

LAND USE COMMISSION  
MINUTES OF MEETING

FEBRUARY 2, 2007

Leiopapa A Kamehameha, 2<sup>nd</sup> Floor  
Conference Room 204  
235 S. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades  
Michael Formby  
Kyong Su Im  
Duane Kanuha  
Steven Montgomery  
Ransom Piltz  
Reuben Wong

COMMISSIONERS ABSENT: Lisa Judge  
Nicholas Teves, Jr.

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony J. H. Ching, Executive Officer  
Maxwell Rogers, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Presiding Officer Formby called the meeting order at 8:37 a.m.

A93-700 OBAYASHI HAWAII CORPORATION (Oahu)

Presiding Chair Formby stated that this was an action meeting to consider Obayashi Hawaii Corporation's Motion to Revert Urban Land Use District Classification back to original Agricultural Land Use Classification and delete conditions in Findings of Fact, Conclusions of Law, and Order filed October 26, 1994.

## APPEARANCES

Ben Matsubara, Esq., represented Petitioner

Curtis Tabata, Esq., represented Petitioner

Don Kitaoka, Deputy Corporation Counsel, City and County of Honolulu

Matthew Hiyashida, Department of Planning and Permitting, City and County of Honolulu

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mr. Matsubara noted that Intervenor Maui Loa was not present to the proceedings. Presiding Officer Formby then confirmed that notice of the Land Use Commission meeting had been mailed to the intervenor.

Mr. Matsubara made his presentation before the Commission and described petitioner's motion to revert urban land use district classification back to original agricultural land use classification and delete conditions in Findings of Fact, Conclusions of Law, and Order filed October 26, 1994. Mr. Matsubara referenced maps 1, 2, and Exhibit 4 in his presentation. He stated that all 18 conditions were no longer applicable to the project and addressed specific improvements to the project. In addition, Mr. Matsubara indicated that he will present two witnesses.

## PETITIONER'S WITNESSES

### 1. Lia Hong, Trust for Public Lands

Ms. Hong provided a summary overview of the transaction between Petitioner and Trust for Public Lands (TPL). The Affidavit was attached to the motion. Ms. Hong stated that Petitioner and TPL have entered into an agreement, and that TPL has worked with several different agencies to raise funds for the purchase. A portion of land will go to the Department of Land and Natural Resources, Parks Division, and added to its parks reserve system. The makai parcel will go to the City and County of Honolulu (C&C) and used as a nature preserve.

Mr. Matsubara indicated that the closing date of negotiations is March 29, 2007.

There were no questions from the State and C&C.

Commissioner Wong questioned the witness regarding a possible binding agreement to convey trust to the C&C and State, and expressed his concerns that if the Commission grants Petitioner's motion, the land will be classified back to agricultural, and Petitioner Obayashi will not have any options in the event that the State and C&C have difficulty in coming to an agreement with TPL.

Ms. Hong responded that they hope the final agreement is approved at the BLNR meeting on March 23, 2007, giving the C&C and TPL enough time to negotiate an agreement before the city council meeting.

Mr. Matsubara indicated that its client is fully aware that if sale is not conveyed, the land would automatically return to its original classification.

2. Blake McElheney, Chair of the North Shore Community Land Trust

Mr. McElheney indicated that he's been involved with TPL and Petitioner. He commented that he's provided LUC with documentation as to the communities' involvement in the reversion of the property and have received wide-ranging community support. Mr. Matsubara added that Petitioner has the support of over a hundred community organizations which are listed in the affidavit.

There were no questions from the State or C&C.

Commissioner Kanuha questioned Mr. Matsubara as to why the property would have to be converted back to agricultural in order to be conveyed to various entities. Mr. Matsubara indicated that it was one of the conditions of the BLNR, and that the conditions that were imposed does not jive with the proposed natural preserve.

Mr. Kitaoka indicated that the C&C fully supports Petitioner's motion. He further indicated that it is a rare occurrence when all parties and entities associated with the deal will benefit by the transaction.

Commissioner Wong expressed his concern that the Commission would have to make a ruling based on certain assumptions, that there is no written agreement, and that the transaction may not go through. Mr. Kitaoka indicated that there's a unilateral agreement that is going through the down-zoning process with the C&C, and if these agreements do not go through, the transaction will not occur.

Mr. Yee indicated that the Office of Planning supports Petitioner's motion and indicated a level of comfort that the transaction will move forward, and that Petitioner is willing to accept the risks. Mr. Yee further indicated that the Office of Planning sees no general state concern to the reversion of the land back to agricultural.

Commissioner Wong's question, "Does the state pay anything for the land?" resulted in bringing forward to the witness stand the State's witness to respond to Commissioner Wong's question.

## STATE'S WITNESS

### 1. Gavin Chun, DLNR, Land Division

Mr. Chun indicated that \$1 million in CIP funds have been appropriated for this transaction. DLNR has filed an NOAA grant, and that NOAA has already given preliminary approval.

Mr. Matsubara commented that page 6 of the motion lists the parties who would be contributing funds for the transaction.

Mr. Matsubara noted in his closing comments that petitioner understands the risk in asking for commission action. He added that petitioner has a level of comfort even though there is a slight possibility that the transaction will not go through. However, should the transaction be completed, there would be substantial benefits to all parties and to the community at large.

Commissioner Piltz commented that the Commission should allow the purchase of this land to happen. He further commented that it is very unusual to have a down-zoning which all parties support and urged the Commission to approve the motion.

Commissioner Piltz moved that the Commission approve Obayashi Hawaii Corporation's Motion to Revert Urban Land Use District Classification back to original Agricultural Land Use Classification and delete conditions in Findings of Fact, Conclusions of Law, and Order filed October 26, 1994. Vice Chair Montgomery seconded the motion.

Commissioner Wong commented that it is wonderful that the land would be reclassified for the state and C&C, but expressed his concerns that it would be based upon the assumption that lands end up partly while there are no binding agreements. He then suggested that for future petitions, if the Commission is being asked to approve or disapprove based on assumptions, there should be a written agreement that assumptions will be fulfilled.

Mr. Ching polled the Commission as follows:

Ayes: Piltz, Montgomery, Contrades, Im, Kanuha, Wong, and Formby.

The motion passed with 7 ayes and 2 absent.

A recess was taken at 9:14 a.m., and the Commission reconvened at 9:36 a.m.

Commissioners Wong and Im were not present to the proceedings at this time.

A83-562 WEST BEACH ESTATES (Oahu)

Presiding Officer Formby made a disclosure that Phoenician is a subsidiary of Marisco, and that Marisco is one of his firm's clients. The Commission and the parties indicated that they had no objections to his participation.

Presiding Officer Formby stated that this was an action meeting to consider West Beach Estates' (WBE) Motion for Order to Amend Caption.

APPEARANCES

Wyeth Matsubara, Esq., represented Petitioner

Curtis Matsubara, Esq., represented Petitioner

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

PUBLIC WITNESSES

1. Creighton Chang

Mr. Chang provided his oral testimony before the Commission, and made the following comments:

- He used to fish at Ko Olina.
- Was told that the Phoenician ramp was a substitute.
- Too many problems with the ramp. Too flat, tires get wet, brakes will go bad.
- Ramp is dangerous as there is no pier or cat walk.
- Difficult to launch a boat there.
- There was no safety railing.
- Too many swells and surges in the harbor. If you climb down the ladder, you might pinch your foot against the ladder system.
- Poor construction, lumps of concrete, and holes.
- Consideration should be given to enhancing safety and providing other amenities.

There were no questions by the parties.

Vice Chair Montgomery had some minor questions regarding where the witness had lived in 1983, and whether or not he knew what was said about the boat ramp or this docket at that time. There were no other questions.

## 2. Carroll Cox

Mr. Cox testified and expressed his opposition to the motion. Mr. Cox also provided to the Commission documentation of various written testimonies that he had previously provided to other entities. He felt that if the Commission entertains this motion, it will set a bad precedent.

The State had no questions.

Vice Chair Montgomery expressed his concerns and asked Mr. Cox for his opinion as to the option of making repairs to the new ramp to make it equally safe and convenient, or the option of reconstructing the original boat ramp. Mr. Cox responded that he is guided by the Findings of Fact, Conclusions of Law, and Decision and Order and does not want to be responsible for any construction or reconstruction of the boat ramp.

Vice Chair Montgomery commented that a lot of fishermen avoid using the boat ramp due to damage to their craft, and that the Commission obliged to what the previous commission have agreed to, and how to fix things for the future. Mr. Cox commented that the Commission should start a new process to free the public and be stripped of the conditions.

There were no other questions.

A recess was taken at 10:24 a.m. The Commission reconvened at 10:32 a.m.

## 3. Ed Watamura

Mr. Watamura stated that he represented the Waialua Boat Club. He commented that he was confused about why this matter was being debated. He indicated that the Phoenicians boat ramp was intended to be a haul out facility, and that it was dangerous to launch a boat there. Mr. Watamura also indicated that the ramp provided an alternative to the Waianae ramp.

Commissioner Im entered the proceedings at 10:35 a.m.

The state had questions regarding the Phoenician's ramp being characterized as a haul out facility and the possibility of making changes to the facility so that it would be acceptable for small boats and whether or not it would create a separate problem. Mr. Watamura indicated that it would be quite a project to make it into a multi-purpose ramp.

Vice Chair Montgomery questioned the witness about the annual user fee.

Commissioner Kanuha expressed his concerns about the boat ramp's hours of operation.

Commissioner Piltz also had questions about the user fees.

Presiding Officer Formby commented that the safety factor alone was a major issue.

#### 4. Barbara Tanaka

Ms. Tanaka testified that she and her husband once had a 26-foot boat which they had to sell because it was too large and had difficulty launching their large boat at the Phoenician's ramp.

#### 5. Steven Tanaka

Mr. Tanaka testified that it would be unwise to make improvements to the Phoenician ramp as it is an unsafe ramp, and that it was difficult to climb a ladder to go into a boat during the surges. He suggested that the Ko Olina boat ramp be reopened. Mr. Tanaka circulated pictures that were not part of the record and for demonstrative purposes only.

#### 6. Roy Morioka

Mr. Morioka testified that the ramp was a haul out facility. He indicated that the current would create issues for those with small boats.

There were no questions by the parties or the Commission.

#### 7. Rodney Ajifu

Mr. Ajifu testified that he disagreed with Todd Apo's comments in his January 5, 2006 letter.

8. William Aila Jr.

Mr. Aila testified on the user fees and access hours to the boat ramp and made reference to a unilateral agreement.

Commissioner Contrades exited the proceedings at this time.

Commissioner Piltz commented on an access plan indicated in Exhibit 13 Item #9. He felt that the Petitioner is not in compliance with the conditions described in this exhibit.

A recess was taken at 11:38 a.m. The meeting reconvened at 11:46 a.m.

Commissioner Piltz moved to amend caption from West Beach Estates to Ko Olina Resort and Marina. Commissioner Kanuha seconded the motion.

Commissioner Im left at the proceedings for about five minutes and returned shortly thereafter. Commissioner Contrades also returned to the proceedings.

Mr. Ching polled the Commission as follows:

Ayes: Piltz, Kanuha, Contrades, Montgomery, Im and Formby.

The motion passed with 6 ayes and 3 absent.

Mr. Matsubara provided a status report and a chronological history on its effort. He also provided a brief description of the petition area.

The C&C commented that the developer is in compliance with condition #13.

The State commented that they express the same position as the C&C.

Commissioner Contrades expressed his concerns that a condition has not been met and the developer has an obligation to follow the conditions the Commission had previously set forth.

Commission Piltz expressed his concerns about money being wasted.

Vice Chair Montgomery expressed his concerns regarding the potential cost to fix the ramp.



Commissioner Kanuha commented that he respected on the matter of fishing the opinion of one of the previous public testifiers whom he's known for over 30 years. He further commented that the alternative site for the boat ramp at the Phoenicians does not seem to satisfy the intent of the Commission's order.

Commissioner Im indicated that the public testimony was a good source of information and that his concerns were very fundamental and considers public access to be a very important issue.

In closing, Presiding Officer Formby indicated that withstanding the receipt of this status report by the Commission, the Petitioner must comply with all conditions contained in the decision and order. Presiding Officer Formby also noted that the Commission is maintaining all of its rights to enforce its decision and order.

The meeting adjourned at 12:31 p.m.

*(Please see the LUC transcripts for more details on all above matters.)*