

LAND USE COMMISSION
MINUTES OF MEETING

February 23, 2007

Leiopapa A Kamehameha
Fourth Floor
Conference Room 405
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Lisa Judge
Duane Kanuha
Michael Formby
Kyong-su Im
Steven Montgomery

COMMISSIONERS ABSENT: Ransom Piltz
Nicholas Teves, Jr.
Reuben Wong (Abstain)

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 Judge called the meeting to order at 9:35 a.m.

DOCKET NO. A92-683 HALEKUA DEVELOPMENT CORPORATION (Oahu)

ATTENDANCE

Jonathan Durrett, Esq., representing Petitioner

Mike Watkins, City and County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented state Office of Planning

Abe Mitsuda, State Office of Planning

Delwyn Wong, Esq., representing HRT Realty, LLC

Vice Chair Montgomery disclosed that in 1988 he purchased a home in the Village Park subdivision from Horita Realty. This relationship was a normal business relationship and he would be able to participate without prejudice in this matter.

Mr. Durrett began his presentation and introduced petitioner's first witness.

Petitioner's Witnesses

1. Gerald Guben, Esq.

Mr. Guben referenced and discussed Section 362 (11 U.S.C. § 362) regarding Automatic Stay. Mr. Guben noted that according to this rule, he believed that it was appropriate for the Commission to proceed and not be in violation of the automatic stay which was in place.

Mr. Watkins stated that the City had no questions for Mr. Guben.

Mr. Yee raised a few questions regarding Section 362 (a), the obligations of the automatic stay, the bankruptcy court order, and today's proceedings.

Commissioner Im posed questions related to the bankruptcy court order and the jurisdiction of the Commission.

Vice Chair Formby asked if any party, person, or entity was opposed to this matter.

Mr. Guber stated that no one had objected or taken a position on this matter.

EXECUTIVE SESSION

Vice Chair Formby moved to go into executive session under §92-5(a)(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. Vice Chair Montgomery seconded the motion. The motion was approved by a show of hands.

The Commission entered into executive session at 10:05 a.m.

A recess break was taken at 10:25 a.m. The open meeting reconvened at 10:40 a.m.

Vice Chair Formby moved to amend the agenda to add the motion of Halekua Development Corporation's request for LUC approval of the transfer of ownership. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

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

The motion passed with 6 yes, 3 absent.

Mr. Durrett stated that Halekua Development Corporation had filed a motion, pursuant to the amendment of the agenda, to approve the transfer of the ownership and to also make an oral motion to dismiss the order to show cause proceeding that seeks to reclassify and revert the property.

Chair Judge stated that the LUC would defer their consideration of Halekua Development Corporation's motion to transfer ownership and instead would first discuss the motion to dismiss the order to show cause proceeding. Following the Commission's action on the first motion, the Commission would entertain the motion to approve transfer of ownership.

Chair Judge noted that HRT's application to intervention had not yet been acted on by the Commission. The Chair asked if HRT still intended to intervene in this matter.

Mr. Wong replied in the affirmative. Mr. Wong stated that it was HRT's intention to intervene in the order to show cause proceeding.

Vice Chair Formby then moved that the LUC approve and grant HRT's application for intervention in this matter. Vice Chair Montgomery seconded the motion.

The Commission was polled as follows:

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

The motion passed with 6 yes, 3 absent.

Chair Judge noted that there were no public witnesses.

Mr. Durrett stated that in support of the motion to dismiss the order to show cause proceeding, petitioner would present three witnesses to speak to the resolution that they have reached with the Office of Planning.

Petitioner's Witnesses

1. Gregory Smith

Mr. Smith stated that he was a Senior Loan Officer for California Mortgage and Realty, San Francisco. Mr. Smith referenced and discussed petitioner's exhibit E and the \$100 million commitment to the Halekua project. Mr. Smith added that the borrower must be prepared to close by February 28th.

The parties had no questions for Mr. Smith.

Vice Chair Formby posed questions regarding the involvement of Stanford Carr Development, and the \$3.6 million initial commitment.

Vice Chair Montgomery raised a few questions related to Mr. Smith's personal inspections to the site, the defunct depot, and the WWII rock tunnels in the area.

Commissioner Im referenced page 19, exhibit E, and posed questions regarding the commitment of Canyon Capital Realty Advisors.

Mr. Durrett stated that petitioner would be providing fully executed copies of the loan commitment and agreement documents to the Commission.

Chair Judge had questions and concerns on the conditions of closing and asked if the LUC's 18 conditions of approval were satisfied.

Mr. Durrett stated that most of the conditions have been addressed and that the lenders are fully prepared to close this transaction before the 28th.

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

2. Randolph Y. Teruya

Mr. Teruya stated that he is the Agricultural Asset Manager of the Department of Agriculture (DOA) and is involved in the management of agricultural parks and the State's irrigation program, which includes the Royal Kunia agricultural park. Mr. Teruya discussed the MOU with petitioner, general obligations, and the commitment of Halekua Development to convey 150 acres of agricultural lands to the State DOA and to develop the infrastructure for the agricultural park.

The parties had no questions for Mr. Teruya.

Vice Chair Montgomery posed a few questions regarding the siphon for Waikele Gulch, and the Waiahole irrigation ditch system.

Mr. Teruya stated that water is available for this agricultural park and noted that the state had entered into a revocable permit, adding that these lands are currently being farmed.

3. Heidi Meeker

Ms. Meeker stated that she is a Planner with the DOE, Facilities Development Branch. Ms. Meeker noted that she administers the fair share program with the developers for public schools. Ms. Meeker explained that the fair share program is a donation of land or cash from a developer of residential property to offset the impacts generated by additional children from new residential units. Ms. Meeker discussed the agreement entered with Halekua Development.

There were no questions posed by the parties or the Commission of Ms. Meeker.

Mr. Watkins stated that the City had no comments on the motion to dismiss.

Mr. Yee stated that the State had no objections on the motion to dismiss and agreed that it was appropriate to dismiss the order to show cause.

Mr. Wong stated that HRT strongly supports the motion to dismiss. Mr. Wong added that HRT's primary concerns were for the conveyance of the agricultural park and the financing, but that HRT is confident now that the lack of financing is no longer an issue, as earlier testified to by Mr. Smith.

Mr. Watkins stated that the City does support the settlement of this matter and the dismissal of the order.

Vice Chair Montgomery commented that as a resident of this community, he was impressed that the legal and financial commitments have worked out. Vice Chair Montgomery added that he would like to have a status report in a few months.

Vice Chair Formby moved that the LUC grant Halekua Development Corporation's oral motion to dismiss the order to show cause motion as to why certain lands should not revert to its former agricultural use classification. The motion was seconded by Commissioner Contrades.

The Commission was polled as follows:

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

The motion passed with 6 yes, 3 absent.

Chair Judge noted that one of the Commissioners, Reuben Wong, had an association with HRT Limited and had recused himself from these proceedings and abstained from this matter.

The vote changes to 6 yes, 1 abstain, and 2 absent.

A recess break was taken at 11:30 a.m. The meeting reconvened at 11:35 a.m.

Mr. Durrett began his presentation on the motion to request transfer of ownership and stated that it was an underwriting requirement of the lenders to make sure the petitioner would not file for bankruptcy again and to also comply with LUC condition 21. Mr. Durrett added that the new entity would assume all the obligations of the LUC order and would proceed with the development of the project. Mr. Durrett then requested that the LUC grant the approval of the motion to make the transfer, which would occur immediately following the emergence of the petitioner from bankruptcy.

Mr. Durrett added that the motion would also effect the transfer of interest to the new entity Halekua-Kunia, LLC as the successor petitioner for the purpose of complying with the LUC's two previous orders in this docket.

Mr. Watkins noted that the City had no objections.

Mr. Yee noted that the State had no opposition to the motion.

Mr. Wong stated that HRT had no objections.

Commissioner Im moved to grant the motion of Halekua Development Corporation to Halekua-Kunia, LLC and approve the transfer of ownership as well as their substitution as successor petitioners for this docket. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

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

The motion passed with 6 yes, 1 abstain, and 2 absent.

Chair Judge noted that the Commission would request that the new petitioner provide a status report and to submit the bankruptcy related documents within the next 60 days.

Mr. Durrett replied in the affirmative and stated that they would provide the documentation within 60 days.

A recess break was taken at 11:40 a.m. The meeting reconvened at 11:45 a.m.

LEGISLATIVE PRESENTATION BY THE OFFICE OF PLANNING

Ms. Thielen began her presentation of Legislative Policy Issues and discussed HB 1282/SB 1368 relating to time limit for reclassification; HB 1269/SB 1355 relating to redefinition of rural district, and HB 1271/SB 1357 - HB 1272/SB 1358 relating to quasi-legislative, regional boundary amendment.

Vice Chair Formby raised questions on HB 1271 versus 1272. Vice Chair Formby also discussed HB 1282 noting that he supports this type of initiative and supports all three-policy statements, especially the redefinition of the rural districts.

Commissioner Im commented that he also supports all three initiatives, particularly HB 1282, but questioned the second bulleted item regarding reversion. Commissioner Im also referenced HB 1271 and noted that he had a slight problem with quasi-legislative versus quasi-judicial.

Chair Judge referenced HB 1282 and 1271 and commented that she liked the idea of the HB 1271 pilot project and if OP takes the lead role to move it forward.

Vice Chair Montgomery had a few concerns on HB 1271-1272 regarding the proposal that no conditions would be attached to regional land use changes.

Commissioner Kanuha questioned how these bills are being received by the Legislature.

Ms. Thielen noted that they are working with the House on different drafts and that other measures would likely be dropped into another vehicle. They are concentrating on policy matters versus bill numbers. Ms. Thielen added that there are other IAL bills and would keep the LUC updated.

Ms. Thielen asked the Commission if it was their preference to take a position, direct staff, or publicly state their positions individually.

Chair Judge noted that the Commission would need to discuss this further with a full Commission.

Vice Chair Formby stated that Ms. Thielen could use his personal comments on how he felt about the policy initiatives.

Commissioner Kanuha noted that the Executive Officer had previously provided legislative testimony and had found his comments to be comprehensive and fair. Commissioner Kanuha added that perhaps Mr. Ching could take the individual concerns and desires of the Commission and provide testimony to the Legislature.

Ms. Thielen noted that although individual viewpoints would be helpful, official action by the LUC would give the legislature an official position of this Commission.

Mr. Ching noted that any commission action would need to be noticed and specific to the proposals on the three general areas, and could speak to the general themes versus specific proposals.

Vice Chair Formby commented that he would not be attending the March 1-2 meetings and if possible, an agenda item on one of the subsequent LUC meetings when most of the members are in attendance would be desirable.

Chair Judge noted that a meeting in late March or early April would be considered.

The meeting adjourned at 12:35 p.m.

(Please refer to LUC Transcript of February 23, 2007 for more details on this matter.)