

Approved  
4/05/01

Minutes of Meeting

King Kamehameha's Kona Beach Hotel  
Eha Room  
75-5660 Palani Road  
Kailua-Kona, Hawaii

March 8, 2001

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Pravin Desai  
Isaac Fiesta, Jr.  
M. Casey Jarman  
Lawrence N.C. Ing  
Merle A. K. Kelai  
Stanley Roehrig  
Peter Yukimura

STAFF PRESENT: Bert Saruwatari, Acting Executive  
Officer  
John Dellera, Esq., Deputy Attorney  
General  
Russell Kumabe, Staff Planner  
Teri Hee, Chief Clerk  
Esther Ueda, Consultant  
  
Michelle R. Kauth, Court Reporter

Chairperson Kelai called the meeting to order at 9:35 a.m.

CONTINUED ACTION

A00-731 - DESTINATION VILLAGES KAUAI, LLC (Kauai)

Chairperson Kelai announced that the Commission would take action to consider reclassifying approximately 153.696 acres of land currently in the Agricultural District into the Urban District at Makaweli, Kauai, for the development of a resort and accessory uses.

On February 28, 2001, the Commission received facsimile comments from Bruce Pleas on Commissioner Roehrig's Proposed Findings of Fact, Conclusions of Law and Decision and Order. He has also requested to present oral testimony.

On March 5, 2001, the Commission received a facsimile letter from Mary Ellen Vana.

On March 7, 2001, the Commission received facsimile testimony from Bruce Pleas. He stated that he would not be able to present his testimony at the meeting as requested earlier.

The Commission also received approximately 6 facsimile letters in opposition to the project. These letters will be part of the Chapter 92 minutes; they will not appear in the contested case record.

Commissioner Coppa was excused from this proceeding due to a previously declared conflict of interest.

PUBLIC WITNESSES (Pursuant to Chapter 92 Proceedings)

1. Joseph Punilei Manini, Sr.

Appearances

Michael Belles, Esq., representing petitioner

Lew Geysler, petitioner

Laurel Loo, Esq., Deputy Corporation Counsel

Keith Nitta, Kauai County Planning Department, Staff Planner

John Chang, Esq., Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Arguments were heard from Mr. Belles, Ms. Loo, and Mr. Chang.

It was determined by Chairperson Kelai that all of the Commissioners present were eligible to participate in the action on the petition.

Commissioner Fiesta suggested an amendment to stipulated condition no. 24 to add language that if there was a sale, lease, or change of ownership that the new owner would abide by all the conditions that were imposed. There were no objections by all parties to this amendment.

Commissioner Roehrig moved to approve his Proposed Decision and Order, with Commissioner Fiesta's amendment. The motion was seconded by Commissioner Fiesta. Commissioner Catalani raised concerns regarding condition no. 20, subparagraph B, with respect to issues relating to the fishpond. After further discussions

among the Commissioners, Commissioner Roehrig's final amended motion included the following as shown in ramseyer format:

Condition 20(b)

1. The management plan shall also include provisions for a fishpond management entity composed of a representative from the Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community.
2. Add the following language - The selection of the management committee shall take place no later than six months after the approval of the SMA permit.
3. The management plan shall remain in effect for the duration of the original term of the Petitioner's lease with the landowner.
4. Add the following language - The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

Condition 23

1. Add the following language - The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law.

Commissioner Roehrig's motion to approve his amended Proposed Decision and Order, as amended was seconded by Commissioner Fiesta and polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Desai, Ing, Yukimura, and Kelai

Nays: Commissioners Jarman and Catalani

HEARING

A00-732 - TSA INTERNATIONAL, LIMITED

Pursuant to a notice published in the Hawaii State & County Public Notices of MidWeek and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by TSA International, Limited, to consider reclassifying approximately 102.016 acres of land currently in the Conservation District into the Urban District at Kaloko, North Kona, Hawaii for the development of a mix of light industrial and industrial-commercial uses.

Appearances

Nathan Natori, Esq., representing Petitioner

Rodney Funakoshi, Wilson, Okamoto & Associates

Daryn Arai, County of Hawaii Planning Department

John Chang, Esq., Land Use Division, Office of Planning

Judith Henry, Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Stanley Bond, representing Intervenor

Geri Bell, representing Intervenor

Russell Kumabe, staff planner, oriented the Commission to the subject area on the Land Use District Boundaries and tax maps.

A disclosure was made by Commissioner Desai. There were no objections by the parties to have Commissioner Desai participate in the proceedings.

PUBLIC WITNESSES

1. Lance Wilhelm

Mr. Natori made an oral motion to change the docket name from TSA International, Limited, to TSA Corporation. Commissioner Ing moved to approve the name change. The motion was seconded by Commissioner Coppa and polled as follows:

Ayes: Commissioners Ing, Coppa, Desai, Fiesta, Jarman,  
Yukimura, Catalani, Roehrig, and Kelai

EXHIBITS

1. Petitioner's Exhibit Nos. 1 through 44 were admitted into evidence by the Land Use Commission.
2. County's Exhibit Nos. 1, 2, and 3 were admitted into evidence by the Land Use Commission.
3. Office of Planning's Exhibit Nos. 1 through 5 were admitted into evidence by the Land Use Commission.
4. Intervenor's Exhibit Nos. 1 through 22 were admitted into evidence by the Land Use Commission.

PETITIONER'S WITNESSES

1. Hideki Hayashi
2. Rodney Funakoshi

MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes for the meeting date of February 16, 2001. The motion was seconded by Commissioner Yukimura and unanimously approved by voice votes.

2. ADOPTION OF DECISION AND ORDER

Commissioner Fiesta moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order Determining A Negative Declaration for a State Land Use District Boundary Amendment for Docket No. A00-733 - Harrison J. & Sharene Z. Klein. The motion was seconded by Commissioner Ing and unanimously approved by voice votes.

Commissioner Fiesta moved to adopt the Order Granting Petition for Intervention for Docket No. A00-732 - TSA International, Limited. The motion was seconded by Commissioner Desai and unanimously approved by voice votes.

3. STATUS REPORT ON LEGISLATIVE MATTERS

Mr. Saruwatari reported that most of the bills that the LUC has drafted testimony on has died. One bill for which the LUC has expressed support of the intent is S.B. 1469, which would establish an 11-member task force to identify and designate marginal agricultural lands for inclusion in the rural district as well as permitting open area recreational uses within the Rural District. Another bill that is being monitored is HB 954, Relating To Regulatory Processes.

4. OTHER PENDING MATTERS

- a. Personnel Matters - Report from Selection Subcommittee and Recommendation of Top Candidates for the Executive Officer's Position.

Commissioner Ing moved to go into executive session to discuss legal matters relating to Personnel Matters with our deputy attorney general. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

The meeting was adjourned at 12:45 p.m. with the announcement that the Commission will reconvene tomorrow at 9:00 a.m.