

LAND USE COMMISSION
MEETING MINUTES
October 13, 2016 – 9:30 a.m.
Ballroom # 4, King Kamehameha's Kona Beach Hotel
75-5660 Palani Road, Kailua-Kona, Hawai'i 96738

COMMISSIONERS PRESENT: Edmund Aczon
Arnold Wong
Kent Hiranaga (arrived at 10:15 a.m.)
Aaron Mahi
Linda Estes
Nancy Cabral
Gary Okuda
Dawn Chang

COMMISSIONERS EXCUSED: Jonathan Scheuer

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 10:14 a.m. and apologized for the delayed start due to transportation issues.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the September 7th and 23rd, 2016 minutes. There were no corrections or comments. Commissioner Estes moved to approve the minutes. Commissioner Wong seconded the motion. The minutes were unanimously approved by voice vote (8-0-1 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.

- November 9-10, 2016 will involve the remand hearings on A89-649 Lāna`i Resort Partners.
- November 15-16, 2016 are reserved for A89-649 Lāna`i Resort Partners remand hearings on Maui.
- December 8 and 22, 2016 are reserved for additional A89-649 Lāna`i Resort Partners meetings.
- January, 2017 meetings may be scheduled to include SP09-403 Waimanalo Gulch and A94-706 Ka`ono`olu Ranch
- The remaining meeting dates are awaiting scheduling.
- Any questions or conflicts, please contact LUC staff.

There were no further comments or questions on the tentative schedule.

Chair Aczon announced that the Commission would next address Docket No. A81-525 Y-O Limited Partnership's Motion for an Order Regarding Satisfaction of Affordable Housing Condition

**ACTION— A81-525 Y-O LIMITED PARTNERSHIP (Hawai`i)-
Successor Petitioner RCFC KALOKO HEIGHTS, LLC's Motion for an Order Regarding
Satisfaction of Affordable Housing Condition**

In the Matter of the Petition of Y-O Limited Partnership, To Amend the Agricultural Land Use District Boundary to the Urban Land Use District for Approximately 408.719 acres of land at Kaloko and Kohanaiki, North Kona, Hawai`i, Tax Map Key No.: 7-3-09: 19

APPEARANCES

William Yuen, Esq., for Successor Petitioner RCFC KALOKO HEIGHTS, LLC ("RCFC")
 Mark Meyer, Representative, RCFC
 William Brilhante, Esq., for Hawai`i County Planning Department ("County")
 Duane Kanuha, Director, County
 Dawn Takeuchi-Apuna, Esq. for State Office of Planning ("OP")
 Rodney Funakoshi, Land Use Administrator, OP

Chair Aczon updated the record, and described the procedures for the hearing. There were no questions or comments on the procedures.

Chair Aczon asked if Petitioner agreed to the LUC's reimbursement policy. Mr. Yuen responded that Petitioner was aware of the reimbursement policy and would comply with its requirements.

Commissioner Okuda disclosed that he had personal and professional relationships with Mr. Yuen's law firm and its personnel. There were no objections to Commissioner Okuda's continued participation in the hearing.

Commissioner Cabral disclosed that she had personal and professional relationships with members of the County agencies and businesses present at the meeting. There were no objections to Commissioner Cabral's continued participation in the hearing.

PUBLIC TESTIMONY- DOCKET NO. A81-525

Chair Aczon asked if there were any Public Witnesses who wished to testify.

PUBLIC WITNESSES

1. Keith Kato, Executive Director, Hawai'i Island Community Development Corporation ("HICDC")

Mr. Kato stated his purpose for appearing before the Commission and described how his organization functioned in developing and providing affordable housing on Hawai'i island; and how the current arrangement between HICDC and RCFC relating to an approximate 10 acre parcel was structured; and what future development plans were being considered.

Commissioner Cabral requested clarification on the proposed affordable housing project, and what estimated start and completion dates were being considered. Mr. Kato described what the scope of development would be and responded that, depending on acquiring suitable financing in 2017, he hoped construction would begin in 2018 and end in 2019.

Commissioner Chang sought further details regarding what financing arrangements were being procured and what alternatives the Petitioner/Developer had if project financing could not be secured. Mr. Kato responded that there were several financing sources available and described how he would continue to pursue getting the affordable housing project started and completed.

Commissioner Chang requested clarification on where the proposed 10 acre site that would be donated was located; what its approximate value was; and additional specifics on the anticipated construction period. Mr. Kato described where the 10 acre site was located and what type of residential units were being considered for development during the 2018-2019 time period; and stated that he did not know what the acreage was worth.

Commissioner Wong sought additional details regarding what the projected proposed development costs included; and whether the HICDC project under consideration would be categorized as a 201H project. Mr. Kato shared his understanding of what infrastructure costs were included, what the timetable was for the various stages of site preparation; and how the proposed project was anticipated to progress. Mr. Kato also stated that the project would be categorized 201H.

Commissioner Okuda requested clarification on various details of the agreement that HICDC had with RCFC; what Mr. Kato's understanding was of the current situation between the two entities; whether a bond had been obtained for the proposed project; and what the forecast of project success was. Mr. Kato described how update changes were necessary to the original agreement between HICDC and RCFC due to the updated proposed changes to Condition No. 1 of the Decision and Order, and shared his perspective of what the current situation between HICDC and RCFC was. Mr. Kato stated that no bond had been obtained yet for the proposed project and provided his opinion of how successful the project would be based on other projects that he had been involved with.

Commission Cabral shared her knowledge of the need for affordable housing in the area and requested information on how the "local" population might first benefit from the proposed project before "outsiders". Mr. Kato described how marketing efforts to the "local" population were developed to assist in providing for "local" population housing needs.

There were no further questions for Mr. Kato.

Chair Aczon asked if the Parties had any Exhibits that they wished to submit into evidence. None of the Parties had exhibits to submit.

Commissioner Cabral requested additional information regarding the location of the proposed project in proximity to area landmarks that she was familiar with. Chair Aczon requested that Commissioner Cabral withhold her questions for Petitioner's presentation. Commissioner Cabral acknowledged the Chair's request.

Chair Aczon called for Petitioner to make its presentation.

PRESENTATIONS

Petitioner

Mr. Yuen provided a background history and summary of his Motion for An Order Regarding Satisfaction of Affordable Housing Condition and described how negotiations between RCFC, Hawai'i County and OP had resulted in revised language for the amendment to Condition No. 1 of the LUC's Decision and Order in the matter dated January 20, 1983 and altered the intention stated in his Motion from a Satisfaction of Affordable Housing Condition to amending Condition No. 1 of the Order instead. (During his presentation, Mr. Yuen referred to Condition No. 1 language cited in an October 5, 2016 correspondence from him to the LUC, OP and Hawai'i County that had not been filed with the Commission till later in the hearing.)

Commissioner Chang requested clarification on how satisfaction of the Condition No. 1 Affordable Housing requirement would be met. Mr. Yuen replied that a release from Condition No. 1 would be sought when the housing units were completed; and clarified that RCFC would continue to be responsible for satisfying Condition No. 1, despite donating a 10 acre parcel to HICDC.

Commissioner Chang sought information on the current status of the proposed project and how its market rate and affordable components would be introduced. Mr. Yuen provided his understanding of the progress made on infrastructure, project design, and estimated costs, etc. and how the affordable units would be staggered and introduced to satisfy County requirements.

Commissioner Cabral requested clarification on the proposed house/lot offerings. Mr. Yuen deferred responses to RCFC representative, Mark Meyers. Mr. Meyers, after being sworn in, described the proposed house/lot offerings and their estimated price ranges, and possible development packages.

Commissioner Chang requested clarification on why the rental component was necessary. Mr. Yuen described how and why the new language for Condition No. 1 was necessary to conform to more current affordable housing requirement conditions than the LUC imposed.

Commissioner Cabral requested clarification on whether extra affordable units had been included. Mr. Yuen responded that the extra affordable units had been withdrawn.

There were no further questions for Petitioner. Chair Aczon called on County to make its presentation.

COUNTY

Mr. Brilhante described the efforts that County had contributed to crafting the language to the amendment to Condition No. 1, argued why the Commission should amend the Condition; and stated that Petitioner's October 5, 2016 letter to the Commission accurately portrayed County's agreement regarding amendment of the Condition.

Commissioner Wong asked County to confirm its approval of the October 5, 2016 language. Mr. Brilhante confirmed that the language was accurate.

Commissioner Chang stated that she had not seen the Petitioner's October 5, 2016 letter and requested confirmation that the amendment suitably included affordable rentals and leasing as desired by the County. Mr. Brilhante acknowledged that the amendment was acceptable.

There were no further questions for Mr. Brilhante. Chair Aczon called for OP to make its presentation.

OP

Ms. Apuna summarized OP's position and described the considerations that OP had made in crafting the language for an amendment to Condition No. 1; and why OP recommended approval of the revised language to the amendment to Condition No. 1; and argued why the Commission should grant the amendment to the Condition No. 1 language. Ms. Apuna also addressed Commissioner Cabral's concerns about providing housing for Hawai'i residents first and described how the Condition No. 1 language made specific references about Hawai'i residents.

Commissioner Chang requested clarification from County about zoning and how staggering construction of market rate and affordable housing would occur. Mr. Brilhante deferred to Petitioner to respond.

Mr. Yuen shared his perspective on how concurrent construction requirements could be imposed by County.

Discussion ensued to clarify what the requirements for concurrent construction of market rate and affordable units were, when the various types of units would be built, and how Petitioner would pursue obtaining satisfaction that Condition No. 1 had been achieved.

Mr. Yuen described how the Petitioner hoped to accomplish its project goals; and how the Commission would be approached in the future by Petitioner to make necessary adjustments to Conditions if needed.

Mr. Brilhante offered Mr. Kanuha to provide additional information on the County perspective in this matter. Mr. Kanuha, after being sworn in, described his understanding of

how County zoning would determine the market rate and affordable rate housing concurrent construction phasing. Mr. Kanuha stated that there currently was no concurrent construction zoning requirement in force.

Mr. Yuen stated that the estimated value for the 10 acre parcel to be donated was \$5 million.

Commissioner Wong sought clarification on OP's position and on the family dwelling unit types that would be offered in the proposed project. Ms. Apuna reaffirmed that OP had no problem with the revised wording for Condition No. 1. Mr. Yuen described how the term multi-family should be interpreted; and how townhouses would be included in the proposed project and reaffirmed that the amended Condition No. 1 language was acceptable.

Commissioner Wong questioned whether, under the new language, the Commission would continue to be involved in the proposed project. Mr. Yuen responded that he expected the Commission to remain involved until the Condition was satisfied.

Commissioner Chang expressed her concerns about concurrent construction of market rate and affordable rate housing. Mr. Yuen described how concerns about concurrent construction could be addressed.

Commissioner Cabral questioned whether the October 5, 2016 letter that Mr. Yuen had been referring to was available to review. Discussion ensued to determine whether Mr. Yuen could provide the Commission with the letter in question. Mr. Yuen responded that he could provide the letter after a recess.

Chair Aczon declared a recess at 11:23 a.m. and reconvened the meeting at 11:35 a.m.

Mr. Yuen filed his October 5, 2016 correspondence to the LUC, OP and Hawai'i County as Petitioner's Exhibit 1 and provided copies to the Commission. Neither Hawai'i County nor OP objected, and Chair Aczon admitted the letter into the record as Petitioner's Exhibit 1.

Commissioner Okuda verified that Petitioner's Exhibit 1 and the language it contained was accurate and acceptable with Petitioner, County and OP. All Parties affirmatively confirmed the contents of the document.

Commissioner Hiranaga asked if County had any concerns with the last line of the Condition. Mr. Brilhante responded that County had no concerns.

Commissioner Okuda requested clarification of what relief Mr. Yuen was seeking. Mr. Yuen responded that the Commission's approval of the language of the amendment to Condition No. 1 as contained in Petitioner's Exhibit 1 was what Petitioner was seeking.

Commissioner Chang sought clarity on whether the Commission would retain overall authority of both phases of the proposed project. Mr. Yuen acknowledged that the Commission would continue to retain authority till it decided to release Petitioner from the Conditions of the Order and that approval to continue with Phase II would be dependent upon satisfying conditions imposed on Phase I.

Chair Aczon asked if Mr. Yuen wished to provide a rebuttal. Mr. Yuen declined the opportunity for rebuttal.

Commissioner Cabral moved to adopt the revised Condition 1. Commissioner Wong seconded the Motion.

Commissioner Okuda sought clarification of the Motion and provided his understanding of what Commissioner Cabral's motion was.

Commissioner Hiranaga questioned Commissioner Okuda on whether the motion was to adopt the language in Petitioner's Exhibit No. 1.

Commissioner Okuda acknowledged that he had stated that the Motion was to amend the existing Condition No. 1 in the original Order by adopting the new language contained in Petitioner's Exhibit 1 filed on October 13, 2016 with the Commission; with all other aspects of the original Motion being denied.

Commissioners Cabral and Wong agreed with Commissioner Okuda's interpretation of the Motion.

There were no further questions or discussion.

The Commission unanimously voted (8-0- 1 excused) to amend the existing Condition No. 1 in the original Order by adopting the language contained in Petitioner's Exhibit 1 filed on October 13, 2016 with the Commission; with all other aspects of the original Motion being denied.

Chair Aczon declared a recess at 11:48 a.m. and reconvened the meeting at 11:50 a.m.

DISCUSSION AND ACTION, IF APPROPRIATE

Authorize LUC Staff to Proceed with Administrative Rule Amendments

Chair Aczon stated that the next agenda item was a discussion to authorize LUC Staff to proceed with Administrative Rule Amendments for consideration by the 2017 Hawai'i Legislature and asked if there were any Public Witnesses.

Public Witnesses

None.

Chair Aczon asked Mr. Orodenker to provide further information on the LUC Staff's need for the Commission's authorization to proceed with Administrative Rule Amendments. There was a brief discussion to determine the amount and scope of authority that the LUC staff required to proceed with Administrative Rule Amendments and what the deadline for suggested changes would be.

Commissioner Cabral moved to authorize LUC staff to proceed on making Administrative Rule Amendments as directed by the Commission. Commissioner Wong seconded the motion.

There was no further discussion.

The motion was adopted unanimously (8-0- 1 excused).

There being no further business, the Commission meeting was adjourned at 11:54 a.m.