

LAND USE COMMISSION  
MINUTES OF MEETING

April 10, 2008

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

COMMISSIONERS PRESENT: Kyle Chock  
Vladimir Paul Devens  
Duane Kanuha  
Lisa Judge  
Normand Lezy  
Ransom Piltz  
Nicholas Teves, Jr.  
Reuben Wong

COMMISSIONERS ABSENT: Thomas Contrades

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Rodney A. Maile, Interim Executive Officer  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 11:00 a.m.

## ADOPTION OF MINUTES

Vice Chair Kanuha noted an amendment to the minutes of March 20, page 4 to add that in the line of questioning during the cross-examination of Ms. Suzuki-Jones, she was asked whether she supervised the construction technicians once they were in the construction mode. Ms. Suzuki-Jones replied that she did not and that it was the project management on the agency's part to supervise during construction.

Commissioner Chock then moved to adopt the minutes of March 19 and March 20, 2008 as amended. Commissioner Piltz seconded the motion. The minutes were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Chair Judge noted that the next meeting would be held on Oahu. The first May meetings will be held in Maui. Chair Judge reminded the Commissioners to let Sandy know of any conflicts that they may have with the proposed schedule to ensure a quorum.

## A06-770 THE SHOPOFF GROUP, L.P.

Chair Judge stated that this was a continued hearing on Docket No. A06-770 the Shopoff Group to consider 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.

On April 8, 2008, the Commission received the Shopoff Group, LP's motion to amend its second amended list of exhibits and to amend its list of witnesses and to add a rebuttal witness; memorandum in support of motion; declaration of Jesse K. Souki; third amended list of exhibits; amended list of witnesses; and exhibits 52 and 53.

Also on April 8, 2008, the Commission received the Office of Planning's second amended list of exhibits and exhibit 7.

## APPEARANCES

Benjamin 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  
Abbey Mayer, State Office of Planning  
Lorene Maki, State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

## Admission of Additional Exhibits

Ms. Kuwaye briefly described petitioner's exhibits 52 and 53 and stated that copies of the motion and exhibits were distributed to the LUC and the parties in advance. There were no objections by the parties or the Commission. Petitioner's exhibits 52 and 53 were admitted into the record.

Mr. Yee briefly described OP's exhibit 7. There were no objections by the parties or the Commission. OP's exhibit 7 was admitted into the record.

## Petitioner's Rebuttal Witness

### 1. Jeffrey Stevens

Mr. Stevens stated that he was the Director of Planning with Danielian Associates in Irvine, California. Mr. Stevens briefly described his educational and professional background and commented that he specialized in green building programs and described his current memberships in several planning and architectural associations. Mr. Stevens is a LEED accredited professional since April 2004. Mr. Stevens was qualified as an expert in the field of LEED and green building for purposes of this hearing. Mr. Stevens referenced petitioner's exhibit 53 and discussed the associated costs for LEED-H in comparison to the previous testimony of Ms. Suzuki-Jones.

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

Mr. Yee raised questions on the average cost to build a home under LEED certified, silver, and gold standards, and referenced petitioner's exhibit 53.

A recess break was taken at 11:35 a.m. The meeting reconvened at 11:45 p.m.

Mr. Yee continued to raise questions related to LEED standards and measures, cost increments based on a 2,000 square foot home, landscaping design and turf, and referenced exhibit 53, the cost summary.

Mr. Kudo, on re-direct, posed questions related to the LEED-H minimum score of 61.5 points as a minimum.

Commissioner Wong raised questions regarding the additional costs to achieve LEED silver certification compared to a project without the certification, the LEED-H checklist, and whether there was a formula to calculate the estimated costs.

Vice Chair Kanuha posed questions related to the economic scale as home prices increase, and incentives, if any, to make LEED more attractive and marketable.

Chair Judge referenced exhibit B, page 2 regarding the four categories of basic specification and LEED certification and raised questions related to the project costs and the LEED rate amount.

Commissioner Wong posed questions on the minimum points of 61.5 for LEED silver certification based on the 2,000 square foot home, and the cost evaluation summary.

Chair Judge raised questions on the cost method to attain silver certification and the potential number of points estimated for landscaping in exhibit 53. Chair Judge wondered if Mr. Stevens knew the number of points needed for a smaller sized home.

Mr. Stevens stated that some items may be prerequisites and noted that the number of points for a smaller sized home was not available.

After a discussion, there were no further questions for Mr. Stevens.

Mr. Kudo gave his closing statement and commented that the project will enhance the quality of life in the region by providing market and affordable housing units and homes for the working families in the area to avoid long commutes. The project will create jobs and provide primary residences to the people of Hawaii. This

petition would also ensure that the Holoholo Street extension improvements would mitigate traffic in the region by providing a northern and southern access road. Mr. Kudo added that LEED should not be imposed as a requirement on this petition or any boundary amendment lands.

Mr. Bancroft stated that the county supports the project based on the reasons as stated in the testimony of the county's Planning Director. Mr. Bancroft added that the county also opposed any mandatory LEED requirement.

Mr. Yee noted that the OP concurred with the petitioner's request for district boundary amendment. Mr. Yee commented on the recommended conditions that the OP requested be imposed in this matter related to the 1) cave ecology; 2) wastewater systems; 3) transportation; 4) the automatic order to show cause; and 5) LEED requirement.

Chair Judge then declared the evidentiary portion of the proceedings completed. The individual proposed findings of fact, conclusions of law and decision and order should be served upon the parties and the LUC no later than the close of business on Friday, May 23, 2008. Exceptions to proposed findings of fact, conclusions of law, and decision and order must be filed no later than the close of business on June 6, 2008; and responses to exceptions must be filed no later than the close of business on June 11, 2008.

Chair Judge then asked whether the parties had the desire to stipulate either partially or fully, as encouraged by the LUC.

Mr. Kudo replied in the affirmative.

Mr. Bancroft stated that the county would pursue a stipulation.

Mr. Yee concurred that the OP also had the desire to stipulate, either partially or fully.

Chair Judge then directed that the parties file their stipulated proposed findings of fact, conclusions of law, and decision and order with the LUC no later than the close of business on Friday, May 30, 2008. If there is only a partial stipulation, the objecting party will serve upon the other parties, any exceptions no later than the close of business on Friday, June 6, 2008. Responses to exceptions should be filed no later than the close of business on June 11, 2008. The stipulated proposed findings of fact,

conclusions of law and decision and order and/or exceptions would be considered no earlier than June 19 and 20, 2008 on the Big Island.

The parties had no objections to this procedure.

A recess break was taken at 1:05 p.m. The meeting reconvened at 1:18 p.m.

#### A06-767 WAIKOLOA MAUKA, LCC (Hawaii)

Chair Judge stated that this was a meeting to consider the reclassification of approximately 731.581 acres of land currently in the Agricultural District to the Rural District at South Kohala, Hawaii, for residential subdivision, including:

- Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by Petitioner and County of Hawaii Department of Planning and Permitting;
- Office of Planning's Exceptions to Petitioner Waikoloa Mauka, LLC's Proposed Findings of Fact, Conclusions of Law, and Decision and Order;
- Waikoloa Mauka, LLC's Post-Hearing Brief in Response to The Office of Planning's Exceptions; and appropriate action.

#### APPEARANCES

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  
Abbey Mayer, State Office of Planning  
Lorene Maki, State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Chair Judge stated that on April 9, 2008, the petitioner filed a motion for continuance of the hearing. Chair Judge then entertained a motion to amend the agenda to include the motion.

Commissioner Devens moved to amend the agenda. The motion was seconded by Commissioner Teves. Said motion was approved by a show of hands.

Ms. Kuwaye stated that the petitioner took it upon itself to try and resolve outstanding issues (LEED) and approached the OP to discuss a possible middle ground. The petitioner believed that it would be more expeditious to having the parties work on a stipulation.

Mr. Bancroft noted that the county had received a copy of the motion and based on the ongoing discussions between the parties, the county had no objections to the continuance.

Mr. Yee stated that the OP had no objections to the continuance and will be open to discussions with the petitioner.

Commissioner Lezy commented that the motion was filed with the LUC only a day prior to the hearing. The LUC is in a difficult position and the continuance may cause the state to incur significant costs. Commissioner Lezy wondered why the petitioner filed for the continuance on such short notice.

Ms. Kuwaye stated that they attempted to resolve as much as they could with the OP on this issue prior to the filing of their proposed order. However, at that time the parties were unable to commit to any type of middle ground. In light of new circumstances, they believed that it would be more expeditious to reach a middle ground. Ms. Kuwaye added that they did not get a confirmation until late Monday afternoon, and then conferred with the county.

Mr. Yee noted that the OP supported the motion and that they only received the call and responded on the same day (Monday).

### EXECUTIVE SESSION

Commissioner Lezy moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Devens. The motion was approved by a show of hands.

The Commission entered into executive session at 1:30 p.m.

The open meeting reconvened at 1:45 p.m.

Chair Judge noted that there was considerable expense and inconveniences that would be incurred for the LUC. Chair Judge asked whether the petitioner was willing to absorb some of that cost.

Ms Kuwaye replied in the affirmative and noted that even if they were to proceed, the petitioner would absorb that cost. Ms. Kuwaye apologized for the inconvenience and added that if the LUC was willing to proceed forward, then they were willing to proceed with the understanding that the LUC would address some type of order today.

Commissioner Devens commented that the motion is asking for a continuance and that the representation made today was that there were new circumstances.

Ms. Kuwaye stated that the new circumstance was that Mr. Mayer was recently confirmed as the new OP Director and that the parties had just confirmed that they could possibly reach a middle ground on the LEED condition.

Vice Chair Kanuha noted that the parties are clear that they may reach a stipulation regarding a LEED condition. However, it did not mean that the LUC would ultimately consider that condition.

After a brief discussion, Commissioner Wong moved to grant the continuance. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Wong, Teves, Chock, Devens, Lezy, Piltz, Kanuha, and Judge.

The motion passed with 8 yes, 1 absent.

A lunch recess was taken at 2:00 p.m. The meeting reconvened at 3:25 p.m.

## EXECUTIVE SESSION

Commissioner Piltz moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities



regarding a personnel matter. The motion was seconded by Commissioner Chock. The motion was approved by a show of hands.

The Commission entered into executive session at 3:30 p.m.

The open meeting reconvened at 3:50 p.m.

### REVIEW OF CONTESTED CASE HEARING PROCEDURES

Interim Executive Officer Rod Maile discussed the differences between Chapter 91 (quasi-judicial) and Chapter 92 (legislative) hearings.

Mr. Maile commented on the LUC's hearings, and provided examples of the LUC as a quasi-judicial body in hearings for DBA land reclassification, special permits, and declaratory rulings.

Mr. Maile further discussed matters of the LUC's deliberation process, the evidentiary portion of the hearings, hearing notices and notification, and public witness testimony.

Mr. Maile suggested that to make time more efficient, the parties should be encouraged to stipulate beforehand during the pre-hearing conferences. In addition, delegating to a hearings officer would reduce time the LUC spends taking in testimony.

After a brief discussion, there were no further questions for Mr. Maile.

### Legislative Update

Mr. Maile briefly summarized the legislative spreadsheet that listed the status of the bills that are being followed closely as it affects the LUC.

After a brief discussion, there were no questions posed for Mr. Maile.

The meeting adjourned at 5:35 p.m.

*(Please refer to LUC Transcript of April 10, 2008 for more details on this matter.)*