

LAND USE COMMISSION
MINUTES OF MEETING

Conference Room 405
State Office Tower, Leiopapa A Kamehameha
235 South Beretania Street
Honolulu, Hawaii

April 25, 2003

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Isaac Fiesta (morning portion of the proceedings)
Steven Montgomery
Stanley Roehrig (afternoon portion of the proceedings)
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai
Lawrence Ing

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony J. H. Ching, Executive Officer
Bert Saruwatari, Staff Planner
Russell Kumabe, Staff Planner
Holly Hackett, Court Reporter

Vice-Chair Catalani called the meeting to order at 9:30 a.m.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

At this time, Vice Chair Roehrig was not present to the proceedings.

Vice-Chair Catalani announced that this was an action meeting of the Land Use Commission Docket No. A00-730 Lanihau Properties, LLC, to consider acceptance of Petitioner's Final Environmental Impact Statement for the reclassification of approximately 336.984 acres of land currently in the Conservation District into the Urban District at Honokohau, North Kona, Hawaii, for the development of a mix of light industrial and industrial-commercial uses and quarrying activities.

APPEARANCES

R. Ben Tsukazaki, Esq., representing Petitioner
James Greenwell, Lanihau Properties, LLC
William Moore, William L. Moore Planning
Patricia O'Toole, Esq., representing the Planning Department, County of Hawaii
Norman Hayashi, Planning Department, County of Hawaii
John Chang, Esq., representing the Office of Planning
Abe Mitsuda, Land Division, Office of Planning

Staff presented the Commission with a summary of its report including analysis of Petitioner's Final Environmental Impact Statement filed on April 10, 2003 ("FEIS II"), including fourteen (14) points for clarification. FEIS II was a revision of Petitioner's initial Final Environmental Impact Statement ("FEIS I") to address the following issues/concerns, which provided the basis of the rejection of FEIS I by Commission on April 25, 2002:

1. Insufficient findings in FEIS I in areas of impacts to the regional aquifer for estimated potable water demands; impacts to the regional landfill from estimated solid waste generation; impacts to air quality from estimated energy demands; impacts upon HELCO's generating capacity; and the viability of solar energy alternatives.
2. The lack of a rigorous discussion on development alternatives.
3. The involvement of the National Park Service ("NPS") in the analysis of the groundwater impacts upon the Kaloko-Honokohau National Historical Park ("KAHO").

Mr. Tsukazaki pointed out that Petitioner just received Staff's summary of issues, and was concerned with its ability to adequately address the points of clarification. Upon inquiry from Commissioner Coppa, Staff acknowledged the untimely submittal of Staff's report, but it believed thorough analysis the Commission's concerns was warranted. Vice-Chair Catalani recommended Petitioner to respond to whatever issues it could and address any outstanding issues for the docket hearing. The Vice-Chair reminded the Commission that its action was to determine whether Petitioner's FEIS II is complete, and believed that Staff's concerns would not affect it to the contrary.

Mr. Moore proceeded to address the points of clarification as summarized in the following:

- The potential impacts upon the North Kona aquifer from the project's estimated potable water demand;
- The potential impacts upon the capacity of the Pu`uanahulu landfill from the project's estimated solid waste generation and alternatives, and clarification that the project's solid waste management plan will be implemented by tenants;
- The potential air quality impacts from the project's energy demands, and the use of particulates as a proxy for other emissions;
- The estimation of the project's twenty-year (20) energy demands, and verbal verification of no impacts from HELCO;
- The lack of tax incentives and cost effective technologies limiting solar energy as an energy alternative, the information sharing of solar water heating alternatives with tenants to encourage increased solar use, and potential visual impacts from solar panels;
- The development of Area D may take twenty (20) years to complete and its exclusion may result in the following: an estimated 12% tax revenue reduction within the twenty-year (20) timeframe; the lack of incentive to construct a connector road from Kealakehe Parkway; and the issue of incremental districting for Area D in light of the project's twenty-year (20) timeframe;
- The groundwater issues in relation to KAHO include: maintaining baseline groundwater flow rates; wastewater effluent analysis targeted nitrates and phosphates but the NPS monitoring data includes a full suite of contaminants; compliance with Department of Health regulations regarding injection well drilling and the occurrence of void encounters; and the confirmation that the owner's association will be empowered with certain pollution prevention authority and oversight; and

Mr. Tsukazaki acknowledged that the proposed mitigation measures were not construed to be proposed conditions of approval. He reminded the Commission that it told Petitioner that the conditions imposed on LUC Docket No. A00-732/TSA Corporation ("TSA Conditions") would be a baseline of requirements. He added that the proposed measures reflect agreement with the NPS, and he acknowledged that these measures will not preclude the Commission from adding or deleting conditions as appropriate.

Ms. O'Toole stated that the County had no objections to the FEIS II and recommended that the Commission accept Petitioner's FEIS II.

Mr. Chang stated that the State had no objections to the FEIS II and stood by its recommendation for FEIS I for acceptance.

Commissioner Fiesta made a motion to accept Petitioner's FEIS II, and seconded by Commissioner Yukimura. Vice-Chair Catalani clarified that if the Commission accepted the FEIS II, there would not be any further revisions required as Petitioner's clarifications will be reflected in the LUC transcripts and Petitioner's arguments during the hearing process.

By a vote of 6 ayes and no nays, with 3 absent, the motion passed.

(Refer to the Commission's Order and transcripts for more details on this matter.)

A00-733 HARRISON J & SHARENE Z. KLEIN (Hawaii)

Vice-Chair Catalani announced that this was an action meeting on Land Use Commission Docket No. A00-733 Harrison J & Sharene Z. Klein to consider Petitioner's motion to release, discharge and delete Condition Nos. 1 and 2 imposed on Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order filed November 5, 2001.

APPEARANCES

Steven Lim, Esq., representing the Petitioner

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

Norman Hayashi, Planning Department, County of Hawaii

John Chang, Esq., representing the Office of Planning

Abe Mitsuda, Land Division, Office of Planning

Staff provided a map orientation of the Petition Area.

Mr. Lim explained that the motion before the Commission was a follow-up of a previous action on February 20, 2003. Petitioner was requesting the deletion of Condition Nos. 1 and 2, relating to substantial compliance of representations made to the Commission and notification of ownership changes of the Petition Area, respectively.

Petitioner believed it had substantially completed the proposed development and entered into a stipulation with the County and State to delete Condition Nos. 1 and 2, and retain Condition Nos. 4, 6, and 7, relating to lateral shoreline access, mitigation of unforeseen archaeological resources, and the Commission's release of conditions, respectively.

The County confirmed the stipulation and had no objections to the motion.

The State confirmed the stipulation and had no objections to the motion.

Upon point of clarification from Vice-Chair Catalani, Mr. Lim explained that the stipulation was the only new evidence since the prior action in February. He believed that the filing of a subsequent motion was its only alternative since it appeared that the Commission had changed its policy regarding release of conditions subsequent to substantial completion of development. He reiterated that the proposed ti-leaf plantation has been established and the proposed interior stairway has not been started due to cost reasons.

Commissioner Fiesta received clarification that Petitioner is not restricted to the one-year (1) waiting period for motions to release conditions. Commissioner Sakumoto inquired if Staff was still standing by its position to retain Condition Nos. 1 and 2 from the previous motion, if the project has been substantially completed. Executive Officer Ching acknowledged that the completion of development would warrant a release of conditions and Staff's previous position was to assure the retention of Condition Nos. 4 and 6, but Staff's would defer to the Commission to determine the policy of releasing conditions subsequent to substantial completion.

Mr. Lim reiterated that if the requested conditions were released, the Commission has authority over the remaining Condition Nos. 4, 6, and 7. Upon inquiry from Commissioner Coppa, Mr. Lim further explained the Commission's order to show cause procedure would provides a means for Petitioner to comply with its representations without the substantial compliance and annual report requirements. Also, the County's SMA process would provide additional enforcement of the shoreline access requirements. In regard to the urgency of releasing seemingly standard conditions as inquired by Commissioner Sakumoto, Petitioner clarified that it wanted to clear title of as many requirements as possible, especially those that would be minor in nature.

Commissioner Fiesta made a motion to delete Condition Nos. 1 and 2 and seconded by Commissioner Yukimura.

By a vote of 6 ayes and no nays, with 3 absent, the motion passed.

(Refer to the Commission's Order and transcripts for more details on this matter.)

A90-658 AMFAC/JMB HAWAII, LLC (Maui)

Vice-Chair Catalani announced that this was a status report for LUC Docket No. A90-658 AMFAC/JMB Hawaii (Maui) to hear the status of progress of the project and compliance with conditions imposed on the subject docket. On January 31, 2003, the Commission received correspondence from the Department of Education that the Vintage project in the South Mauka project area was developed without consideration of the fair-share education condition as imposed by the Commission. On April 17, 2003, the Commission received a letter from West Maui Development Company, LLC ("WMDC"), regarding the education contribution agreement for the Vintage project at Kaanapali. (Refer to these correspondences for more details on this issue.)

APPEARANCES

John Higham, AMFAC

Tamara Edwards, AMFAC

Howard Kihune, WMDC

John Chang, Esq., representing the Office of Planning

Abe Mitsuda, Land Division, Office of Planning

Sanford Beppu, Facilities and Support Services Branch, Department of Education

Heidi Meeker, Department of Education

Staff provided a map orientation of the Petition Area.

Mr. Kihune explained that WMDC obtained the Vintage property from AMFAC, and they acknowledge that a fair-share education contribution was imposed. They attempted to discuss the matter with DOE, where they understood that the County, in collaboration with DOE, was to set a procedure for notification and fee collection. When WMDC filed for County permits, they were informed that procedures were not in place yet, but WMDC would need to comply if the project is developed. The Vintage was completed in 2001, and DOE notified them of its fair-share compliance in 2002. WMDC objected to DOE's untimely notification because the project has been completed and financial reserves and obligations have been relieved. Mr. Kihune acknowledged that the fair-share requirement still stands and WMDC is willing to negotiate with DOE because it believed that DOE has some responsibility in the situation.

Upon inquiry from Commissioner Coppa as to why the LUC was not notified of WMDC's situation earlier, Mr. Kihune clarified that WMDC was relying upon the

County to provide them with notification of the requirement and acknowledged communication problems leading to the situation. He added that with their subsequent Summit project developed in the Petition Area, DOE was in immediate contact with them for compliance with the requirement.

Upon inquiry from Commissioner Sakumoto if WMDC filed an annual report to indicate its problem in complying with the condition, Ms. Edwards clarified that AMFAC filed the annual report for the Petition Area, including the WMDC projects, and they were not aware of the problems regarding this condition because compliance of conditions were the responsibility of the subsequent landowners. Commissioner Sakumoto inquired if WMDC had any correspondence or documentation on DOE guidance in the matter, where Mr. Kihune answered in the negative. He believed that the County was the agency they needed to work with to comply with this requirement. He acknowledged that they need to work with DOE but reiterated their objection to the untimely notification and their willingness to negotiate.

Vice-Chair Catalani and Commissioner Coppa commented on the problems of complying with fair-share requirements and the implication of having the requirements imposed upon individual homeowners, especially in cases where compliance has not been achieved and release of conditions is not forthcoming. Upon inquiry from the Vice-Chair as to reserves set aside for compliance with the education contribution, Mr. Kihune responded that such reserves were dispersed because they were not provided with a fair-share amount and the project had been completed over two (2) years ago.

Mr. Chang pointed out that education agreements for two (2) projects in the Petition Area was reached with DOE in 2001 at \$930.00/unit, and inquired if WMDC followed with due diligence for the Vintage project after it entered into an agreement with the subsequent Summit project with DOE. Mr. Kihune responded in the negative and believed that both WMDC and DOE did not follow through in the matter.

Mr. Beppu took the stand to clarify the background of the situation. He pointed out the following:

- DOE does not have any documentation or record of releasing the Vintage project from the fair-share requirement.
- In DOE's letter of October 1997 to AMFAC, it requested the planned unit count for the Petition Area and stated that the fair-share requirement was subject to certain limitations and included a senior housing exemption.
- In AMFAC's letter of March 1998 to DOE, it summarized their meeting which included a request to DOE to defer the fair-share requirement until specific development plans and timeframes were developed. In a follow-up letter DOE

concurred with the deferral and assumed that AMFAC would notify subsequent landowner/developers that the fair-share requirement is pending and not released.

- In June 2000, the Pinnacle project in the Petition Area performed its due diligence and entered into a fair-share agreement with DOE based upon conditions imposed on the Petition Area.

Commissioner Sakumoto inquired if DOE contacted WMDC when a fair-share formula was determined, Mr. Beppu responded in the negative, but insisted that the DOE had implemented a formula in 1999. Commissioner Sakumoto also inquired how the County is involved in process, Mr. Beppu said there are cases where a parallel requirement is imposed by the County, but in this case DOE did not pursue such a requirement because it was already imposed by the Commission.

Commissioner Coppa and Vice-Chair Catalani commented on the need for a mechanism to release the requirement from transportation and education fair-share requirements as they are completed, to prevent the implication of the burden placed upon individual homeowners. Upon an inquiry from Commissioner Coppa on whether DOE will negotiate, Mr. Beppu responded in the negative, where DOE would question the basis of a compromise.

Mr. Chang stated that the State's position is that the onus is upon the developer to fulfill the requirements imposed by the conditions of approval. Commissioner Fiesta concurred that during the action on the docket, conditions of approval were discussed and agreed upon, where the developer should be prepared to comply with the requirements. Commissioner Yukimura expressed concerns of who bears the burden of fulfilling the requirements of the condition if AMFAC did not request release or deletion of the condition. Vice-Chair Catalani concurred and suggested some negotiation may be needed because of the uncertainty of whether AMFAC, WMDC, or the homeowners will be responsible for this requirement. Commissioner Sakumoto clarified that the matter before the Commission was a status report with no formal action to be taken.

In closing, Mr. Beppu reiterated that DOE was not late notifying of the fair-share requirement, as he referred to DOE's letter to AMFAC in 1998 that agreed to defer the fair-share requirement but not release any project from the requirement. Mr. Kihune reiterated that ownership transference documents from AMFAC indicated that DOE would be working with the County on a fair-share fee procedure, in which WMDC was notified by the County for the subsequent Summit project.

Vice-Chair Catalani concluded that there is no clear path to the resolution of the situation but at least issues were aired on the subject. With the divergent positions of the parties, he recommended negotiation, unless one of the parties files a motion before the Commission.

(Refer to the Commission's transcripts for more details on this matter.)

A lunch break was taken at 12:00 p.m. and the meeting reconvened at 1:05 p.m.

At this time, Commissioner Fiesta excused himself from the proceedings, and Vice Chair Roehrig was present to the proceedings.

A92-683 HALEKUA DEVELOPMENT CORPORATION (Oahu)

Pursuant to a notice published in the Honolulu Star-Bulletin and notices sent to all parties, a hearing was called by the Land Use Commission on an Order to Show Cause as to why certain land located at Waikele and Hoaeae, Ewa, Oahu, and identified as TMK No. 9-4-02: 1, portion of 52, 70, 71, and 78 should not revert to its former agricultural land use classification or be changed to a more appropriate classification due to the failure to perform according to the conditions imposed and the representations and commitments made by the Petitioner in obtaining reclassification of the subject property.

APPEARANCES

Kathy Sokugawa, Dept. of Planning and Permitting, City and County of Honolulu
John Chang, Esq., representing the Office of Planning
Abe Mitsuda, Land Use Division, Office of Planning
Reuben Wong, Esq., representing HRT Ltd., 300 Corporation, and Honolulu Limited

Presiding Officer Catalani announced that the Commission had received a letter from Joann Hirata and a Notice of Filing of Bankruptcy Petition.

Commissioner Roehrig