

LAND USE COMMISSION
MEETING MINUTES

November 6, 2003

Paddle Room
Kauai Coconut Beach Resort
484 Kuhio Highway
Kapaa, Hawaii 96746

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Lawrence Ing
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta

STAFF PRESENT: Anthony Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Russell Kumabe, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Caroline Lorenzo, Secretary

Chair Ing called the meeting to order at 9:40 a.m.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching indicated that the next meeting will be held in Maui on November 20-21, 2003. At that time, pre-hearings regarding the Maui Land and Pineapple Company, Inc. – Kapalua Mauka will be heard. Mr. Ching also indicated that the Commission would meet in Oahu on December 4-5, 2003. There will be a meeting on January 15, 2004. On this date, Attorney General, Mark Bennett will address the Commission. Also, there will be a meeting in February with anticipated Maui dockets on the agenda.

CIVIL NO. 02-1-1759-07

On October 9, 2003, Mr. Jeff Mikulina, Director of the Sierra Club, Hawaii Chapter wrote to ask that the Land Use Commission – rather than the City and County’s Department of Planning and Permitting – be charged with the authority to determine the acceptability of Castle & Cook Homes, Hawaii, Inc.’s Environmental Impact Statement for the Koa Ridge Project.

Mr. Ching noted that in Mr. Mikulina’s letter of October 9, 2003, it indicated that when the Circuit Court vacated the Commission’s decision in the Koa Ridge docket, it held that “completion of the Chapter 343 process is required prior to any decision by the LUC – and because the LUC must render a decision on whether to accept Castle & Cooke’s EIS must rest with the Land Use Commission.”

Commissioner Coppa moved to enter into executive session to discuss legal matters with counsel. Commissioner Desai seconded the motion and the motion was unanimously approved by voice votes.

The Commission exited regular session at 9:50 a.m. The meeting reconvened at 10:25 a.m.

Commissioner Catalani recused himself from the proceedings at this time. (10:30 a.m.)

Commissioner Sakumoto moved that the LUC treat the Sierra Club’s letter dated October 9, 2003, as a motion under HAR 15-15-70, as such, the letter would need to be served to all parties allowing adequate time to file a response. This matter to be scheduled for the December 4-5 meetings on Oahu. Also, waive the 7-day requirement and allow 14 days, which is a more reasonable time frame. Commissioner Montgomery seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Montgomery, Coppa, Desai, and Yukimura.

The Motion passed with 5 ayes, 1 abstention, and 1 absent.

Commissioner Catalani was present to the proceedings at this time (10:37 a.m.).

A03-738 GENTRY INVESTMENT PROPERTIES (Oahu)

Chair Ing announced that this was an action meeting on Docket No. **A03-738 Gentry Investment Properties**, to consider reclassifying approximately 282.614 acres of

land currently in the Agricultural District into the Urban District at Ewa, Oahu for residential, industrial/commercial, public facility and open space uses.

APPEARANCES

Benjamin Matsubara, Esq., represented the Petitioner

Curtis Tabata, Esq., represented the Petitioner

John Chang, Esq., represented Office of Planning

Abe Mitsuda, Office of Planning

Mr. Matsubara noted that he received a call from the City and County indicating that they would not be present to the proceedings.

Mr. Matsubara summarized his testimony and stated that Gentry will provide much needed housing and traffic improvements. This project will provide homes for a broad spectrum of homeowners and includes proposed local and regional improvements to be partnered with the state, federal and the private sector.

Commissioner Catalani questioned if the proposed road improvements will occur within a reasonable timeframe, as traffic will still be a problem in the peak morning hours. Also, Commissioner Catalani questioned the outcome if the homes are built prior to the widening of the roadways.

Mr. Matsubara stated that there will be the widening of Fort Weaver Road from four to six lanes, completing Kapolei Parkway and improvements to Ocean Point and the North/South Road. The first phase will begin in early 2004 and completed by March 2005. The second phase will be completed in early 2007. The first phase of homes are projected to go on sale in 2005.

Mr. Matsubara added that they have received written testimony from Tesha Malama who has advocated for relief for the congestion on Fort Weaver Road and the regional traffic improvement projects. Most of the traffic is on Fort Weaver Road as there are schools in the area, which causes the traffic to back up in the morning hours. The bottleneck is the result of the existing two lanes. The widening of the Fort Weaver Road of 2 to 3 lanes will allow the current 700 cars to turn off in a more efficient manner. The proposed measures that Gentry will put in will help to alleviate some of that traffic for those who do not need to use Fort Weaver Road.

Commissioner Montgomery commented on the proposed state and county fixed rail system and if Gentry would cooperate with the fixed rail solutions.

Mr. Matsubara indicated that the fixed rail system may be a solution but the high cost may have some problems getting approved. The widening of Fort Weaver Road

will allow 700 cars to turn off the highway. These projects are not as ambitious as the fixed rail system, but Gentry will continue to participate in needed solutions.

Commissioner Coppa noted that the LUC's interest is to see the traffic flow during the entire course of the project and would like the DOT and the City and County to come before the Commission. There was a concern that these conditions may be tied in to unpredictable circumstances; something outside of the developer's control.

Mr. Matsubara stated that they do have a reasonable traffic plan in place, but to tie this development to concurrent state and/or county traffic improvement project is something that they have no control over.

Commissioner Montgomery asked if it was possible to accept or improve the condition promoting energy efficiency (solar), resulting in economical savings to the homeowners.

Mr. Matsubara stated that he had no problems with energy conservation for homeowners (solar energy heating) and incorporating such measures.

A recess break was taken at 11:40 a.m. The meeting reconvened at 11:50 a.m.

Commissioner Sakumoto questioned if the projected schedule for development could be adjusted in conjunction with the traffic concerns.

Mr. Matsubara stated that the project moves according to the market demand. Traffic is an important issue, but the focus on the project is to provide homes, which includes regional road efficiency.

Commissioner Sakumoto indicated that Gentry needs to take into consideration the people who are already living there, as they are the ones who will be impacted by the others who will be moving in. Basically, the decision that the LUC makes will put these families at some degree of risk. On their behalf, we all need to realize that if the widening of Fort Weaver Road is not completed, the main thoroughfare out of the area will be significantly impacted for current and future residents.

Mr. Matsubara indicated that the current residents, parties, and public witnesses have no problem with the project and they recognize that in order to make it better, they need the additional roads that Gentry proposes.

Commissioner Coppa suggested that the Petitioner, in coordination with the DOT, hold briefings to update the community in six months.

Commissioner Coppa moved to approve the petition for reclassification, accept the proposed findings of fact, conclusions of law, decision and order as stipulated and as modified by staff for technical and non-substantive items with the addition of certain traffic mitigation conditions. Commissioner Desai seconded the motion.

After some discussion, the motion was clarified to include a new finding of fact noting a need for regional traffic improvement projects to be constructed in a timely and coordinated manner to alleviate current traffic congestion and delays; that the Petitioner, in coordination with DOT, shall provide a briefing and update on regional and local traffic improvement projects to the Ewa Community on a semi-annual basis in conjunction with this project; and that the Petitioner shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the Project.

The Commission was polled as follows:

Ayes: Commissioners Coppa, Montgomery, Desai, Yukimura, Sakumoto, Catalani, and Ing.

The motion passed with 7 ayes and 1 absent.

A lunch break was taken at 12:25 p.m. The meeting reconvened at 1:45 p.m.

A76-418 MOANA CORPORATION (Kauai)

Chair Ing announced that this was an action meeting on Docket No. **A76-418 MOANA CORPORATION (Kauai)** to consider Kiahuna Mauka Partners, LLC's Motion to Amend or Modify Condition No. 9, of Decision and Order, as amended in August 5, 1997, which reclassified approximately 457.54 acres of land from the Agricultural District into the Urban District at Poipu, Island of Kauai, State of Hawaii; and to consider Eric A. Knudsen Trust's Motion to Amend or Modify Condition No. 9a, of Decision and Order, as amended in August 5, 1997, which reclassified approximately 457.54 acres of land from the Agricultural District into the Urban District at Poipu, Island of Kauai, State of Hawaii.

APPEARANCES

Walton Hong, Esq., represented Petitioner, Kiahuna Mauka Partners
Greg Kammm, Kiahuna Mauka Partners
Grace Nihei Kido, Esq., represented Petitioner, Eric A. Knudsen Trust
Stacey Wong, Eric A. Knudsen Trust

Keith Nitta, County of Kauai, Planning Department
Laurel Loo, Esq., represented County of Kauai, Planning Department
John Chang, Esq., represented Office of Planning
Abe Mitsuda, Office of Planning

Staff Report

Mr. Kumabe, staff planner, provided a GIS map orientation of the area and briefly summarized the staff report before the Commission. Mr. Kumabe summarized the motion before the Commission and the significant dates in the docket.

After Mr. Kumabe summarized the motion and significant dates in the docket, Mr. Ching provided a summary of issues, staff's recommendations and the possible actions.

Mr. Ching provided five possible actions that could be taken:

1. **Approved as Requested.** With the benefit of clarifying information provided by the respective Movants, the Commission may choose to approve the five (5) year extension requested by KMP and the two (2) year extension requested by the EAK Trust. If this action is selected, staff recommends that assurances are given by the Movants that applicable compliance and coordination will be given to the County of Kauai.
2. **Approve with Concern and Modification.** The Commission may determine that the same time extension of either five (5) or two (2) years should apply to both Movants. Staff would still recommend that assurances are given by both Movants that applicable compliance and coordination will be given to the County of Kauai.
3. **Defer Action/Continue the Proceedings for 90 Days to Allow the Movants and the County of Kauai to Exchange Information and Confirm the Amount of Time Necessary to Ensure Performance.** The Commission may elect to continue the proceedings for 90 days to allow the Movants to develop and exchange with the parties additional information such as specific development plans and timeframes and/or agreements with State and County agencies.
4. **Deny the Motions.** The Commission may elect to deny the motions based upon its determination that the information provided in the motions and by the parties was insufficient and/or did not support approval. Staff notes that the Movants have until August 5, 2004 to come back before the Commission for relief.
5. **Initiate Order to Show Cause Proceedings.** The Commission may determine that a show cause order may be warranted by the continued lack of compliance by the Movants with Condition Nos. 9a and 9b. The

most recent time extensions were granted as a condition for the LUC abandoning its show cause proceedings.

Mr. Ching commented that Staff recommends item number three (3) to definitively arrive at a more realistic time frame.

Mr. Hong indicated that he will incorporate his testimony to save time. He clarified that on the motion to modify and amend condition no. 9b, all references regarding KMP is in reference to 9b.

Chairman Ing asked if the County of Kauai had any comments or questions on this matter. Ms. Loo replied that the county did not have any questions at this time. Chairman Ing then asked the Office of Planning if they had any comments or questions on this matter. Mr. Chang replied that they also did not at this time.

PETITIONER'S WITNESS

1. Greg Kammm

Mr. Kamm stated that he is the planning consultant of Kiahuna Mauka Partners, LLC (KMP). There were no objections by the parties and the Commission.

Mr. Kamm provided a brief summary of KMP's written testimony, which was provided to the Commission. Mr. Kamm indicated that they have been working closely with the county and have developed plans and dialogue with them. KMP is moving forward and have a proposed master traffic plan in place. Mr. Kamm added that they will not have a master drainage plan until they know what the plans are for the roadways.

Mr. Chang questioned if the development plans have any roadways connected with the Knudsen property.

Mr. Kamm replied that they do share a cross street, Kiahuna Plantation Drive, and commented that there presently are no other connecting roadways between the properties.

Commissioner Coppa and Commissioner Desai left the proceedings at this time (2:35 p.m.).

Commissioner Yukimura noted that each project is owned by a different developer and asked what type of assurances could be given to the Commission that each different developer would perform as represented.

Mr. Kamm stated that he could provide the Commission with a sanitized version of the LLC agreement which bound the developer/partners to perform.

Commissioner Catalani questioned if there was anything on the record to show authority to the other developers.

Mr. Kamm replied that they have nothing on the record. He added that KMP has undertaken numerous studies on the long-term regional projects, including water and sewage. They are hopeful that they will receive the needed approvals, but they are certain that they will not meet the required deadline. They have had intensive dialogue with the county, in which every condition was reviewed in a matrix that specified progress of compliance.

A recess break was taken at 3:40 p.m. The meeting reconvened at 3:50 p.m.

Commissioner Sakumoto noted a range of alternative solutions such as a 90-day period to produce a two-year development schedule.

Mr. Kamm indicated that they need to comply with a large number of county conditions and that it expects cooperation from the county. Also, geographically they need to cooperate with Knudsen in sharing roadways, sewer, and other necessities.

Commissioner Yukimura questioned if there is a formal agreement with the Knudsen Trust.

Mr. Kamm replied that they are in the process of drafting an agreement, pursuant to the county's request for a formal agreement.

Mr. Chang noted that there are preserved, archeological sites on the KMP land and understood that the Knudsen Trust may cross onto these adjacent lands. Mr. Chang questioned how that may impact the variance requirements and how would that affect KMP's property. Mr. Chang added that there should be a regional plan that includes the Knudsen Trust and KMP properties.

Mr. Kamm indicated that there has been a great amount of surveying work conducted by the previous owners and that they are in the process of documenting and obtaining approvals for preservation sites. He noted that nothing will be touched and they are working on all the archeological conditions.

2. Stacey Wong

Mr. Wong stated that he is trustee of the Knudsen Trust. Mr. Wong provided a brief summary of the Knudsen Trust written testimony, which was provided to the Commission. He indicated that the Knudsen Trust have submitted subdivision application to the county, and was waiting for the county's response.

Mr. Chang questioned if the Knudsen Trust did any of the previous development in the petition area.

Mr. Wong replied that the Knudsen Trust has not developed anything in the area, as the development of the golf course was done by the previous owner. Mr. Wong added that they have completed archeological work and studies on flora and fauna, an engineering study on wastewater, and the traffic study. The traffic study was set to be issued in a few weeks.

Mr. Chang inquired if the Knudsen Trust developed a master plan.

Mr. Wong replied that they are proposing a 210-acre project, the former Poipulani project area. He was uncertain of the project's commencement

COUNTY'S WITNESS

1. Keith Nitta

Mr. Nitta stated that he is a planner for the Planning Department, County of Kauai, for the past 24 years. There were no objections by the parties and the Commission.

Mr. Nitta stated that from a planner's perspective, the problem is that the project has been extended for a long time, including delays in improvements to the area. Another area of difficulty is that there are different owners requesting for different timelines. Mr. Nitta added that the entire project should be coordinated with all issues resolved, and a formal agreement should then be submitted.

After discussion, Commissioner Catalani noted that they are all in support of the project, but that there has not been sufficient information on the record to justify the extension.

Commissioner Yukimura stated that he would like to see the county planning department in a more comfortable position regarding the extension for this project. He commented that there are a number of possible actions by the LUC and asked Mr. Nitta which one he would consider to be the most reasonable and workable.

Mr. Nitta noted that option three (3) the continuance of the proceedings, would appear to be the most reasonable. Mr. Nitta added that due to the history of this project, an extension with a reasonable time frame should be granted. The continuance would allow the county an opportunity to review the master plan, traffic, drainage, and water plans. Upon completion of the review, the projects could then move at a much faster pace.

Mr. Mitsuda stated that the Office of Planning had no objections for the extension, but that it should be realistic. Mr. Mitsuda commented that these projects should be integrated and planned as a whole, adding that this should be the last extension granted so the project can proceed to move forward.

The Commission have discussed and deliberated. A motion was then made by Commissioner Sakumoto to defer taking action on both requests for a reasonable period time not to exceed 90 days, to allow the county to continue to work with the land owners. Commissioner Yukimura seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Yukimura, Calatani, Montgomery, and Ing.

The motion passed with 5 ayes and 3 absent.

ADOPTION OF MINUTES

Commissioner Catalani moved to adopt the Land Use Commission meeting minutes of October 23, 2003. Commissioner Yukimura seconded the motion. Said motion was unanimously approved by voice votes.

The meeting was adjourned at 4:15 p.m.