

LAND USE COMMISSION  
MINUTES OF MEETING

April 13, 2007

Leiopapa A Kamehameha  
4th Floor  
Conference Room 405  
235 So. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades  
Kyong-su Im  
Duane Kanuha  
Ransom Piltz  
Nicholas Teves  
Reuben Wong

COMMISSIONERS ABSENT: Michael Formby  
Lisa Judge  
Steven Montgomery

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

Presiding Officer Im called the meeting to order at 8:40 a.m.

DR06-32 MARK J. BENNETT, AS ATTORNEY GENERAL, STATE OF HAWAII (Oahu)

Presiding Officer Im stated that this was an action meeting to consider  
Petitioner's Motion to Waive Assessment of Fees and Expenses and to Excuse Petitioner

from Any Requirement to Reimburse Fees and Expenses associated with the court reporter and the audio visual equipment and services.

APPEARANCES

Brian Aburano, Esq., represented Petitioner  
Katherine Leonard, Esq., represented Intervenor  
David Karlen, Esq., represented State of Hawaii

Presiding Officer Im noted that on March 16, 2007, the LUC set this docket for contested case hearing and appointed Mr. Ching as its hearing officer. However, only the LUC can entertain and act upon the motion to waive fees.

Mr. Aburano began his presentation and stated that the State is a public entity, which has limited funds. Mr. Aburano noted that the Attorney General is bringing this case in the best interest of the public and unlike a private entity, granting of this petition would not result in any profit to the petitioner. Mr. Aburano added that this matter would be limited in its duration is not anticipated to take long.

Ms. Leonard stated that the respondent and intervenor had no objections to the State's motion to the waiver of fees.

Commissioner Wong moved that the LUC waive fees and expenses for the petitioner. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Wong, Piltz, Teves, Kanuha, Contrades, and Im.

The motion passed with 6 yes, 3 absent

Deputy Attorney General Diane Erickson entered the meeting at this time.

A07-774 NORTH KONA VILLAGE, LLC (Hawaii)

Presiding Officer Im stated that this was an action meeting to 1) determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 181.169 acres of land currently in the Conservation District to the Urban District for master

planned residential, commercial, public and private recreation, open space, park, and coastal preserve uses at Ooma 2<sup>nd</sup> - Kaloko, North Kona, Hawaii; and 2) to determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

#### APPEARANCES

Steven Lim, Esq., represented Petitioner

Jennifer Benck, Esq., represented Petitioner

Tom Witten, PBR Hawaii

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

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

#### Public Witness

##### 1. Janice Palma-Glennie

Ms. Palma-Glennie stated that she represents the State's Sierra Club noting that this was her first time in over 25 years that she is involved in land use planning advocacy. Ms. Palma-Glennie summarized her testimony, noted their opposition to the project, and commented on their commitment to protect Ooma and the importance of the Ooma area and the coastline. Ms. Palma-Glennie described 14 reasons why the LUC should not only require and EIS but why the entire project should be denied reclassification.

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

#### Petitioner's Presentation

Mr. Lim began his presentation and stated that petitioner via PBR Hawaii is currently in the process of preparing an EIS. Mr. Lim also noted that petitioner believes that the LUC is the appropriate accepting authority for the EIS. Mr. Lim added that the petitioner had looked at the potential impacts to the environment and petitioner had determined that the project would have a significant impact and PBR Hawaii has started the formal EIS.

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

Commissioner Piltz moved that the LUC be the accepting authority for the EIS and the potential impacts to the environment generated by the project to warrant the preparation of the EIS. The motion was seconded by Commissioner Wong.

The Commission was polled as follows:

Ayes: Piltz, Wong, Contrades, Kanuha, Teves, and Im.

The motion passed with 6 yes, 3 absent

A recess break was taken at 9:10 a.m. The meeting reconvened at 9:20 a.m.

A00-734 CASTLE & COOKE HOMES HAWAII, INC. and PACIFIC HEALTH COMMUNITY, INC. (Oahu)

Presiding Officer Im stated that this was an action meeting to consider the proposed dismissal of petition without prejudice, as incomplete, for lack of compliance with HRS chapter 343.

APPEARANCES

Karin Holma, Esq., represented Wahiawa General Hospital

Mike Carroll, Esq., represented Wahiawa General Hospital

William Yuen, Esq., represented Pacific Health Community, Inc.

Benjamin Matsubara, Esq., represented Castle & Cooke Homes Hawaii, Inc.

Matt Higashida, City and County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mr. Matsubara stated that they have neglected to file a substitution of counsel with the LUC and requested a special appearance for this docket on behalf of Castle and Cooke Homes Hawaii. The parties had no objections. Mr. Matsubara was granted a substitution of counsel.

Presiding Officer Im noted that there were no public witnesses.

Staff's Report

1. Anthony Ching

Mr. Ching provided a brief chronology and stated that the petition triggers Chapter 343 and that an EIS must be prepared in this matter. Mr. Ching added that he found the petition incomplete and that the status and scope of the proposed development has changed. A completeness review was last conducted 7 years ago. Mr. Ching recommended that this petition be dismissed without prejudice and noted that the petitioner could file a new petition for boundary amendment at any time.

Mr. Yuen questioned whether the petitioner was allowed only to file a new petition at any time or to amend the petition at any time.

Mr. Ching stated that the petitioner would be allowed to file a new petition at any time, as the dismissal would remove the original petition.

Mr. Matsubara noted that Castle and Cooke Homes had no objections to the dismissal of the petition.

Ms. Sunakoda stated that the City had no objections.

Mr. Yee noted that the State supports Mr. Ching's recommendation for dismissal.

Commissioner Piltz moved that the LUC dismiss the petition without prejudice as incomplete. The motion was seconded by Commissioner Contrades.

The Commission was polled as follows:

Ayes: Piltz, Contrades, Wong, Teves, Kanuha, and Im.

The motion passed with 6 yes, 3 absent

The meeting adjourned at 9:30 a.m.

*(Please refer to LUC Transcript of April 13, 2007 for more details on this matter.)*