

LAND USE COMMISSION
MINUTES OF MEETING

June 5, 2008

Hapuna Beach Prince Hotel
62-100 Kaunao'a Drive
Kamuela, Hawaii 96743

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Duane Kanuha
Normand Lezy
Ransom Piltz
Nicholas Teves, Jr.
Reuben Wong

COMMISSIONERS ABSENT: Vladimir Devens
Lisa Judge

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Orlando Davidson, Executive Officer
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Wade Kersey, Audio Technician

Presiding Officer Kanuha called the meeting to order at 11:05 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the minutes of May 15, 2008. Commissioner Contrades seconded the motion. The minutes were approved unanimously by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Davidson noted that the meeting schedule had been distributed.

There were no questions for Mr. Davidson.

Presiding Officer Kanuha reminded the Commissioners to inform Sandy of any conflicts to the proposed schedule.

A07-775 CASTLE & COOKE HOMES HAWAII, INC. (Oahu)

Presiding Officer Kanuha stated that this was an action meeting on Docket No. A07-775 Castle & Cooke Homes Hawai'i, Inc. to determine: 1) whether the Land Use Commission is the appropriate accepting authority pursuant to chapter 343 Hawaii Revised Statutes for the reclassification of approximately 766.327 acres of land currently in the Agricultural Districts to the Urban District at Waipio and Waiawa, O'ahu, Hawaii for residential subdivision at TMK Nos. (1) 9-4-06: por. 1, (1) 9-4-06: por. 2, (1) 9-4-06: por. 5, (1) 9-4-06: por. 29, (1) 9-4-06: por. 31, (1) 9-4-06: 38, (1) 9-4-06: por. 39, (1) 9-5-03: por. 1, (1) 9-5-03: por. 4, and (1) 9-6-04: 21; 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.

On May 16, 2008 the Commission received correspondence from Castle & Cooke Homes, Inc., notifying the Commission of the withdrawal of the draft environmental assessment for the Castle & Cooke Waiawa master planned community covering approximately 191.214 acres of land that was published in the Environmental Notice on November 8, 2007. The Commission also received on that date the environmental impact statement preparation notice Koa Ridge Makai, and Waiawa Development; and the amended petition for Land Use District Boundary Amendment covering approximately 766.327 acres of land; Verification; Exhibits 1 through 6; affidavit of Service of Amended Petition for Land Use District Boundary Amendment; affidavit of Sending of Notification of Petition Filing and the Certificate of Service.

On May 20, 2008 the Commission received Petitioner's Amended Certificate of Service.

Presiding Officer Kanuha noted that at its meeting on July 13, 2007 the LUC agreed to be the accepting authority for an environmental impact statement covering the 191+ acre Waiawa project. The Draft EIS for the Waiawa project had been withdrawn and Petitioner had filed an amended petition covering the Waiawa and Koa Ridge Makai project, together with an EISP covering the expanded project. Therefore, at this meeting, the LUC would need to determine whether it would be the accepting authority on the expanded project and whether an environmental impact statement is warranted for the expanded project as described in the amended petition.

Presiding Officer Kanuha also noted that on June 4, 2008 the LUC received via facsimile correspondence from the city and county of Honolulu, the director of the Department of Planning and Permitting indicating their statement of no position on this matter.

APPEARANCES

Benjamin Matsubara, Esq., representing Petitioner
Laura Kodama, Castle & Cooke Homes Hawaii, Inc.
Rodney Funakoshi, Castle & Cooke Homes Hawaii, Inc.

Presiding Officer Kanuha noted that there were no public witnesses.

Petitioner's Presentation

Mr. Matsubara briefly described the amended petition that would involve the reclassification of 766.3 acres from the Agricultural District to the Urban District for the Waiawa and Koa Ridge Makai project. Mr. Matsubara commented that the project would consist of approximately 5,000 residential dwelling units, school sites, neighborhood and commercial sites, recreational centers, community parks, a park-and-ride facility and a health care component. Mr. Matsubara added that due to the broad scope of this Project and the potential use of state or county lands, it was appropriate to proceed immediately to the preparation of an EIS to fulfill the requirements of Chapter 343, HRS. Mr. Matsubara also requested that the LUC be the accepting authority for the EIS.

Presiding Officer Kanuha asked if the Office of Planning had any public comment on this matter.

Mr. Yee noted that the Office of Planning had no objections to the request.

Commissioner Wong moved that the LUC be the appropriate accepting authority of the EIS and determine that the proposed action would have a significant effect to warrant the preparation of the EIS. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Wong, Teves, Chock, Contrades, Lezy, Piltz and Kanuha.

The motion passed with 7 yes, 2 absent.

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:20 a.m.

A06-767 WAIKOLOA MAUKA, LLC (Hawaii)

Presiding Officer Kanuha stated that this was an action meeting on Docket No. A06-767 Waikoloa Mauka, LLC 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: 1) the stipulated proposed findings of fact, conclusions of law, and decision and order filed by Petitioner and County of Hawaii Department of Planning; 2) The Office of Planning's exceptions to the Petitioner Waikoloa Mauka LLC's proposed findings of fact, conclusions of law, and decision and order; and 3) Waikoloa Mauka LLC's post-hearing brief in response to the Office of Planning's exceptions and appropriate action.

Presiding Officer noted that there were no public witnesses.

Presiding Officer Kanuha stated that at the LUC's last scheduled hearing on this docket on April 10, 2008 the petitioner requested and was granted a continuance in order to attempt to reach a full stipulation with the Office of Planning (OP).

By letter dated May 1, 2008 petitioner informed the LUC that petitioner and the OP were not able to reach a full stipulation.

On May 28, 2008 the LUC received memorandum from the director of the OP amending its proposed energy conservation condition to be consistent with the condition it would pursue in another docket.

Presiding Officer Kanuha asked if any of the other parties had any objections to the LUC considering the untimely, amended proposed condition.

There were no objections by the parties.

Mr. Yee stated that the memorandum reflects the OP's effort to be consistent among the various dockets related to LEED concerns.

APPEARANCES

Benjamin Kudo, Esq., representing Petitioner

Jesse Souki, Esq., represented Petitioner

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Lorene Maki, State Office of Planning

Presiding Officer Kanuha stated that the LUC was in formal deliberations as to the proposed order. Pursuant to HAR § 15-15-56(4), the LUC may approve the proposed decision and order by amending or adopting the order. Presiding Officer Kanuha noted that during the LUC's deliberations, he would not entertain additional input from the parties or the public unless those individuals or entities were specifically requested to do so by the presiding officer.

Presiding Officer Kanuha noted that at the March 19th meeting, the Commissioners present were polled to confirm that each one had the opportunity to review the record and/or reviewed copies of the transcripts of these proceedings and were prepared to deliberate on the subject. Commissioner Wong was not present at that meeting, so Presiding Officer Kanuha asked if Commissioner Wong was prepared to deliberate on this matter.

Commissioner Wong replied in the affirmative.

Presiding Officer Kanuha then asked Mr. Davidson to take the LUC through the document that was before them and to record any comments or corrections that were being offered.

Mr. Davidson noted that additional procedural matters were added; changes for consistency in describing the petition area, the project and other technical changes for clarity; changes to the findings of fact relating to the LEED matter; and additional

conditions to reflect the LUC's standard conditions, time of completion, energy conservation, and reversion. Mr. Davidson also corrected several sub-headings and further discussed the document.

A recess break was taken at 11:55 a.m. The meeting reconvened at 12:10 p.m.

Commissioner Wong raised concerns related to the remedy of reversion for failure to comply with the terms and conditions of the order, and wondered if the Commission could impose a condition such as a bond. Commissioner Wong asked if the Deputy Attorney General could provide comments on this matter.

Ms. Erickson noted that she would be looking into that matter and would try to provide information at the next regularly scheduled meeting.

After a brief discussion, Commissioner Contrades then moved to accept the proposed findings of fact, conclusions of law, and decision and order as presented with staff's recommendations. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Contrades, Piltz, Chock, Lezy, Teves, Wong, and Kanuha.

The motion passed with 7 yes, 2 absent.

LEGISLATIVE UPDATE

Mr. Davidson provided a summary of the IAL bill (SB 2646) and during the discussion, he polled the Commissioners on whether they would want to submit a letter to the Governor expressing their reservations and concerns on this matter.

After a discussion, Commissioner Wong moved that the LUC send a letter to the Governor with their concerns regarding the bill. The motion was seconded by Commissioner Contrades.

The Commission was polled as follows:

Ayes: Wong, Contrades, Chock, Lezy, Teves, Piltz, and Kanuha.

The motion passed with 7 yes, 2 absent.

There were no further questions for Mr. Davidson related to the legislature.

Commissioner Chock had questions and concerns regarding the upcoming field trip to the Waimanalo Gulch/H-Power sites.

The LUC then discussed the upcoming field trip and posed a few questions to Mr. Davidson.

After a brief discussion, Presiding Officer Kanuha asked Mr. Davidson to review what was on the schedule and to consider the concerns expressed by the Commissioners.

The meeting was adjourned at 12:45 p.m.

(Please refer to LUC Transcript of June 5, 2008 for more details on this matter.)