

LAND USE COMMISSION
MEETING MINUTES

November 5, 2010

Ballroom #1 &2, King Kamehameha's Kona Beach Resort Hotel
75-5660 Palani Road,
Kailua-Kona, Hawai`i 96738

COMMISSIONERS PRESENT:

Vladimir Devens
Kyle Chock
Duane Kanuha
Ronald Heller
Normand Lezy
Charles Jencks
Thomas Contrades
Lisa Judge
Nicholas Teves, Jr.

COMMISSIONERS EXCUSED:

None

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:

Walter Mensching

CALL TO ORDER

Chair Devens called the meeting to order at 8:38 a.m

ACTION

A07-774 `O`oma Beachside Village, LLC

Chair Devens announced that this was a deliberation and action meeting on
Docket No. A07-774 `O`oma Beachside Village LLC (`O`oma 2nd, North Kona, Hawai`i)

to consider the reclassification of approximately 181.169 acres of land currently in the Conservation District into the Urban District at `O`oma 2nd, North Kona, Hawai`i, 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.

APPEARANCES

Steven Lim, Esq., and Jennifer Benck, Esq., represented `O`oma Beachside Village LLC
William Brilhante, Esq., represented Hawai`i County Department of Planning
Bobbie-Jean Leithead-Todd, Director, Hawai`i County Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Kathy Billings, National Park Service
Sally Beaver, National Park Service

PUBLIC WITNESSES

1. Al Lardizabal
Mr. Lardizabal shared his reasons for supporting the Petition.
There were no questions for Mr. Lardizabal.
2. Mark Travalino
Mr. Travalino expressed his support for the proposed Project.
There were no questions for Mr. Travalino.
3. Councilmember Brenda Ford
Councilmember Ford voiced the concerns that she and her constituents had about the Project and stated her support for their interests.
There were no questions for Ms. Ford.
4. Janice Palma-Glennie
Ms. Palma-Glennie stated that she represented the Surfrider Foundation Kona Kai Ea Chapter and provided the reasons why her organization opposed the proposed Project.
There were no questions for Ms. Palma-Glennie.
5. Marni Herkes
Ms. Herkes expressed her reasons for supporting the Project.
There were no questions for Ms. Herkes.

6. Cynthia Hope

Ms. Hope submitted a written petition and voiced her opposition to the proposed Project.

There were no questions for Ms. Hope.

7. Michelle Tomas

Ms. Tomas provided her reasons for opposing the Petition.

There were no questions for Ms. Tomas.

8. Diane Corcoran

Ms. Corcoran expressed her reasons for opposing to the proposed Project.

There were no questions for Ms. Corcoran.

9. Sammie Stanbro

Ms. Stanbro stated her reasons for opposing the Petition.

There were no questions for Ms. Stanbro.

10. Charles Flaherty

Mr. Flaherty submitted written testimony and shared his reasons for opposing the proposed Project.

There were no questions for Mr. Flaherty.

11. Shannon Rudolph

Ms. Rudolph stated her reasons for retaining the Conservation designation of the Petition Area..

There were no questions for Ms. Rudolph.

12. Glennon Gingo

Mr. Gingo voiced his reasons for supporting the Petition.

There were no questions for Mr. Gingo

The Commission went into recess at 9:08 a.m. and reconvened at 9:20 a.m.

13. Council Member Elect -Angel Pilago

Councilmember Elect Pilago voiced the concerns that his constituents had about the Project and stated his support for preserving the Conservation status of the Petition Area.

There were no questions for Mr. Pilago.

14. Winfield Chang

Mr. Chang stated his opposition to the proposed Project.

There were no questions for Mr. Chang.

15. Karri Teshima

Ms. Teshima expressed her concerns about the proposed Project and stated her reasons for denying it.

There were no questions for Ms. Teshima.

16. Rebecca Villegas

Ms. Villegas expressed her reasons for preserving the Conservation classification of the Petition Area.

There were no questions for Ms. Villegas.

17. Joy Mills

Ms. Mills expressed her reasons for opposing the Petition.

There were no questions for Ms. Mills.

18. Misti Lambeth

Ms. Lambeth shared her reasons for not granting the Petition.

There were no questions for Ms. Lambeth.

FORMAL DELIBERATION

All Commissioners and Chair Devens indicated that they were prepared to deliberate on the docket.

Motion by Commissioner Kanuha

Commissioner Kanuha moved to deny in part and approve in part the subject Petition for discussion purposes. Commissioner Lezy seconded the motion.

Chair Devens requested clarification on the Motion's contents. Commissioner Kanuha stated that his motion for denial was for the portion of the Petition Area within the 1100 foot buffer zone to remain in Conservation.

Commissioner Lezy reconfirmed his second for the Motion.

Discussion

Commissioner Teves expressed his concerns regarding airport noise and the consequences of allowing an urban area in close proximity to it, the community opposition to the proposed Project and the county laws that were being enacted and stated he would be voting against the Project.

Commissioner Heller stated his concerns about airport proximity and future consequences of allowing settlement in the Petition Area and stated he would be voting against the Project.

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

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Commissioner Lezy stated why he had seconded the Motion for the purposes of discussion and expressed that he would be voting for the Project. Commissioner Lezy recognized the Petitioner's proposed efforts to mitigate the effects of development and described how he hoped an approval of the Project would provide adequate beach facilities and parking and preserve beach access.

Commissioner Kanuha voiced his understanding of the role of the State Land Use Commission and the County General Plan for setting a pattern of planning and urbanization for the area.

Commissioner Contrades requested clarification on what portion of the 1100-foot buffer zone in Commissioner Kanuha's Motion would remain in Conservation. Discussion ensued to define the proposed area that would remain in Conservation and determine the imposed conditions that would be needed to be to protect it.

Commissioner Teves expressed his concerns over allowing the County to control the Petition Area and stated why he felt the Conservation designation should be preserved.

Commissioner Judge stated her concerns about airport proximity and stated that she would be voting with Commissioners Teves and Heller against the Project.

There was no further discussion.

Chair Devens inquired that since Commissioner Kanuha made his motion for discussion purposes, if Commissioner Kanuha wanted to proceed forward with a vote on his motion. Commissioner Kanuha confirmed that he would like to have a vote on his Motion.

The Commission was polled as follows:

Ayes: Commissioners Chock, Kanuha, Lezy, Jencks

Nays: Commissioners Contrades, Heller, Teves, Judge and Chair Devens

The Motion failed 4-5.

Chair Devens entertained additional motions on the Petition.

Motion by Commissioner Teves

Commissioner Teves moved to deny the Petition. Commissioner Heller seconded the motion.

There was no discussion.

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

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The Commission was polled as follows:

Ayes: Commissioners Contrades, Heller, Teves, Judge and Chair Devens

Nays: Commissioners Chock, Kanuha, Lezy, Jencks

Chair Devens stated that the Motion failed 5-4 since 6 votes were necessary to carry the motion.

The Commission went into recess at 10:00 a.m. and reconvened at 10:10 a.m.

Chair Devens moved for an Executive Session and Commissioner Judge seconded the motion. After a unanimous voice vote the Commission entered Executive Session at 10:11 a.m. and reconvened at 10:15 a.m.

Chair Devens stated that upon review of the applicable Hawai`i Revised Statutes and the Administrative rules, the Motion to Deny did pass since a majority of 5 votes is required as opposed to the affirmative 6 votes that are required to approve a petition.

Mr. Yee requested that the Petitioner be asked whether they would accept the 5-4 denial vote. Mr. Lim provided his understanding of administrative rules and how he felt decision making should occur. Mr. Yee referred to HAR 15-15-13(b) and described a voting procedure which he felt would clarify matters and avoid procedural issues. Mr. Lim restated his understanding of how decision making should occur. Mr. Brilhante stated that he agreed with OP's interpretation of the rules and suggested that the record could be protected by entertaining a motion to approve the motion; and if it failed, it would fall within the parameters of HAR 15-15-13(b).

Chair Devens asked the Commission if it had any further motions it wanted to offer.

Motion by Commissioner Heller

Commissioner Heller moved that the Petition A07-774 be approved and clarified that his motion was not to approve in part, and deny in part but was a motion to only approve. Commissioner Jencks seconded the motion.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Chock, Kanuha, Lezy, Jencks

Nays: Commissioners Contrades, Heller, Teves, Judge and Chair Devens

The Motion failed 4-5.

There were no further questions and no other discussion. Chair Devens directed that the LUC prepare the necessary documents to reflect the decision in accordance with HAR 15-15-13(b) and adjourned the meeting at 10:24 a.m.