

LAND USE COMMISSION
MINUTES OF MEETING

November 1, 2007

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

COMMISSIONERS PRESENT: Kyle Chock
Vladimir Devens
Lisa Judge
Duane Kanuha
Normand Lezy
Ransom Piltz
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: Thomas Contrades

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

Presiding Officer Kanuha called the meeting to order at 10:05 a.m.

ADOPTION OF MINUTES

Presiding Officer Kanuha noted that the Adoption of Minutes for October 4 and 5, 2007 would be deferred.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the LUC will travel to Molokai on November 15-16 for the Laau Point FEIS. Mr. Ching noted that the January 2008 meetings will be shifted to the 2nd and 4th week due to the holiday season. The proposed meeting dates will fall on January 10 and 11 and January 24 and 25.

There were no questions for Mr. Ching posed by the Commission.

Presiding Officer Kanuha reminded the Commissioners to notify Sandy of their absence, should they find a conflict in their schedule. Presiding Officer Kanuha then welcomed the two newest Commissioners, Normand Lezy and Kyle Chock.

A06-770 THE SHOPOFF GROUP, L.P. (Hawaii)

DK stated that this was an action meeting to consider motion to amend The Shopoff Group, L.P.'s Final Environmental Impact Statement for the reclassification of approximately 127.94 acres of land currently in the Agricultural District to the Urban District at North Kona, Hawaii for single-family residential and affordable housing units.

APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner
Jesse Souki, Esq., represented Petitioner
Lee Sicther,
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

DK noted that there were no public witnesses.

Ms. Kuwaye stated that the petitioner was requesting that the 19 letters which were comments during the preparation of the EIS be incorporated into the FEIS. Ms.

Kuwaye stated that these letters were inadvertently left out in the earlier filing of the FEIS.

Mr. Yee commented that the state had no objections.

Commissioner Wong moved to amend The Shopoff Group, L.P.'s Final Environmental Impact Statement for the reclassification of approximately 127.94 acres of land currently in the Agricultural District to the Urban District at North Kona, Hawaii . Commissioner Piltz seconded the motion.

The Commission was polled as follows:

Ayes: Wong, Piltz, Teves, Lezy, Devens, Chock, and Kanuha.

The motion passed with 7 yes, 2 absent.

A recess break was taken at 10:15 a.m. The meeting reconvened at 10:20 a.m.

A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (Oahu)

Presiding Officer Kanuha stated that this was an action meeting on Docket No. A06-763 Kapolei Property Development, LLC to consider the Findings of Fact, Conclusions of Law, and Decision and Order.

APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner

Jesse Souki, Esq., represented Petitioner

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Ray Sakai, City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

SEE HOLLY

10-22-07 correspondecne from petitioner regarding energy consv measure cond of approval

By – op would like to withdraw its request for LEED requirement in the d7o – just informed of this change of position at this time – it would affect the final argument – that we are withdrawing our request for a LEED requirement

EXECUTIVE SESSION

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

The Commission entered into executive session at 10:25 a.m.

The open meeting reconvened at 10:35 a.m.

Public Witness

1. David Arakawa

Mr. Arakawa stated that he was the Executive Director of the Land Use Research Foundation (LURF) of Hawaii. Mr. Arakawa discussed energy efficiency and offered a condition that the LUC could possibly impose related to the USGBC voluntary requirements and to encourage petitioner to use Best Efforts in energy conservation.

Commissioner Wong posed questions regarding LEED silver and/or certification requirements, Green Building Council, Best Efforts, and LURF's suggestion of a mandatory or discretionary requirements imposed by the LUC.

Chair Judge entered the meeting at this time.

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

Ms. Kuwaye stated that the Kapolei Harborside project is the last component of the overall vision of Kapolei in the James Campbell's master plan and a part of the City's Ewa Development Plan. Ms. Kuwaye commented that the petitioner had previously argued at length their objections to the automatic order to show cause condition and the imposition of a mandatory LEED condition. Ms. Kuwaye added that

the petitioner supports Commissioner Teves' proposed decision and order as amended in the August 9, 2007 hearing.

Ms. Sunakoda stated that the City has reviewed the order and had no objections or further comments.

Mr. Yee stated that the OP supports the order, however, they have concerns regarding the harbor operations, the airport occasional over-flights, the non potable waterline and project connection, the drainage plan, DOT highway improvements, and the order to show cause condition to ensure timely development.

Commissioner Wong had a few questions regarding OP's withdrawal of a LEED requirement condition.

SEE HOLLY

Dk – reassessment of a mandatory compliance condition re leads – the reason for the withdrawal was a change in policy – I interpret that as a matter of how the state is considering how to implement the policy rather than a policy shift to not pursue that – By – the state supports the encouragement and not a mandatory requirement of lead Dk – the auto osc – the state approaches their review of the petition using the standards provided and rules, does the state view the e boundary petition from the overall land use patterns comprehensive from a long range policy standpoint of does the state give additional weight to these pet because of the specifics

By – you cannot or we do not make that kind of distinction between specific circumstances – given the nature of a contested case hrg if you restrict solely to long range plng I am not sure if you can satisfy all of the requirements of the dba - you have to look at all the criteria to fulfill all things to consider – we do look at the individual circumstance upon review –

Dk when the pet is submitted to the luc for the reclassification i.e. ag to urban – if that pet is granted based on the standards in the rules and regs – does that from the state's perspective is there support related to the specific kind of use that would occur in the pet area irrespective of the use once – are there other entitlement process – zoning permits – is there a difference between what the proj is versus an hsg urban proj, Indus – BY – specific to the kap case – the light Indus – the fact that is light Indus rather than residential was a positive aspect – it provided a necessary component of this community – to kap utilizing the exhibits – this is the last urbanized piece of Kapolei DK– when we look at that map – this one remaining piece is surrounded by urban – there is a long range goal to establish kap as a 2nd city – do you condition a pet based on the specific proj at the time or should there be more weight given – this also leads into leads – if there was a proj 5 yrs ago leads would not be in the picture – over time there

are various aspects – what the project is would not be the main criteria or realistic 5 yrs ago or today

Rw – order to show case – the state op is an interested party – in the event that the pet fails to construct or build as represented would op have standing to bring motion for an order to show cause –

By – after reading the lanai case, the sp ct specifically noted that the enforcement powers rest with the county to enforce the d7o or the cond fo the luc decision – its not clear to me whether the op has that authority

Rw – if for example the pet did not comply with the cond of the d7o - the luc would have the power to overturn its decision –

By – I would assume the county would initiate the osc and the luc could also initiate the osc – how that is interpreted I am not sure

Rw – the op would not be able to bring to the attn that a pet has failed to comply with the d7o

By – its not a standing – the op could file a declaratory relief – but the op may try to file a pet – at the end its not a power to fine an application

Rw – are you in a position to file a motion for an osc

By – acknowledging that it may be in question – we may have done it in the past – but it may be unclear now – with the lanai case – the authority under 205-12 allows the county the power – in the lanai case op and the intervenor filed the osc and the sp ct sent it back saying it's the counties sole power to enforce

Lj – it appears that this is a complicated issue as to the osc – I would like to ask our council diane to look into it and come back to address this issue – your intent of making sure that the developments continue on a pace is accurate – from what I am hearing its not clear in my mind so I ask diane to look into that and get back to a future mtg

Dk – luc will continue with formal deliberations as to the proposed order at this time – not entertain additional input from the public or the parties –

Reviewed the record and received copies of the transcripts and prepared to deliberate on the subject

KC, VD, NL, RP, NT, RW, LJ, DK - aye

Recess 11:25am reconvened at 12:40pm

Mr. Ching nt order – does not reflect any amendments as discussed the last time - - proposed findings 1-31 - add additional findings to reflect the public testimony and action taken and add appropriate findings to reflect today's meetings – as typically ask the luc – should they decide this documents – to correct typos – proposed findings 1-31

procedural matters - in this particular section staff would add appropriate findings to reflect this meetings today and public testimony – will adding 2 new fof and expand the existing fof 31 –

Next section 32 – 45 fof – covers description of the petitioner area

Forf 46-49 reflect and describe the proposal for reclassification

Findings 50-54 describe findings afford and workforce hsg

Findings 55-57 describe pet financial capability to undertake the proj

58-61 state and city and county plans and programs

62-66 the need for proposed proj

67-74 economic and social impacts of the proj

75-77 agri resources and impacts upon the ag reouses in the pet area

78-88 the flora and fauna findings

89-96 archaeological and cultural resources

97 ground water resources within pet area

98-101 scenic resources

Environmental quality fof 102 – 108 and noise and air

109-119 hazardous waste

Adequacy of pubic svc and facilities – 120-130

131-141 water svc – drinking water svc – and wastewater disposal

142-151 drainage

Solid awaste disposal 152-154

155-161 police and fire protection emergency svc, elec and telephone svc

162-66 energy conservation

167-168 commitment of state funds and resources

169-170 conformance to the goals and objectisve of the hawaii state plan and functional plans

171-177 conformace to the coastal zone mgmt program

178-180 conforance to the county gen plan and incremental distrcting

15 conclusions of law

Conditions of approval

1 wastewater facilities

2 transportation

3 harbor security

4 previously unidentified burial and historical sites

5 solid waste mgmt plan

6 air quality monitoring

7 notfication of potential harbor nuisances

8 notification fo potential airports nuisances

- 9 prep of submittal detail pet area drainage plan to dpp and dot
- 10 drainage improvements constructed by petitioner
- 11 water consvr measures – best mgmt practices
- 12 best mgmt practices to protect surface and ground water resources
- 13 hazardous materials
- 14 civil defense – solar powered civil defnsne measures
- 15 energy consvr measures

NT – regarding this d7o regarding proposed amendment to cond 15 energy consvr measures – change the language – pet shall to the extent possible encororat energy consv and design measuer suach as the standards and guidelins as the - us green bldg council, the Hawaii guidlins for energy efficiency – buld design inhawaii – and the applicable city and county bldg codes as to the design and const of the proj –

Lj – would you consider in stead of the proj with structures within the petition area
Nt – I would like to consider the whole proj including the - add “and structures” – yes that’s OK

Tony – pet shall to the extent possible encourporate energy consv measuees such as the ---- “and new structures within the petition area”

Amendment to cond 15 as amended by NT -
LJ – 2nd

NT, LJ, KC, VD, NL, RP, RW, DK
8 YES 1 ABSETN

Tony – cond 16 sinkhole preserve
17 completion of the proj
18 compliance with representation to the luc
19-23 conditions of the luc standards of relationship

Completed review of the proposed order and amendment to cond no, 15

NT – moved to approve the order as amended
Vd 2nd

DK – on the matter of the energy conservation amendment – although I did hear where the representative from LURF was coming from, in terms of the role of the LUC and its oversight in that parciturar area, nevertheless, because o fthe legislative action that

maybe it is incumbent upon the state agency, to begin the consideration of those kinds of measures in their projects. For that reason I believe that it does give us some direction in terms of items of statewide interest and concern that if appropriate the luc should be considering as we do our d7o

To approve the reclassificiaotn as amended
NT, VD, RW, RP, NL, LJ, KC, DK
8 yes 1 absetn

Recess 1:00pm the meeting reconvened at 1:10pm

DK - Adoption of the order relating to the KPD petition. The proposed amendment to cond 15 has been finalized by staff – if the language complies with your understanding of the condition then we will proceed to adopt the form of the order.

NT – a06-763 motion to adopt the form of the order
LJ 2nd

NT, LJ, KC, VD, NL, RP, RW, DK
8 yes 1 absent

Kyle – left the mtg at this time

(Please refer to LUC Transcript of November 1, 2007 for more details on this matter.)

SP87-364 Kahili Adventist School

Attendees

Mark Valencia

Ronald Lindsey – treasurer Hawaii seventh day Adventist

Bryan yee

Abe mistuda

Public witness

1. lyle ishida

I submitted a letter on oct 30 to the luc my response regarding litigation that the applicatnt is involved with – I have nothing to supplement tothat but here to anyswer any questions that the parties may have

LJ – summarize

Lyle – reponse from my client eric a knudsent trust – the knudsent trys is in litigation with the appli – baicially the status fo the litigation that trial level action has been resolved – a copy of the final judgement is attached – the matter is currently on appeal and wont be resolved for awhile –

Mark – no questions

By – I have not seen the letter – summarize the judgement

The entire litigation resolved by pretrial motions – brought both by knudsent and 7th day Adventist - the 7th day Adventist initiated this action – severl issues – primary deals with the impropriety of renting the cabins to the general park – that was ruled in favor of the knudsent truet – the counter was in fvor of the 7th day adv – the appeal was dismissed – the final judgement is attached to the memo and briefing for the appeal has begun

By – who filed the appeal – the Hawaii assn of 7th da adventat – filed then the knudsent filed a cross – the Knudsen calims it's a violation of the lease – the decision make any finding of the continued – the judge ruled in the favor of the 7thday adv to continue the lease – regardless of whather the cabins are appropriate to rent what impact would that have in the luc conditions –

Lyle- the cabins do not relate to this proceeding – however the lessee’s compliance to the luc – the counter claim was to - the primary claim was for declaratory relief in response by the Knudsen to cease rental of the cabins – the appl filed the action - the counter was filed to termination of the lease for a variety of reasons primarily for the rentin of the cabins – the 7th day adv have not complied to various state and county regulations – the court found that the 7th day adv was not in violation of the states requireents – the counter claim was for termination fo the lease – yes – the counter claim was granted to the 7th day adv – so is the lease terminated - no what impact if any would this matter habve on yoru existing appeal – the legally trained people on this luc would understand that the purpose of the apellet cout is to review and the recird is what already exsit before – I don’t see any rason why why results from this proceeding would b e aprt of the existing record – if there is a possibly of remand then we would be starting all over again

Rw – does the decision in the court circuit or appellet – do those decision have any impact before the issues befreo this luc –

Lylje – my iopinio is that it does not impact what is before this luc –

Rw – those court decision has no bidnign decision o nthis commission so this luc can proceed – correct

Vd – clarify = what was the claim that was ruled in favor of the Adventist –

Lyle- they prevailed on the counter cliam – 1 to terminate the lease based ont hehviolaitons – 2 redemnfication of the trustees – 3

Vd – was there any ruling on whether or nto there was a vilaito of this roadway requirements – no with respect to any cond in either d7o which constitutes part of this sp matter

No questions

Mark – thank the luc for continuing this matte r- mr Lindsey was on the mainland for treatment – the luc needs some further background – 1 there are conditions of a permit and compliance to the cond – 2 someone asked you to look at this – in jun 14 from mr tom to Anthony ching – the start of this relationship – 1982 the church purchased a business park – the cabin rental operation with the intent to use the proceeds to fund a k-12 school – the 60yr lease signed with the Knudsen – the use provisision – para 16 – for 17 yrs there was no problem – in 2000 a new trustee stacy wong came on board and said that the church was violating the lease – should have been paying 10% of the rental – wellness center – the church could not afford – 100% revenue has supported the school - the cabin rental operation is also used for humaniatiran projs – when they got the notice of default they asked the court – the judge ruled in favor of para 16 on the

lease and that is on appeal – they have appealed the termination of the lease – the revenue has been cut dramatically – and keep the context of this ongoing dispute in mind

Lindsey – it was in 2003 that our president sent a letter to mr ching and a similar letter to the plng commission on Kauai to give an update on the land use requirements on our lease – we did not receive a response from the luc – so we believed we were complying – also did not receive - there's been no change and continue to believe that we were in compliance – as mark has mentioned that our financial ability has been greatly hampered - we have been trying to maintain – subsidized the school – our contribution – we have been doing the best we can – operating we believed in compliance – that's our framework of operation

By – the state's primary concern is with the roads – the requirement in the sp kaunualii highway as well as the all weather surfacing on the road to the school – our primary concern is the requirements are to the sp as it relates to the roads – the parties are concerned of the litigation – to the extent we can avoid discussion on the litigation - there is possibly a way to separate those issues and for the church to focus on the sp and the language in the sp – the 2003 letter I will not argue that they did not have a good faith belief but the permit says that you have to do certain things – choices – 1 hold to their current position that they believe they are in compliance with the sp and the luc finds violation in the sp = you could issue a osc – 2 could agree to make changes – a timetable – incumbent upon them to tell you a timeframe – 3 they could change the special permit – something needs to be addressed – the permits been pending long enough that something needs to move forward – unfortunately is we just don't know what will happen – I am sensitive to the fact that there is litigation – the op comments are basically that there is a sp and there are conditions in the sp and have they been met – the conditions need to be satisfied and improvements need to be done

Dk – the county of Kauai is not in appearance today

Rp – concern after reviewing the letter to mr ching in 2003 – you built a new road on the lower side – 25x wide and 800ft long – when we were there on site it looked as though it was a gravel road – then when I review the d70 from the plng Commission – in their first item which says interior road improvements shall constitute 16 ft base or better – and later says asphalt, concrete, or concrete roadway improvements shall be provided within 5 yrs – was there ever a road built – since 1987 – did you ever build a asphalt or concrete road

Lindsey – all of this predates my coming on board – we have a new principal, president, sec, etc – I am the oldest person here in 6 years – although this letter was written in 2003 – the key is on top of the 2nd page – the use of – environmental instead coral and rock was used – I don't know what caused the change but I would think that – so no there has not been any concrete – there has been road based coarse rock chips – gravel based road – personally I don't think that you complied with what the plng comm. Asked – that's what I saw when I was there

VD – what are you asking the luc at this point – your suggestion

Mark – I think in taking the consideration and what I heard today – there should be an analysis of whether or not – why these conditions were imposed 20 yrs ago – we been operating 20 yrs with no problems – what we plan to do is hire someone to do an evaluation of the roads, the turning lane issue, and give us an independent -

Vd – as far as delaying our proceeding as going forward – the issue seems to be clear as – are you asking for a continuance – being sympathetic to your position and financial constraints – suggest something for us to consider

Mark – I think it should be continued with some conditions – why these conditions were imposed and whether we need a paved road – I think we need some time to go back and look at exactly what was done – correspondence we have and some discussion with the county – I would be very concerned of a OSC hearing – from that point on it may revoke the permit – I don't think you can ignore the litigation – I think a continuance with some conditions that we do some work with further report to the luc

Vd – on the litigation – I rather not be concerned – our focus is a narrow focus on the luc – If you start getting worried – puts other things in that we are not supposed to consider

Mark – you can consider the financial condition of the permit holder – when you start talking about any remedial work that needs to be done

Lj – in agreement with Mr. Yee's assessment that something needs to be done – I hear you say that you want a continuance – my question I understand this sort of permit the conditions were set at the county level – the county held the hearing and set the conditions –

Tony – in general although in our level the luc could impose additional conditions

Lj – I agree that this whole issue dates back to the 80 and 90s and environmental issues – seems to me that if you would do some assessment – should it come back to us or to the Kauai Planning Commission for amendment to get an accurate portrayal of what your conditions should be – procedurally to re-evaluate should it go to Kauai plng or to us

Tony – procedurally this luc could send the matter back tpo the kaua plng comm and the plng comm. Would be obliged to use its n process and findings and submitted back to us

Ljl – would it be us to send it back to the plng comm. And they look into it

Ton y- in the form of either correspondence the luc could express their concners for follow up with the county – then it would be in their relm to see – it would be a t their description

By – if your question is who should lok at the amendment – the apl should come to the luc first -= if youre referring an enforcement action – some referral from the luc might be done – initially and amendment might not be the luc to do anything – an appl was filed by the applicant – distinction between

Rw – do you have any objections going back to the plng dept to have them reassess what the cond ought to be or changes made

Lindsey – we would not have any objections going back to the plng comm. In kauaiand rquesting an review and change

Rp – reviewing the documentation before us – I would refer to the plng comm. In Kauai

Lj – if that is the route we take it would be in your court to submit some documentation to the plng comm. – what is the vreasonabel time frame for you to do that’

Mark – it would take some time to get an expert on board to make a presentation and have discussion with the plng comm. – we think 6 months

Lj – schedule a status rprrt with this time with the expectation that ou would have smething for us in that respect –yes

Rw – I move that this matter be dfereed to 6mos to allow the permitte to file with the Kauai plng comm. As to its appropriateness

Rp – 2nd

Dk – the status reports filed in 2003 – copies provided to us that those reports were submitted to both the county of Kauai and the luc – what was the disposition of the reports on the luc side –

Tony – in this particular case – as the sp in its current form did nto have a provision for an annual rept – I suggested that the permittee submit a annual rept – I also recommended that copies wer also to be distributed to the county png dept – as we aer dependant on the county png dept as they are the enforcing agency I would request to the dept that they comment

To coniate the status report in 6 months
RW, RP, NT, NL, LJ, VD, DK

7 yes 2 absent

Adjourned 2:10pm