and stated that he did not have involvement with the traffic portion of the EIS.

There were no further questions for Mr. Sichter.

The Commission went into recess at 3:47 p.m. and reconvened at 4:04 p.m.

11. Randy Okaneku- traffic management consultant

Mr. Okaneku stated that he had submitted two versions of the proposed Project's TIAR – one in December 2009 to meet county requirements and one in August 2010 to address comments received from DOT. Mr. Okaneku described the subject matter of the DOT meetings he had been involved with during the course of his work in the Petition Area and related the results of his discussions.

Hawaii County had no questions.

Mr. Yee inquired if the DOT had not yet accepted the TIAR. Mr. Okaneku described the discussions that were still ongoing to obtain DOT approval and acknowledged that he was aware of the Condition 4 requirements of Petitioner's Exhibit 17 which indicated that DOT approval was necessary for the proposed Project to move forward.

The Commission went into recess at 4:55 p.m. and reconvened at 5:09 p.m.

Mr. Kudo requested clarification on Mr. Okaneku's participation and contributions to the TIARs for the proposed Project. Discussion ensued to clarify the versions of TIAR information before the Commission and their accuracy.

Mr. Kudo requested clarification on the results of the TIARs, the DOT meetings to address mitigation measures for the proposed Project and the pro-rata share for regional improvements. Mr. Okaneku provided his understanding of what a TIAR involved and explained the assumptions and methodology used in conducting his study, analysis, and report. Mr. Kudo asked Mr. Okaneku questions relating to possible oversights and errors that could affect the findings and conclusions.

Chair Devens determined for the purposes of using the given time efficiently that Mr. Okaneku should review his report based on the errors that QLT had identified and be prepared to return to testify about such matter after studying the discrepancies. Mr. Kudo and Mr. Lim concurred with his decision.

The Commission went into recess at 5:20 p.m. and reconvened at 6:45 p.m.

(Commissioner Lezy returned at 6:46 p.m.)

Discussion over the comments and issues raised by QLT occurred and Mr. Lim requested deferral of Mr. Okaneku's testimony till October 22, 2010 to allow time to review QLT's report of errors and inconsistencies, and requested copies of QLT's documents. Mr. Kudo concurred and provided his perception of why the errors and inconsistencies were relevant and important to the proceedings.

Chair Devens assessed what information needed to be exchanged by the Parties and discussion ensued to determine what, when and how the information would be provided.

Mr. Kudo requested a recess to discuss the information exchange. Chair Devens granted his request.

The Commission went into recess at 6:53 p.m. and reconvened at 6:57 p.m.

Mr. Kudo described the format of the information that he had available and

estimated that he would need till 10 p.m. to prepare it for Petitioner. Discussion ensued over the estimated timetable for Petitioner's next witness.

The Commission went into recess at 6:58 p.m. and reconvened at 7:01 p.m.

Chair Devens reconfirmed that Petitioner and QLT had agreed to defer Mr. Okaneku's testimony and exchange the necessary information for review. Petitioners' next witness testified.

12. Thomas Holliday- Hallstrom Group

Mr. Holliday provided the details of his economic feasibility study for the proposed Project and reported on his findings.

Ms. Martin requested clarification on the estimated amount that Hawaii County was expected to pay to provide services to the proposed Project. Mr. Holliday shared his perspective of what the Hawaii County costs would be and how he had determined the amount.

Ms. Martin requested clarification on the affordable housing component of the proposed Project. Mr. Holliday estimated that about half of the units would be affordable and discussion ensued on how the county's costs could be impacted by how the per capita costs were calculated and what was not paid for by real property taxes.

Mr. Yee requested clarification on the estimated per capita contributions. Mr. Holliday provided the assumptions and methodology he used for his calculations.

Mr. Kudo requested clarification on the calculation for densities that were used in the study and its scope and breadth. Mr. Holliday shared his understanding of what the significance of differences were between gross and net density and explained the various components that were included in his analysis.

There were no further questions for Mr. Holliday.

13. Jon Wallenstrom- President, Forest City Hawai'i

Mr. Wallenstrom provided a brief history and background of his company and described the efforts that had been made in planning and designing the features of the proposed Project and preparing it for development.

Ms. Martin requested clarification on the number and type of units that the proposed Project included. Mr. Wallenstrom provided the preliminary planned numbers and represented that adjustments might be made over the development period depending on market forces.

OP had no questions.

Mr. Kudo requested clarification on the housing products that Forest City produced during its existence and whether Mr. Wallenstrom was aware of QLT's involvement in mediating neighborhood conflicts in high-density areas. Mr. Wallenstrom described various projects that Forest City had completed and noted that it would be difficult for QLT to draw comparisons to other communities due to the uniqueness of the proposed Project. Discussion ensued over community densities in the area and the subject matter to be covered by Petitioner's remaining witness.

Commissioner Lezy excused himself at 7:52 p.m. and returned at 7:54 p.m.

Commissioner Jencks requested clarification on the planned mix for rental and owner occupied units and what the subdivision plans were for the proposed Project. Mr. Wallenstrom provided his understanding of what the planned mix would be and shared Forest City's subdivision and rental tax-credit plans.

Commissioner Jencks requested clarification on maintenance plans for the planned roadways and open space areas. Mr. Wallenstrom responded that discussions with the County on this matter were in progress and that it was premature to comment on them at this time; and that some of the exemptions that were being sought were associated with these issues.

Commissioner Kanuha requested clarification on Petitioner's position in regards to the OP recommended conditions. Mr. Wallenstrom represented that he was agreeable with all of the conditions and that included Condition 21-Incremental Plan phasing; and described the organizational and financing structure that Forest City intended to have for the proposed Project and the nature of the exemptions that were being sought from the County and State.

Commissioner Judge requested a status report on Forest City's agreement with DOE. Mr. Wallenstrom shared his understanding about DOE matters as they related to the proposed Project.

Commissioner Judge requested clarification on playground sites within areas designated for parks. Mr. Wallenstrom provided his understanding of how park space in the proposed Project would be laid out and utilized.

Commissioner Heller requested clarification on the DOE agreement and on ownership and development of the proposed school site. Mr. Wallenstrom responded that an agreement with DOE had been made and that Mr. Randle would respond to the ownership and development question.

Commissioner Lezy requested clarification on how Forest City would respond to QLT's concerns regarding infrastructure cost responsibilities and what

the plans were for distributing the costs to other landowners. Mr. Wallenstrom replied that they had been working with DOT for a long time and expected to satisfy their requirements.

There were no further questions for Mr. Wallenstrom.

Chair Devens announced that proceedings would recess and reconvene at 9:00 a.m. October 22, 2010.

The meeting was recessed at 8:15 p.m.