

LAND USE COMMISSION
MINUTES OF MEETING

October 4, 2007

Naupaka II Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Vladimir Paul Devens
Duane Kanuha
Ransom Piltz
Nicholas Teves, Jr.
Reuben Wong

COMMISSIONERS ABSENT: Lisa Judge

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

Presiding Officer Kanuha called the meeting to order at 10:40 a.m.

ADOPTION OF MINUTES

Commissioner Devens noted a correction to the minutes of September 7, page 4, third paragraph. 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 the park's lack of objection.

Commissioner Wong then moved to adopt the minutes of September 6 and 7 (as amended), and September 20 and 21. Commissioner Teves seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that there would be no second set of meetings in October. Mr. Ching also reported the following schedule for November and December:

- o November 1-2 the LUC would be meeting on Oahu;
- o November 15-16 the LUC would be on Molokai;
- o December 6-7 is tentatively scheduled for Maui.

There were no questions posed for Mr. Ching by the Commission.

A06-767 WAIKOLOA MAUKA, LCC (Hawaii)

Presiding Officer Kanuha stated that this was a continued hearing on 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.

Presiding Officer Kanuha noted that one of the county's witness would be taken out of order and would testify this morning. The petitioner and the OP indicated that they had no objections to the change. The county would then continue their case in the afternoon.

APPEARANCES

Ben Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

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

Phyllis Fujimoto, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Lorene Maki, State Office of Planning

Admission of Additional Exhibits

Ms. Kuwaye described and offered petitioner's exhibits 58 thru 64.

Mr. Bancroft noted that the county had no objections to the admission of petitioner's additional exhibits.

Mr. Yee commented that the state had no objections to the admission of petitioner's exhibits, although, they had some disagreement to petitioner's exhibits 61, 62, and 63, regarding the impacts of LEED. Mr. Yee noted that upon presenting their case, the OP would be admitting 3 new exhibits to demonstrate the areas of disagreement. Mr. Yee added that the state had no objections to the admission of petitioner's exhibits.

Presiding Officer Kanuha stated that petitioner's exhibits 58 through 64 were admitted into the record.

Mr. Bancroft stated that the county had filed an amended exhibit list and described the county's additional exhibits 2 through 6. It was noted that all parties were served with these additional exhibits. There were no objections by the parties. Said exhibits were admitted into evidence.

County's Witness

1. Chris Yuen

Mr. Yuen stated that he is the Director of Planning for the County of Hawaii since December 2000. Mr. Yuen summarized the county's position on the petition and stated that the county was in support of this project because it is consistent with the county's general plan and its land use designation.

Commissioner Piltz entered the meeting at this time.

Mr. Yuen continued to discuss the county's subdivision approval process, fair share contribution, and intersection improvements as proposed in this petition.

Mr. Kudo noted that the petitioner had no questions for Mr. Yuen.

Mr. Yee posed questions regarding the 12-acre parcel excluded from the petition area and conformance to the county's general plan. Mr. Yee also had questions in reference to county's exhibit 3 and the proposed multipurpose community center for public use.

Presiding Officer Kanuha had a few questions regarding Waikoloa Road and the revised TIAR.

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

A recess break was taken at 11:05 a.m. The meeting reconvened at 11:15 a.m.

A00-732 TSA CORPORATION (Hawaii)

Presiding Officer Kanuha stated that this was an action meeting to consider Petitioner's Motion to (1) Amend Condition No. 2A and (2) Delete Condition Nos. 6, 7, and 8A of the Land Use Commission's February 14, 2002 Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment.

Presiding Officer Kanuha noted that although the movant, TSA Corporation had requested for a non-hearing on their motion, they were advised that the Commission was interested in receiving presentations from the parties in this docket and that the Commission would be expecting formal appearances by the parties to assist them in their deliberations.

APPEARANCES

Nathan Natori, Esq., represented Petitioner

Alan Suwa, Planner, Wilson Okamoto Corporation

Geraldine Bell, Superintendent, Intervenor Kaloko-Honokohau National Historical Park

Sallie Beavers, Intervenor Kaloko-Honokohau National Historical Park

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

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Lorene Maki, State Office of Planning

Presiding Officer Kanuha noted that there were no public witnesses.

Staff's Report

1. Anthony Ching

Mr. Ching provided a brief history of the project and stated that both the TSA and Lanihau petitions were similar in their proposed uses and locations. Mr. Ching also noted that both projects are adjacent to the National Park.

Mr. Natori began his presentation and stated that petitioner is requesting for an amendment to Condition No. 2A, and the deletion of Condition Nos. 6, 7, and 8A. Mr. Natori then summarized the petitioner's motion.

Mr. Bancroft stated that the county had no objections to the petitioner's request.

Mr. Yee stated that in reference to Condition No. 2A, the OP had confirmed with the DOH that they would not be reviewing the language in the CC&Rs and that the OP supported the amendment of Condition No. 2A. Mr. Yee added that the state had no position on Condition Nos. 6 and 8A, and would defer Condition No. 7 to the county.

Ms. Bell stated that the National Park Service had no objections to the amendment of Condition No. 2A.

Ms. Beavers added that the National Park Service had no opposition to Condition Nos. 6, 7, and 8A being released.

Commissioner Devens noted a belated disclosure. Commissioner Devens stated that in reviewing the documents this morning, he noticed that Mr. Hideki Hayashi had signed off on the deed. Commissioner Devens commented that he had previously represented Mr. Hayashi in another case many years ago and that matter had dealt with property in Honolulu and had since been resolved.

There were no objections by the parties in Commissioner Devens' continued participation in this matter.

Commissioner Contrades moved to approve petitioner's request to (1) Amend Condition No. 2A and (2) Delete Condition Nos. 6, 7, and 8A of the Land Use Commission's February 14, 2002 Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

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

The motion passed with 6 yes, 1 absent.

Ms. Beavers asked whether the vote was to delete conditions or to release conditions.

Presiding Officer Kanuha stated that the motion was to delete Condition Nos. 6, 7, and 8A and to amend Condition No. 2A.

A lunch break was taken at 11:40 p.m. The meeting reconvened at 1:00 p.m.

A06-770 THE SHOPOFF GROUP, L.P. (Hawaii)

Presiding Officer Kanuha stated that this was an action meeting to consider the acceptance of The Shopoff Group, L.P.'s Final Environmental Impact Statement for the reclassification of approximately 127.94 acres of land currently in the Agricultural District to the Urban District at North Kona, Hawaii for single-family residential and affordable housing units.

APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner

Lee Sichter, Belt Collins Hawaii, Ltd.

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

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Lorene Maki, State Office of Planning

Presiding Officer Kanuha noted that there were no public witnesses.

Staff's Report

1. Cameron Lowry

Mr. Lowry briefly summarized staff's report and noted the requirements of a complete FEIS. Mr. Lowry added that the FEIS adequately met the 5 technical requirements for acceptance and discussed the significant comments and substantive issues for consideration.

There were no questions posed for Mr. Lowry by the parties or the Commission.

Petitioner's Presentation

Ms. Kuwaye began her presentation and requested for the LUC's approval and finding that the FEIS prepared for the Kula Nei project met the criteria for acceptability as defined in HRS 11-200-23.

Mr. Sichter stated that he co-authored, supervised, and prepared the FEIS and provided a brief summary of the FEIS.

Mr. Bancroft stated that the county agreed with the petitioner that the FEIS should be accepted by the LUC.

Mr. Yee noted that the state had no comments and concurred that the FEIS be accepted by the LUC.

Commissioner Wong moved that the LUC accept the FEIS. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

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

The motion passed with 6 yes, 1 absent.

A recess break was taken at 1:20 p.m. The meeting reconvened at 2:00 p.m.

A06-767 WAIKOLOA MAUKA, LCC (Hawaii) - continued hearing

Admission of Additional Exhibits

Mr. Yee described and offered the OP's exhibits 12 and 13. There were no objections by the parties. State's exhibits 12 and 13 were admitted into the record.

Mr. Yee then requested that the state's witness be taken out of order. There were no objections by the parties.

State's Witness

1. Brennon Morioka

Mr. Morioka stated that he is the Deputy Director for the DOT Highways Division. Mr. Morioka was qualified as an expert in the field of transportation.

Mr. Morioka discussed the proposed improvements to the state roadways, the Mamalahoa and Waikoloa Road intersection, and the Queen Kaahumanu and Waikoloa Road intersection. Mr. Morioka also commented on the short term and long-term improvements, and the discussions with petitioner regarding a tentative agreement. Mr. Morioka referenced OP's exhibits 12 and 13 and summarized the proposed improvements and tentative agreement.

Commissioner Wong raised questions in reference to OP's exhibit 13, the drawing of the proposed 2 left turn lanes into the cross street.

Presiding Officer Kanuha posed questions regarding the MOA and the revised TIAR, and the improvements by Waikoloa Resort.

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

Presiding Officer Kanuha noted that there were no public witnesses.

Petitioner's Witness

1. Bert Toba

Mr. Toba stated that he was a civil engineer with RM Towill. Mr. Toba was qualified as an expert in civil engineering. Mr. Toba summarized his written testimony submitted as petitioner's exhibit 20, and discussed matters of the project infrastructure, roadway improvements, installation of traffic signals and turn lanes, and the county's recent roundabout requirement. Mr. Toba also discussed drainage, flood studies, the water system, and referenced exhibits 53 and 54.

Mr. Bancroft stated that the county had no questions for Mr. Toba.

Mr. Yee posed questions regarding the drought tolerant plants and enforcement for non-potable and potable water uses.

Commissioner Piltz had a few questions regarding water storage capacity and constructing of wells and transmission pipelines.

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

2. Charles Santos

Mr. Santos stated that he is the Project Manager for Waikoloa Mauka LLC and that his written direct testimony was submitted as petitioner's exhibit 61. Mr. Santos briefly described his employment background as a land use consultant in various projects on the mainland. Mr. Santos added that he was authorized as a project manager for the Waikoloa Highlands project and the authorization letter was submitted

as petitioner's exhibit 58. Mr. Santos described the nature of this project and noted that they have met with the DOE and have reached a fair share agreement, as indicated on petitioner's exhibit 59.

Mr. Bancroft stated that the county had no questions for Mr. Santos.

Mr. Yee raised questions regarding future plans, if any, for the 12-acre site (not included in the petition), the park or recreation center, and suggested energy requirements to be imposed on the homeowners.

Mr. Santos noted that their intention is to leave the 12-acre parcel vacant. The petitioner will not build a golf course in the petition area and the petitioner is proposing a public community center with possible jogging paths and open recreation areas. Mr. Santos had concerns regarding energy requirements in the CC&Rs, commenting that they would be selling open lots and not building homes.

Mr. Yee posed questions regarding the house and lots to be sold at approximately \$750,000 to 2 million dollars and referenced petitioner's exhibit 17, the estimated annual income rate of families at \$192,000 to \$264,000. Mr. Yee also questioned matters of the county's zoning approvals and the timeline for construction and infrastructure, water enforcement of potable and non-potable water uses, preservation of the native *Wiliwili* trees, the *kawelu* grasslands, site 22 data recovery, and LEED requirements.

Commissioner Wong wondered if the petitioner's objections to requiring LEED standards or any energy savings was purely a matter of cost.

Mr. Santos noted that although higher cost was a main concern, the petitioner was only selling lots and not building homes.

Commissioner Wong asked if the petitioner would commit to solar water heating in the CC&Rs.

Mr. Santos stated that solar water heating might be something that they may consider. However, he could not confirm an answer at this time. Mr. Santos added that they would not be committed to any LEED certification.

Commissioner Wong questioned whether the open areas and jogging paths would be open to the public and if so, where would the public be allowed to park.

Mr. Santos noted that they did not anticipate the public driving from a distant area to utilize the trails.

Commissioner Wong also raised questions in reference to OP's exhibits 12 and 13 and wondered if petitioner would provide the necessary assurance that these traffic corrections would be controlled, such as in an escrow account or a reimbursable fund.

Commissioner Devens wondered if the petitioner knew the anticipated amount of local residents who would be buying these lots and questioned what others were they marketing to purchase these lots.

Mr. Santos replied that besides the local residents, they would be marketing the project to mainlanders for second homes.

Commissioner Wong commented that since they planned to market the project to higher income mainlanders, would the developer encourage these homeowners to help in energy savings.

Mr. Santos replied that they did not intend to do so at this time.

Presiding Officer Kanuha noted that the master developer owns 11,000 acres in this area and asked Mr. Santos to indicate these acres by referencing LUC Map 1 and to also point out the intersection improvements that were negotiated with the DOT.

Mr. Santos discussed the opportunity of the public to access the open space passive park and noted that there would be ample parking along the streets and that the proposed community center would also have public parking. Mr. Santos added that the choice of providing energy conservation measures or LEED standards should be voluntary to the homeowners, rather than being imposed in their CC&Rs.

A recess break was taken at 3:15 p.m. The meeting reconvened at 3:30 p.m.

Mr. Bancroft stated that the county had nothing further.

Mr. Yee stated that the OP had two additional witnesses, Ms. Gail Suzuki-Jones and Ms. Lorene Maki. Mr. Yee added that although Ms. Maki was in attendance today, her testimony relied on Ms. Suzuki-Jones' testimony regarding LEED and energy conservation. Ms. Suzuki-Jones was scheduled to fly to Kona in the morning, as she had another appointment in Honolulu that afternoon.

Mr. Kudo stated that petitioner also had a rebuttal witness to follow Ms. Suzuki-Jones regarding her LEED testimony.

After a brief discussion, Presiding Officer Kanuha noted that the LUC would be in recess until 9:00 a.m. tomorrow.

Commissioner Contrades commented that the meeting was posted on the agenda for 8:30 a.m. Commissioner Contrades voiced his opposition to the delay in proceeding because of the special accommodation given for the witnesses.

Presiding Officer Kanuha stated that all parties should take note of Commissioner Contrades' comments.

The meeting adjourned at 3:30 p.m.

(Please refer to LUC Transcript of October 4, 2007 for more details on this matter.)