

LAND USE COMMISSION
MINUTES OF MEETING

January 4, 2007

Leiopapa A Kamehameha
2nd Floor
Conference Room 204
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Kyong-su Im
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: Michael Formby

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
Kathryn Garrison, Intern

Chair Judge called the meeting to order at 10:45 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the minutes of December 8, 2006. Commissioner Teves seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- January 18-19 the LUC will be on Maui to take action on the Hale Mua docket item.
- February 1-2 the LUC will open hearings on Oahu and will add a declaratory ruling.

Mr. Ching noted that although the hearing dates are set, the docket items and island locations may be shifted.

There were no questions posed by the Commission.

A87-617 BRIDGE AINA LE`A, LLC and BANTER, INC. (Hawaii)

Chair Judge stated that this was a continued action meeting to receive a status report from Petitioner Bridge Aina Le`a LLC and Banter, Inc..

APPEARANCES

Barney Bays, Esq., represented Petitioner

Bobbie-Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Bays began his presentation on the motion to change petitioner's name and caption. A portion of the property owned by Banter, Inc. has been returned to Bridge Aina Le`a, LLC.

Chair Judge posed questions regarding the two mortgages for the property.

Mr. Bays noted that to his knowledge, there were no mortgages on the property only an open line of credit with the First Hawaiian Bank on which \$1,000 has been drawn.

Ms. Leithead-Todd stated that the county had no objections to the motion.

Mr. Yee commented that the state also had no objections to the motion.

Commissioner Piltz moved to accept petitioner's motion to change name to Bridge Aina Le`a, LLC. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Teves, Im, Montgomery, Wong, and Judge.

The motion passed with 6 yes, 3 absent.

Mr. Bays described the new exhibits which were recently submitted and provided information to complete his status report. Mr. Bays discussed and referenced the three aerial photographs of the project site which had been submitted to the LUC today.

Commissioners Kanuha and Contrades entered the meeting at this time.

Commissioner Im referenced exhibit 2 and questioned what grading was done since the last amendment, the amount of money spent by the petitioner since the approval, and the cost sharing agreement with Goodfellow Brothers.

Commissioner Kanuha asked what date these photos were taken.

Mr. Bays replied that the photos were taken last Saturday (December 30, 2006).

Commissioner Im posed questions related to the emergency access road and the amount of money paid to the county.

Mr. Bays noted that the emergency access road was improved and built as a joint project with the county. Mr. Bays added that he was unsure on the amount paid to the county and will provide that information later.

After a discussion, Chair Judge commented that since the approval of the amendment in early November of 2005, the petitioner has taken very few steps in bringing the development forward. Chair Judge added that she is concerned about the affordable homes and if they would be built to the timetable established by the petitioner. Chair Judge commented that she would like to see another status report on the progress that the petitioner has taken in the next 6 months.

Commissioner Im stated that they all want to see this project move forward and that the affordable homes are delivered. Commissioner Im asked the petitioner to describe the progress which they expect to occur within the next 6 months and where the financing for those developments will come from.

Mr. Bays stated that Bridge Capitol will fund the development for the next year and expects to drill and construct two wells in the next 6 months. Mr. Bays added that they also hope to get a joint venture partner on board within this period.

Commissioner Im asked if petitioner had a construction work schedule.

Mr. Bays commented that they have a preliminary schedule and could provide it before the next July update meeting.

Commissioner Piltz commented that the exhibits in the December 14 submittal contains a construction schedule, but that the materials in this submittal were all outdated. Commissioner Piltz also raised questions regarding the contract with Goodfellow Brothers.

Commissioner Kanuha posed questions regarding the fallout with Cole Capitol and the constraints faced by the petitioner in securing a joint venture partner. Commissioner Kanuha commented that he did not like playing project manager and that his only interest is to ensure that the affordable housing is constructed on a timely basis. Commissioner Kanuha asked if petitioner is working with the county administration and council.

Mr. Bays stated that the petitioner needs to have more discussions with the county.

Chair Judge posed a few questions related to the contract for golf course design services executed by Michael Bowen (CEO of Westwood Development), the drilling of wells in the next 6 months, exhibit D (SSFm contract), and sought clarification as to which parcels were identified for the affordable housing units.

Commissioner Wong noted that he had a serious concern as to the petitioner's creditability and suggested that the petitioner re-examine this project.

After a discussion, Commissioner Wong moved that the petitioner return to this body in 6 months and give the Commission a status report. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Commissioners Wong, Piltz, Contrades, Im, Kanuha, Montgomery, Teves, and Judge.

The motion passed with 8 yes, 1 absent.

Commissioner Kanuha stated that he would like to see specifics on the affordable housing component in relationship to the policy and administration's position of the County of Hawaii.

Commissioner Piltz asked that petitioner provide the LUC with an updated construction timeline for the development of the affordable homes and related infrastructure (such as sewer, water, mass grading, etc.).

A recess break was taken at 12:00 p.m. The meeting reconvened at 1:20 p.m.

A06-769 1250 OCEANSIDE PARTNERS (Hawaii)

Chair Judge stated that this was a continued action meeting on A06-769 1250 Oceanside Partners:

- To determine whether the preparation of a Supplemental Environmental Impact Statement is warranted pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 1,418.739 acres of land from the state Land Use Agricultural District to the state Land Use Rural District and approximately 16.016 acres of land from the state Land Use Agricultural District to the state Land Use

Conservation District at Honauino 3 and 4, Hokukano 1 and 2, Kanaeue 1 and 2, Halekii, Keekee, Ilikahi, Kanakau, Kalukalu, and Onouli 1, North and South Kona, Hawaii for residential, golf course with related improvements, and park uses within the Hokulia development.

- To determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, in the event a Supplemental Environmental Impact Statement is warranted.

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner

Bobbie-Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Public Witness

1. Koalani Kaulukukui

Ms. Kaulukukui stated that she was speaking on behalf of OHA and stated that OHA respectfully requests that the LUC require the petitioner to prepare an SEIS. The OHA believes that: 1) an SEIS is required by law under HRS 343 and HAR 11-200-27; and 2) the 1993 EIS does not adequately support the project to protect cultural resources and customary rights.

Commissioner Im posed questions regarding OHA's belief on the differences in land use and change, and positive or negative impacts.

Commissioner Piltz commented that in December 2006, the LUC conducted a public tour of the project site. Commissioner Piltz asked if anyone from OHA attended the site visit.

Ms. Kaulukukui stated that no one from OHA attended the site visit.

Commissioner Kanuha had a few questions related to OHA's reference to HAR 11-200-27 regarding the increase of or change in intensity of environmental impacts .

Vice Chair Montgomery referenced the petitioner's follow up letter to OHA regarding their invitation for a tour of the petition area. Vice Chair Montgomery asked if OHA will be accepting this invitation.

Ms. Kaulukukui stated that although she could not speak for Mr. Namuo, the invitation would be accepted.

After a brief discussion, there were no further questions posed for Ms. Kaulukukui by the parties and the Commission.

Mr. Tsukazaki requested that a recess be granted to allow him to consult with his client.

Petitioner's Witness

1. Lee Sichter

Mr. Sichter referenced the EIS and discussed the comments and concerns of OHA. Mr. Sichter referenced matters of storm runoff impacts, significant archaeological and cultural impacts, and traditional and customary rights.

A recess break was taken at 2:25 p.m. The meeting reconvened at 2:35 p.m.

Mr. Sichter continued to reference the EIS and discussed the rural character of the development, the impact of restoring trails, public access, and the shoreline park.

Ms. Leithead-Todd stated that the county's position remains the same and added that the county does not believe that the SEIS is required.

Mr. Yee noted that the state concurred with the county that the SEIS is not required for this project.

Commissioner Im stated that he agrees with both the county and the state that the reduction on impact without substantial change for this project does not require an SEIS. Commissioner Im asked if petitioner would agree that there is a difference between agricultural use and rural use on a property.

Mr. Tsukazaki stated that for this project, he believed that you could have the same type of project whether designated in agricultural or in the rural district.

Chair Judge left the meeting at this time.

Commissioner Im commented that he agreed with petitioner that the project could be the same whether designated in agricultural or rural use, but questioned if there is a difference between agricultural or rural use in perpetuity. Commissioner Im also had questions and concerns for the re-designation since initially the EIS noted a reclassification from agricultural to urban use.

Commissioner Kanuha asked the petitioner if their original EIS was prepared in anticipation of urbanizing portions of the project area.

Mr. Sichter replied in the affirmative and added that the EIS was approved and accepted by the county.

Commissioner Kanuha continued to discuss and pose questions related to the county's general plan, § 11-200-26, and the total petition area of approximately 1500 acres. Commissioner Kanuha commented that he was interested in hearing from someone who could validate that over the past 13 years there has been no changes in anticipated impacts or mitigation plans.

A recess break was taken at 3:35 p.m. The meeting reconvened 3:45 p.m.

2. Bob Stuit

Mr. Stuit provided testimony that he has been involved with the project since 1993 and was the consultant who worked on the original physical planning and design of the project. Mr. Stuit added that all of the impacts found were addressed adequately and mitigated in the 1993 EIS.

Commissioner Im referenced page 114 of the EIS and posed questions related to the re-designation of 863 acres of lands for low and medium density urban use.

Commissioner Kanuha questioned Mr. Stuit that based on his responses to Commission Im's questions, why did he believe that the action has not changed substantially in size, scope, intensity, and use.

Mr. Stuit stated that he believed the impacts have not changed substantially and that the impacts that were addressed in the original EIS are the same impacts that would occur with the new action.

Ms. Leithead-Todd stated that the county had no questions for Mr. Stuit and that they were fully aware of what occurred on this property.

Vice Chair Montgomery asked what type of coordination between the OP and OHA had occurred since they were both state agencies.

Mr. Yee noted that OHA is a unique agency outside the legislative branches of the state and the coordination is primarily with respect to logistics. Mr. Yee added that it is a standard practice of the OP to invite comments and that either office does not control each other's position.

Commissioner Kanuha commented that because the LUC was not the accepting authority of the original EIS, there needs to be a level of coordination between the petitioner and the Hawaii County Planning Director.

Ms. Leithead-Todd noted that she has discussed this matter with Chris Yuen, Hawaii County Planning Director, and they agree that no SEIS is required under the current state law.

Commissioner Im stated that given the history of this project, he would like to continue this hearing to allow the petitioner time to respond to these issues. Commissioner Im added that his concern is that the original EIS proposed agricultural use and 800+ acres to be reclassified to urban via a request to change the district boundary amendment processed through the LUC. Commissioner Im asked if the agricultural use changes to rural (even though the scope of intensity of the development has decreased) whether that would be a substantial change in use and scope pursuant to 11-200-26, HAR. The original EIS described agricultural use with a portion of land to come before this body for reclassification to urban. Now the petitioner is coming before the LUC proposing a change to rural. Should this be considered a substantial change? Commissioner Im had a concern that this was not the understanding of the public or the county at the time of the EIS acceptance and approval.

EXECUTIVE SESSION

Commissioner Piltz moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Wong seconded the motion. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 4:25 p.m.

The open meeting reconvened at 4:40 p.m.

Commissioner Wong noted that the EIS referenced 863 acres of land to be reclassified agricultural to urban and that 500+ acres of land to be reclassified from agricultural to rural. Commissioner Wong asked if that was disclosed in the prior EIS.

Mr. Tsukazaki replied that it was not. Mr. Tsukazaki added that the project was characterized as a rural residential project with 863 acres proposed to be urbanized at that time.

Commissioner Wong asked if the 500+ acres from agricultural to rural was discussed in the prior EIS in any way.

Mr. Sichter replied that the FEIS did not discuss the possibility that any portion of the project would be reclassified to the rural district, although the project was characterized as a rural residential development. Mr. Sichter added that under the current proposal, the approximate number of homes or the impacts created are not any different from the impacts disclosed in the FEIS.

Mr. Yee questioned what the acreage was for the golf course.

Mr. Sichter stated that he did not have the exact acreage but believed that it was 220 acres.

Commissioner Im asked if the 1993 EIS contemplates the impact of converting agricultural lands into rural use, particularly in the areas that are not covered within the 863 acres.

Mr. Sichter stated that the EIS did not specifically address the possibility that the property would be reclassified to the rural designation, but that it characterized the project as a rural residential. Mr. Sichter referenced page 41 of the EIS and added that the impact is marginal because the bulk of the land is not high value agricultural land.

Commissioner Im asked if this area is related to the coffee growing belt.

Mr. Sichter stated that the mauka boundary of the project is adjacent to, but does not lie within the coffee belt.

After a discussion, Commissioner Piltz commented that there are many questions that still need to be resolved, but that time is of the essence today.

Commissioner Piltz moved to continue this discussion to tomorrow's meeting. The motion was seconded by Commissioner Im. The motion was approved by a show of hands.

The motion passed with 7 yes, 2 absent.

Presiding Officer Montgomery stated that this item will be the second item on the agenda at tomorrow's meeting.

The meeting was recessed at 5:00 p.m.

(Please refer to LUC Transcript of January 4, 2007 for more details on this matter.)