

LAND USE COMMISSION
MINUTES OF MEETING

July 11, 2008

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

COMMISSIONERS PRESENT: Kyle Chock
Lisa Judge
Duane Kanuha
Normand Lezy
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: Thomas Contrades
Vladimir Devens
Ransom Piltz

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 9:10 a.m.

A85-595 KUILIMA DEVELOPMENT, CO. (Oahu)

Chair Judge stated that this was an action meeting to consider Defend Oahu Coalition's Motion for Issuance of an Order to Show Cause Why the Boundary Classification of Kuilima Development Company Should Not Be Revoked for Failure to Perform Conditions, Representations and Commitment by Kuilima Development Company in Docket No. A85-595 filed on April 1, 2008.

APPEARANCES

Gregory Kugle, Esq., Defend Oahu Coalition
Robert Harris, Esq., represented Defend Oahu Coalition
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Lorene Maki, State Office of Planning
Terry O'Toole, Esq., Kuilima Development
Ivan Liu-Kwan, Esq., Kuilima Development
Shyla Cockett, Esq., represented Kuilima Development

Chair Judge noted that this was not a contested case proceeding. Chair Judge also noted that Commissioner Devens had recused himself from this matter.

Public Witnesses

1. Mark Cunningham

Mr. Cunningham stated that he was the Co-Chair for Defend Oahu Coalition, a grass roots organization of approximately 3,500 members and supporters, residents and visitors. Their goal is to protect the North Shore. Mr. Cunningham noted his concerns of the expansion and objection to the project. Mr. Cunningham requested that the LUC issue an Order to Show Cause and if possible, that a hearing be conducted in the North Shore area.

Mr. Kugle asked where Mr. Cunningham resides.

Mr. Cunningham stated that he resides about a quarter mile West of the project.

There were no further questions for Mr. Cunningham.

2. Bob Nakata

Mr. Nakata stated that he was the Pastor of the Kahaluu Baptist Church and noted that he has been actively involved in issues along the Windward coast for the past 36 years. Reverend Nakata noted his concerns and objections to the project.

Mr. Kugle asked what Reverend Nakata's position was with the Defend Oahu Coalition.

Reverend Nakata stated that he was the Co-Chair with Mr. Cunningham.

There were no further questions for Reverend Nakata.

3. Phyllis Shipman

Ms. Shipman stated that she resides in Haleiwa and was not speaking as a member of Defend Oahu Coalition but as a long time citizen of Sunset Beach. Ms. Shipman noted her objections to the expansion.

There were no questions for Ms. Shipman.

4. Margaret Prim

Ms. Prim noted her objections to the expansion and her concerns on the length of time the developer took with no further development.

There were no questions for Ms. Prim.

5. Kent Funoimoana

Mr. Funoimoana stated that he resides in Kahuku, was a lifetime resident of the North Shore, and a former employee of Turtle Bay. He noted his concerns of traffic congestion and protecting the aina. He added that certain improvements need to be made to the property that could benefit the community and that the owners should find a happy medium.

There were no questions for Mr. Funoimoana.

6. Elmer Kaponon Manly

Mr. Manly stated that he was a North Shore resident and noted his objections to the expansion of 35,000 units, and the affordable housing that was not built.

There were no questions for Mr. Manly.

7. Deldrene Herron

Ms. Herron stated that she has a family home in Haleiwa and expounded on her access rights as a Native Hawaiian fish person. Ms. Herron referenced an article in the Honolulu Star Bulletin regarding a personal incident at the resort. Ms. Herron added that the petitioner must open all of the shoreline to the public and to educate and advocate for those rights under the Hawaii land use laws and PASH.

There were no questions posed for Ms. Herron.

A recess break was taken at 9:55 a.m. The meeting reconvened at 10:10 a.m.

Movant's Presentation

Mr. Kugle began his presentation and discussed the reasons why Movant believed that Kuilima Resort did not meet the conditions and representations made in the LUC's 1986 decision and order. Mr. Kugle added that the reclassification should be revoked and urged the LUC to commence with an Order to Show Cause (OSC) hearing.

Mr. O'Toole argued that the Movant is not a party to this matter and that this was not a contested case hearing. Mr. O'Toole referenced §15-15-52 (c)(2) regarding persons who have a property interest in the land. Mr. O'Toole referenced an aerial photo of the project and continued to discuss the development of the 236 acres, which is the LUC's reclassification.

A recess break was taken at 11:00 a.m. The meeting reconvened at 11:10 a.m.

Mr. Yee provided an overview of the facts and discussed the Lanai Supreme Court remand, equitable estoppel and whether or not the LUC conditions were violated.

Mr. Kugle noted the differences in the Lanai and Kuilima matter and argued on the issue of standing that their members are adjoining property owners. Mr. Kugle added that they have reason to believe that there is non-compliance and requested that the LUC proceed with the OSC hearing on this matter.

Mr. O'Toole emphasized the importance of standing and requested that the LUC review the issue carefully.

Mr. Yee noted that the State had nothing further.

Commissioner Wong posed a few questions to Mr. Yee regarding why the OP believed that the OSC was not the proper method in this matter.

Commissioner Wong also raised questions to Mr. O'Toole on whether he believed that the petitioner had fully complied with the conditions imposed by the LUC, and if he believed that the LUC had the power to issue an OSC in the event that the Movant was found to not have standing in this matter.

Mr. Yee noted a clarification that if a condition is violated, then the proper method would be an OSC hearing.

Vice Chair Kanuha asked Mr. Kugle whether the Movant was asking the LUC to set an OSC hearing on the 236 acres.

Mr. Kugle replied in the affirmative.

Commissioner Chock asked Mr. O'Toole if he could provide the LUC an update on the State's interest in purchasing the property.

Chair Judge asked Mr. Yee to elaborate on what the OP sees as an appropriate avenue for some of the conditions that have not been met.

Mr. Yee stated that he believed a proper method for non-compliance to certain conditions could be through a motion to amend or modify conditions. The LUC could ask for a progress report primarily if the LUC's purpose is to create a deadline by which certain conditions are to be complied with.

EXECUTIVE SESSION

Commissioner Wong 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.

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

The Commission entered into executive session at 11:44 a.m.

The open meeting reconvened at 12:10 p.m.

A lunch break was taken at 12:10 p.m. The meeting reconvened at 1:05 p.m.

Commissioner Wong left the meeting at this time.

Chair Judge stated that because of the complex legal matters that surround this issue, the LUC would take this matter under advisement until they receive legal advice from their Deputy Attorney General.

Chair Judge then entertained a motion to have Kuilima Development return to the LUC at the next appropriate meeting with a status report on the development that is the subject of this docket.

Commissioner Chock moved to have Kuilima Development provide a status report at the next appropriate meeting. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Chock, Teves, Kanuha, Lezy, and Judge.

The motion passed with 5 yes, 4 absent.

Mr. Davidson noted that the next appropriate meeting date would be September 18 and 19, 2008. Written materials should be submitted by close of business August 18, 2008.

Mr. O'Toole stated that those dates were acceptable to his client.

The meeting was adjourned at 1:10 p.m.

(Please refer to LUC Transcript of July 11, 2008 for more details on this matter.)