

LAND USE COMMISSION
MINUTES OF MEETING

October 7, 2005

Kakuhihewa
601 Kamokila Boulevard
Room 111 Conference Room A & B
Kapolei, Oahu, Hawaii 96707

COMMISSIONERS PRESENT: Thomas Contrades
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Michael Formby
Kyong-su Im

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

Presiding Officer Montgomery called the meeting to order at 9:10 a.m.

A04-753 AINA NUI CORPORATION (Oahu)

Presiding Officer Montgomery stated that the Commission will continue with testimony from petitioner's witness.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Cameron Nekota, represented Petitioner

Don Kitaoka, Esq., represented Department of Planning and Permitting

Raymond Sakai, City and County of Honolulu, Department of Planning and Permitting

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Petitioner's Witnesses

1. Maya LeGrande

Ms. LeGrande discussed the botanical resources in this area describing the vegetation types and the indigenous and endangered species of plants. Ms. LeGrande added that the proposed development is not expected to have any negative impacts to the area.

Mr. Kitaoka noted that the City had no questions.

Mr. Chang asked the number of times Ms. LeGrande accompanied Ms. Char on the field surveys. Ms. LeGrande replied once in the November 2003 survey.

2. David Shideler

Mr. Shideler stated that he is employed at Cultural Surveys Hawaii and is an archaeologist. Mr. Shideler was qualified as an expert in the field of archaeology. Mr. Shideler summarized his written testimony and discussed the archaeological studies regarding the 21 sites that were identified in the course of the studies within the Petition lands. Mr. Shideler also recommended the preservation of 7 sites, which included the burial cave, OR&L, a shrine, and an agricultural site with a notable sinkhole. Mr. Shideler added that the Petition area will not adversely impact the cultural resources.

Mr. Kitaoka raised a few questions regarding the burial site, signage, and the recommended buffer or perimeter fence.

Mr. Change posed a question relative to customary practices not found on this site.

Vice Chair Judge commented that in Exhibit 39a, the DLNR describes the area as 124 acres and Petitioner has a slightly larger acreage of 174. Vice Chair Judge posed questions relative to the survey that was conducted on this project area, burial caves, a buffer or perimeter fencing with DLNR restrictions and signage, and sinkholes.

Presiding Officer Montgomery posed questions on the size of the sinkholes, fossils of birds, and the sediment of Ewa fauna found in the sinkholes.

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

3. Bruce Plasch

Mr. Plasch stated that he is an economic financial consultant and was previously qualified as an expert in the field of economics. Mr. Plasch summarized his written testimony and discussed issues of economic impacts on the petition's agricultural lands. Mr. Plasch added that this project will not affect the agricultural employment and would instead result in a lot of resources.

Mr. Kitaoka stated that the City had no questions.

Mr. Chang raised a few questions regarding the current land use for agricultural purposes on this project area, if any, and the closest areas outside of the petition area that are being used for agricultural farming.

Vice Chair Judge posed questions relative to the list of existing crops as listed on page 9 and 11 and the types of crops that are presently being raised. Vice Chair Judge also raised questions on the differences in low altitude farming and the crops raised on higher elevations.

Commissioner Kanuha had questions and concerns regarding the agricultural conditions and types of low elevation crops, the impact of growth in diversified crops, and the generation and number of employees who work there.

Presiding Officer Montgomery had a few questions in reference to the peak year of agriculture (1968) before World War II and sugar cane and macadamia nut farming.

A recess break was taken at 10:00 a.m. The meeting reconvened at 10:15 a.m.

Mr. Kudo noted that the City has requested for their witness to testify out of order and added that the parties have stipulated.

City's Witness

1. Kathy Sokugawa

Ms. Sokugawa stated that she is the Chief Planner for the City's Department of Planning and Permitting. Ms. Sokugawa briefly summarized her educational background and employment history. Ms. Sokugawa was recognized as an expert in land use planning. There were no objections by the parties.

Ms. Sokugawa stated that the City supports this Petition as it is consistent with the City's General Plan and the elements that set forth the anticipated growth. Ms. Sokugawa discussed the project's consistency with the Ewa Development Plan and the General Plan, sustainable development and smart growth, and the City's affordable housing guidelines and standard conditions of approval.

Mr. Kudo noted that the Petitioner had no questions.

Mr. Chang raised a few questions on the affordable housing requirement imposed by the City, and the acceptance of in lieu fees for this project.

Vice Chair Judge raised a few questions and concerns relative to the increase in public services, such as fire and police.

Commissioner Piltz had a few questions regarding the traffic impacts, the Ewa Regional Highway Program, and the infrastructure improvement fees.

Commissioner Kanuha posed questions in reference to participation by the Petitioner in the Ewa Highway Master Plan, and fair share requirements with respect to traffic improvements.

After further discussion and clarification on the affordable housing condition, there were no questions posed by the parties and the Commission.

Petitioners Witness (continued)

4. Ann Bouslog

Ms. Bouslog stated that she is a real estate development advisor and noted that she conducted the market assessment and study for this project. Ms. Bouslog summarized her written testimony and discussed issues of concept and relationship of the community, urban expansion, economic and social impacts, and fiscal assessment. Ms. Bouslog also commented on the home price sales in the Kapolei West project with an average home selling for \$445,000 in the project area, and \$503,000 in the urban area outside of this Petition. Ms. Bouslog also discussed job revenue, expenditures, and the affordable housing study.

Mr. Kitaoka stated that the City had no questions.

Mr. Chang raised questions on the approximate purchase price for the homes, the year of the research conducted, the ratio of primary versus secondary homes, and the market responses.

Vice Chair Judge posed questions and concerns related to the mix in the studies of secondary versus resident homes, the demand for executive golf course homes, and the density ranges. Vice Chair Judge also had concerns relative to the affordable housing numbers.

Commissioner Kanuha asked if this additional analysis on the affordable housing issue will be presented to the Commission as an amendment or only by this verbal testimony today. Mr. Kudo replied that this issue is by way of oral testimony and added that Ms. Bouslog's written study on affordable housing has been submitted as an exhibit.

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

A lunch recess was taken at 11:35 a.m. The meeting reconvened at 12:45 p.m.

Commissioner Kanuha left the meeting at this time.

Chair Sakumoto entered the meeting at this time.

DOCKET NO. A87-617 BRIDGE AINA LE`A and BANTER, INC.
fka Puako Hawaii Properties (Hawaii)

Chair Sakumoto stated that this was an action meeting to consider Petitioner Bridge Aina Le`a LLC and Banter, Inc.'s Motion To Amend Conditions 1 and 8 of Amended Findings of Fact, Conclusions of Law, and Decision and Order Dated July 9, 1991.

Chair Sakumoto noted that this is a continuance of Mr. Paoa's testimony and that he will be on the stand and subject to examination by the Commission at this time.

APPEARANCES

Bernard Bays, Esq., represented Petitioner
Robert Martin, represented Petitioner
Josh Trevey, represented Petitioner
John Chang, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Public Witness

1. George Robertson

Mr. Robertson stated that he is the President of Puako Community Association and thanked the Commission for allowing him the opportunity to testify again today as he flew over from Kona this morning. Mr. Robertson stated that after a board meeting with the Association, he was instructed to follow up on this hearing and to raise the issues that were discussed at their board meeting. Mr. Robertson commented that they are in need of affordable housing and he believes that the Petitioner can produce the 1,000 units of affordable housing. Mr. Roberts also asked that the Commission consider rejecting the time-share component as the Association is very much against it and also opposes the resort development plan.

Mr. Bays asked Mr. Robertson for clarification and asked him if the Association did not oppose the reduction requirement and the project as a whole, but opposes the time-share component. Mr. Robertson replied in the affirmative.

Mr. Chang noted that the State had no questions.

Vice Chair Judge commented that the time-share matter is between the Petitioner and the County's zoning and noted that the Commission does not dictate the zoning. Vice Chair Judge added that she believes if the Petitioner builds time-share units, they would need to increase the affordable housing ratio, as required by ordinance. Vice Chair Judge suggested that Mr. Robertson reserve his zoning questions and address them with the County at a later time.

Chair Sakumoto noted that Mr. Robertson's testimony appears to have changed between last week and today. Chair Sakumoto asked if Mr. Robertson is taking a different position from what was testified earlier. Mr. Robertson replied that the Association had a board meeting and these issues came up more refined and the members asked him to testify about their concerns, especially regarding the time share component. Mr. Robertson added that the Association will take a stand on the reduction of affordable housing units, if Petitioner deleted the time-share.

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

Chair Sakumoto noted that there were no other public witnesses.

Petitioner's Witness

1. Mr. Paoa

Chair Sakumoto commented that since Commissioners Contrades and Piltz were not available at the last hearing, Mr. Paoa could briefly review his presentation again and to also explain the exhibits.

Mr. Paoa began his presentation and stated that his testimony last week primarily focused on the reduction of affordable housing units and the difference of the project today. Mr. Paoa discussed issues of the original development, in lieu fees, and the quality of the homes to be designed by Architects Hawaii.

Vice Chair Montgomery commented that it was unfortunate that the County was not in attendance today. Vice Chair Montgomery raised a few questions on preferences to accommodate the displaced sugar workers, ILWU membership and support, pre-qualifying applicants for the affordable homes, and the time-share component.

Mr. Bays commented that it was his understanding that the County supports this Petition on the affordable housing component.

Commissioner Piltz had a few questions and concerns related to the time-share component and the economic factor.

Vice Chair Judge posed questions relative to the agreement with the County on affordable housing and its timeline.

Chair Sakumoto raised questions and concerns regarding the development timetable, construction and full build out, and at what point in the construction process will the developer be at a benchmark or threshold and cannot turn back. Chair Sakumoto also questioned the discretionary permits.

Mr. Bays noted that they have prepared and submitted an amended condition 1, exhibit 25, which states the location and distribution of the affordable housing units and that Petitioner shall build the affordable housing units concurrently in proportion to the market units.

Chair Sakumoto had questions and concerns on Mr. Paoa's testimony as he believed Mr. Paoa previously testified that he needed to build the affordable homes first.

Mr. Paoa replied that they are not going to build the entire market component at once, as they will be built in phases. Mr. Paoa added that they may be building foundations ahead of time. Mr. Paoa noted that besides the commercial component, the affordable housing would be first and added that they are horizontal developers and plans to have all the grading and infrastructure to start at the same time.

Vice Chair Judge commented that this was not the impression that she received at the last meeting, where she believed Mr. Paoa testified that they would build the 384 affordable homes first and has agreed to build them on site not using credits. Vice Chair Judge noted that she is not comforted to hear a different version today that only the slabs would be poured and that the affordable housing units will only be constructed in proportion to the market units.

Commissioner Piltz raised questions related to the procedure on building these pads, and the timeline to build horizontally with the market and affordable units.

Chair Sakumoto posed questions regarding the construction timetable of the market and affordable homes, the completion date or occupancy of the 384th home, and the stage in time for the granting of the certificate of occupancy.

Admission of additional exhibits

Chair Sakumoto noted that during Petitioner's presentation, they have introduced exhibits 11a, 12a, 22, 23, and 25. The State had no objections to the submittal of said exhibits. Said exhibits were admitted into evidence.

A recess break was taken at 1:50 p.m. The meeting reconvened at 2:00 p.m.

Chair Sakumoto noted that the project, as being represented, has now changed in size, scope and nature. Chair Sakumoto referenced condition number 13 of the original Amended Findings of Fact, Conclusions of Law, and Decision and Order dated July 9, 1991 and commented that Petitioner should give it some consideration that they need to be in compliance to this order.

Chair Sakumoto also commented that Mr. Paoa had provided some testimony in response to Vice Chair Montgomery's concerns related to the time share component and recalls that Mr. Paoa's response was that it was a right to have the time share component because it was heavily litigated with the County. Chair Sakumoto referenced a footnote on page 6 of the Petitioner's Motion to Amend Conditions 1 and 8, and noted some confusion as the footnote indicates "...no timeshare units."

Mr. Bays replied that the footnote and supporting memorandum is correct as Mr. Paoa is guarding the entitlement as this is what the County has given him. Mr. Bays added that they do not foresee any time-share projects being built at this present time, but want to reserve that entitlement.

Chair Sakumoto commented that the Commission needs to have a clear representation of what the project is and what is expected to be built.

2. Mike Bowen

Mr. Bowen stated that he is a partner of Westwood Development Group, a national developer typically involved in large scale projects. Mr. Bowen discussed his previous projects of planned communities, shopping centers, multi-family residential projects, and issues of financial support and equity funds.

Mr. Chang raised a few questions regarding Mr. Bowen's experience in developing malls, open-air retail, community centers, groceries, big box, and lifestyle centers such as the Shops at Wailea. Mr. Chang also had a few questions on the golf course component's timetable.

Vice Chair Judge posed questions on Heritage/Westwood, the equity financing agreement, the controlling entity, and the affordable housing construction timeline.

Chair Sakumoto raised a few questions relative to Westwood's due diligence before becoming an investor in the project, the 5-year projection for awarding of the certificate of occupancy for the 384 affordable housing units, market demands, and financial commitment for the entire project.

Vice Chair Montgomery had a few questions and concerns regarding the time-share component, the housing market and economic stability.

Commissioner Piltz posed questions in reference to the market homes timeline and the number of units they could produce per year.

Vice Chair Judge had questions and concerns regarding the construction timeline of the 384 affordable housing units and the 1900 market units according to County requirements, with the absence of catastrophic or unforeseeable conditions.

Mr. Bays commented that it was his understanding that in order to deliver 100 market units, you would need to have 20 affordable homes constructed and completed. Mr. Bays added that in addition to the money already spent exploring this project, Goodfellows is ready to start immediately and have set aside all other projects.

The meeting adjourned at 2:35 p.m.

(Please refer to LUC Transcript of October 7, 2005 for more details on this matter.)