

LAND USE COMMISSION  
MINUTES OF MEETING

March 19, 2008

Alii Ballroom  
Waikoloa Beach Marriott  
69-275 Waikoloa Drive  
Waikoloa, Hawaii

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

COMMISSIONERS ABSENT: Lisa Judge  
Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Rodney A. Maile, Interim Executive Officer  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Presiding Officer Kanuha called the meeting to order at 10:35 a.m.

## ADOPTION OF MINUTES

Commissioner Teves moved to adopt the minutes of March 6 and 7, 2008. Commissioner Contrades seconded the motion. The minutes were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Mr. Maile noted that some of the agenda items may change as some of the projects are in the process of submitting their FEIS for the LUC's review.

Presiding Officer Kanuha reminded the Commissioners to let Sandy know of any conflicts that they may have with the proposed schedule to ensure a quorum.

## A06-767 WAIKOLOA MAUKA, LCC (Hawaii)

Presiding Officer Kanuha stated that this was a meeting to consider the reclassification of approximately 731.581 acres of land currently in the Agricultural District to the Rural District at South Kohala, Hawaii, for residential subdivision, including:

- Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by Petitioner and County of Hawaii Department of Planning and Permitting;
- Office of Planning's Exceptions to Petitioner Waikoloa Mauka, LLC's Proposed Findings of Fact, Conclusions of Law, and Decision and Order;
- Waikoloa Mauka, LLC's Post-Hearing Brief in Response to The Office of Planning's Exceptions; and appropriate action.

## APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner

Jesse Souki, Esq., represented Petitioner

Gerald Takase, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Lorene Maki, State Office of Planning

Presiding Officer Kanuha noted that there were no public witnesses.

Presiding Officer Kanuha stated that the LUC would be entering into formal deliberations to the proposed order. Pursuant to 15-15-56(4) HAR, the LUC may approve the proposed decision and order by amending or adopting the order. During the LUC's deliberations, the LUC would not entertain additional input from the parties or the public unless they are specifically requested to do so by the Presiding Officer. Presiding Officer Kanuha then polled the LUC to confirm that each one had reviewed the record and copies of the transcripts, and were prepared to deliberate on the subject.

Aye: Commissioner Chock  
Commissioner Contrades  
Commissioner Devens  
Commissioner Lezy  
Commissioner Piltz  
Commissioner Teves

Presiding Officer Kanuha was also prepared to deliberate on this subject and noted that Commissioners Judge and Wong were absent.

Mr. Maile briefly summarized the proposed order and noted that the stipulated document was submitted on behalf of the petitioner and the county. Subsequently, the state submitted a response to that stipulation. However, the state is not in disagreement with portions of the order that do not relate to the LEED requirement.

Mr. Maile noted a single correction under the Finding of Fact 122, to read "five-eighths (5/8) of an inch" instead of "five, 8-inch." Counsel for the petitioner has clarified this error and the correction has been made to the proposed stipulated order.

Presiding Officer Kanuha asked for further clarification regarding the proposed stipulated conditions and the OP's area of concern.

Mr. Maile stated that the question was whether the LUC should require that the project be constructed in a way to meet energy conservation standards.

Presiding Officer Kanuha commented on the proposed deletion of Finding of Fact 132 and OP's exhibit 1, page 8, the revision by the OP that appears to be acceptable to the petitioner with the exception of the last sentence. Presiding Officer Kanuha

added that the OP has been somewhat consistent in trying to foster a more specific condition related to the LEED standard.

Presiding Officer Kanuha continued to discuss OP's exceptions and proposed conditions related to the construction timetable and reversion.

A recess break was taken at 11:20 a.m. The meeting reconvened 11:55 a.m.

Presiding Officer Kanuha noted that the LUC would defer this petition to allow time for the Executive Officer's analysis and formulating proposed recommendations for the LUC's consideration at the next meeting.

There were no further questions.

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

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

Presiding Officer Kanuha stated that this was a continued hearing to consider 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

Benjamin Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Jesse Souki, Esq., represented Petitioner

Gerald Takase, Esq., represented County of Hawaii Planning Department

Phyllis Fujimoto, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Lorene Maki, State Office of Planning

Mr. Yee stated that the parties have previously agreed to scheduling issues. The Hawaii County's witness, Mr. Yuen, would be attending in the afternoon and the parties were willing to take him out of order. In addition, the OP's witnesses would be

arriving in Kona on Friday morning and requested that the LUC permit their testimony at that time.

Presiding Officer Kanuha noted that the LUC would anticipate their arrival in the morning and schedule accordingly.

#### Public Witness

1. Geraldine Bell

Ms. Bell clarified a couple of items from the last meeting related to the conditions that were previously agreed upon between the petitioner and the National Park Service (NPS), and the location of the watershed area. Ms. Bell referenced OP's exhibit 2A and discussed concerns of the quality and quantity of water, and the non-source point pollution.

Presiding Officer Kanuha posed a few questions regarding the watershed area and the effects on the quality of the resources in the park.

Presiding Officer Kanuha noted that there were no other public witnesses.

#### Admission of Additional Exhibits

Mr. Kudo described the three additional exhibits that were relevant to the issues raised at the last hearing. In addition, a fourth exhibit, a letter from Stanford Carr Development regarding access to the property of the Holoholo Street extension was requested to also be admitted. All four exhibits have been served to the parties.

There were no objections by the parties or the Commission. Petitioner's exhibits 48, 49, 50, and 51 were admitted to the record.

Mr. Kudo asked if the OP would still hold their position in the LEED matter and whether they would be calling upon their expert witness Gail Suzuki-Jones.

Mr. Yee stated that the OP intends to call upon Ms. Suzuki-Jones and that it was their current position to request for the mandatory LEED silver certification in the CC&Rs.

Mr. Takase commented that the County of Hawaii's Planning Director would be appearing Thursday afternoon. However, the county had previously submitted an amended witness list indicating Norman Hayashi as their witness. Mr. Takase requested to withdraw that amended list.

Mr. Yee noted that the OP had submitted an amended witness list and that Mr. Mayer would be testifying on behalf of the OP.

There were no objections by the parties or the Commission to these amendments.

#### Petitioner's witness

1. Walter Billingsley

Mr. Billingsley stated that he was employed at Belt Collins, Ltd. as the project engineer. Mr. Billingsley was previously qualified by stipulation as an expert witness in the field of civil engineering. Mr. Billingsley discussed issues of wastewater, storm water run off, and the Kula Nei master plan infrastructure needs.

Mr. Takase noted that the county had no questions.

Mr. Yee raised questions related to matters of the sewage treatment plant, individual wastewater systems, potable and non-potable water uses, solid waste disposal, energy supply and demand, and the sub-surface lava tubes.

There were no further questions for Mr. Billingsley.

A recess break was taken at 2:20 p.m. The meeting reconvened at 2:35 p.m.

2. Brian Rupp

Mr. Rupp stated that he resides in Irvine, California and is the project manager with the Shopoff Group. Mr. Rupp described his duties as the project manager and overall responsibility for the development of Kula Nei. Mr. Rupp discussed matters of the site acquisition, final pro forma, adding that he is the authorized representative for the petitioner and authorized to accept conditions imposed by the LUC. In addition, Mr. Rupp discussed issues of the backbone infrastructure, proposed community park,

regional water supply well and reservoirs, preservation of significant cultural and historical sites, the residential and affordable housing, mitigation to traffic impacts, the fair share contribution to the state highway, and the Holoholo Street extension.

Presiding Officer Kanuha noted that as previously requested by the parties, Mr. Yuen, the County's witness had arrived at the meeting. The parties had no objections in taking him out of order at this time.

### County's Witness

#### 1. Chris Yuen

Mr. Yuen stated that he is the Planning Director for the County of Hawaii since December 2000. Mr. Yuen noted that he is familiar with the Shopoff Group's petition for reclassification. Mr. Yuen discussed the general plan designation for this project, the current Ag5 zoning, and the typical conditions imposed at the county level. Mr. Yuen discussed water systems, the TIAR, and the homestead road.

Mr. Kudo raised questions related to the Holoholo Street extension, the conditions in the subdivision approval, and mandatory LEED requirements.

Mr. Yee posed questions regarding LEED certification in the CC&Rs, final building permits, shielded lights to protect birds, solid waste and landfill capacity, wastewater systems, and the archaeological site review by SHPD.

Mr. Takase clarified matters related to the county's review of CC&Rs related to LEED certification and enforcement.

Presiding Officer Kanuha posed a few questions related to the county's recommended condition on affordable housing opportunities in accordance to the county's affordable housing policy.

There were no further questions posed for Mr. Yuen.

A recess break was taken at 3:55 p.m. The meeting reconvened at 4:15 p.m.

Petitioner's Witness (continued)

Cross Examination of Mr. Rupp

Mr. Yee continued to raised questions regarding the use of drought tolerant native Hawaiian plants near the lava tubes, public access to the homestead road, the 4.4 acre community park for use by the residents only, the agreement with Stanford Carr for the Holoholo Street extension, clarification of the master homebuilder, estimated construction timetable, the biological survey of the lava tubes and the sub grade cavities, and reports to the SHPD. Mr. Yee also raised questions related to energy efficiency standards and the recommended LEED requirement.

Presiding Officer Kanuha had a few questions regarding the construction timetable, anticipated county zoning and subdivision approvals.

There were no further questions for Mr. Rupp.

Mr. Yee noted that the OP's witnesses would be available in the morning at tomorrow's meeting.

Presiding Officer Kanuha noted that the LUC would reconvene the meeting at 8:30 a.m. and at that time, they would have the other items on the agenda to be taken out of order. The OP's witnesses should be arriving at approximately 9:00 a.m.

The meeting adjourned at 4:50 p.m.

*(Please refer to LUC Transcript of March 19, 2008 for more details on this matter.)*