

LAND USE COMMISSION
MINUTES OF MEETING

November 18, 2004

Lehua Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Michael Formby
Kyong-su Im
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai
Isaac Fiesta, Jr.
Lisa Judge

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Bert Saruwatari, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Catalani called the meeting to order at 10:25 a.m.

ADOPTION OF MINUTES

Vice Chair Sakumoto moved to adopt the Land Use Commission meeting minutes of November 4, 2004 and November 5, 2004. Vice Chair Montgomery seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching proposed that for January, February, and March 2005, the second set of meetings be taken off the calendar and the only meetings for these months will be held on the first Thursday and Friday. The Commission concurred with the proposed schedule.

Mr. Ching then reported the following schedule:

- December 2 is the Commissioners' Workshop on Oahu.
- January 6 and 7 will be held in Maui.
- February 3 and 4 will be held in Kona.

After a brief discussion there were no further questions.

A88-634 ALEXANDER AND BALDWIN, INC. (Maui)

Chair Catalani stated that this is an action meeting to consider acceptance of Alexander and Baldwin, Inc.'s Final Environmental Impact Statement for Phase II of the subject docket consisting of approximately 33.530 acres of land currently in the Agricultural District to the Urban District at Kahului, Maui, Hawaii.

APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner
Stanley Kuriyama, CEO of Alexander and Baldwin, Inc.
Dan Yasui, Project Manager, Maui Business Park
Jane Lovell, Esq., represented the County of Maui Department of Planning
James Nagle, Esq., represented the State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Mr. Matsubara provided a brief chronology of Phase I Maui Marketplace initiated in 1988 and the recent Maui Business Park Phase II application to the LUC for district boundary amendment. Mr. Matsubara commented on the proposed project and indicated that the petitioner requests the Commission's approval of the final EIS.

Mr. Yasui further explained the chronology of the conceptual master plan and commented on the content and compliance of the final EIS. Mr. Yasui also discussed issues related to the associated housing and traffic studies, and further clarified the expected mix of light industrial and retail activity mix for the Phase II portion of the project.

After a brief discussion, there were no further questions.

Staff Report

Staff Planner Bert Saruwatari provided the Commission with a staff report and a map orientation of the subject docket using LUC maps of the subject docket area. There were no questions by the parties and the Commission.

Ms. Lovell indicated that for the County of Maui, there were no conceptual issues, just some minor wastewater issues. However, the County has no objections as the applicant is currently working with the County to resolve these matters and fully expects that some agreement will result.

Mr. Chang stated that the State had no objections to the final EIS.

Vice Chair Sakumoto moved to accept Alexander and Baldwin, Inc.'s Final Environmental Impact Statement for Phase II. Commissioner Yukimura seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Yukimura, Formby, Im, Montgomery, and Catalani.

Nays: None

The motion passed with 6 ayes, 3 absent.

A recess break was taken at 10:55 a.m. The meeting reconvened at 11:10 a.m.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Chair Catalani stated that this was an action meeting to consider Lanihau Properties, LLC's Motion for a time extension to comply with conditions of approval 1C, 3B, and 8 of the State Land Use Commission's Decision and Order dated September 26, 2003.

APPEARANCES

R. Ben Tsukazaki, Esq. represented Petitioner
Norman Hayashi, County of Hawaii Planning Department
Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department
James Nagle, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

Chair Catalani noted that the intervenor National Park Service was not present at this hearing.

Mr. Tsukazaki noted there was an oversight by his office regarding the circulation of his September 16, 2004 letter. It had not been sent to the Office of Planning. The Office of Planning has since received a copy of the letter.

Mr. Nagle indicated that the State's Office of Planning has stipulated with the Petitioner and waives the service of this document.

Mr. Tsukazaki noted that there was nothing further to add.

Vice Chair Sakumoto noted that item 2 on the letter appeared incomplete, as there was no continuation on the second page of the letter to complete the sentence from the first page.

Mr. Tsukazaki explained that it was a copy malfunction and recited the last four lines of the paragraph. Mr. Tsukazaki also indicated that he will be providing the missing information for the record.

Mr. Tsukazaki discussed issues of the timeframe for the zone change, the extension request, and the DOH approval of the IWS facility.

Ms. Leithead-Todd stated that the County had no objections.

Mr. Nagle indicated that the State also had no objections to the extension request.

Chair Catalani noted that there were no public witnesses.

Vice Chair Sakumoto moved to grant Petitioner's request for a time extension to comply with conditions of approval 1C, 3B, and 8 of the State Land Use Commission's Decision and Order until July 31, 2005. Vice Chair Montgomery seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Montgomery, Formby, Im, Yukimura, and Catalani.

Nays: None

The motion passed with 6 ayes, 3 absent.

DR04-30 KULEANA KU'IKAHU, LLC (Maui)

EXECUTIVE SESSION

Vice Chair Sakumoto moved that the Commission enter into executive session to discuss personnel matters with its Deputy Attorney General. The motion was seconded by Commissioner Formby. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 11:25 a.m.

The open meeting reconvened at 12:10 p.m.

DR04-30 KULEANA KU`IKAHI, LLC (Maui)

Chair Catalani stated that this was an action meeting for the selection of a hearings officer for Docket No. DR04-30 Kuleana Ku`ikahi, LLC (Maui).

APPEARANCES

James W. Geiger, Esq., representing Kauaula Land Company, LLC
Blaine Kobayashi, Esq., representing R. Charles Bergson, et al
Paul Horikawa, Esq., representing Jason Cuevas and Concetta Cuevas
Jane Lovell, Esq., represented the County of Maui Department of Planning
James Nagle, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Vice Chair Sakumoto commented on the process for the hearing officer's list of names for consideration and discussed the sub-committee's previous meetings that were held on November 10 and November 16. Vice Chair Sakumoto added that the final list of 6 names, resumes and responses have been circulated to the Commission for review and discussion.

Commissioner Formby expressed his appreciation to the parties for submitting their comments. Commissioner Formby had questions and concerns related to Maui County's response letter in objection of Riki Mae Amano and Casey Jarman.

Vice Chair Sakumoto also had similar questions and concerns as to the basis of Maui County's objections and asked Ms. Lovell if there was any information helpful to the Commission that she could provide before their selection of a hearings officer.

Chair Catalani commented that all 6 candidates would be fair and accountable. Chair Catalani had questions to the parties regarding the basis of their responses and if the names listed were in ranking order.

Mr. Kobayashi indicated that they had no specific objections to any of the names listed and in formulating their response, Mr. Luna and himself relied on their past experience with each individual, resulting in the ranking order.

Mr. Horikawa commented that the sub-committee did an excellent job in compiling a “blue-ribbon” panel. He added that he had no objections to the list.

Mr. Geiger stated that he also had no objections and added that it is important to select a hearings officer who will provide a clear record. Although all six are qualified, he ranked the experienced judges as the first four.

Mr. Nagle indicated that the Office of Planning did not receive any statements, but the six are all qualified and the State has no objections to any of them.

Chair Catalani noted that Mr. McCarty was not present at the meeting, however, his response was received and he has indicated 2 objections, including the basis of these objections.

After a discussion, Vice Chair Sakumoto moved to select Francis Yamashita as the hearing officer. The motion was seconded by Commissioner Formby.

Vice Chair Sakumoto indicated that he made this motion because there were no objections to Francis Yamashita.

After a discussion, Chair Catalani stated that in review and discussion of the comments, he has not heard any specific objection in the discussion for Professor Jarman. Chair Catalani reiterated his support for Professor Jarman, given her LUC background made her ideally qualified to create a record for the Commission in order to make a decision.

Commissioner Im concurred with Chair Catalani and added that the purpose of hiring the hearings officer in this matter is to basically assist the Commission and create a record. Commissioner Im added that without a strong basis for objection, Professor Jarman has the past experience to create the best record with the least amount of pre- and post-hearing training so as to expedite these proceedings.

Vice Chair Montgomery noted his understanding that the hearings officer is responsible for creating a record and draft an order that will be submitted to the parties and the applicant prior to Commission approval. He added that the sub-committee has invested a lot of energy and is interested in having this proceeding done in a fair and efficient manner.

Vice Chair Sakumoto stated that the purpose of having a hearings officer for this case was based upon the economics and to also expedite and resolve this issue efficiently.

Commissioner Yukimura commented that he personally served with Professor Jarman on the Commission and had no objections to her qualifications, however, because this is such a controversial case, the best way to resolve it is to select a hearings officer that everyone agrees upon.

After a brief discussion, Chair Catalani stated that he had no objections to Francis Yamashita, although his initial concern is who will deliver the best record to the Commission. Chair Catalani then asked the parties if they felt that Professor Jarman would be impartial in making a recommendation to this commission.

Mr. Geiger stated that he did not have any basis to comment if Professor Jarman would be biased or impartial and that his previous comment was that he would be in favor of an experienced judge.

Mr. Kobayashi indicated that he did not have any basis to state whether or not Professor Jarman would be biased or impartial.

Mr. Horikawa stated that he has never practiced before Professor Jarman and did not have a basis to offer a disqualification of Professor Jarman.

After a discussion, Vice Chair Montgomery suggested that the Commission take a lunch break at this time.

A lunch break was taken at 1:00 p.m. The meeting reconvened at 2:00 p.m.

Chair Catalani called the meeting back to order.

Chair Catalani then reiterated the motion by Vice Chair Sakumoto to appoint Francis Yamashita as the hearings officer.

The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Formby, and Yukimura.

Nays: Montgomery, Im, and Catalani.

The motion failed with 3 ayes, 3 nays, and 3 absent.

Commissioner Im moved to select Casey Jarman as the hearings officer. Vice Chair Montgomery seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Im, Montgomery, and Catalani.

Nays: Yukimura, Sakumoto, and Formby.

The motion failed with 3 ayes, 3 nays, and 3 absent.

After a discussion, Vice Chair Sakumoto moved that the Commission defer taking action on this matter until the December 2, 2004 meeting at which time the Commission will hopefully reach a consensus. Commissioner Formby seconded the motion. Said motion was approved by voice votes.

A recess break was taken at 2:10 p.m. The meeting reconvened at 2:20 p.m.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION (Hawaii)

Chair Catalani stated that this was a continued hearing, last heard on October 7, to consider the reclassification of approximately 487.246 acres of land currently in the Agricultural District into the Rural District at Keauhou I and II and Kahaluu, North Kona, Hawaii, for the development of a single-family residential subdivision.

APPEARANCES

R. Ben Tsukazaki, Esq. represented Petitioner
Greg Chun, President of Kamehameha Investment Corporation
Francis Kauhane, Kamehameha Investment Corporation
Norman Hayashi, County of Hawaii Planning Department
Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department
James Nagle, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Admission of New Exhibits by the Parties

Mr. Tsukazaki stated that he had a new exhibit, marked as Petitioner's Exhibit 26, the graphic map describing the projected peak hour traffic at the intersection of Kamehameha III and Kuakini Highway. Mr. Tsukazaki indicated that he also received a document this morning from OP regarding DOT's comments relative to this graphic, as OP's Exhibit 5. Mr. Tsukazaki added that he will be submitting an amended exhibit list.

The County had no objections to the submittal of Petitioner's Exhibit 26 and OP's Exhibit 5.

Mr. Nagle indicated that the State had no objections to the Petitioner's Exhibit 26, and added that they would also be submitting an amended exhibit list to include OP's Exhibit 5.

There were no objections by the parties. Said exhibits were admitted into the record.

PETITIONER'S WITNESSES

1. Ron Terry

Mr. Terry stated that he was retained to prepare the EIS, having over 12 years of experience in management and conservation use applications. His resume was submitted as exhibit 20. Mr. Terry was qualified as an expert in the field of environmental impact analysis. There were no objections by the parties.

Chair Catalani had questions and concerns regarding Mr. Terry's procedure for conducting the study and requirements of the environmental review process.

Mr. Terry discussed the formal review process for the EIS and explained the specialized packaging of information. He further commented on his research methodology, evaluation and critique, flora and other biological reports, historical sites, archeological studies, economic impact market study, cultural, historical and ethnic impacts, burial cave systems, heiau, and orientation of the burial map.

Mr. Terry also provided an orientation of the petition area and commented on the proposed recreational opportunities, buffer zones, and water commitments.

Ms. Leithead-Todd had a few questions regarding the petitioner's request for a reduction in the acreage that will be left in the agricultural district.

Mr. Nagle's questions and concerns were related to the Ohia trees and the preservation and/or potential for this species to be threatened or endangered by this project, and the native leafhopper.

Commissioner Im had questions and concerns relative to the Ohia trees and its concentration in the vicinity of the subject project.

Vice Chair Montgomery also had questions regarding the Ohia trees, the vegetation of the area that potentially houses rats, the buffer zones, and the foundation of the native fauna.

Vice Chair Sakumoto's questions were relative to the public access trails, archeological surveys, the DLNR's recommendation that the applicant provide protection of the burials from disturbances, and the response to OHA's concern regarding the historical sites.

Chair Catalani had questions and concerns regarding the assumption of school impact numbers being primarily low for a development of this size, the creation of a job market, and the measurement of the economic and cultural impacts. Chair Catalani also had concerns related to the high number of Ohia trees concentrated in this area.

Commissioner Im had questions and concerns in reference to issues of the Ohia tree concentration in the area, the native Hawaiian cultural impacts, the economy and the future neighborhood/community changes. Commissioner Im also had questions regarding the fairness of a new development providing school spaces, whether it is resort development or low-income housing.

A recess break was taken at 3:50 p.m. The meeting reconvened at 4:05 p.m.

Mr. Terry continued to discuss the recommendations made based on the best strategy for the Ohia trees and the development of buffer zones and active management to help preserve the species.

Ms. Leithead-Todd had a few questions on the dry-land forest, the Ohia trees, and the over-growth of the Christmas berry.

Mr. Nagle had a few questions and concerns related to the buffer zones and the cultural resources in the area.

After a brief discussion, there were no further questions.

2. John Kirkpatrick

Mr. Kirkpatrick was sworn in at a previous hearing and still under oath. Mr. Kirkpatrick discussed issues of the market analysis and economic studies, the future developments coming on line in the area, and the impact study of the south Kohala area.

Ms. Leithead-Todd noted that the County had no questions.

Mr. Nagle had questions relating to the market and economic study performed and the certain projections based on the assumptions.

After a discussion, there were no further questions.

The meeting adjourned at 5:20 p.m.

(Please refer to LUC Transcript of November 18, 2004 for more details on this matter.)