

LAND USE COMMISSION  
MEETING MINUTES

March 28, 2019– 9:00 a.m.

Natural Energy Laboratory Hawai`i Authority (NELHA)  
73-970 Makako Bay Drive Kailua Kona, Hawai`i 96740-2637  
Hale `Iako Training Room #119

COMMISSIONERS PRESENT: Lee Ohigashi  
Gary Okuda  
Arnold Wong  
Nancy Cabral  
Aaron Mahi  
Jonathan Scheuer  
Edmund Aczon

COMMISSIONERS EXCUSED: Dawn Chang

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Randall Nishiyama, Deputy Attorney  
General  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk  
Bert Saruwatari, Staff Planner  
Rasmi Agrahari, Staff Planner

COURT REPORTER: Jean McManus

**CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:00 a.m.

Chair Scheuer stated that the next agenda item which was the adoption of the form of the order for A06-767 Waikoloa Mauka (Hawai`i) would be deferred and that the Parties would be advised of the meeting details when they were available.

**ADOPTION OF ORDER**

**A06-767 WAIKOLOA MAUKA LLC, (HAWAII)**

Deferred till meeting details available.

Chair Scheuer stated that the next agenda item was a status report on A02-737 U of N Bencorp (Hawai'i)- Consideration of whether to issue Order to Show Cause based on correspondence from Petitioner's successor in interest and related matters, if any.

**STATUS REPORT AND ACTION (IF NECESSARY)**

**A02-737 U of N BENCORP (UNB)**

Consideration of the Findings of Fact, Conclusions of Law, and Decision and Order dated August 8, 2003, granting the reclassification of approximately 62 acres situate at Wai`aha 1<sup>st</sup>, North Kona, County and State of Hawai`i, identified as Tax Map Key Nos.: (3) 7-5-010: 085 and 7-5-017: 006

**APPEARANCES**

Julie Anjo, Esq., represented Petitioner (UNB)

Anthony Ching, Planning Consultant for Petitioner

Paul Childers, Chief Operating Officer, UNB

Mr. Allen Anjo, UNB

Duane Kanuha, Deputy Director, County of Hawaii Planning Department (County)

Ron Kim Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

**PUBLIC WITNESSES:**

None

Chair Scheuer declared the Public Testimony portion of the hearing closed.

**DISCLOSURES**

None

Petitioner UNB's Presentation

Ms. Anjo provided background information and the history of why UNB did not plan to comply with the conditions prescribed by the LUC's decision and order and described how UNB had reconsidered its recent initial position of requesting to revert the Petition Area and offered Mr. Ching to present information on UNB's latest position.

Mr. Ching used a PowerPoint presentation to provide background information on Petitioner and how UNB had reconsidered its initial Motion to Substitute Petitioner and Withdraw Land Use Commission Approvals and Revert Land Use District Boundary Classification to Agricultural.

Mr. Ching offered Mr. Childers to provide UNB's commitment statement in this matter. Mr. Childress described setbacks that UNB had encountered since the initial Decision and Order had been issued and provided information on how UNB was attempting to re-establish itself to fulfill its mission and move forward.

Commissioner Wong requested clarification on the various difficulties UNB had experienced and why a similar 2007 motion made by UNB to the Commission had not been pursued. Mr. Ching and Ms. Anjo provided their perspectives on the history of the Petition Area and Ms. Anjo stated that some initial infrastructure for water supply via wells had been pursued.

Commissioner Aczon sought further clarification on the 2019 Motion that had been filed and withdrawn. Ms. Anjo provided additional details surrounding the submittal and withdrawal of the Motion.

Chair Scheuer requested clarification on the annual reports submitted to the Commission. Ms. Anjo recapped the history for failing to provide timely reports.

Commissioner Ohigashi requested clarification on the status of the initial 2003 affordable housing requirements. Mr. Ching described how UNB had determined that it would attempt to amend that condition but had not yet approached the Commission about it.

Commissioner Aczon requested clarification on the specific objectives that UNB was trying to accomplish. Ms. Anjo described how her conversation with Ms. Apuna had impacted UNB's decision making about the Petition Area; and why UNB assumed the current position it had before the Commission.

Commissioner Okuda requested clarification on the current state of progress regarding the Conditions related to the Decision and Order. Mr. Ching provided his perspective of why the Petitioner had not failed to meet conditions. Mr. Okuda commented that there appeared to be no evidence to support that assessment.

The Commission went into recess at 9:59 a.m. and reconvened at 10:09 a.m.

Chair Scheuer requested clarification on the plans for the Petition Area. Mr. Childress shared how UNB attempted to serve and educate the community and was in the process of developing plans to accomplish those goals and was developing its team to fulfill this effort.

Mr. Ching acknowledged his past role as Executive Officer at the LUC when the 2007 Motion had been heard and shared his recollection of the events that had occurred during those proceedings; and stated that the Commission had lost quorum and could not continue proceedings. Mr. Ching stated that Petitioner had been advised “off the record” at that juncture that it should return to the Commission when it had better organized its Petition.

Chair Scheuer asked if the Commission had initiated any action which would have prevented Petitioner from returning to pursue its Motion. Mr. Ching replied that the Commission had not.

There were no further questions, comments or discussion.

#### COUNTY

Mr. Kim offered Mr. Kanuha to present County’s position. Mr. Kanuha stated that County had no comments and noted that Petitioner had not submitted any rezoning requests or taken any action at the County level related to the Petition Area.

Mr. Kim stated that County needed more information regarding the proposed Affordable Housing component if Petitioner wanted to receive any credits for it. Mr. Kim recognized the outreach efforts that the UNB organization had made during the recent emergency lava evacuations to assist the community with temporary housing.

#### OP

Ms. Apuna described the various conditions where the Petitioner had failed to meet stated deadlines.

Commissioner Cabral expressed her assessment of the proceedings.

Commissioner Wong moved for an Executive Session to consult with the Board's Attorney on the Commission's duties, privileges, responsibilities and liabilities in this matter. Commissioner Aczon seconded the Motion.

The Commission entered Executive Session at 10:20 a.m. and reconvened at 10:33 a.m.

Chair Scheuer recognized Commissioner Aczon. Commissioner Aczon stated that he moved that an Order to Show Cause be issued. Commissioner Cabral seconded the motion.

#### DELIBERATIONS

Chair Scheuer described the status of proceedings and opened the floor for discussion on the Motion.

Commissioner Aczon described how the Petitioner's 2019 Motion's filing and withdrawal had raised OSC issues and concerns that he felt needed to be addressed.

Commissioner Wong shared his similar concerns and added that the lack of action to acquire permits or other development work prompted him to support the motion.

Commissioner Okuda expressed why he felt the standards for an OSC had been met.

Chair Scheuer shared his reasons for supporting the motion and how Petitioner had, by its own admission, failed to meet conditions; how the record supported an OSC; how the Commission's duties to the public required it and how an OSC allowed Petitioner an opportunity to share information with the Commission.

Chair Scheuer had Mr. Orodenker poll the Commission. The Commission unanimously voted to issue an OSC (7-0-1 excused).

The Commission went into recess at 10:43 a.m. and reconvened at 10:45 a.m.

Chair Scheuer stated that the next agenda item was a status report on A06-770 Shopoff Group, L.P. (Hawai'i) and to consider if any action by the Commission was necessary.

#### **STATUS REPORT AND ACTION (IF NECESSARY)**

##### **A06-770 THE SHOPOFF GROUP, L. P. (HAWAI'I)**

Consideration of the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 127.94 Acres at North Kona, Island of Hawai'i, TMK Nos.: (3) 7-3-007: 038, 039 and (3) 7-3-009: 007

- Consideration of whether to issue Order to Show Cause based on correspondence from Petitioner's successor in interest and related matters, if any.

## APPEARANCES

Nohea Baptista, Petitioner (KNP)

Robert E. Lee, Jr., Petitioner

Colin Keola Childs, Petitioner's Consultant

Jeff Darrow, County of Hawaii Planning Department (County)

Ron Kim Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning

Rodney Funakoshi, State Office of Planning

Lorene Maki, State Office of Planning

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

## DISCLOSURES

Commissioner Okuda asked if Mr. Lee was related to his client Wade Lee. Mr. Lee replied that he was not. Commissioner Okuda confirmed that he had no disclosure to make.

There were no other disclosures.

Chair Scheuer called for Public Witnesses

## PUBLIC WITNESSES:

None

Chair Scheuer declared the Public Testimony portion of the hearing closed.

## PETITIONER PRESENTATION

Ms. Baptista provided background information and the history of why KNP could not comply with the conditions prescribed by the LUC's decision and order and described how KNP's future plan was to create 26 lots within the Petition Area for a Planned Unit Development ("PUD") instead of attempting the large-scale development proposed by The Shopoff Group in the original Petition.

## Commissioner Questions

Commissioner Okuda commended KNP for making the effort to appear before the Commission to resolve its predicament. Ms. Baptista described how the proposed PUD would attempt to preserve the cultural and archaeological features of the Petition Area and retain the "country feeling" of the area.

Commissioner Aczon requested clarification on what KNP intended to do within the Petition Area. Ms. Baptista deferred to Mr. Lee to describe the future efforts that KNP had planned for the PUD.

Chair Scheuer requested clarification on the site plan and what was reported in the last annual report. Mr. Lee and Ms. Baptista described the components of the site plan and how it would be necessary to sell some of the Petition Area to provide the funding for the PUD; and how family members would be allowed first right of refusal to purchase.

Commissioner Cabral requested more specifics on the vision for the proposed future development and how water infrastructure concerns were being addressed. Mr. Lee described how County's Department of Water Supply ("DWS") had confirmed that water would be available for the proposed PUD.

Commissioner Aczon requested clarification on what timeline was planned for the proposed PUD. Mr. Lee and Ms. Baptista expressed that they were working with County authorities to advance the PUD as quickly as possible once the Commission made a determination on the future of the Petition Area.

Chair Scheuer questioned what type of action KNP was seeking from the Commission. Ms. Baptista described how a land use designation of "Agricultural or Rural" would better suit the proposed PUD.

Commissioner Aczon commented that he had questions for County about the PUD.

Chair Scheuer called for the County to make its presentation.

## COUNTY

Mr. Kim offered Mr. Kanuha to respond to questioning. Mr. Kanuha stated that he had no specific comments to make about the proposed PUD and described what current County zoning allowed for the Petition Area under different land use designations.

## Commissioner Questions

Commissioner Ohigashi requested clarification on whether County supported the reversion of the Petition Area to its former designation; and whether County would consider stipulating to an LUC reversion of the Petition Area. Mr. Kanuha shared his

perspective of how land use trends had affected County's thinking and how a "Rural" designation could be supported by the Planning Department.

Commissioner Cabral inquired how the proposed PUD could be developed with a "Rural" land use designation. Mr. Kanuha described what was permissible under County PUD guidelines with the "Rural" designation.

Commissioner Okuda requested additional information on whether "Rural" allowed enough flexibility for the proposed PUD whether sweet potato farming would still be permissible. Mr. Kanuha described how a "Rural" designation would be in line with the County General Plan and allow for the PUD and sweet potato farming.

There were no further questions.

Chair Scheuer asked if OP had any comments.

OP

Ms. Apuna stated that OP had no comments.

#### Final Questions

Commissioner Wong expressed his appreciation for the information update on the Petition Area.

Commissioner Okuda inquired whether OP would stipulate to a decision to revert. Ms. Apuna replied that it would depend on the specifics and analysis of the stipulation terms and conditions.

There were no further questions.

#### DELIBERATIONS

Chair Scheuer described the status of proceedings and sought the pleasure of the Commission.

Commissioner Cabral moved for an OSC and described how the Petitioner's presentation had presented the Commission with OSC issues and concerns that she felt needed to be addressed.

Commissioner Mahi seconded the motion.

Commissioner Cabral expressed why she felt her motion did not contain more specifics.

Commissioner Wong contributed why he felt an OSC was procedurally in order.

Commissioner Okuda expressed why he was in favor of the Motion.

Chair Scheuer recognized Mr. Childs call for a point of order. Mr. Childs described how Commissioner Cabral had described the PUD effort by KNP using the word "Motion" and emphasized that KNP had not made a Motion before the Commission during its presentation.

Commissioner Okuda described his understanding of what Commissioner Cabral was attempting to express in her Motion and stated that he felt that the Commission recognized that KNP had not made a Motion to the Commission. There was no objection by the other Commissioners to that representation of the Commission's understanding of Commissioner Cabral's motion.

Chair Scheuer stated that his reasons for supporting the OSC motion were like the previous docket and described how an OSC action might allow Petitioner an opportunity to share information with the Commission and move forward.

Chair Scheuer had Mr. Orodener poll the Commission. The Commission unanimously voted to issue an OSC (7-0-1 excused).

The Commission went into recess at 11:25 a.m. and reconvened at 11:31 a.m.

## **ACTION**

### **A18-805 Church (Hawai'i)**

Consider Amended Motion that the Land Use Commission Accept an Existing EA/FONSI as Sufficient to Support the Petition

## **APPEARANCES**

Kenneth Church and Joan Hildal, Petitioners

Ronald Kim, Esq., Deputy Corporation Counsel, for County Planning Department  
("County")

Jeff Darrow, Planning Department Manager, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Rodney Funakoshi, Land Use Administrator, OP

Chair Scheuer called for the final agenda item and updated the record; described the procedures for the hearing; and called for public witnesses. There were no questions or comments on the procedures.

## **PUBLIC WITNESSES:**

None.

## PRESENTATIONS

Chair Scheuer called for the Parties to make their presentations.

### Petitioner

Ms. Hildal described the reasons why she and her husband had submitted their Petition to the Commission. Chair Scheuer stated that the Commission was procedurally focused on the Environmental Assessment ("EA") for the Petition Area and requested that further testimony address that.

Mr. Church argued why the Land Use Commission should accept an Existing EA/FONSI as sufficient to support the Petition.

Commissioner Aczon requested a summary on what Mr. Church expected the action of the Commission should be and what efforts had been made to ensure that the EA had been reviewed by the proper agencies. Mr. Church described his efforts to vet his EA with various agencies in anticipation of LUC approval.

Commissioner Cabral requested more specifics on how the EA had been prepared.

There were no further questions for Mr. Church.

Chair Scheuer clarified the state of the proceedings and called on the County.

### County

Mr. Kim stated that County had no questions.

Commissioner Ohigashi inquired whether there had been any change in the status of its Position. Mr. Kim responded that there were none.

### OP

Ms. Apuna stated that the Office of Planning had no questions.

Final Comments

None.

## DELIBERATIONS

Commissioner Okuda moved to approve Petitioner's motion that the Commission was the appropriate accepting agency for Petitioner's compliance with HRS Chapter 343; and, to determine that Petitioner's 2016 EA/FONSI accepted by

DLNR, was sufficient for purposes of the action proposed in the Petition pursuant to HRS section 343-S(g) and HAR sections 11- 200-13(b) and (c).

Commissioner Aczon seconded the motion.

Commissioner Okuda described why he felt Petitioner had met the threshold to procedurally proceed forward.

Commissioner Aczon shared his reasons for supporting the Motion.

Chair Scheuer had Mr. Orodener poll the Commission. The Commission unanimously voted to approve the Motion (7-0-1 excused).

There being no further business to address, Chair Scheuer adjourned the meeting at 12:06 p.m.