

LAND USE COMMISSION
MINUTES OF MEETING

January 9, 2009

Waikoloa Beach Marriott Resort
69-275 Waikoloa Beach Drive
Waikoloa, Hawaii 96738

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

COMMISSIONERS ABSENT: Vladimir Paul Devens

STAFF PRESENT: Orlando Davidson, Executive Officer
Riley Hakoda, Staff Planner
Russell Suzuki, Deputy Attorney General
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

CALL TO ORDER

Chair Kanuha called the meeting to order at 9:13 a.m.

A87-617 BRIDGE AINA LE`A, LLC (Waikoloa, South Kohala, Hawaii)

Chair Kanuha announced that this was an action meeting regarding LUC's Order To Show Cause.

Chair Kanuha provided a brief background on the docket, and announced that the meeting would end around 12 noon.

APPEARANCES

Eric Maehara, Esq., represented Petitioner, along with Hoolae Paoa, CEO Bridge Aina Le'a, and Bruce Voss, Esq.

Norman Hayashi, County of Hawaii Planning Department

Amy Self, Esq., represented County of Hawaii Planning Department

Julie Decklenberg Esq., represented County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Abe Mitsuda, State Office of Planning

PUBLIC WITNESSES

1. Greg Regothier

Mr. Regothier spoke on behalf of the ILWU Union. He testified that he was in support of the project, and read a letter regarding housing needs for working force.

There were no questions for this witness.

2. John Basiner

Mr. Basiner testified that he was in support of the project, and that the project would create jobs. He also expressed concerns regarding workforce housing issues, and excessive travel distances.

There were no questions for this witness.

3. Sam Walker, Sr.

Mr. Walker stated that he was in civil construction, and testified that he was in support of the project. He expressed his concerns about employment opportunities, and housing issues. He hoped that the process gets streamlined and moves forward.

There were no questions for this witness.

3. Keone Paoa

Mr. Paoa testified that he was in support of the project, and stated that construction work was needed.

4. Kulikei Chong

Mr. Chong testified that he was in support of the project. He expressed that the project would be beneficial to both sides of the island.

There were no questions for this witness.

5. Gene Paul Rivera

Mr. Rivera testified that he was in support of the project. He expressed that the project would be a good boost for economy, and that it would relieve traffic.

There were no questions for this witness.

6. Mr. Randy Vitousek

Mr. Vitousek stated that he was the attorney for the Mauna Lani Resort Association. His client took position on the Order to Show Cause; however, he indicated his concerns regarding compliance with Condition 4. He indicated that improvements were needed at intersection, and that beach/recreation access was important. He also testified that many other conditions needed updating.

Mr. Maehara indicated that Petitioner will make intersection improvements.

There were no questions by the County or State.

Vice Chair Piltz indicated his interest in the signalization of the intersection.

7. George Robinson

Mr. Robinson stated that he represented the Puako Community Association. He expressed his concerns regarding the progress of the project despite reduction of project size, and felt that deadlines will not be met and that the project was no longer meeting its initial intent. He expressed his opposition to any time-share development in the project.

There were no other questions for this witness.

8. Miles Miyasato

Mr. Miyasato stated that he was an operating engineer, and represented construction workers on private development that would stimulate the economy. He testified that he was in support of the current classification of the project.

There were no questions for this witness.

9. Howard Kihune

Mr. Kihune stated that he was the president of Land Tech Inc. He expressed concerns regarding infrastructure issues, specifically to water. He felt that project can move forward if developer complies with conditions.

There were no questions for this witness.

The Commission went into recess at 9:54 a.m. The Commission reconvened at 10:08 a.m.

Mr. Maehara confirmed receipt of the LUC staff summary material.

Commissioner Judge reminded the Commission and audience why she made her Motion for an Order to Show Cause at the last meeting. She spoke only for herself but as a proponent for affordable housing, she had sat through hearings and listened to testimonies which were similar to past testimonies which promised affordable housing, and jobs. These promises are why the 5 year extension was given in 2005 but still, to date, there is no progress, no permits,

and no infrastructure. The idea is not to kill the project, but to check if it is still alive, and if so, how and when promises would be kept. She cited Hawaii Statute 205-4G as the reason why she made the motion for the OSC and wants to know what the current plans are for the acreage involved.

Chair Kanuha echoed her statement and stated that there are at least four sitting Commissioners who were present during those discussions that heard the same representations. He said that the lack of progress on the project was the reason for the support for the OSC. Chair Kanuha then called for the Petitioner to testify.

Mr. Maehara called Hoolae Paoa, Bridge Aina Le'a CEO, to testify.

Before Mr. Paoa testified, Mr. Maehara asked to preface his testimony. Mr. Maehara said that he had filed a motion to amend condition 1 of the D&O, as amended, in January 2009 and a memorandum in support of that. Mr. Maehara realized that he had not filed in a timely manner for these documents to be on the agenda for this meeting but asks for indulgence on the matter since some of the facts in the memorandum are germane to their position.

Mr. Paoa and Mr. Maehara engaged in a question and answer session to check for Mr. Paoa's awareness of the requirements of the 2005 D&O and the conditions that needed to be met for affordable housing. Mr. Paoa stated that the most immediate way to provide affordable housing was by working with the county to provide transitional and affordable housing. Mr. Paoa stated that he had a final working agreement to deliver 24 transitional units this year and needed a required amendment to the housing condition to allow him to build an additional 74 units on the same site. He stated that he was appearing before the Commission to request a hearing regarding some of the changes needed to meet his timely obligations. Transitional and rental housing are mentioned as some of the changes needed to meet them.

Mr. Paoa stated that he felt he could still meet his deadline in 2009 with the new administration in place. He explained his joint venture agreement, and contracts that he had signed. Mr. Paoa explained that his district zoning application was delayed by an EIS requirement. His district zoning application would have allowed construction of the affordable housing to be built. He also mentioned that his attempt to subdivide was denied.

Mr. Maehara asked Chair Kanuha if he could get the County to state its position in support of the new housing agreement, and then recall his witness. Chair Kanuha responded by advising Mr. Maehara that he should complete his questioning of Mr. Paoa and that the county could too.

Vice Chair Piltz asked Mr. Paoa to explain the proposed transitional housing and affordable rentals. Mr. Paoa described the transitional housing and stated that the 74 units would be built as affordable rentals in the same area.

Vice Chair Piltz then asked for a timetable for Bridge Aina Le'a's other units. Mr. Paoa stated his goal was to assemble a high-density parcel in one parcel close to highway and that he has a local builder who can deliver 25 units per month.

Vice Chair Piltz further inquired about the mass grading contract and the joint venture agreement. Mr. Paoa stated that the contracts are still in place but he is trying to replace his

existing partner with a more proactive developer to assist. Vice Chair Piltz reminded Mr. Paoa that there has been no activity, and asked if the earlier contracts are still in effect. Mr. Paoa responded in the affirmative.

Mr. Paoa asked for time to complete final negotiations with the County to complete the 24-unit project. This County will require Bridge Capital to put \$6 million in escrow, then build the 24 units which have to be completed this year. He also asked to allow Bridge the opportunity to build 100 offsite units since 1) they can get started very quickly; and 2) the offsite units could help meet the affordable homes requirement to relieve that pressure. Vice Chair Piltz summarized by asking Mr. Paoa to look the construction workers in the face regarding the promise of work and to be accountable to the workers.

Commissioner Judge asked if the due diligence process undertaken by the Petitioner included an awareness of the conditions imposed on this project. She advised Mr. Paoa that 15 conditions were to have been met by 2002 and that all the deadlines have been missed. She further added that the elimination of a golf course was not in compliance with the previous order. Mr. Paoa responded that he is not sure about the other conditions, and said that he will meet the affordable housing requirement. Commissioner Judge asked Mr. Paoa what the project will look like, the removal of the golf course, as open space, project water source status, sewage, education, the mass grading permit and its cost, and when final EIS can be expected. The concern expressed to Mr. Paoa was that the project no longer was the same as originally approved, and that the Commission needed to be updated on the matter.

Chair Kanuha asked Mr. Paoa about the current affordable housing site, and its financing.

Chair Kanuha explains an OSC is a severe notice and the expectation was that Petitioner would give its best shot to convince the Commissioners to change their minds. An up to date report of what the project would be in 2009, 2010 was expected - the Petitioner should not assume that a presentation would be reserved for a future hearing.

Commissioner Contrades stated that he is aware of the workers plight. He cautioned the Petitioner that this meeting was to show why the land should not be reverted back to agriculture and is insulted that petitioner cannot show any proof. He expressed disappointment that nothing has been shown and that this meeting was a total waste of his time. He wants to be told why he shouldn't vote to revert the land.

The County of Hawaii confirmed with Mr. Paoa that the County did not deny Petition's district zoning applications, rather it required that an EIS be prepared.

The Commission went into recess at 11:15 a.m. The Commission reconvened at 11:27 a.m.

Vice Chair Piltz left the meeting at this point.

Mr. Yee of the Office of Planning asked Mr. Paoa about the 24 transitional units, the infrastructure to serve them, and about the 72 affordable rental units. Mr. Yee confirmed with Mr. Paoa that in addition to these units, he would be building additional affordable units either for rental or for sale on the Aina Le'a property to equal or surpass the affordable housing requirement. Mr. Paoa stated that the number of units would depend on several factors. Mr. Yee

asked Mr. Paoa if he were close to finalizing the agreement for the 24 transitional housing units and Mr. Paoa answered affirmatively. On the remaining 72 units, Mr. Paoa stated that an agreement in principle was in place, subject to the LUC approval, however, they are committed to the 24 units.

Mr. Yee asked for specific completion dates and how many affordable units will be built in the project. Mr. Paoa answered that the number and times were subject to variables and dependent of what would be allowed initially. Mr. Yee also inquired if the relationship of Bridge Aina Le'a to Bridge Capital still existed to provide financing. Mr. Paoa responded that it currently did. Mr. Yee then asked if a revised critical path was ready to be submitted. Mr. Paoa replied in the negative.

Mr. Yee asked Mr. Paoa if a revised development plan was going to be submitted. Mr. Paoa replied affirmatively and that a timetable would accompany it. Mr. Yee also asked when the delivery of the certificate of occupancy for affordable housing could be expected. Mr. Paoa answered that it would be possible to meet the November deadline if they could start in four months. Mr. Paoa will be submitting his development plan for affordable homes on Aina Le'a property in his presentation.

Chair Kanuha then asked to the County of Hawaii to testify regarding the negotiations for the transitional housing.

Commissioner Lezy excused himself from the proceedings at 11:52 a.m.

Ms. Julie Decklenberg, representing County of Hawaii Housing Department, provided the Commission with a brief synopsis. She stated that the County views this project as being subject to Chapter 11 of the County Code requirements for affordable housing. Regarding the transitional housing, there is an agreement in principle with Petitioner that requires the Petitioner to deposit 6 million dollars in escrow. She stated that the Petitioner has been given the opportunity to construct the affordable rentals but no commitments existed. Current water supply cannot accommodate all 72 units, and that another MOU for additional units would be needed.

Chair Kanuha asked Ms. Decklenberg if there is an estimated cost for the 24 transitional units. Ms. Decklenberg responded that \$7 million has been allocated for the project.

Commissioner Judge then asked if this recent proposal came in on December 17 and if previous discussions related to it had occurred. Ms. Decklenberg did not have a timeline of previous discussions.

Chair Kanuha stated that the Petitioner had mentioned a housing deadline and asked the County if they knew what it might be. The County thought the deadline might be in relation to the shut down of another transitional housing project, estimated to close on June 30, 2009.

Commissioner Wong asked the Deputy Attorney General to render an opinion for the Commissioners on an order for reversion unless the Petitioner finds a substitute petitioner.

Chair Kanuha advised Commissioner Wong that Executive Officer Davidson heard the request and will follow up.

Chair Kanuha stated that the hearing will be continued at a future date set by the Commission. Petitioner at that time will provide critical path, timetables, and a full discussion of all project conditions and Petitioner's plan to satisfy the LUC conditions. Commissioner Wong reminded the Petitioner, so that there is no misunderstanding, that the OSC is still on the table for Petitioner to address.

The meeting was adjourned at 12:06 p.m.

(For more details on the above matter, see LUC Transcript of January 9, 2009.)