

LAND USE COMMISSION
MINUTES OF MEETING

January 6, 2006

Conference Room 405
Leiopapa A Kamehameha
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Michael Formby
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Thomas Contrades
Kyong-su Im

STAFF PRESENT: Anthony Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

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

EXECUTIVE SESSION

Commissioner Piltz moved that the Commission enter into executive session to consult with legal counsel pursuant to § 92-5(a)(4), Hawaii Revised Statutes, on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities in setting Docket No. A89-649 Lanai Resort

Partners for hearing. The motion was seconded by Vice Chair Judge. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 8:30 a.m.

The open meeting reconvened at 8:40 a.m.

A recess break was taken at 8:40 a.m. The open meeting reconvened at 9:10 a.m.

Chair Sakumoto reconvened the open meeting and instructed the executive officer to hold a prehearing on Docket A89-649 Lanai Resort Partners to meet with parties to describe the issues that need to be addressed and to provide reasonable opportunity for the parties to have time to prepare their cases for hearing. The Supreme Court has remanded this matter back to the LUC for clarification of its findings or further hearings if necessary, on the issue of whether Lanai Company Inc. used potable water from the high level aquifer in violation of Condition 10. The hearing will address that issue and any other issues raised by the Supreme Court's opinion.

Mr. Ching noted that a prehearing will be scheduled.

SP70-85 EDWIN DeLUZ TRUCKING & GRAVEL, LLC fka Waikoloa Development Co. (Hawaii)

Chair Sakumoto stated that this was an action meeting on SP70-85 DeLuz Trucking & Gravel (Hawaii) to adopt the order granting amendment to Condition No. 2.

Mr. Rogers provided a brief summary of minor clarifications made to the motion that was made to approve the Special Permit.

Commissioner Formby stated that the change does comport with his recollection of the motion.

Commissioner Formby moved to adopt the order in SP70-85 DeLuz Trucking & Gravel. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Commissioners Formby, Kanuha, Judge, Piltz, Montgomery, and Sakumoto.

The motion passed with 6 ayes, 2 absent.

SP86-359 COUNTY OF MAUI DEPARTMENT OF PUBLIC WORKS

Chair Sakumoto stated that this was an action meeting on SP86-359 County Of Maui Department of Public Works to adopt the order approving an amendment to a special use permit.

APPEARANCES

Jane Lovell, Esq., represented the County of Maui Department of Planning
Gregg Kinkley, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Vice Chair Judge moved to adopt the order in SP86-359 County Of Maui Department of Public Works. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Commissioners Judge, Piltz, Formby, Kanuha, Montgomery, and Sakumoto.

The motion passed with 6 ayes, 2 absent.

A recess break was taken at 9:20 a.m. The meeting reconvened at 9:30 a.m.

A83-562 WEST BEACH ESTATES

Chair Sakumoto stated that this was an action meeting on A83-562 West Beach Estates for a status report and action if appropriate.

APPEARANCES

Todd Apo, represented Ko Olina Resort and Marina
David Tanoue, Esq., represented City and County of Honolulu, Department of Planning and Permitting

Gregg Kinkley, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Public Witness

1. Naomi Kuwaye

Ms. Kuwaye stated that she is from Imanaka Kudo & Fujimoto and was appearing on behalf of their clients Campbell Estates. Ms. Kuwaye noted that they are interested on the disposition in this matter as Campbell Estates own property situated within the boundaries of this docket and immediately adjacent to this docket, which directly impacts Campbell Estates. Ms. Kuwaye requested that the LUC provide notice on any further action or continued hearings on this matter.

There were no questions posed by the parties or the Commission.

Petitioners Report

Mr. Apo provided a status report and video of the Ko Olina Resort Marina and its past development.

Mr. Tanoue stated that the City had no questions.

Mr. Kinkley noted that the State also had no questions.

Commissioner Formby raised questions regarding the landowner of Phonecians, the lease for the use of Phonecians boat ramp, public meetings, and public documents or communications from the community and neighborhood boards. Commissioner Formby also posed questions on the demolition of the Ko Olina boat ramp and its status.

Mr. Apo stated that he was unsure of the original intent of the boat ramp and believes that when the new group developed the marina, the intent was to serve those using and staying at the Ko Olina marina and that the use as a public marina was always intended to be on an interim basis. Mr. Apo added that they have spent \$400,000 for the repair, maintenance, and improvements to the Phonecians facility.

Commissioner Formby asked if there was in the record, any indication of a temporary boat ramp versus a boat ramp that was to be included in the developed community.

Mr. Apo replied that there was nothing in the record and added that he did not know the intent of the original developers in 1985 when they included the boat ramp in the master plan. Mr. Apo noted that he believes the requirement of condition 13 is that the petition area be developed in substantial compliance with the language that exists in the findings of fact.

Commissioner Formby asked if it was correct to say that substantial compliance is substantial compliance with the representations made to the LUC. Mr. Apo replied that it is correct.

Vice Chair Judge posed a few questions relative to publicly noticed meetings on a larger scale to discuss the ramifications of the closure of the boat ramp.

Mr. Apo noted that he was not sure of any specific meetings and believes that there were neighborhood board meetings, specific to Makakilo, Honokai Hale and Kapolei. Mr. Apo added that this issue was well discussed amongst the fishing community thru Mr. William Aila.

Vice Chair Judge asked that when the group Ko Olina purchased the resort in the 1990's were they aware of an LUC order and questioned if they had reviewed these documents and the representations made and were aware of what they were purchasing at that time.

Mr. Apo replied in the affirmative and stated that is why they went through a process and came up with the Public Access Master Plan. He added that they understood the process and worked with the City's planning department and the State harbors regarding the boat ramp issue.

Commissioner Piltz raised questions regarding the cost to initially build the boat ramp, and the cost to demolish it, and if these contributions have made the new ramp equal to what they had before at Ko Olina, as the LUC has received complaints that the new ramp is not safe enough.

Mr. Apo was unsure of those costs and added that they have already spent \$400,000 to date for improvements on Phonecians, and will now be installing bumpers for added safety.

Vice Chair Judge noted that to be in substantial compliance, the original documents have representations made that this public boat ramp was to be located in the Ko Olina marina as a social and economic benefit.

Mr. Apo stated that the new group came sometime in 1998 and plans for the marina development started. Mr. Apo added that in talking with Mr. Aila and the local fishermen, discussions came about that the boat ramp would be better suited if they located the facility right across the harbor versus within the resort marina. Mr. Apo also noted that there were several issues raised, such as public intoxication of boaters, trailers left at the marina all night, the lack of 24-hour access to the ramp, and the State's requirement of insurance and registration. Ko Olina waived the insurance and registration requirements by having the fishermen sign waivers.

A recess break was taken at 10:10 a.m. The meeting reconvened at 10:35 a.m.

Chair Sakumoto noted that it is the Commission's intention to go through 12 noon today, then break for lunch. The meeting will reconvene at 1:00 p.m., at which time the Commission has committed speakers for their workshop. If needed, this matter will be continued.

Commissioner Formby stated that as a Commissioner, he takes representations very seriously on public benefits in return for an approval from the LUC. Commissioner Formby added that he has looked at the record and saw no indication of a temporary permit. He asked if Mr. Apo had a photo of the Phonecians boat ramp as they have received comments that this ramp has high walls that require a ladder to access a boat and also that the Ko Olina boat ramp was a more user-friendly boat ramp.

Mr. Apo stated that he did not have a photo but that the Phonecians ramp is much longer with similar walls to the Ko Olina ramp. Mr. Apo added that they have heard issues on improvements to the Phonecians facility and are trying to make it more operational.

Commissioner Formby asked what the cost was to launch at Ko Olina since Phonecians charges \$125 to launch there.

Mr. Apo replied that the \$125 fee at Phonecians is a registration fee and at Ko Olina, they waived fees, including insurance, registration, etc.

Commissioner Formby asked if there was any financial relationship between Phonecians and Ko Olina.

Mr. Apo replied that there is no financial relationship between Ko Olina and Phonecians.

Commissioner Formby asked if there was a public fuel dock in Ko Olina.

Mr. Apo replied in the affirmative and added that you do not need to be a member to use the fuel station.

Commissioner Formby raised questions on the \$400,000 worth of improvements paid by Ko Olina toward the alternate ramp and questioned the type of work that was done towards improvements at the Phonecians facility.

Mr. Apo stated that \$400,000 was paid for improvements to the Phonecians facility. Initially it was a haul out for boats to lift and haul them out to dry dock. Mr. Apo noted that the money was actually paid to Phonecians for improvements to their facility, construction costs, and for putting in the ladders and bumpers. Mr. Apo added that prior to their decision to shut down the Ko Olina boat ramp, their biggest complaint was the lack of 24-hour access by boaters at the Ko Olina boat ramp.

Commissioner Formby asked if a boat ramp previously existed at Phonecians, as there was a complaint that it was a large vessel haul-out ramp.

Mr. Apo stated that it was originally planned by Phonecians as a haul-out so that the boats could be picked up and hauled out for repairs. Mr. Apo added that the ramp has been converted into a boat ramp as well as a haul-out and the upside of locating the ramp there is that boaters can take their boats out of the water for dry dock repairs.

Commissioner Formby asked what was the administrative decision to prohibit the operation of a 24-hour public boat ramp.

Mr. Apo noted that it was a combination of state issues, security and liability.

Commissioner Kanuha posed a few questions regarding any documentation on complaints related to the operational constraints at the Ko Olina boat ramp, and the Public Access Master Plan.

Mr. Apo noted that he was unsure that they had written complaints, but has had personal discussions with Mr. Aila regarding the need for 24-hour access to the boat ramp. He noted that the discussion happened because of feedback from the community for a more desirable boat ramp in the area and that decision was made to create the public access ramp at Phonicians.

Vice Chair Montgomery commented that William Aila is the harbormaster at Waianae Boat Harbor and asked if Mr. Apo had any documentation about his professional opinion on the qualities of the alternate ramp. Vice Chair Montgomery also asked if it was possible for Mr. Aila to answer questions as to what is adequate for public use and what is safe for boaters.

Mr. Apo replied that he did not have any documentation but will be glad to provide his written testimony or have him answer these questions.

Vice Chair Montgomery also posed questions in reference to Mr. Apo's comments on safety issues and the intoxication by boaters as the reason for the closure of the Ko Olina boat ramp. Vice Chair Montgomery commented that the Coast Guard inspects and convicts violators at the public boat harbors and asked if there is something in the record to support Mr. Apo's comments on intoxication or convictions at the Ko Olina boat ramp.

Mr. Apo stated that they had no records.

Vice Chair Montgomery noted that this is a lot of information to digest today and noted that this is a serious matter. Vice Chair Montgomery added that hopefully, we all can be prepared for a continuation to find out whether the LUC conditions were met.

Commissioner Kanuha commented that based on what Mr. Apo has said, the only difference is the 24-hour accessibility of the Phonicians ramp as the

insurance requirements are the same. Commissioner Kanuha asked if they could provide any user information on the new ramp and its frequency of use.

Mr. Apo noted that they will get that information from Phonecians and provide it to the LUC.

Vice Chair Judge commented that the Phonecians is a completely separate entity from the Ko Olina Resort and questioned what would happen when the Phonecians no longer wanted to operate this boat ramp and shuts it down.

Mr. Apo replied that the burden would fall back to Ko Olina to look for another site and added that they have only a contractual relationship with Phonecians to operate that as a public ramp.

Vice Chair Judge asked if there was any requirement of the Phonecians to operate on a 24-hour basis and if this ramp was easy to find.

Mr. Apo stated that it is a requirement under their contract with the Phonecians that they operate as a 24-hour public boat ramp. He added that it is located right off a major exit (Kalaeloa exit) off the H-1 freeway.

Commissioner Formby asked what were the operating hours at the Ko Olina ramp. Mr. Apo replied that it was from sunrise to sunset and access was thru the guard shack entrance and resort security, and if a person was to drive in at night without a boat, they were allowed access.

Commissioner Piltz posed questions relative to the 20 acres of shoreline access and easements. Mr. Apo replied that all easements have been designated to the state.

Chair Sakumoto posed questions related to condition 1 the required development of affordable housing and the 10% requirement, plus the 10% of resort residential units not operated as full service hotels. Chair Sakumoto also asked what the total number of residential units have been built or under construction.

Mr. Apo was unsure of these numbers and noted that he would need to refer to Mr. Kurahashi.

Chair Sakumoto posed questions relative to condition 3, the construction of offsite infrastructure that satisfies the City and the State. Mr. Apo replied that he believes this condition has been satisfied.

Chair Sakumoto posed a question on condition 6 related to testing sinkholes for fossil bird bones.

Mr. Kurahashi, planning and zoning consultant for Ko Olina, stated that they worked with the State's Historic Preservation Division on sinkhole mitigation measures and archeological plan. Mr. Kurahashi also noted that of the 1411 units constructed or planned for Ko Olina, the 392 affordable units are well over the 10% requirement and added that they have no resort condo units operating as full service hotel facilities and presently there are no units in that category so that second category is at zero.

Chair Sakumoto posed questions on condition 8, construction of 4,000 hotel rooms and resort condo units with at least 50% as full service hotel facilities.

Mr. Apo noted that they are working to get to that number, but presently have 387 units at the Ihilani hotel and in the process of building 750 units at the Ko Olina Beach Club. Also, the Beach Villas will add 247 more units.

Chair Sakumoto commented that a part of the requirement for the condition relates to jobs created from these hotel rooms and asked if the non-full service hotel facilities are creating jobs.

Mr. Apo replied that presently they do not have any non-full service facilities.

Chair Sakumoto raised questions on condition 9, sound impacts from aircraft noise contours and the creation of covenants for the residents affected. Chair Sakumoto asked if there was a diagram showing the affected lots.

Mr. Apo noted that it was his understanding that studies were done when Kalaeloa was an operating military base and covenants were recognized. Mr. Apo added that since the base has been closed, those contours have significantly changed and does not impact the resort. Mr. Apo stated that he will be providing the documents on this.

Chair Sakumoto noted that due to a number of questions that still require further information and follow up, the LUC will continue this process at a later date.

Public Witness

1. Carroll Cox

Mr. Cox expressed his appreciation to the LUC for allowing him to provide his testimony and stated that he is the President of Envirowatch and requested to be apprised of the next meeting on this matter. Mr. Cox presented some photos of the boat ramp at Ko Olina and of the alternate ramp, which is the Phonecians dry dock operation. Mr. Cox also stated that he believes there are no formal records reflecting any official capacity that Mr. Aila held in this manner in reference to representing the fishing community. Mr. Cox noted that the critical concern is public safety adding that this is a haul out ramp for vessels of Phonecians' operations. Currently, there is an operating crane sharing the ramp and also noted that the order has a finding of a 125 foot buffer zone for the concern of explosives but the new public restroom is located right next to the propane gas tanks. Mr. Cox also noted a terrible surge that comes into the harbor. Mr. Cox added that he just wants to keep the public safe.

Commissioner Formby asked if people could board their boats from the side ledges. Mr. Cox replied that they could thru the ladders and that it would also depend on the height of the boat and how it sits in the water. Mr. Cox could not recall if there were any rubber bumpers, but that the grade of the slope, parking stalls, and wash racks were a requirement, but not provided. He commented that there were many deficiencies in the trade off. Mr. Cox stated that he was a patrol boat operator and fish and game warden and very familiar with safety for boating and operations.

Vice Chair Montgomery asked what would be needed at Phonecians to make this a safe and public access. Mr. Cox replied that the entity needs to build on a safety factor; remove the crane, don't allow the boats to cross over, install the wash ramps, provide parking stalls, don't charge a fee, and have harbor radio contact for coordination. Also, the high surge is a safety hazard. Mr. Cox noted that there are several safety issues that still need to be addressed.

Vice Chair Montgomery posed a few questions regarding the public's opinion and any comments from the Hawaii Fishing News. Mr. Cox replied that he has four articles detailing the facts and of what is safe and adequate.

Vice Chair Judge asked Mr. Cox to briefly explain what is Envirowatch. Mr. Cox stated that they are a non-profit informal network of entities and public officials, designed to simply serve as a conduit. He added that they are not trying to duplicate Sierra Club, but speaks for the people as a podium. Mr. Cox noted that he was unsure on the number of members, but that number depends on the issue and added that public access, environmental justice, and environmental racism are all important to them. Mr. Cox also noted that their mission statement looks to waste and abuse in government issues.

Commissioner Formby commented that there does not appear to have a 24-hour operation requirement in the original condition and asked if there was a benefit of a 24-hour operation if a boat owner with engine trouble could not get back in time. Mr. Cox replied in the affirmative and noted that a fireman was unable to come here today to testify that having this boat ramp at Ko Olina open 24-hours would greatly benefit the community because if a person had a heart attack or major injury at sea, this would serve a critical part of having someone back to shore faster. Mr. Cox stated that this is important and suggested that the LUC require a 24-hour operation at Ko Olina. He noted that there should not be any problems since the Ko Olina people operate their boats in the marina and harbor at night. Mr. Cox also stated that he had never launched a boat at Ko Olina or Phonecians and that he does not own a boat.

Chair Sakumoto noted that normally the public testimony is taken first. He asked Mr. Apo if they wanted to respond to the comments made and noted that the LUC will need to continue this matter at a later date.

Mr. Apo stated that regarding the parking requirement, there are now 20 stalls at Phonecians. He added that they will continue discussions with the Phonecians regarding safety issues and noted that there is radio communication as they continue to share entrance of the deep draft harbor. Mr. Apo also stated that they will continue to make improvements at Phonecians for a functional ramp at the Kalaeloa site.

A lunch break was taken at 12:00 p.m. The meeting reconvened at 1:15 p.m.

LAND USE COMMISSION WORKSHOP

Chair Sakumoto reconvened the meeting and introduced Sam Lemmo, Department of Land and Natural Resources, and Dennis J. Hwang, to discuss the production and use of the Hawaii Coastal Hazard Mitigation Guidebook.

Chair Sakumoto also noted that during the presentations, the parties and the Commissioners should refrain from any discussion on any matters pertaining to this Commission.

1. Sam Lemmo

Mr. Lemmo stated that he is from the DLNR's Office of Conservation and Coastal Lands Division. Mr. Lemmo provided a brief summary of their duties and provided a copy of the Hawaii Coastal Erosion Management Plan.

2. Dennis Hwang

Mr. Hwang made his video presentation on the Hawaii Coastal Hazard Mitigation Guidebook.

Commissioner Kanuha asked if the guidebook is being used for decision making by any government agency.

Mr. Hwang noted that they have gone through a series of workshops in August and September introducing the guidebook to the planning communities and the planning departments in all four counties. He added that each county has the option to use the guidebook to their preferred extent of the process. Mr. Hwang added that the idea is to have a common denominator in all the counties.

Mr. Lemmo stated that the DLNR is a regulatory agency for conservation lands and regulate land uses for conservation and beaches. Mr. Lemmo added that they do not deal with large development projects but has existing authority to ask an entity to do a hazard assessment if they believe one is necessary. Mr. Lemmo also noted that they would envision that the LUC would do the same before making a decision on a coastal property to ask for a hazard assessment.

Commissioner Piltz commented that in Maui, there was a hazard study conducted by Dr. Flecture, and a group of developers hired their own person to

conduct another study, which refuted Dr. Flecture's hazard study, and asked what they thought of this study.

Mr. Lemmo stated that he has personally worked with Dr. Flecture and the study, which Commissioner Piltz is referencing, was for erosion only. Mr. Lemmo added that Dr. Flecture's method is sound and accepted by many and has withstood many challenges.

Vice Chair Judge asked if there is an acceptance method by which to establish the erosion rate.

Mr. Hwang stated that there is a standard provided and how each agency needs to build a process in the guidebook. Mr. Hwang explained that his background before land use law was in geology.

Chair Sakumoto commented that the LUC has a quasi-judicial process and asked at what stage would there be a legal basis for the LUC to have this information so that conditions could be imposed and addressed.

Mr. Hwang stated that they are trying to provide agencies with strategies and options that are easy to implement. Mr. Hwang noted that for the LUC to address it early helps and the conditions would run with the land. He added that the idea of innovative design, such as if it is a large parcel they could still create the same number of units with more protection and the idea of hazard mitigation could relax some standards to encourage the applicant.

Mr. Lemmo also noted that he believes some authority is in Chapter 205a that allows you to ask for that information. He added that it is hard for the Commission to make a decision if you did not know if there is an erosion hazard.

Chair Sakumoto commented that those are all good thoughts and added that they need to consider state resources, which does give the LUC authority on issues that may impact the environment. Chair Sakumoto also noted that recently, there has been pressure for development on oceanfront properties. He added that the LUC takes their job seriously and expressed his appreciation for the presentation and noted that the LUC will see how they could incorporate these concepts in the Commission's decision-making process.

Mr. Lemmo expressed his appreciation to the LUC for allowing the presentation and noted that they are excited in being able to inform other

agencies about their efforts and glad that the LUC was interested in receiving this information.

The meeting adjourned at 2:25 p.m.

(Please refer to LUC Transcript of January 6, 2006 for more details on this matter.)