

LAND USE COMMISSION
MINUTES OF MEETING

March 16, 2007

Leiopapa A Kamehameha
4th Floor
Conference Room 405
235 So. Beretania Street
Honolulu, Hawaii

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

COMMISSIONERS ABSENT: Lisa Judge

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

Presiding Officer Formby called the meeting to order at 8:40 a.m.

A07-772 A&B PROPERTIES, INC. (Maui)

Presiding Officer Formby stated that this was an action meeting on Docket No. A07-772 A & B Properties, Inc.: 1) To determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 94.352 acres of land currently in the Agricultural District to the Urban District for residential, commercial, and park uses at Waiakoa, Maui, Hawaii; and 2) To determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

Ben Matsubara, Esq., represented Petitioner
Curtis Tabata, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Presiding Officer Formby noted that the Commission had received email communication from the County of Maui indicating that they will not be present at today's proceedings. Their communication also indicated that they have no objection to the LUC being the accepting authority and agreed with the petitioner that a full EIS should be prepared.

Presiding Officer Formby also noted that there were no public witnesses.

Mr. Matsubara began his presentation and stated that petitioner was seeking to reclassify approximately 94.3 acres for the development of 600 residential dwellings, a small neighborhood commercial area, as well as open spaces and parks with trails and bike paths. Mr. Matsubara added that petitioner believed that the LUC is the appropriate accepting agency and that due to the scope of the project, it may result in environmental impacts and petitioner had agreed to proceed with the preparation of a full EIS for this petition.

Mr. Yee noted that the State had no objections to the LUC being the accepting authority and agreed with petitioner that the proposed action may have a significant effect to warrant the preparation of an EIS.

Commissioner Wong moved that the LUC be the accepting authority for the reclassification of approximately 94.352 acres of land and that the proposed action will

have a significant effect to warrant the preparation of an EIS. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

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

The motion passed with 8 yes, 1 absent.

A recess break was taken at 8:45 a.m. The meeting reconvened at 8:50 a.m.

DR06-33 BIG ISLAND COUNTRY CLUB HOMES, LLC (Hawaii)

Presiding Officer Formby stated that this was an action meeting on Docket No. DR06-33 Big Island County Club Homes, LLC.

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Presiding Officer Formby noted that on March 15, 2007 the LUC received a request for withdrawal of the request for a declaratory order from Mr. Tsukazaki.

Presiding Officer Formby also noted that the LUC had been notified that the County of Hawaii would not be present at today's proceedings.

Mr. Tsukazaki stated that petitioner was requesting a withdrawal of their request for a declaratory order.

Mr. Yee noted that the State supports the petitioner's request for withdrawal.

Presiding Officer Formby accepted the request for withdrawal and concluded this agenda item.

A recess break was taken at 8:55 a.m. The meeting reconvened at 9:00 a.m.

DR06-32 MARK J. BENNETT, AS ATTORNEY GENERAL, STATE OF HAWAII (Oahu)

Presiding Officer Formby stated that was an action meeting on DR06-32 Mark J. Bennett vs. Richard W. Gushman, II, et al to consider the Petition for Declaratory Order Regarding Pre-Condition No. 9.B. of Land Use Commission's September 23, 1998 Decision and Order in Docket No. A87-613.

Presiding Officer Formby noted that the LUC will be served by David Karlen, who has been retained to provide legal counsel to the Commission on this docket.

Presiding Officer Formby also noted that there were no public witnesses present.

Presiding Officer Formby then described the Commission's procedure for processing Petitions for Declaratory Order, as it differs in many ways from the procedure governing Petitions for District Boundary Amendments.

APPEARANCES

Brian Aburano, Esq., represented Petitioner
David Karlen, Esq., represented State of Hawaii
Katherine Leonard, Esq., represented Intervenor
Melissa Lambert, Esq., represented Intervenor

EXECUTIVE SESSION

Commissioner Im 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 Contrades seconded the motion. The motion was approved by voice votes.

The Commission entered into executive session at 9:05 a.m.

A recess break was taken at 9:40 a.m. The open meeting reconvened at 9:45 a.m.

Ms. Leonard stated that she was counsel representing both the Kapolei Property Development (KPD) and the Trustees for James Campbell. Ms. Leonard added that they had filed the petition to intervene since the rules allow for intervention for all persons who have a property interest in the subject lands. Ms. Leonard added that KPD owns the subject lands. Ms. Leonard argued that the LUC should either dismiss the application or allow KPD to intervene and conduct a contested case hearing.

Mr. Aburano stated that they had not prepared any comments on the KPD intervention and would make a limited objection to KPD's petition to intervene. Mr. Aburano also noted that to make this a more efficient proceeding, KPD and the Trustees for James Campbell should file a joinder so not to have these two parties making duplicate arguments.

Presiding Officer Formby noted that the LUC was only taking action on the KPD's petition to intervene at this time.

After a brief discussion, Commissioner Piltz moved to allow KPD to intervene in this matter. The motion was seconded by Commissioner Im.

The Commission was polled as follows:

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

The motion passed with 8 yes, 1 absent.

Presiding Officer Formby then entertained a motion to set this matter for contested case hearing.

Commissioner Wong moved to set this matter for hearing. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

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

The motion passed with 8 yes, 1 absent.

Presiding Officer Formby then gave opportunity for the City and County of Honolulu and the State's Office of Planning (OP) to intervene in this docket.

Mr. Kitaoka stated that at this time, the City is not a party and will not be making a motion to intervene. However, Mr. Kitaoka noted that the City would be observing the proceeding.

Mr. Yee noted that the State's OP also would not seek to intervene on this matter.

Ms. Leonard noted that they also represent the Trustees of Campbell Estate and would like to clarify that they would also be recognized as parties to this matter.

Commissioner Im commented that he believed that the trust had been dissolved.

Ms. Leonard stated that the trustees are still the trustees of the trust until they are discharged by the probate court. All of the assets have been distributed with the termination of the trust, however, if there were any potential liabilities and money owed to the trust, they would have to administer those activities until the trust was completely dissolved. Ms. Leonard added that the trustees still actively participate as trustees and that a probate court termination plan for the Estate was in place.

Commissioner Wong asked if KPD had assumed all the rights and interest in the subject land that is before the LUC today.

Ms. Leonard stated that KPD had assumed the rights and any obligations with respect to the 40 acres that the AG is specifically targeting.

Commissioner Wong questioned if Ms. Leonard would be representing both KPD and the Trustees of James Campbell.

Ms. Leonard replied in the affirmative.

Commissioner Piltz then moved to allow the Trustees of James Campbell to proceed in this matter.

Presiding Officer Formby commented that the trustees are already named as respondents by the State of Hawaii and that both parties are already before the LUC.

After a brief discussion, Commissioner Piltz then withdrew his motion.

Presiding Officer Formby recommended that the LUC employ a hearings officer in this matter. Presiding Officer Formby suggested that the LUC employ Anthony

Ching to hear this docket. Mr. Ching will also handle all the procedural matters and set a briefing schedule.

Mr. Aburano noted that they had no objections.

Ms. Leonard stated that they also had no objections.

Commissioner Contrades then moved to employ Anthony Ching as the hearings officer for this matter. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

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

The motion passed with 8 yes, 1 absent.

Presiding Officer Formby noted that Mr. Ching would be the hearings officer for this matter and that he would act only within that capacity. Mr. Ching would also be setting the schedule and overseeing other procedural matters.

Mr. Kitaoka stated that although the City is not a party in this matter, they would request that the parties provide courtesy copies of all filings to the City.

Both Mr. Aburano and Ms. Leonard indicated that they had no objections to providing courtesy copies to the City and to the State's OP.

The meeting adjourned at 10:10 a.m.

(Please refer to LUC Transcript of March 16, 2007 for more details on this matter.)