

LAND USE COMMISSION
MINUTES OF MEETING

September 7, 2007

Alii Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Vladimir Paul Devens
Lisa Judge
Duane Kanuha
Ransom Piltz
Reuben Wong

COMMISSIONERS ABSENT: Nicholas Teves, Jr.

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Cameron Lowry, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 8:45 a.m.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Chair Judge stated that this was an action meeting to consider Petitioner's Motion to Amend Conditions and to Extend Time for Compliance.

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner
Brooks Bancroft, Esq., represented County of Hawaii Planning Department
Norman Hayashi, County of Hawaii Planning Department
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Richard Boston, Intervenor Kaloko-Honokohau National Historical Park
Sallie Beavers, Intervenor Kaloko-Honokohau National Historical Park

Chair Judge noted that there were no public witnesses.

Staff's Report

1. Anthony Ching

Mr. Ching provided the background on this docket and stated that the TSA and Lanihau dockets are similar in their proposed uses and location. Both dockets are adjacent to each and immediately mauka of the Queen K highway and the national park.

Commissioner Wong asked whether the conditions were requested by a particular agency or something that the LUC decided on years ago to impose on this particular docket.

Chair Judge had a question on condition 7 and whether there was any background to this condition.

Commissioner Wong offered a suggestion that a bond system could be instituted to ensure commitment for repayment.

Commissioner Piltz commented on the fair share financial arrangement.

Commissioner Devens asked whether the petitioner objected to the condition's language at the time in which they were proposed.

Petitioner's Presentation

Mr. Tsukazaki began his presentation and noted that an amended Certificate of Service was filed because initially, they failed to serve a copy of the motion to the National Park Service. Mr. Tsukazaki added that they have been in contact with park staff and have been attempting to work collaboratively. Mr. Tsukazaki then described the reasons for this motion.

A recess break was taken at 9:40 a.m. The meeting reconvened at 9:50 a.m.

Mr. Bancroft stated that the county had no objections to the motion.

Mr. Yee stated that after a review of the petitioner's motion and the presentation heard today, the state had no objections to petitioner's request as set forth in their motion. Mr. Yee added that the state believed that some additional time would be appropriate for the parties to come to an agreement.

Ms. Beavers noted her concerns regarding the water conditions and the nitrogen removal in the IWS.

Commissioner Devens posed questions regarding Mr. Tsukazaki's belief that the language in condition 1c is ambiguous or not clear and the MicroFAST treatment system. Commissioner Devens also asked whether the petitioner was agreeable to the conditions that were outlined by the park service.

Mr. Tsukazaki replied that they are agreeable to all of them, however, there are a few things that need to be worked out, but there is nothing that they disagree in concept with.

Vice Chair Kanuha had a few questions whether TSA was having the same type of difficulty in complying with these certain conditions.

Commissioner Wong posed questions regarding condition 7 financial aspects and whether there were any fair share arrangements pending with another agency. Commissioner Wong also had questions and concerns regarding conditions 2c and 2a.

Chair Judge posed questions regarding the Kealakehe Wastewater Treatment Plant. Chair Judge also clarified that it was the national park's position that they would not object to the petitioner's proposed language changes.

Ms. Beavers stated that they would not object, with the caveat that the petitioner is committed to monitoring that 80%, based on that information presented today.

Commissioner Devens asked the National Park representative whether or not the Commission was to assume that there would be no impact to the environment given they had no objection.

Ms. Beavers stated that the reasons they are not objecting is that both the petitioner and TSA have presented the park service with their report on costs and feasibility of achieving and proving 92%, which is a practical solution.

Commissioner Piltz asked whether petitioner was agreeable to the LUC granting the petitioner's extension of time.

Mr. Tsukazaki replied in the affirmative.

Commissioner Piltz then moved to amend conditions and to extend time for compliance. Commissioner Kanuha seconded the motion.

The Commission was polled as follows:

Ayes: Piltz, Kanuha, Wong, Devens, Contrades, and Judge.

The motion passed with 6 yes, 1 absent.

REVIEW AND DISCUSSION OF STAFF PROPOSED ADMINISTRATIVE RULES

Chair Judge noted that there were no public witnesses.

Mr. Ching requested that the discussion be deferred for two weeks until more consultation and input could be received by the OP and the counties. Staff would then provide a full text of the proposed changes at the September 21 meeting.

Chair Judge granted the request for a 2-week deferral and noted that the Commissioners should provide their comments on a timely manner to the Executive Officer so that their comments would be incorporated into this final draft to be discussed on September 21.

A lunch break was taken at 11:15 a.m. The meeting reconvened at 12:05 p.m.

A06-767 WAIKOLOA MAUKA, LCC (Hawaii)

Chair Judge stated that this was a continued hearing to consider Waikoloa Mauka, LLC's petition for reclassification of approximately 731.581 acres of land currently in the Agricultural District to the Rural District at South Kohala, Hawaii, for a residential subdivision.

APPEARANCES

Ben Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Brooks Bancroft, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Petitioner's Witness

1. Stephen Bowles

Mr. Bowles stated that he was a groundwater geologist and was contracted to advise Waikoloa Mauka on water development for their lands. Mr. Bowles discussed the regional study and hydrologic budget and discussed exhibits 31, 32, and 33.

Mr. Bancroft noted that the county had no questions for Mr. Bowles.

Mr. Yee posed questions regarding the adequacy of the water supply and demand for the project, the use of IWS, and irrigation.

Commissioner Piltz posed questions in reference to exhibit 33, water budget results, fog drip data, and evapotranspiration.

Chair Judge had a few questions regarding the West Hawaii Utility Company, and non-potable water use for irrigation.

Commissioner Wong asked if it was known whether there was non-potable water available in the area, such as in a nearby ditch or stream.

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

2. Eric Guinther

Mr. Guinther stated that he had an addition to page 6 of his written direct testimony regarding fire impacts to the area's vegetation. Mr. Guinther stated that he was a biologist specializing in ecology and field botany. He discussed the survey he conducted of the Waikoloa Highlands property, a 700-acre site, over a 2-day period.

Mr. Bancroft stated that the county had no questions.

Mr. Yee posed questions regarding the Wiliwili trees, the *`akia* shrub, and the *kawelu* grassland assemblage.

Commissioner Piltz had a few questions regarding the *kawelu* grasslands and seed regeneration.

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

3. Julian Ng

Mr. Ng presented a number of slides to summarize his findings. Mr. Ng discussed the traffic study and summarized the TIAR analysis.

Mr. Bancroft asked about a roundabout proposed for the intersection at Paniolo Drive and Waikoloa Road.

Mr. Yee posed questions regarding the TIAR and discussions with the DOT.

A recess break was taken at 1:15 p.m. The meeting reconvened at 1:30 p.m.

Commissioner Piltz commended Mr. Ng on exhibits 38 through 42 noting the ease of understanding and analysis in his presentation.

Chair Judge questioned whether the roundabout or signalized intersection was recommended.

Commissioner Wong asked about the volume of traffic in the year 2015.

Commissioner Piltz wondered if the roundabout would be ineffective as a means of controlling the traffic and controlling speed.

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

A recess break was taken at 1:35 p.m. The meeting continued at 1:40 p.m.

4. Reginald David

Mr. David provided a summary of the avian and mammalian survey. He declared that there was no Hoary Bat, Hawaiian Petrel or Newell's Shearwater habitats.

Mr. Bancroft noted that the county had no questions.

Mr. Yee raised questions regarding the Hawaiian Hawk, Hawaiian Bat over flights, and the recommendation that the lights be shielded.

Commissioner Piltz had a question related to low-pressure sodium lighting.

Chair Judge asked if there were any owl habitats in the area, such as the *Pu`eo* or of the common barn owls.

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

The meeting adjourned at 1:50 p.m.

(Please refer to LUC Transcript of September 7, 2007 for more details on this matter.)