

LAND USE COMMISSION
MEETING MINUTES

June 26, 2003

Hawaii Naniloa Resort
Crown Room
93 Banyan Drive
Hilo, Hawaii 96720

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Isaac Fiesta
Lawrence Ing
Steven Montgomery
Stanley Roehrig
Randall Sakumoto

COMMISSIONERS ABSENT: Peter Yukimura

STAFF PRESENT: Russell Suzuki, Deputy Attorney General
Anthony Ching, Executive Officer
Caroline Lorenzo, Acting Chief Clerk
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 9:36 a.m.

ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes of the Land Use Commission meeting of June 5, 2003. Commissioner Coppa seconded the motion, and said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that a meeting in August would be required. Commissioners indicated their understanding that August 7 & 8 meeting would be convened and that they would be polled as to their availability.

Mr. Ching also reported that the LUC would be convening an affordable housing procedures meeting on August 13, 2003 on Maui. Given the pending filing of two affordable housing fast track projects on Maui, and a potential third project, staff felt it prudent to discuss protocols for this fast track process. Fast track housing projects have not been filed in recent times and state and county agencies might be unfamiliar the process. Once a fast track petition has been filed, the Commission has no more than 45 days to complete its action on these dockets. The County Planning, Housing and Community Human Concerns, Public Works, HCDCH and DOT agencies are expected to attend this forum. As always, Commissioners are welcome to attend but should not exceed a quorum or no more than 5 commissioners.

AO3-738 GENTRY INVESTMENT PROPERTIES (Oahu)

Chair Ing announced that this was an action meeting to consider Haseko (Ewa), Inc.'s Application to Intervene in the proceeding to reclassify approximately 282.614 acres of land currently in the Agricultural District into the Urban District in Ewa, Oahu, Hawaii for residential, industrial commercial, public facilities, and open space uses.

Chair Ing announced that the Petitioner and the City and County of Honolulu would not be present to the proceedings.

APPEARANCES

Linnel Nishioka, Esq., representing Intervener – Haseko (Ewa), Inc.
John Chang, Esq., representing Land Use Division, Office of Planning
Abe Mitsuda, Land Use Division, Office of Planning

Ms. Nishioka stated that Haseko is the fee simple owner and developer of the Ocean Point project located in Ewa, Oahu directly makai of the subject property. She indicated that because of the location of Haseko's property and because Ewa Marina has been designated as the regional drainage basin for Kalo'i Gulch, Haseko continues to have concerns about drainage issues. She noted two principle issues- the quantity of the amount of water because of flooding issues and its property being the seaward most property; and the quality of water and meeting Department of Health standards. She indicated that it was in Haseko's interest to intervene to ensure that adequate infrastructure was in place to mitigate the quantity and quality of storm water. Ms. Nishioka believed that by the case law and Commission rules, its client has met the standards to intervene.

Commissioner Coppa moved to approve Haseko's Application to Intervene.
Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Coppa, Fiesta, Desai, Roehrig, Catalani, Sakumoto, and Ing

The motion passed with 7 ayes and 2 absent.

(Refer to the LUC transcripts for more details on this matter.)

A break was taken at 9:49 a.m. The meeting reconvened at 9:55 a.m.

Commissioner Montgomery was present to the proceedings.

A02-737 U of N BENCORP (Hawaii)

Chair Ing announced that this was an action meeting to consider the Petition to Amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 62 acres at Kailua-Kona, Island, County and State of Hawaii.

APPEARANCES

Steven Lim, Esq., representing Petitioner U of N Bencorp
Patricia O'Toole, Esq., representing County of Hawaii Planning Department
Norman Hayashi, County of Hawaii Planning Department
John Chang, Esq., representing Land Use Division, Office of Planning
Abe Mitsuda, Land use Division, Office of Planning

PUBLIC WITNESSES

1. Clayton Hee

Mr. Hee stated that present with him were students of `Aha Punana Leo, a Hawaiian language emersion organization and others who represented the Hawaiian language. Mr. Hee also introduced Mr. Peter K. Park, who was his uncle and lineal descent of Kona, and a native speaker of the Hawaiian language.

Mr. Hee informed the Commission that he would like the reopen the hearing but understood that the Commission would have to make the motion to do so in order to reopen the hearing. Mr. Hee indicated that he supports the project knowing that the Applicant was a 501C2 and 501C3 non-profit organization. Mr. Hee further indicated that he was aware that the Applicant proposes to build a cultural center, and that 400 townhouse units from \$180,000 to \$500,000 for four-bedroom units would be built. Mr. Hee also indicated that he has not seen the project's financials and felt he was entitled to see it.

Mr. Hee testified that the cultural center represents the Hawaiians, that language represents culture and the bridge from the past to the future. Mr. Hee stated that the cultural center has an obligation to ensure that language never dies and that it could not be a cultural center without language. He believed that the Commission should compel the Petitioner to set aside monies of the gross income specifically for Hawaiian language, in perpetuating the language and ensure that the cultural center would be a bonafide cultural center.

An inquiry was made by the Chair asking the witness if there was any particular organization that he represented at this proceeding. Mr. Hee responded that he has always been a part of `Aha Punana Leo.

An inquiry was made by the Chair asking if the witness has read the Petition, exhibits, and all of the transcripts regarding this docket. Mr. Hee responded that he has not read the transcripts in its entirety but has read much of the pleadings made by the Applicant before the Land Use Commission.

Mr. Lim asked Mr. Hee if the percentage of the gross income off of the project to fund native Hawaiian language programs would apply to the residential portion of the project or only to the cultural center. Mr. Hee indicated that it should apply to the entire the project.

Mr. Lim asked the witness if he would expect every residential project that came before the Land Use Commission should be assessed a percentage of the gross income to assist in the development of native Hawaiian language programs. Mr. Hee responded in the affirmative.

Mr. Lim asked the witness if he would agree to the University of the Nations providing Hawaiian language programs, through means other than cash such as distance learning programs or the provision of classrooms at night where the people of Kona could do distance learning with the University of Hawaii Hawaiian program in Hilo. Mr. Hee believed that distance learning can be applied to any campus statewide through `Aha Punana Leo, but it also takes funding and resources.

Mr. Lim asked if Mr. Hee was aware that the University of the Nations Bencorp agreed to working with the University of Hawaii Hawaiian language program to provide distance learning programs and other facilities. Mr. Hee indicated that he was not aware of that and that he hasn't seen anything in writing.

Mr. Lim referred to the proposed order from `Aha Punana Leo, item C on page 8, which stated "The exact programs shall be chosen by a non-profit educational program specializing in Hawaiian language instruction and in existence for at least 20 years." He asked if the witness had a specific organization in mind. Mr. Hee responded that UH Manoa, UH Hilo, and `Aha Punana Leo are all one in the same.

Vice Chair Roehrig stated that the Hawaii State Supreme Court has mandated that the State Land Use Commission protect native Hawaiian PASH rights and resources. Vice Chair Roehrig further stated that if the project has PASH resources and rights that have been identified as existing, the State Land Use Commission is required to protect those rights if feasible, and if not feasible by the reason of the nature of the development, then the Commission is obligated to find a mechanism for mitigating those resources and rights. Furthermore, Vice Chair Roehrig indicated that the mitigation that has been identified in the PASH and Kapaakai decisions was that funding be provided to perpetuate the Hawaiian language and its culture.

2. Peter Kekua'ana Park

Mr. Park stated that he was an instructor of lauhala weaving, and indicated that he supports Hawaiian language and that language should be kept alive. Mr. Park also explained and demonstrated the art of lauhala weaving before the Commission.

A break was taken at 10:58 a.m. The meeting reconvened at 11:15 a.m.

Commissioner Montgomery was not present to the proceedings.

3. Larry Kimura

Mr. Kimura stated that he was the first president and co-founder of `Aha Punana Leo. He also stated that he is of Japanese, Hawaiian, and English descent and can speak some German, Tahitian, and fluent Hawaiian. He indicated that he supports the preservation of the Hawaiian language and felt that there was currently not enough support of the language.

4. Dr. Pila Wilson

Dr. Wilson stated that there are laws to protect the Hawaiian language and its cultural and history. He noted Article X of the education section states that , “The State shall promote the study of Hawaiian culture, history, and language.” Dr. Wilson further stated that according to PASH rights, “The State reaffirms and shall protect all rights, customary and traditionally exercised for subsistence, cultural and religious purposes.” Dr. Wilson also indicated that Hawaii’s legal system was connected to the monarchy and that Hawaiian has always been the official language of the State.

Mr. Lim asked the witness if he agreed that the Petitioner should develop the cultural center with sensitivity to the host native Hawaiian culture and provide for outreach and educational opportunities for the children of Hawaii. Dr. Wilson responded in the affirmative.

Mr. Lim asked Dr. Wilson if the UH Hilo College of Hawaiian language would agree to help promote cultural sensitivity in the development of the programs by consulting with the Petitioner. Dr. Wilson indicated that there were not enough faculty members to teach and kokua but are generally willing to kokua.

Mr. Lim asked if Dr. Wilson agreed that the Petitioner be assessed a percentage fee, whether it is a residential, commercial or industrial project. Dr. Wilson indicated that teaching the Hawaiian language is a really good way to mitigate cultural impacts because it allows people to live in the contemporary society and still make chants, and that you can go anywhere and use the Hawaiian language and connect back to those values to this land.

Vice Chair Roehrig suggested that an initial percentage be charged and tagged not only to the cultural center, but also toward the residential area. He further suggested that the initial percentage be a certain amount of the gross revenue, and the Commission will keep this matter under its jurisdiction to review on an annual basis.

A break was taken at 12:15 p.m. The meeting reconvened at 1:39 p.m.

5. Kelii HoolaninawahineeluakamanaWilson

Ms. Wilson stated that she was a student of `Aha Punana Leo, had graduated from Nawahiokalaniopu`u (a laboratory school in Puna) and now attends Loyola Marymount University in California. She indicated that more resources and teachers are needed. She further indicated that it is important for us to move on and that something needs to be done to perpetuate the Hawaiian language.

6. Sherry Broder

Ms. Broder provided a copy of her testimony, a copy of a table for the Hawaii Data Book, and her Proposed Findings of Fact, Conclusions of Law, and Decision and Order (Proposed Findings) to the Commission. She indicated that her Proposed Findings did not directly include the PASH case and Article XII, Section 7 of the Hawaii State Constitution because she knew that the Commission was well aware of this and have been addressed in most of the proceedings already. Ms. Broder provided legal principles and highlights of her testimony. She indicated the importance of the connection between preservation of archaeological sites and its meaning. She further indicated that it was very important than ever to preserve the Hawaiian language because of the stories behind those sites and those still contained in the Hawaiian language chants and oral traditions. Ms. Broder also indicated that Hawaiian language should get a percentage of the gross from this reclassification, and that the imposed percentage be on the cultural center and residential areas.

Mr. Lim referred to paragraph C of Ms. Broder's Proposed Findings, which states that the exact programs shall be chosen by a nonprofit educational program specializing in Hawaiian language instruction and in existence for at least 20 years, and asked the witness if she was targeting a particular organization. Ms. Broder indicated that it would be a nonprofit organization specializing in the Hawaiian language.

Mr. Lim asked how much money does the Office of Hawaiian Affairs (OHA) give to the `Aha Punana Leo program each year, which has been in existence for 20 years. Ms. Broder responded that OHA purchased the Nawahiokalaniopu`u School and it educates children in Hawaiian language from kindergarten through graduation. Ms. Broder also added that OHA has provided substantial funding for the Niihau children and to other Hawaiian language programs as well.

Mr. Lim asked if OHA can also give money to the University of Hawaii (UH) College of Hawaiian Language. Ms. Broder responded in the affirmative and indicated that OHA has funded the masters program at UH Hilo and have given money to Hawaiian Studies at the UH Manoa.

Commissioner Desai excused himself from the proceedings at about 2:05 p.m. and returned to the proceedings at about 2:13 p.m.

Mr. Lim indicated that they are trying to determine how far the Petitioner would want to go, and that one of the outstanding issues is the motion to reopen the hearing. He further indicated that if the Commission approves to reopen the hearing, the Petitioner may need to go back regroup. If the Commission is ready to act on the Petition, then the Petitioner is ready to propose something for discussion to the Commission but wanted to make sure that the proceeding will move forward without reopening the hearing.

Chair Ing suggested that the Commission would hear the Petitioner's proposal first.

Vice Chair Catalani asked the witness what specific mitigation will address the impact. Ms. Broder indicated that the mitigation that we are trying to pay for was the loss of important lands, and by the cultural assessment and archaeological survey done by the Petitioner, these lands are full of history, from preservation of archaeological sites to the perpetuation of Hawaiian language and culture. She further indicated that mitigation is Hawaiian language and the Hawaiian language program, and that monies will be used for faculty salaries, locations and curriculum materials in the Hawaiian language.

A recess was taken at 2:48 p.m. The meeting reconvened at 2:58 p.m.

Vice Chair Catalani moved to enter into executive session to discuss the legal aspects of this docket's testimonies. Commissioner Desai seconded the motion. The motion was unanimously approved by voice votes.

The Commission entered into executive session at 2:59 p.m.

The meeting reconvened at 3:26 p.m.

Mr. Lim stated that the Petitioner had discussions with Mr. Hee and Ms. Broder during the break in attempt to reach an agreement, but because of the complexity of the issue and commitment of funds, Mr. Lim asked that the Commission take a break from the proceedings at this time and reconvene on this docket the next day.

Chair Ing suggested that the Commission go onto the next matter, and asked the Petitioner to return to proceedings at 4:45 p.m.. There were no objections by the parties.

(Refer to the LUC Transcripts for more details on this matter.)

A break was taken at 3:36 p.m., and the meeting reconvened at 3:45 p.m.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Chair Ing announced that this was an action meeting to consider Kaloko-Honokohau's National Historic Park's Motion for Appearance of Out of State Counsel.

Vice Chair Catalani moved to approve Kaloko-Honokohau's National Historic Park's Motion for Appearance of Out of State Counsel. The motion was seconded by Commissioner Coppa, and said motion was unanimously approved by voice votes.

Chair Ing then opened the hearing portion of said docket to consider the Petition to reclassify approximately 336.984 acres of land currently in the Conservation District into the Urban District at Honokohau, North Kona, Hawaii for the development of mix of light industrial, industrial and commercial uses for the Kaloko-Honokohau Business Park.

APPEARANCES

R. Ben Tsukazaki, Esq., representing Petitioner
James Greenwell, Petitioner and President of Lanihau Properties, LLC
William Moore, Planner for the Petitioner
Norman Hayashi, County of Hawaii Planning Department
Patricia O'Toole, Esq., representing County of Hawaii Planning Department
John Chang, Esq., representing Land Use Division, Office of Planning
Abe Mitsuda, Office of Planning
Judith Henry, Office of Planning
Nicole Walthal, Esq., representing Intervener Kaloko-Honokohau National Historical Park
Stanley Bond, Resource Manager, Intervener Kaloko-Honokohau National Historical Park
Geraldine Bell, Superintendent, Intervener Kaloko-Honokohau National Historical Park

PUBLIC WITNESS

1. David Roy

Mr. Roy stated that he represented Na Kokua Kaloko-Honokohau and testified that development should stop until a determination is made and can accurately measure the effects of the development of any sort in Kekaha on the subterranean purity of the water. Mr. Roy also expressed concern that hearings have been held elsewhere except in Kona and finds it most difficult to attend hearings on other islands. He stated that he is very much concerned over the protection and purity of subterranean waters and marine life. He felt that the whole of west Hawaii would be subject to contamination by this development, and that the limited quantity of water must be kept pure and hope that the Commission will pay heed to what has been suggested. His written testimony was also submitted.

STAFF REPORT

Executive Officer Anthony Ching provided the Commission with a staff orientation of the Petition Area referencing LUC maps. Mr. Ching also presented a three-page matrix, which listed conditions of approval that the Commission might want to consider. Mr. Ching further indicated on the matrix those conditions of approval, which were either identical, modified with enhancements, or enhanced with additions.

Commissioner Sakumoto commented that he is under the presumption that the conditions stated in the TSA docket were effective and should be applied in this case as well. Mr. Ching indicated that the TSA order did serve as a template.

Commissioner Sakumoto asked if there were any kind of reporting from TSA that the Commission should be made aware. Mr. Ching stated that if measured in terms of information received from the TSA docket, there has been evidence of compliance and much effort to establish pollution prevention projects. Mr. Ching further stated that staff has had the opportunity to review those efforts to date and believe that those efforts are consistent with the Decision and Order. Mr. Ching also stated that he has been party to discussions amongst TSA, Lanikai, and the Park with respect to the monitoring system, and understands that there has been substantial agreement amongst the parties to implement the system.

PETITIONER'S CASE

Mr. Tsukazaki indicated that the parties have stipulated to a proposed decision which was filed with the Commission on June 6, 2003, pursuant to Section 15-15-56 of the LUC rules which provides for the parties to reach a stipulation as to some or all of the relevant Findings of Fact, Conclusions of Law, and Decision and Order. Mr. Tsukazaki also indicated that the conditions in the TSA docket would be applied to this case.

Mr. Tsukazaki indicated that the parties have stipulated to all of the exhibits filed by each party on June 26, 2003, and requested that the exhibits be entered into the record. There were no objections by the parties, and the exhibits were entered into the record by the Commission.

PETITIONER'S WITNESS

1. William Moore

Mr. Moore indicated that he is the Principal of William M. Moore Planning since 1991 and started working with Lanikai Properties since 1995. Mr. Moore provided the project site concept and background on the property before the Commission, and referred to Exhibit 8.

Vice Chair Catalani referred to page 32 of the stipulated Proposed Findings, which identified various cultural resources in the form of archaeological features. Vice Chair Catalani

indicated that if those features do exist, there was a need for testimony in the form of how to mitigate the development's impact on those features. Mr. Moore indicated that the cultural features found were related to the archaeological features and that the burials were the most important cultural resources in this area, which will be protected.

Vice Chair Catalani referred to page 145 which identified various types of cultural resources and archaeological features, and page 104 which identified the archaeological condition. Vice Chair Catalani asked for clarification on how it addresses the archaeological resources found on page 32. Mr. Moore indicated that the Historic Preservation Division has approved its inventory survey and identified sites for data recovery and that preservation work was not required at this time.

Chair Ing asked if a condition could be framed where the mitigation plan has to be brought back to the Commission for review and approval. Vice Chair Roehrig responded in the affirmative and indicated that this issue was faced with in the TSA docket.

Commissioner Sakumoto asked that Mr. Moore summarize the primary differences between the TSA project and the Lanihau project. Mr. Moore indicated that a lot of the mitigation measures imposed on TSA were proposed by Lanihau. Mr. Moore further indicated that putting in the dry sewerlines that were on imposed on TSA were offered by Lanihau, and had also offered to do the enhancement treat. Mr. Moore also indicated that in the McClean decision, there were provisions that were also applicable to this project.

Chair Ing announced that continuation on this docket would begin at 9:00 a.m., on Friday, June 27, 2003.

(Refer to the LUC Transcripts for more details on this matter.)

A recess was taken at 4:54 p.m.

A02-737 U OF N BENCORP (Hawaii)

The Commission reconvened on Docket No. A02-737 U of N Bencorp at 4:55 p.m.

APPEARANCES

Steven Lim, Esq., representing Petitioner U of N Bencorp

Mark Spengler, U of N Bencorp

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

Norman Hayashi, County of Hawaii Planning Department

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

Abe Mitsuda, Land use Division, Office of Planning

PUBLIC WITNESSES

6. Sherry Broder (continued)

Mr. Lim indicated that he had discussed the matter with Ms. Broder and her clients and it was very difficult to determine what particular programs might be offered and will continue to discuss the matter with them. Mr. Lim indicated that Petitioner could not reach agreement with Mr. Broder and her clients and is unsure that they will reach an agreement in the near future. Mr. Lim also indicated that his clients would like to propose something to the Commission in keeping with what they feel was the original intent of meeting with the parties and trying to work out a solution amenable to the parties.

Ms. Broder confirmed that they had met and were at an impasse.

Mr. Lim indicated that the basis of discussions with its client and `Aha Punana Leo has been that the exaction that they have proposed has very scant nexus to the impacts of the project. He further indicated that to avoid the potential legal challenges and to follow up with its commitment with `Aha Punana Leo and the UH College of Hawaiian Language and assuming that the Petition is approved, its client proposes to commit to a gift of two scholarships for two students to the UH Hilo Hawaiian Language program already identified beginning the next school year. He stated that one student is already teaching at `Aha Punana Leo, and that these students already have their second year teaching certificates from the Hawaiian language program. Mr. Lim indicated that the Petitioner would fund scholarships to take these students through graduation and into their third and fourth year teaching certificates. The Petitioner also proposed to pay the salaries of these two teachers for teaching at a nonprofit entity specializing in the Hawaiian language and cultural instruction. Mr. Lim further indicated that when the cultural center opens, the Petitioner is willing to commit to giving 1% of the actual ticket price to a fund to advance the Hawaiian language for a maximum period of 5 years. If the cultural center does not open by January 1, 2008, the Petitioner would return to the Commission for further discussion on this matter

At this point, Chair Ing announced that a recess would be taken on this matter and reconvene on June 27, 2003 at 8:30 a.m., then continue with Docket No. A00-730 Lanihau Properties, LLC at 9:00 a.m.

(Refer to the LUC Transcripts for more details on this matter.)

The meeting was adjourned at 5:08 p.m.