

LAND USE COMMISSION  
MINUTES OF MEETING

July 24, 2008

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

COMMISSIONERS PRESENT: Kyle Chock  
Thomas Contrades  
Vladimir Paul Devens  
Duane Kanuha  
Normand Lezy  
Reuben Wong

COMMISSIONERS ABSENT: Lisa Judge  
Ransom Piltz  
Nicholas Teves, Jr.

STAFF PRESENT:  
Dan Davidson, 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 Contrades moved to adopt the minutes of July 10 and 11, 2008. Commissioner Devens seconded the motion. The minutes were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Mr. Davidson noted that the schedule was filled in till September and reminded the Commissioners to let Sandy know of any conflicts that they may have with the proposed schedule to ensure a quorum.

## A06-770 THE SHOPOFF GROUP, L.P.

Presiding Officer Kanuha stated that this was an action meeting on Docket No. A06-770 the Shopoff Group to consider reclassification of approximately 129.99 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  
Jesse Souki, Esq., represented Petitioner  
Gerald Takase, Esq., represented County of Hawaii Planning Department  
Norman Hayashi, County of Hawaii Planning Department  
Abe Mitsuda, 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 Commissioners would be in formal deliberations as to the proposed order and noted that pursuant to § 15-15-56 (4) HAR, the Commission may approve the proposed decision and order by amending or adopting the proposed decision and order. Also during deliberations, the Presiding Officer would not entertain additional input from the parties or the public unless those individuals or entities were specifically requested to do so. If called upon, any comments would be limited to the question at hand.

Presiding Officer Kanuha then polled the Commissioners to confirm that each one had the opportunity to review the record and/or received copies of the transcripts of these proceedings and were prepared to deliberate on the subject.

The Commission was polled as follows:

Ayes: Chock, Contrades, Devens, Lezy, Wong, and Kanuha.

Commissioner Wong noted that in terms of reviewing the document, he proposed that the Executive Officer start with the Conclusions of Law, then go back to the Findings of Facts that supported such conclusions.

A recess break was taken at 10:45 a.m. The meeting reconvened at 10:48 a.m.

Mr. Davidson stated that the proposed document was based upon the stipulation between the petitioner and the County of Hawaii with the addition of procedural and technical amendments for clarity and style. Mr. Davidson began with the Conclusions of Law numbers 1 through 18 and briefly summarized the document and the amendments made.

Commissioner Wong commented on the new condition number 6B related to Transportation and noted his concern regarding enforcement of the revised TIAR. Commissioner Wong also commented on condition number 9, the Affordable Housing condition and offered an amendment.

Mr. Davidson continued to discuss conditions numbers 12 through 30.

A recess break was taken at 11:25 a.m. The meeting reconvened at 11:50 a.m.

Commissioner Devens referenced condition number 3, page 36, related to Reversion on Failure of Substantial Commencement of the Project and offered an amendment to include language from § 15-15-93, HAR, in reference to the order to show cause.

Commissioner Devens concurred with Commission Wong's amendment to condition number 6, regarding Transportation.

Commissioner Devens offered amendments to condition number 7, page 37, regarding Holoholo Street; condition number 9 Affordable Housing and commented

further on Commissioner Wong's suggestions to that condition; condition number 10 regarding Previously Unidentified Burials and Archaeological Sites; condition number 12, Homestead Road and suggested to delete the word "public" and replace it with "open to the public."

Commissioner Devens then referenced condition number 23, page 43, regarding Energy Conservation Measures, and commented that he had some language to offer and suggested to replace the words "feasible and practicable."

Commissioner Wong commented on Commissioner Devens' suggestions regarding the order to show cause and reversion condition. Commissioner Wong concurred with Commissioner Devens' proposed amendments to the energy conservation condition.

Commissioner Devens commented on the amendments to the energy conservation condition and further discussed the enforcement concern of the CC&Rs.

Presiding Officer Kanuha noted that there had been testimony previously provided by the County's Planning Director that the county does not enforce the CC&Rs, as it would be a self-enforcing mechanism within the community association.

Commissioner Lezy further discussed condition number 23 regarding the Energy Conservation Measures and noted a typo in condition number 14 in the spelling of a karst expert.

Commissioner Wong concurred with Commissioner Devens in taking out the words "feasible and practicable" and inserting "consistent with the standards and guidelines..."

Commissioner Devens added that the condition, as amended, would address the concerns of ambiguity in the language of this condition.

Presiding Officer Kanuha commented on the reference to the CC&Rs and added that these energy conservation measures were consistently in flux.

Commissioner Devens noted that he would be comfortable with the deletion of his proposed amendment related to the CC&Rs and was in concurrence with Commissioner Wong's amended language as discussed.

Commissioner Devens further discussed condition number 5, Water Conservation Measures, and the recommendation for the use of indigenous and drought tolerant plants.

Commissioner Lezy discussed the amended language in condition number 23, Energy Conservation, as proposed by Commissioners Devens and Wong, and commented that by substituting the word "consistent" he believed that it would obligate the petitioner to implement those standards.

Commissioner Devens understood Commissioner Lezy's concern to the amendments to condition number 23 as discussed. However, Commissioner Devens noted that the petitioner had offered this language and was willing to do something to address energy conservation measures.

After a discussion, Presiding Officer Kanuha then asked Mr. Kudo to comment on the "feasible and practicable" language in the energy conservation condition and whether he would have concerns with replacing those words with "consistent."

Mr. Kudo stated that he understood the concern of the Commissioners regarding the language. However, he would have concerns with the amendment of replacing "feasible and practicable" with "consistent" as he believed that these were aspirational standards and that it should be up to the buyers and homeowners to decide what standards and other energy saving devices they would incorporate.

Mr. Takase noted that they would have a concern with the inclusion of the CC&Rs, as they believed it was not appropriate for the LUC to look towards the county for its enforcement.

Mr. Mitsuda commented that OP would support the LUC's amendment to include "consistent" in the language of the condition.

Commissioner Chock referenced condition number 5 regarding Water Conservation Measures and proposed additional language. Commissioner Chock offered additional language to condition number 9 regarding Affordable Housing and offered an amendment to condition number 18, Solid Waste Management Plan.

Commissioner Chock also suggested amendments to Conclusions of Law number 16, page 35, regarding the capacity at the West Hawaii landfill.

Commissioner Wong further commented on condition number 23 regarding Energy Conservation Measures noting that the language could read that the petitioner's requirement would be at the time of construction.

After a discussion, Commissioner Wong wondered if the Executive Officer could make these amendments as discussed and review the findings of facts to see whether there was sufficient findings to support these amendments. Commissioner Wong added that he understood that there was sufficient time and that the LUC could defer the ruling.

Commissioner Devens added that it was not only the record and evidence presented, but also the law that the Commission needs to look at in reviewing the facts based on the legal standards that they were bound by.

Commissioner Devens then moved to defer this matter. The motion was seconded by Commissioner Lezy.

The Commission was polled as follows:

Ayes: Devens, Lezy, Chock, Contrades, Wong, and Kanuha.

The motion passed with 6 yes, 3 absent.

#### A87-617 BRIDGE AINA LEA LLC and BANTER INC

Presiding Officer Kanuha stated that this was an action meeting to receive a status report from Petitioner Bridge Aina Le`a and Banter, Inc.

#### APPEARANCES

Eric Maehara, Esq., represented Petitioner

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

Norman Hayashi, County of Hawaii Planning Department

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

## Public Witnesses

### 1. Roy Vitousek

Mr. Vitousek stated that he represents the Mauna Lani Resort and that they were interested in the status of this matter and would like to be provided with future notices. Mr. Vitousek added that they share an intersection with the petitioner and that the association had recently received ownership of the roads.

There were no questions posed for Mr. Vitousek.

### 2. George Robertson

Mr. Robertson stated that he represents the Puako Community Association and has been watching this project for many years. He noted his concerns regarding the impacts to the water.

Presiding Officer Kanuha asked if Mr. Robertson wanted to be on the LUC's mailing list.

Mr. Robertson replied that they are presently on the list and that the developer would continue to keep them informed as they are waiting for the DEIS.

There were no further questions for Mr. Robertson.

## Petitioner's Presentation

Mr. Maehara stated that on July 26, 2008, a Substitution of Counsel was filed with the LUC and noted that at this time, the petitioner was not ready to provide a full status report. However, the petitioner would be filing a motion to amend conditions by the end of August and would also be submitting the annual report.

Mr. Takase stated that the county have not received any filings from the petitioner and that they had no comments.

Mr. Mitsuda briefly discussed the original affordable housing requirement and the amendment to the decision and order.

Commissioner Wong questioned the length of time needed in order to prepare and file the status report.

Mr. Maehara stated that they intend to file a motion to amend condition numbers 1, 3, and 7 by the end of August. In addition, they would file the annual report just prior to that date. Mr. Maehara noted that it was suggested that they would need to hold off on the annual report.

Commissioner Devens asked who was it that suggested the petitioner to hold off on the annual report.

Mr. Maehara noted that the suggestion was made to him in a discussion with the Executive Officer.

Presiding Officer Kanuha commented that he recalled this matter three years ago and since that time, all they have received from the petitioner were status reports and the nature of these reports were basically that there had been no progress. Presiding Officer Kanuha added that with the next status report and proposed filings, he urged Mr. Maehara to make sure that the filings and representations are well prepared, as they would be looked at very closely by this Commission.

There were no further questions for Mr. Maehara.

Mr. Davidson commented that he did not recall a representation made to Mr. Maehara about the status report.

Mr. Davidson noted that the Shopoff matter would be deferred to a possible September hearing date and that the LUC would return to hear both matters at that time.

The meeting adjourned at 1:10 p.m.

*(Please refer to LUC Transcript of July 24, 2008 for more details on this matter.)*