

LAND USE COMMISSION
MINUTES OF MEETING

October 5, 2007

Naupaka II Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Vladimir Paul Devens
Duane Kanuha
Ransom Piltz
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Lisa Judge
Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Cameron Lowry, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Wade Kersey, Audio Technician

Presiding Officer Kanuha called the meeting to order at 9:15 a.m.

A06-767 WAIKOLOA MAUKA, LCC (Hawaii)

Presiding Officer Kanuha stated that this was a continued hearing on Waikoloa Mauka, LLC's Petition for reclassification of approximately 731.581 acres of land currently in the Agricultural District to the Rural District at South Kohala, Hawaii, for a residential subdivision.

APPEARANCES

Ben Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Brooks Bancroft, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Lorene Maki, State Office of Planning

Admission of Additional Exhibits

Mr. Yee described and offered OP's exhibits 9, 10, and 11.

Mr. Kudo noted that he had some concern on the last minute submission of these exhibits and the handwritten numbers and calculations being used as rebuttal exhibits of petitioner's own expert. Mr. Kudo added that he would have concerns in trying to prepare a response to this last minute submittal.

Mr. Yee noted that Ms. Suzuki-Jones would be explaining the information contained in these documents in her testimony today.

Mr. Kudo noted that although it is up to the LUC, this was highly unusual. The reason the petitioner has called upon a rebuttal witness is because Ms. Suzuki-Jones is testifying today. Mr. Kudo added that he believed it was not appropriate for the primary witness to re-rebut the rebuttal witness.

Presiding Officer Kanuha stated that Mr. Kudo's objections were noted and commented that during the course of the proceedings, Mr. Kudo would be able to cross exam the witness and make his case. The Commission would then consider how to weigh the information that the exhibits provide or not.

Mr. Bancroft stated that although the exhibits were admitted at the last minute and the handwritten notes were unclear, the county took no position on the exhibits.

Commissioner Piltz concurred with the petitioner and the county, adding that he believed that the calculations on the exhibits were not a fair comparison.

Commissioner Teves commented on the LEED issue and noted that in his opinion, the Commission should not require LEED in any of their projects.

Presiding Officer Kanuha noted that although there is a concern on this late submittal, the petitioner would have the opportunity to cross examine the witness and make their case. Presiding Officer Kanuha then admitted OP's exhibits 9, 10, and 11 into the record.

Mr. Kudo asked whether the Commission was to have public witness testimony today.

Presiding Officer Kanuha stated that the opportunity for public witness testimony had been provided for during yesterday's proceedings. There will not be any public witness testimony heard today.

State's Witness

1. Gail Suzuki Jones

Ms. Suzuki-Jones was offered as an expert in the field of energy efficiency.

Mr. Kudo noted that his concern was that Ms. Suzuki-Jones had expertise in the area of LEED policy and that she was not a licensed architect.

Mr. Bancroft stated that the county would defer to the Commission.

Presiding Officer Kanuha stated that Ms. Jones would be admitted as an expert witness in the areas of LEED and LEED policy.

Mr. Yee stated that Ms. Suzuki-Jones would also be testifying on Energy Star and Hawaii Built Green, which are other standards of energy efficiency. Mr. Yee added that Ms. Suzuki-Jones is an energy analyst at the State's Energy Division, which is not dedicated solely to the LEED standard but to energy conservation.

Mr. Yee then offered Ms. Suzuki-Jones as an expert in the field of energy efficiency. There were no objections expressed by the parties. Ms. Suzuki-Jones was then admitted as an expert in the area of energy efficiency.

Ms. Suzuki-Jones discussed the various standards for determining whether a home was built “green,” such as LEED for homes, Energy Star standards, and the Hawaii Built Green programs.

A recess break was taken at 9:50 a.m. The meeting reconvened at 10:00 a.m.

Mr. Kudo posed questions to Ms. Suzuki-Jones regarding her involvement in a project’s design phase, cost of materials, supervision of a construction project, inspection of final development, certification rating process, and LEED requirements.

Mr. Bancroft had a few questions regarding LEED requirements in relation to current laws, if any, and the Palamanui project that had volunteered to do LEED.

Commissioner Piltz posed questions related to carbon emissions and building materials. After a brief discussion, Commissioner Piltz commented that he did not believe that the LUC should be imposing LEED standards until the Legislature sets a statewide mandate.

Commissioner Devens questioned who would enforce compliance, should the LUC impose LEED standards on a project.

Ms. Suzuki-Jones stated that LEED requirements could be included in the CC&Rs. Enforcement would be up to the homeowners’ association or whoever was to enforce all the other covenants.

Commissioner Devens noted that the LEED program had been successful in the commercial development and wondered how that came about.

Ms. Suzuki-Jones stated that there are 14 states and approximately 30 local governments that have mandated LEED. Ms. Suzuki-Jones added that the commercial development’s success came about because laws were changed mandating the requirements.

Commissioner Contrades asked whether Ms. Suzuki-Jones believed that LEED should be required for all housing.

Ms. Suzuki-Jones noted that she did not believe it was necessary in all housing because renovations, as an example, would be difficult and unreasonable.

Commissioner Contrades commented that as a Commissioner, he did not believe that the LUC should be the body that requiring this program. The Legislature required it only on State buildings. Commissioner Contrades added that since the LUC does not have an enforcement arm, the requirement should be placed in the building code where the county has the enforcement.

Presiding Officer Kanuha posed a few questions regarding compatibility between retrofitting an existing building or new construction, and whether there was compatibility between LEED and the Uniform Building Codes.

Ms. Suzuki-Jones noted that there are certain areas where our code, the international code, and LEED are on different levels. However, they are all working towards a more coordinated effort.

Presiding Officer Kanuha questioned whether different LEED certified personnel would review and score a project the same or differently.

Ms. Suzuki-Jones noted that the process goes through one of the reviewers. The submittals and the applicant would have a chance to challenge any reading that the USGBC makes on a submittal. Ms. Suzuki-Jones added that there is a possibility that there could be different interpretations.

Commissioner Piltz had a few questions on LEED standards that could reduce or delete mold and the use of blue treated wood.

After a brief discussion, there were no further questions posed for Ms. Suzuki-Jones by the parties or the Commission.

2. Lorene Maki

Ms. Maki stated that she was a staff planner with the Office of Planning (OP). Ms. Maki summarized the position of the OP and stated that the OP was in total support of the project.

Ms. Maki discussed the agreement reached between the DOE and the petitioner, the negotiations between the West Hawaii Water Company and the petitioner, and the agreement with the DLNR's SHPD regarding recommendations for the archaeological resources. Ms. Maki also discussed the agreement between the DOT and the petitioner regarding a revised TIAR and traffic improvements.

Ms. Maki discussed LEED recommendations and summarized her testimony noting that the OP strongly supports the approval and reclassification of the development to rural subdivision.

Mr. Bancroft referenced the OP's exhibit 1 and noted a few corrections to recommended Condition No. 3 and Condition No. 10.

Presiding Officer Kanuha commented that the petitioner already had the rezoning entitlements. Presiding Officer Kanuha wondered if the OP's proposed conditions were already imposed on the property.

Ms. Maki stated that they were not, noting that the OP did not receive the zoning ordinance until recently with the county's conditions.

Petitioner's Rebuttal Witness

1. Susan Irvine

Ms. Irvine stated that she was a licensed architect at Architects Pacific Incorporated and also a LEED certified architect for three years.

Ms. Irvine discussed the type of work she performed as a LEED certified architect. Ms. Irvine also discussed her training and certification for LEED. Ms. Irvine discussed past projects and cost to implement LEED standards. Ms. Irvine added that LEED should not be imposed on this project but should rather remain a voluntary choice for the petitioner.

A recess break was taken at 11:25 a.m. The meeting reconvened at 11:30 a.m.

Ms. Irvine referenced and discussed petitioner's exhibits 63 and 64 regarding LEED's cost percentage.

Mr. Bancroft noted that the county had no questions for Ms. Irvine.

Mr. Yee posed questions regarding the four federal projects that incorporated various energy savings but no LEED certification, LEED for homes, the points system, and calculation for certification.

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

Presiding Officer Kanuha then closed the evidentiary portion of the hearing and noted that the parties should draft their individual findings of fact, conclusions of law, and decision and order based upon the record of this docket. The parties were encouraged to a stipulation and the parties had agreed to a partial or fully stipulated order. The proposed stipulated order should be received by the LUC no later than the close of business December 7, 2007. Any proposed stipulation would be considered at a meeting in January 2008 on the Big Island.

The meeting adjourned at 11:55 a.m.

(Please refer to LUC Transcript of October 5, 2007 for more details on this matter.)