

LAND USE COMMISSION
MINUTES OF MEETING

July 10, 2008

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

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Vladimir Devens
Lisa Judge
Duane Kanuha
Normand Lezy
Nicholas Teves

COMMISSIONERS ABSENT: Ransom Piltz
Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Orlando Davidson, Executive Officer
Bert Saruwatari, Staff Planner
Mike Murphy, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 10:40 a.m.

ADOPTION OF MINUTES

Commissioner Contrades moved to adopt the minutes of June 5, 2008. Commissioner Teves seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Chair Judge noted that the schedule had been circulated. There were no questions posed by the Commissioners.

EXECUTIVE SESSION

Commissioner Contrades moved to go into executive session pursuant to §92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities regarding declaratory rulings pursuant to §91-8 and orders to show cause pursuant to chapter 205.

The motion was seconded by Commissioner Devens. The motion was unanimously carried by a show of hands.

The Commission entered into executive session at 10:40 a.m.

The open meeting reconvened at 11:35 a.m.

DR08-36 KO`OLINA DEVELOPMENT LLC (Oahu)

Chair Judge stated that this was a hearing on Docket No. DR08-36 Ko Olina Development Co. (Oahu) to consider its petition for declaratory order filed on March 24, 2008.

Chair Judge noted that on April 23, 2008, the Commission received via facsimile correspondence from the City and County of Honolulu, Department of Planning and Permitting (DPP) indicating that the DPP states no opposition to the petition. Also, that the DPP takes no position on the Office of Planning's Motion to Intervene.

Chair Judge also stated that the public witness testimony would be limited to three minutes and asked that the testimony be directed particularly to the issue of whether the petitioner's location of the public boat ramp at Kalaeloa, with the proposed improvements, constitutes substantial compliance with the representations made to the Commission.

Public Witnesses

1. Chuck Krause

Mr. Krause stated that he has had no problems with the ramp at Kalaeloa, Barbers Point.

Mr. Yee asked whether Mr. Krause had previously used the ramp at the Ko Olina marina.

Mr. Krause stated that he did not use the Ko Olina ramp, although he was the marina manager for Ko Olina from 2002 to 2004. Mr. Krause added that he noticed some congestion at the Ko Olina ramp, but not at the Kalaeloa site.

There were no further questions posed for Mr. Krause.

2. Ronald Tam

Mr. Tam stated the he had prepared a PowerPoint presentation but in the interest of time, he distributed his presentation. Mr. Tam discussed his concerns regarding safety and the hazardous conditions at the Phoenicians ramp, his objections to the relocation of the public boat ramp, and his belief that the petitioner was not in compliance with the LUC's order.

Mr. Matsubara asked whether Mr. Tam had the opportunity to review the proposed improvements at the Kalaeloa ramp.

Mr. Tam replied in the affirmative.

Mr. Yee posed a few questions regarding Mr. Tam's personal measurement of the surge at the ramp.

Chair Judge asked Mr. Tam to clarify the user fees at Kalaeloa.

Mr. Tam referenced page 9 of his presentation and noted that there is a sign “private boat ramp” on the property since users need to pay a \$125 fee to use the Kalaeloa ramp. Mr. Tam stated that as a boater, you would need to pay fees for a State of Hawaii boat and trailer registration. This entitles a boater to use a launch ramp facility statewide and to use the wash area. A user at Phoenicians would need to pay an additional \$125 fee per year to Phoenicians. That fee does not apply to any of the other state public boat ramps.

After a brief discussion, there were no further questions for Mr. Tam.

3. Ed Watamura

Mr. Watamura stated that he was the President of the Waialua Boat Club. Mr. Watamura noted his objections to the relocation of the public boat ramp. Mr. Watamura added that if an alternate site should be considered, he would suggest the back of the marina, which is accessible by the service road. The boaters and trailers would not need to travel through the main resort area.

Mr. Yee posed a few questions related to the problems of the haul out facility causing delays for boaters.

After a brief discussion, there were no further questions posed for Mr. Watamura.

4. Rodney Ajifu

Mr. Ajifu noted his objections to the relocation of the public boat ramp, the frustration caused by the developers not communicating with the users/boaters before closing the ramp, and the dangerous conditions at Phoenicians.

Mr. Yee posed a few questions regarding safety concerns and the proposed plans at Phoenicians.

After a brief discussion, there were no further questions posed for Mr. Ajifu.

5. Al Farm

Mr. Farm stated that he was in support of the boaters and fishermen who testified against the closure of the Ko Olina public boat ramp and believed that the ramp, with the proposed improvements at Kalaeloa, would not comply with the LUC's order.

There were no questions posed for Mr. Farm.

6. Warren Von Arnswaldt

Mr. Von Arnswaldt stated that he is a Kapolei resident and a member of the Waialua Boat Club. Mr. Von Arnswaldt noted his objections to the relocation of the public ramp at Ko Olina and commented on the proposed improvement plans at Phoenicians, adding that the consultant is from California and did not have the expertise of Hawaiian waters.

There were no questions posed for Mr. Von Arnswaldt.

7. Richard Yamasaki

Mr. Yamasaki noted his opposition to the closing of the Ko Olina boat ramp. Mr. Yamasaki added that he personally had worked with the developer (Herbert Horita) in the initial planning stages of the project and attended public meetings in which the community voiced strong opposition to the development of the area. At that time, the community felt that they would be denied public access to the area. Mr. Yamasaki requested that the LUC restore what was originally approved and have Ko Olina re-build the public boat ramp.

Mr. Yee posed a few questions related to the initial proposals by the developer and the location of the public boat ramp within the property.

After a brief discussion, there were no further questions posed for Mr. Yamasaki.

8. Creighton Chang

Mr. Chang submitted written testimony from Barbara and Steve Tanaka, commercial fishermen.

9. Doug Ewalt

Mr. Ewalt stated that he has three charter boats and preferred to launch at Phoenicians since it is larger and easier for him to set up. Mr. Ewalt added that he believed that Ko Olina was a private marina, not comparable to the state boat ramps or state run facilities.

Mr. Yee posed a few questions related to the swell surge and asked where Mr. Ewalt ran his operation from.

Mr. Ewalt stated that he has three boats and operate out of the Ko Olina marina. He rents a berth at Ko Olina for 365 days of the year.

There were no further questions for Mr. Ewalt.

10. Reggie Puana

Mr. Puana stated that he would launch his boat out of Ko Olina and at Phoenicians. He noted that the new facility at Kalaeloa is better because it currently exists. He added that the proposed improvement plans should focus on safety issues.

Mr. Matsubara posed a few questions regarding the proposed improvements and whether they would sufficiently address the safety concerns.

Mr. Yee had a few questions related to the ramp and problems launching at Kalaeloa.

After a brief discussion, there were no further questions posed for Mr. Puana.

11. Ken Silva

Mr. Silva stated that he was the Fire Chief of the Fire Department. Chief Silva stated that he was providing testimony on a public safety perspective. Kalaeloa is ideal since the access is directly from the freeway, and has a large area to stage their equipment. Chief Silva noted that he has not seen the proposed improvements.

Mr. Matsubara had a few questions regarding emergency responses and the staging area at Kalaeloa for their boats and fire engines.

Mr. Yee posed a few questions related to the mixed use of public and hazardous materials (propane tanks) in the area; and whether the Fire Department had any agreements with the owners since there is a user fee for the public to use the facility.

After a brief discussion, there were no further questions posed for Chief Silva.

12. Brian Halsey

Mr. Halsey stated that he has been fishing all his life and has lived in Hawaii since 1996. Mr. Halsey noted his support for the Kalaeloa ramp and stated that the proposed enhancements would address the issues of the slope and walkway. Mr. Halsey added that he had no problems launching at Phoenicians.

There were no questions for Mr. Halsey.

13. Todd Pickering

Mr. Pickering stated that he is a commercial boater at Ko Olina and has experienced the surge at both the Ko Olina and Phoenician ramps. Mr. Pickering added that he had never had any problems launching at Phoenicians.

There were no questions for Mr. Pickering.

14. William Chang

Mr. Chang noted his concern of Ko Olina not having a boat ramp facility at the marina and not complying with the LUC's order. Mr. Chang noted his frustrations and

stated that it has been years since the developer shut down the ramp and yet they continue to put up roadblocks. Mr. Chang added that the issue of public access is an important one.

There were no questions for Mr. Chang.

15. Eiji Tanaka

Mr. Tanaka voiced his objections to the closure of the Ko Olina ramp four years ago. Mr. Tanaka voiced his concerns of why the developer took so long to finally provide plans to repair the Phoenicians ramp. Mr. Tanaka added that he used to launch his boat at Ko Olina, but refuses to launch at Phoenicians, noting safety and vehicle maintenance concerns.

There were no questions for Mr. Tanaka.

A lunch recess was taken at 12:55 p.m. The meeting reconvened at 2:05 p.m.

Admission of Exhibits

Chair Judge noted that the prehearing order issued in this docket required that all exhibits were to be filed with the Commission no later than the close-of-business on June 23, 2008. The prehearing order also provided up to the close-of-business on June 30, 2008 for the parties to file any responses. The acceptance of any untimely filings was subject to the pleasure of the Commission.

Mr. Matsubara briefly described petitioner's exhibits 1 to 35. There were no objections by the OP. Petitioner's exhibits 1 to 35 were admitted into the record.

Mr. Yee described the OP's exhibits 1, 1a, 2 to 14 and 15 to 20. The petitioner had no objections. OP's exhibits 1, 1a, 2 to 14 and 15 to 20 were admitted into the record.

Chair Judge noted that it would be useful to take official notice of the record of LUC Docket No. A83-562 West Beach Estates.

Mr. Yee noted that both parties have expert witnesses that would be testifying and for efficiency, the parties were prepared to stipulate to their expertise. There were no objections by the parties or the Commission.

Petitioner's Presentation

Mr. Matsubara began his presentation and briefly summarized the history of the project's development. Mr. Matsubara noted that the Declaratory Order was filed for the LUC's guidance as to what the petitioner would need to do in order to be in compliance. Mr. Matsubara then called upon the petitioner's first witness.

Petitioner's witness

1. Gordon Fulton

Mr. Fulton stated that he is the Regional Vice President of TransSystems Corporation, Berkeley California, and specialized in engineering design and construction of waterfront marinas, launch ramps, and port facilities. His resume was admitted as petitioner's exhibit 33a. Mr. Fulton discussed his recommendations for the proposed improvements at Phoenicians.

Mr. Yee posed questions related to the ADA requirements at launch ramps, if any, the North West swell and surge, review of other ramps in the petition area, and the operational plans.

Commissioner Lezy asked whether Mr. Fulton was a consultant in the marina construction at the Ko Olina ramp and if asked, where he would place a ramp today.

Chair Judge commented that the LUC heard public testimony regarding an alternative site located in the back of the marina, and wondered if this would be a site that should be further studied.

After a brief discussion, there were no further questions posed for Mr. Fulton.

2. Patrick Ross

Mr. Ross was qualified as an expert in marine construction. Mr. Ross stated that he was retained to provide an estimate in construction costs and discussed the timeframe for the proposed improvements.

After a brief discussion, there were no further questions posed for Mr. Ross.

A recess break was taken at 3:15 p.m. The meeting reconvened at 3:35 p.m.

3. Joann Hiramatsu

Ms. Hiramatsu was qualified as an expert in the entitlement process. Ms. Hiramatsu stated that she was retained to determine what Corps permitting was necessary for the proposed improvements and discussed the proposed timeframe for permit processing.

Mr. Yee posed a few questions regarding the Army Corps of Engineer's permit, consultation with the DOH and DOT, and other permits such as SMA and CUDA.

A recess break was taken at 3:30 p.m. The meeting reconvened at 3:35 p.m.

Mr. Yee continued to pose questions related to the Army Corps of Engineer's permit processing and estimated timeline.

Commissioner Lezy raised questions regarding the timeframe for processing of a permit to rehabilitate the Ko Olina boat ramp.

After a brief discussion, there were no further questions posed for Ms. Hiramatsu.

4. Keith Kurahashi

Mr. Kurahashi was qualified as an expert in permitting and disclosure requirement. Mr. Kurahashi noted that he was familiar with the proposed improvements and discussed the differences in the SMA, CDUA, and EA process.

Mr. Yee posed questions regarding a CDUA permit for the ramp improvements, whether or not the area underwater was classified as conservation, and the requirement of an EA for harbor improvements.

Vice Chair Kanuha questioned if Mr. Kurahashi was involved in the process of substituting the Kalaeloa ramp with the Ko Olina ramp and whether there was any consideration of notifying the LUC to determine whether the project was in conformance at that time.

Mr. Kurahashi stated that the matter did not appear in their discussions. However, they had discussions with a person who they believed was representing the fishermen, the DLNR, DOT, and the City's Managing Director regarding the relocation of the boat ramp.

Commissioner Devens asked if Mr. Kurahashi believed that what Kalaeloa is providing is in substantial compliance with the decision and order in this matter and whether there was an attempt to modify the condition in the order.

Mr. Kurahashi stated that by providing a boat ramp, they were in substantial compliance. Mr. Kurahashi added that he believed there was no condition for a boat ramp and reiterated that they are in substantial compliance to the order.

Vice Chair Kanuha and Commissioner Contrades left the meeting at this time.

Chair Judge raised a few questions regarding the representative who the petitioner believed was the voice of the fishermen, attempts to seek input from other fishermen on the island, and permits needed if they were to reinstate the Ko Olina ramp.

After a discussion, there were no further questions posed for Mr. Kurahashi.

Chair Judge noted that in the matter of issuing the Order to Show Cause, the item would be placed on the agenda for the first August meeting, at which time the LUC would also be hearing a continuation of this matter.

The meeting adjourned at 4:15 p.m.

(Please refer to LUC Transcript of July 10, 2008 for more details on this matter.)