

LAND USE COMMISSION
MINUTES OF MEETING

December 10, 2004
Lehua Ballroom
Hapuna Beach Prince Hotel
62-100 Kaunao`a Drive
Kohala Coast, Hawaii 96743

COMMISSIONERS PRESENT: P. Roy Catalani
Isaac Fiesta
Michael Formby
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Kyong-su Im
Lisa Judge

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Wade Leland Kersey, Audio Technician

Chair Catalani called the meeting to order at 8:40 a.m.

ADOPTION OF MINUTES

Vice Chair Sakumoto noted a slight correction on the November 18, 2004 minutes. Page 6, paragraph 6 states "Vice Chair Sakumoto indicated that he made this motion because the selection of the hearings officer needs to satisfy all the parties." He noted that the change should read "Vice Chair Sakumoto indicated that he made this motion because there were no objections to Francis Yamashita."

Vice Chair Sakumoto then moved to adopt the Land Use Commission meeting minutes of November 18, 2004 with the amendment, and the minutes of November 19, 2004. Commissioner Fiesta seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching stated that the next meeting originally scheduled for January 6-7 will be re-scheduled to January 13-14 on Maui to consider the incremental application of A&B Properties, Maui Business Park Phase II. Also scheduled for action on this date will be the Hanohano and Consolidated Baseyards dockets.

Mr. Ching also indicated that he is currently in discussion with hearings officer, Casey Jarman, for the Kuleana Ku`ikahi docket.

There were no questions posed by the commission.

DOCKET NO. A87-617 PUAKO HAWAII PROPERTIES (fka) SIGNAL PUAKO CORPORATION (Hawaii)

Vice Chair Sakumoto noted a disclosure that one of his law partners had previous legal work with Bridge Aina Lea and that Vice Chair Sakumoto had no financial interest in the matter, no actual conflict, and will continue to participate in this proceeding.

Chair Catalani stated that this was an action meeting to consider Bridge Aina Lea, LLC's Motion for Continuance regarding Petitioner's Motion to Amend Corporate Ownership and to Amend Land Use Commission Order dated July 1, 1991 and to Amend Paragraph (1) to Comply with Existing Hawaii County Standards and Requirements. This docket involved the reclassification of approximately 1,060 acres of land in the Agricultural District to the Urban District for residential and golf course uses at Waikoloa, South Kohala, Hawaii.

APPEARANCES

Jamie Cheng, Esq., represented Petitioner

Rick Tsujimura, represented Petitioner

Norman Hayashi, County of Hawaii Planning Department

Bobbie Leithead-Todd, Esq., represented County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Ms. Cheng stated that the Petitioner requests to withdraw the motion to amend and also requests to withdraw the petition in its entirety.

Chair Catalani noted that the Commission would hear public testimony before closing this docket for today.

There were no objections to the petitioner's request for withdrawal by the County and the State.

PUBLIC WITNESSES

1. George Robertson

Mr. Robertson stated that he has been on the Puako Association and briefly discussed some issues related to Protect Puako and this project. He also expressed the need for affordable housing in this area.

Mr. Chang suggested that the Petitioner notify Mr. Robertson and his organization upon filing the petition again to allow him actual notice. Ms. Cheng replied that they would provide notice to his organization.

Vice Chair Montgomery had questions and concerns on issues related to time-share, affordable housing, and multi-family zoning.

After a brief discussion, there were no further questions posed by the parties or the Commission.

2. Pete Hoffman

Mr. Hoffman stated that he is a resident of Waikoloa and a newly elected member of the Hawaii County Council. He discussed issues of fairness to the developers and the community, and expounded on the need for affordable housing on this side of the island.

Vice Chair Montgomery had questions and concerns related to the affordable housing policy under review by the County, public entitlement, and the rising cost of homes in the area.

Commissioner Fiesta was excused from the meeting at 9:20 a.m.

Vice Chair Sakumoto noted that at a previous hearing in Kona, the County Planning Director testified at the Kamehameha Investment Corporation docket regarding situations where the Commission had imposed affordable housing requirements higher than the County's requirement. Vice Chair Sakumoto suggested that council member Hoffman could review this LUC testimony prior to meeting with the County's Planning Director and also with his fellow council members.

After a brief discussion, there were no further questions posed by the parties or the Commission.

3. Bob Mossman

Mr. Mossman stated that he is the President of the Puako Community Association. He discussed issues of affordable housing, balancing the community, and project impacts.

There were no questions posed by the parties and the Commission.

4. Stacy Davis

Ms. Davis stated that she has been a member of this community for over 5 years and expounded on the need for affordable housing on this side of the island. She added that the cost of gas and childcare, along with the long commutes, have been hazardous and deadly.

Vice Chair Montgomery had a few questions on the public's notice for these proceedings that allow community members to testify.

There were no further questions posed by the parties or the Commission.

5. Cecelia Poblete

Ms. Poblete stated that she has been a resident in this area for 20 years and have worked at several of these resorts. She expressed the need for affordable housing in this area. She noted that the employees are sleeping in the hotel parking lots to avoid the long commutes daily and taking drugs because of their irregular sleeping hours.

There were no questions posed by the parties and the Commission.

Chair Catalani noted that petitioner withdraws the motion to amend and has withdrawn this petition in its entirety.

A recess break was taken at 9:35 a.m. The meeting reconvened at 10:05 a.m.

SP00-393 KAMEHAMEHA SCHOOLS BERNICE PAUAHI BISHOP ESTATE (Hawaii) and BR93-699
OFFICE OF STATE PLANNING, STATE OF HAWAII

Chair Catalani stated that this was an action meeting to consider the Motion to Release Condition 7g from Decision and Order Entered on April 7, 2000, in Docket No. SP00-393 and Release Conditions 7 and 8 from Decision and Order Partially Approving Motion, entered on April 7, 2000, in Docket No. BR93-699.

APPEARANCES

Lane Ishida, represented Kamehameha Schools

Yukio Takemoto, Kamehameha Schools

Norman Hayashi, County of Hawaii Planning Department

Bobbie Leithead-Todd, Esq., represented County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that the Commission received 2 items of correspondence this morning. The first letter is addressed to Yukio Takemoto from Glen Yasui, Administrator of the Highways Division, dated November 12, 2004. The second is a copy of an e-mail memorandum from Mr. Yasui to Mr. Takemoto dated December 3, 2004.

PUBLIC WITNESSES

1. John Ota

Mr. Ota stated that he was born on this island when it was still a territory and has since retired in Hilo. Mr. Ota commented that the DLNR has been very active in many projects throughout Hawaii and that the community is not being notified of their ongoing projects, such as the raising of eucalyptus trees, constructing mill yards for harvesting the lumber, and chemicals that will be used.

Chair Catalani noted that the docket presently in discussion is the Kamehameha Schools East Hawaii Campus and added that this Commission has no authority over DLNR's projects.

There were no questions posed by the parties and the Commission.

2. David Roy

Mr. Roy stated that he was born in Kealahou, Kona and noted his concern for the development of the Keaau area. He added that it is the wish of Bernice Pauahi Bishop to educate the children of Hawaii, although he believes that the Hawaiian culture is disappearing and that the traditional Hawaiian culture is not being taught in the school.

After a brief discussion, there were no questions posed by the parties or the Commission.

Mr. Ishida continued with his presentation and discussed issues of traffic impacts at the school intersection and the deceleration lane. He added that there has been evidence indicating flowing traffic in the area. Mr. Ishida also stated that they have been attempting to negotiate with the DOT to come to a resolution.

Ms. Leithead-Todd stated that they had no opposition to Kamehameha School's motion.

Mr. Chang noted that the state has 2 outstanding issues. The first is the drainage and ponding problem at the intersection. The second is the stipulation between the DOT and Kamehameha Schools towards a future, global solution.

Chair Catalani had questions and concerns in reference to the traffic conditions, the special use permit, and the stipulated order.

Vice Chair Sakumoto had a few questions and concerns related to the agreement between the DOT and Kamehameha Schools. After a brief discussion, he suggested that a deferral might be an option to allow time for an agreement between the parties.

Mr. Ishida commented that they would appreciate another month or more.

Chair Catalani had concerns regarding petitioner's request for relief because the improvements were made to address the impact from their project, although the State is indicating that the impacts are greater.

Mr. Chang stated that the improvements made are not adequate because further work on that intersection needs to be done to resolve the drainage problem.

After a discussion, Vice Chair Sakumoto moved to defer action until such time that notice is received from the petitioner that the matter is ready for presentation to the Commission. The motion was seconded by Commissioner Formby. The Commission was polled as follows:

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

Nays: None

The motion passed with 5 ayes, 3 absent.

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:45 a.m.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION (Hawaii)

Chair Catalani stated that this was a continued hearing 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
Norman Hayashi, County of Hawaii Planning Department
Bobbie Leithead-Todd, Esq., represented County of Hawaii Planning Department
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Admission of Supplemental Exhibits

Mr. Tsukazaki introduced Petitioner's Fifth Amended List of Exhibits. He noted that the amended list includes the letter to Mr. Namuo of OHA that was circulated to the Commission at the last hearing. There were no objections to Petitioner's Fifth Amended List of Exhibits. Said List of Exhibits was admitted into the record.

Ms. Leithead-Todd noted that the County has no new exhibits.

Mr. Chang introduced and described the State's 5 new exhibits:

- Exhibit 6 - letter dated November 18, 2004 from Mr. Namuo to Mr. Tsukazaki;
- Exhibit 7 - letter dated December 8, 2004 from DLNR regarding the Na Ala Hele Trail;
- Exhibit 8 - Memorandum of Agreement dated December 4, 2004 Keauhou Historic Trail;
- Exhibit 9 - DLNR letter from Peter Young to the Chair of the Land Use Commission;
- Exhibit 10 - letter dated December 8, 2004 from the Historic Preservation Division.

Mr. Chang added that they have not submitted an amended List of Exhibits because they have just received the mentioned correspondences within the past 2 days of the hearing. There were no objections by the parties. Exhibits 6 to 10 were admitted into the record.

PUBLIC WITNESSES

1. David Roy

Mr. Roy stated that he is representing the Kualana Hui, a non-profit organization with objectives centered on the welfare and educational improvements of the Hawaiian culture. He indicated his objection to this project adding that the lands should be kept in agricultural use for the Hawaiian people in the community.

There were no questions posed by the parties or the Commission.

2. Robert Misk

Mr. Misk stated that he is a sixth generation resident of the area and has worked for various construction/development firms. He added that it is now a privilege to own a home in Kona and expounded on the need for affordable homes for the local residents versus resort homes for part-time residents.

There were no questions posed by the parties or the Commission.

A lunch break was taken at 12:20 p.m. The meeting reconvened at 1:40 p.m.

STATE'S WITNESS

1. Abe Mitsuda

Mr. Mitsuda provided a brief background of his previous testimony and continued to answer the questions posed by the Commission at the last hearing. Mr. Mitsuda discussed issues of the OHA letter, affordable housing, fair share contribution, construction of traffic improvements as required by the DOT, and the letter from Peter Young (DLNR).

Vice Chair Montgomery had questions and concerns related to the figures provided for the estimated school population in the area and the DOE policy based on the geographic location.

Commissioner Formby had questions and concerns in reference to the estimated population and statistics.

Vice Chair Sakumoto had questions and concerns regarding issues such as the OHA letter, the memorandum of agreement with Na Ala Hele, the testimony of Mr. Kauhane from the previous hearing, the DOT recommendation on traffic impacts, and DOE's position.

Chair Catalani's questions and concerns were relative to issues of testimony from the previous hearing, additional information on the DOE matter, letter from DLNR's Peter Young, and the state's affordable housing policy.

Commissioner Formby had a few questions and concerns related to the DOE matter and suggested that a subpoena may assist in retrieving the requested information on the position of the DOE.

After a discussion, Vice Chair Sakumoto moved that the Commission enter into executive session under §92-5 (4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and

liabilities. The motion was seconded by Vice Chair Montgomery. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 2:45 p.m.

The open meeting reconvened at 3:20 p.m.

A recess break was taken at 3:20 p.m. The meeting reconvened at 3:30 p.m.

Vice Chair Sakumoto moved that the Commission issue a subpoena to the DOE's Superintendent or individual with authority to speak on behalf of the DOE, to present live testimony regarding issues relevant to the following matters:

- The impacts of the project proposed in Docket No. A04-747 on public education facilities;
- The analysis upon which the conclusion as to impacts is based; and
- Any recommended conditions to be imposed if the district boundary amendment is approved.

The motion was seconded by Vice Chair Montgomery. The Commission was polled as follows:

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

Nays: None

The motion passed with 5 ayes, 3 absent.

A recess break was taken at 3:45 p.m. The meeting reconvened at 3:55 p.m.

A04-744 HILUHILU DEVELOPMENT, LLC (Hawaii)

Chair Catalani stated that this was a continued hearing on Docket No. A04-744 Hiluhilu Development, LLC.

PETITIONER'S WITNESSES

1. Joe Vierra

Mr. Vierra stated that he is the Principal of Belt Collins and was qualified as an expert in the filed of Civil Engineering. There were no objections by the parties. Mr. Vierra provided a summary of the FEIS, regional traffic impacts, road connections, bicycle paths, grading and excavation, dust and noise impacts, surface water drainage issues, soil and contamination, sand filters, golf course fertilizers and pesticides, and the proposed monitoring program.

2. Guy Lam

Mr. Lam discussed issues of the golf course, irrigation, sewage treatment system, and solid waste.

Commissioner Formby had questions and concerns relative to the wastewater effluent to maintain the golf course, and the wastewater treatment plant.

Vice Chair Sakumoto's questions and concerns were regarding the wastewater treatment plant, public or private ownership, PUC regulations, and potable water needs.

Commissioner Yukimura had a few questions related to wastewater on the university side of the project, and the demand for potable water and wastewater upon full build out.

Chair Catalani had questions and concerns in reference to best management practices to be used for this project during construction and near shore water quality.

After a discussion, there were no further questions by the parties and the Commission.

A recess break was taken at 5:15 p.m. The meeting reconvened at 5:30 p.m.

3. Guido Giacometti

Mr. Giacometti stated that he was retained as a consultant for Hiluhilu in 1999. Mr. Giacometti briefly described the Makalei Estates development and the adjoining Hiluhilu project, which is the bottom portion of the 1,000-acre parcel. Mr. Giacometti also discussed issues of the university's component, road systems, wastewater treatment plant and power, the senior housing component, ground water and near shore water quality.

Ms. Leithead-Todd had a few questions regarding the selling price of the lots, infrastructure, and sewage treatment system.

Mr. Chang had questions and concerns relative to the traffic impacts, the airport access road, negotiations with the DOT, and the ground water filters.

Commissioner Formby had a few questions in reference to the senior housing component and if they would also consider the offering of assisted living units.

Vice Chair Montgomery's questions were relative to affordable housing units that may be provided for full time students of the university.

After a discussion, there were no further questions posed by the parties or the Commission.

Chair Catalani noted that there were 2 letters received prior to yesterday's hearing. The first is dated November 18, 2004 from Kathleen Horrigan and the second is dated December 1, 2004 from Charles Park, General Manager of Mauna Kea Resort. Both letters were in favor of the petition.

The meeting adjourned at 6:30 p.m.

(Please refer to the LUC Transcript of December 10, 2004 for additional details on all above matters.)