

LAND USE COMMISSION
Minutes of Meeting
King Kamehameha's Kona Beach Hotel
Eha Room
75-5660 Palani Road
Kailua-Kona, Hawaii

March 6, 2003

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Lawrence Ing
Steven Montgomery
Stanley Roehrig
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai
Isaac Fiesta

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Russell Kumabe, Staff Planner
Caroline Lorenzo, Acting Chief Clerk
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 8:30 a.m.

A02-737 U OF N BENCORP (Hawaii)

Chair Ing announced that this is a continuation of the action meeting of the Land Use Commission on Docket No. A02-737 University of the Nations Bencorp to consider reclassifying approximately 62 acres of land currently in the Agricultural District into the Urban District at Kailua-Kona, Island, County and State of Hawaii, as last hearing on March 5, 2003.

PETITIONER'S WITNESSES (continued)

5. Mark Spengler

Mr. Spengler provided the Commissioners with an overview of the project area.

The county and state shares its concerns regarding housing and traffic issues, and the impact on concerns due to the number of students on campus.

Commissioner Roehrig voiced his concerns over the cultural aspect, education, and presentation at the cultural center and ceremonial practices that preservation of the value of the cultural heritage be taught through the learning center.

A break was taken at 9:52 a.m.

The meeting reconvened at 10:11 a.m.

DR03-29 DOUTOR COFFEE HAWAII CO., INC. (Hawaii)

Chair Ing announced that this is an action meeting on LUC Docket No. DR03-29 to consider Doutor Coffee Hawaii Company's Petition for Declaratory Order for the scope of permitted uses within the State Agricultural District at Hienaloli 2nd, North Kona, Hawaii filed February 13, 2003.

Mr. Ching provided the Commission with an orientation of the petition area and provided staff's recommendations. Map #1 and Exhibit 1 Site Plan were used as reference.

APPEARANCES

R. Ben Tsukazaki, Esq., representing Petitioner

Dennis Krueger, Esq., representing adjacent property owner Dean Yokoyama, Parcel 26

Patricia O'Toole, Esq., representing the County of Hawaii Planning Department

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

Abe Mitsuda, Land Use Division, Office of Planning

Commissioner Roehrig moved to enter into executive session to discuss legal issues with counsel regarding this matter. Commissioner Montgomery seconded the motion, and said motion was approved by voice votes.

The Commission entered into executive session at 10:24 a.m. and exited executive session at 10:39 a.m.

The meeting reconvened at 10:40 a.m.

Commissioner Roehrig asked the petitioner to provide a short summary as to why the Commission should not defer this matter to the planning director and commission's handling of this matter.

The County expressed that jurisdiction is with the County planning commission, the hearing date is set, and the planning commission is ready to proceed on it. The Land Use Commission should not interfere in that process.

Commissioner Roehrig moved to deny petition. Commissioner Catalani seconded the motion.

Attorney General, Diane Erickson, provided that Section 15-15-102 of the LUC rules gives you reasons for good cause, you may refuse to issue a declaratory order giving specific reasons:

1. Speculative and purely hypothetical and does not involve existing facts or facts that can be expected to exist in the near future.
2. The Petitioner's interest is not of the type that would give the petitioner standing to maintain an action if the petitioner would seek judicial relief.
3. The issuance of the declaratory order may affect the interest of the Commission in a litigation that is pending or may reasonably be expected to arise or for the matter is not within the jurisdiction of the Commission.

Commissioner Sakumoto further clarified that under Section 15-15-102, Commissioner Roehrig's motion is to refuse to issue a declaratory order for good cause.

Commissioner Catalani expressed that he is not convinced that the Commission has a record developed to respond to this important matter.

Commissioner Coppa expressed that he feels the Commission has jurisdiction over this matter but doesn't feel comfortable with what's in the record to make a decision.

The motion for the Commission to refuse the declaratory order for good cause was repeated by Commission Roehrig and seconded by Commissioner Catalani, and said motion was approved. The Commission were polled as follows:

Ayes: Commissioners Roehrig, Catalani, Coppa, Montgomery, Yukimura, Sakumoto, and Ing.

The motion passed with 7 ayes and 2 absent.

A break was taken at 11:30 a.m.

The meeting reconvened at 11:41 a.m.

Chair Ing announced that the Commission will break for lunch and reconvene at 12:30 p.m.

- 11:41 a.m. -

The meeting reconvened at 12:30 p.m.

At this time, Commissioner Coppa excused himself from the proceedings.

A02-737 U OF N BENCORP (Hawaii)

Chair Ing announced that this is a continuation of the hearing on LUC Docket No. A02-737 U of N Bencorp last heard this morning at 8:30 a.m.

PUBLIC WITNESSES

1. Mikahala Roy

Ms. Roy shared her concerns regarding the use of the land, and the respect of its culture and language and sacred sites. Ms. Roy expressed concerns of maintaining the integrity of the cultural center and impacts the proposed project may have on roadways.

2. Lunakanawai Hauanio

Mr. Hauanio expressed that the western religion destroyed the Hawaiian culture. Mr. Hauanio expressed the conflict of values between western culture and the

Hawaiian culture. The conflict leads to distrust of government actions/responses to cultural/archaeological resources and water usage. He recommended the monitors of the cultural center comprise of people with knowledge and experience.

At 12:59 p.m., Commissioner Catalani excused himself from the proceedings and at 1:03 p.m. returned to the proceedings.

The Petitioner's Exhibits 26 to 30 were received by the Commission, Office of Planning's Exhibit 3 was also received, and all were admitted into the record.

Mr. Lim introduced Exhibit 2.1, which is a revised plot plan that took into account the preserve areas for the three burials, great wall of kuakini, and agricultural shrine. This is a replacement to Petitioner's Exhibit #3.

PETITIONER'S WITNESSES (continued)

5. Mark Spengler

Commissioner Roehrig expressed his interest that the project be totally power by alternate energy technology, and recognizes that it is a challenge to the developer given existing technology.

Chair Ing emphasized that the Commission's questioning is seeks to minimize the project's impact to the adjacent neighbors, leaning towards improving the quality of life of the neighbors.

Mr. Lim stated that petitioner is willing to commit that the three burials within the petitioner area, sites 23681, 23682, 23683, 23684, and 6302, are valued cultural and historical resources within the petition area. He also stated that petitioner will establish a monitoring committee similar to that of the Kaupulehu Development's case, which will be called the Waiaha Development Committee. There will be two persons appointed to the committee. The petitioner will ask the Commission to appoint Mary Kamahale Boyd as the petitioner's representative, the other person would be the lineal descendant, Josephine Nahale Kamoku. Others in the community would also be consulted such as the Office of Hawaiian Affairs-Kona office, Leinaala McComber-Fruin-UH Hawaiian studies student in her fourth year, Coleman Keapua-UH Hawaiian studies student in his second year, Lunakanawai Hauanio, Kuakini Hawaiian Civic Club of Kona, and Mikahala Roy. The petitioner will also provide annual reports to the Commission. The petitioner, as represented by Mr. Spengler, confirmed its commitments to the Commission.

At 1:18 p.m., Commissioner Sakumoto excused himself from the proceedings and returned to the proceedings at 1:21 p.m.

A break was taken at 1:43 p.m., and the meeting reconvened at 1:59 p.m.

PETITIONER'S WITNESSES (continued)

6. Nancy Burns

Ms. Burns provided a status report on the water and drainage issues and traffic improvements of the general area to the Commission.

At 2:06 p.m., Commissioner Montgomery excused himself from the proceedings.

The meeting was adjourned at 2:30 p.m. Continued hearing is to be scheduled sometime in May 2003.