

LAND USE COMMISSION
MINUTES OF MEETING

August 7, 2008

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

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

COMMISSIONERS ABSENT: Ransom Piltz

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

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

ADOPTION OF MINUTES

Commissioner Devens noted a correction to the minutes of July 24, 2008, page 6, third paragraph, to read "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 Wong then moved to adopt the amended minutes of July 24, 2008. Vice Chair Kanuha seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Davidson noted that the schedule had been set through the September meetings and reminded the Commissioners to let Sandy know of any conflicts they may have with the schedule.

ELECTION OF OFFICERS

Commissioner Contrades nominated Duane Kanuha as Chair; Ransom Piltz and Vladimir Devens as Vice Chairs. The nomination was seconded by Commissioner Teves. There were no further nominations and the Chair closed the nominations. The nominations were unanimously approved by voice votes.

Commissioner Judge passed the gavel to Commissioner Kanuha, who assumed the duties of Chair.

Chair Kanuha expressed his appreciation to Commissioner Judge for her dedicated service for the past two years serving as the Chair of the LUC.

EXECUTIVE SESSION

Commissioner Judge 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 personnel matters. The motion was seconded by Commissioner Contrades. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 10:15 a.m.

The open meeting reconvened at 10:30 a.m.

A06-771 D. R. HORTON – SCHULER HOMES, LLC (Oahu)

Chair Kanuha stated that this was an action meeting to consider the acceptance of D. R. Horton – Schuler Homes, LLC's Final Environmental Impact Statement for the reclassification of approximately 1553.844 acres of land, identified as Tax Map Key Nos.: (1) 9-1-017: 004 and 059 and 072; (1) 9-1-018: 001 and 004 from the Agricultural District to the Urban District for development of residential units.

APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner
Jesse Souki, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Scott Derrickson, State Office of Planning

Public Witnesses

1. Kioni Dudley

Dr. Dudley commented on the FEIS and noted his concerns about the loss of farmlands. Mr. Dudley further commented that he believed that the EIS covered the problems rather than addressed them.

There were no questions for Dr. Dudley.

2. Maeda Timson

Ms. Timson stated that she is the Chair for the Makakilo-Honokowai Community Board and commented on her support for the project.

There were no questions for Ms. Timson.

Staff's Report

1. Michael Murphy

Mr. Murphy began his presentation and referenced the background and major points of the project, and provided a map orientation of the site. Mr. Murphy added that based upon the review of the FEIS, staff believes that the petitioner had generally complied with the content requirements of an FEIS and recommended that the FEIS be accepted in accordance with Chapter 11-200, HAR.

Petitioner's Presentation

Ms. Kuwaye began her presentation by noting that the 30-day acceptance period expires on August 10, 2008. Ms. Kuwaye stated that petitioner was seeking to reclassify approximately 1553 acres of land for residential and commercial uses and for supporting infrastructure. Ms. Kuwaye also noted that on August 5, 2008, petitioner filed substitute pages to the FEIS, which included corrections to typographical errors and other non-substantive changes. Ms. Kuwaye argued that the FEIS complied with the statutory requirements and requested that the LUC accept the FEIS.

Petitioner's Witness

1. Vincent Shigekuni

Mr. Shigekuni stated that he was the planner and produced the EIS. Mr. Shigekuni briefly discussed the comment letters and responses, the arthropod study as recommended by the LUC, and the filing of the errata.

County and State Comments

Mr. Hata noted that the City and County of Honolulu, Department of Planning and Permitting, had taken no position on this matter and had no questions.

Mr. Yee commented that although the FEIS was submitted to the LUC on July 11, 2008, the OP received a copy only a few days ago, on August 4. Mr. Yee noted their

disappointment of the late receipt of the FEIS, adding that they had concerns on the difficulty of reviewing and commenting on the FEIS during this short period, and in receiving comments from other state agencies as well. Mr. Yee added that the OP would not oppose acceptance of the FEIS at this time.

Chair Kanuha wondered if the concerns of the OP were responded to or further clarified.

Mr. Yee replied that he received a response this morning to most of their issues.

Ms. Kuwaye apologized for the lateness of the filing to the OP and the County, adding that copies were delivered to their offices on Monday, August 4.

Commissioner Wong noted his concerns on the short period of review time for the OP and the County and whether this could set precedence for future dockets.

Ms. Kuwaye noted that it was an oversight as they believed there was no legal requirement for the petitioner to serve the FEIS to the OP or the County.

Mr. Yee stated that he was not aware of a legal requirement, as he believed that the OP was not a party to the case at this time. Mr. Yee noted that the OP shall be a party to each DBA case and that the LUC has been interpreting it as the case does not begin until after the acceptance of the final EIS and the application is deemed complete. The OP is not a party at this time because the application is not deemed complete. Mr. Yee added that they were in attendance because they will be parties to this matter and believe that they have valid comments.

Commissioner Lezy commented that although there are no legal obligations to serve a copy of the EIS, the LUC would not have the benefit of observations from another entity other than the petitioner. Commissioner Lezy felt that it would be appropriate to serve a courtesy copy to the OP and the County at the same time it is served upon the LUC.

Commissioner Judge posed a few questions regarding the transit system and wondered if the DEIS for the transit system was produced in the second quarter of 2008, as noted in the FEIS.

Mr. Shigekuni noted that the document had not been produced and that it was the proposed date at the time of writing the FEIS.

Commissioner Wong then moved to accept the FEIS, as amended by the errata sheet. The motion was seconded by Commissioner Chock.

The Commission was polled as follows:

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

The motion passed with 8 yes, 1 absent.

A recess was taken at 11:25 a.m. The meeting reconvened at 11:45 a.m.

Commissioner Wong left the meeting at this time.

DR08-36 KO`OLINA DEVELOPMENT LLC (Oahu)

Chair Kanuha stated that this was a continued hearing on Docket No. DR08-36 Ko`Olina Development's petition for declaratory order filed on March 24, 2008.

APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner
Wyeth Matsubara, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Scott Derrickson, State Office of Planning

Public Witnesses

1. Maeda Timson

Ms. Timson noted her support for the petitioner adding that Ko`Olina Resort is an economic engine offering jobs, is a partner with the community, and is in compliance with the Ewa development plan.

Mr. (Wyeth) Matsubara referenced petitioner's exhibit 12, a letter from Ms. Timson supporting the sunup to sundown hours at the marina ramp, filed as petitioner's exhibit 12.

Ms. Timson acknowledged that she had submitted a letter supporting the ramp hours.

Commissioner Lezy posed questions regarding the neighborhood board meetings, representatives of the fishing community who attended the board meetings, and others involved in the discussion of the marina ramp hours.

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

EXECUTIVE SESSION

Vice Chair Devens 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 Chock. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 11:55 a.m.

A lunch recess was taken at 12:25 p.m.

The open meeting reconvened at 1:20 a.m.

Public Witnesses (continued)

2. Warren Von Ards wandt

Mr. Von Ards wandt commented that Ms. Timson lives two blocks from him and at no time did she come to discuss her neighborhood board meetings with him. Mr. Von Ards wandt added that there were no notices in his community about the ramp discussions and the only thing he knew of was the discussion between William Aina and Ko`Olina Resort. Mr. Von Ards wandt noted that they would want a boat ramp at the farther end of the marina and could come to a stipulation on the ramp hours.

There were no questions for Mr. Von Ards wandt

3. Richard Yamasaki

Mr. Yamasaki commented that in response to the previous testimony about Mr. Horita's development, it was during a time of the economic downturn. Mr. Yamasaki then noted his concerns of the public boat ramp being taken away without any due process or hearings. Mr. Yamasaki commented on Ko`Olina's ramp user registration and further commented on unsafe conditions at the Phoenicians ramp. Mr. Yamasaki added that they would like to see Ko`Olina re-open the ramp in the marina since it's already there and to allow public access now.

There were no questions posed for Mr. Yamasaki.

4. Kioni Dudley

Dr. Dudley stated that he is also a member of the neighborhood board with Ms. Timson and was stunned by her testimony relating to neighborhood board discussions with the fishermen. Dr. Dudley noted that he could not recollect any discussions with the fishermen, but could recall when they closed the boat ramp. Dr. Dudley added that he objects to Ko`Olina's guard station that keeps the public out and was opposed to limiting the public ramp hours from dawn to dusk for the fishermen.

There were no questions for Dr. Dudley.

Petitioner's Presentation

Mr. (Ben) Matsubara noted that at the last meeting, petitioner's witness Mr. Kurahashi had just completed his testimony. Mr. Matsubara added that Mr. Kurahashi would be available to answer any questions.

1. Mike Nelson

Mr. Nelson is the Vice President of Marketing and Special Events at Ko`Olina Resort. The petitioner had met with OP to try to expedite this matter and had provided Mr. Nelson's written testimony as petitioner's exhibit 36.

Admission of Additional Exhibits

Mr. Nelson's written testimony was submitted as petitioner's exhibit 36. There were no objections to the submittal of exhibit 36. Said exhibit was admitted into the record.

Mr. Nelson briefly summarized his testimony and stated that he was familiar with the situation after discussing the issues for two years with the boaters. Mr. Nelson commented that if the LUC feels that they are progressing in the right direction, then they would move ahead with the improvements and temporary walkway at Phoenicians.

Mr. Yee raised a few questions regarding the yacht club, and the possibility of relocating a boat ramp within the marina.

Vice Chair Devens commented that the location of the original ramp was built within the marina and has since been closed. Vice Chair Devens asked Mr. Nelson whether he believed that Ko`Olina was in substantial compliance with the Decision & Order at that time.

Mr. Nelson commented that although he was not employed at Ko`Olina at that time, it appeared that the former ramp would have been in compliance.

Vice Chair Devens further commented that the Decision & Order calls for the marina with a public boat ramp, although the ramp that the petitioner is proposing is in Kalaeloa Harbor and not a part of Ko`Olina. Vice Chair Devens questioned if Mr. Nelson believed that was correct.

Mr. Nelson noted that it was correct.

There were no further questions for Mr. Nelson.

Admission of Additional Exhibits

Mr. (Wyeth) Matsubara introduced petitioner's exhibit 37, the written testimony of Russell Doane. There were no objections. Petitioner's exhibit 37 was admitted into evidence.

2. Russell Doane

Mr. Doane briefly summarized his testimony and stated that he was the Marina Manager / Harbor Master and provides traffic control in and out of Kalaeloa harbor. Mr. Doane discussed the number of boats launched and retrieved for a three-week period.

Mr. Yee raised questions regarding the operator of the haul out facility, temporary slips at Phoenicians, and the \$125 user fee.

Vice Chair Devens asked if the Ko`Olina marina currently has a public boat ramp and whether there had been any other public boat ramp open within the marina since the closure of the original ramp.

Mr. Doane replied that there has not been any public ramp within the marina since its closing.

Chair Kanuha raised questions regarding security issues related to users of the old ramp, operational issues, conflicts between the boaters and resort users, and whether improvements at the Phoenicians ramp would encourage more boaters.

Mr. Doane noted that they did not have any security issues, but liability was always an issue with the boaters coming through the parking areas. In addition, there were times when the marina transit was crowded. Mr. Doane added that any improvements would be better and hopefully the usage would go up at Phoenicians.

There were no further questions for Mr. Doane.

Admission of Additional Exhibits

Mr. Yee described and offered OP's exhibits 1B, 18A, 19A, and OP's amended Exhibit List. There were no objections to OP's exhibits. Said exhibits were admitted into the record.

State's Witnesses

1. Fredrick Nunes

Mr. Nunes stated that he is the Program Manager of the Engineering Branch, Harbors Division, State Department of Transportation. Mr. Nunes was qualified as an expert in engineering. Mr. Nunes' written testimony was admitted as OP's exhibit 19A.

Mr. (Wyeth) Matsubara raised questions on whether the proposed improvements were acceptable guidelines for safety and usage and the ideal percentage for the slope.

Mr. Nunes stated that the proposed improvements were acceptable and that although the 15 percent slope is acceptable, he would recommend a 12.5 percent slope.

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

2. Eric Yuasa

Mr. Yuasa stated that he is the Branch Head of the Engineering Branch, Division of Ocean Boating and Recreation, State DLNR, who manages the small boat harbors. Mr. Yuasa's written testimony was admitted as OP's exhibit 18A.

Mr. Yuasa discussed the proposed repairs to the Phoenicians harbor and briefly summarized his eight recommendations to the proposed improvements.

Mr. Yee posed questions and further discussed the 15 percent ramp slope and the other facilities with a dual ramp slope.

Mr. (Wyeth) Matsubara posed a few questions regarding the guidelines for boat ramps and the 15 percent slope as recommended in the guidelines.

Mr. Yuasa noted that Hawaii does not have written guidelines for boat ramps. However, Hawaii has unique water surges and recommended that it should be considered when determining the slope percentage.

Mr. (Wyeth) Matsubara commented that petitioner would be willing to work with the State's recommendations.

Commissioner Judge asked who is the author of the guidelines and if Mr. Yuasa's department was familiar with the hours of operation at the boat harbors.

Mr. Yuasa stated that the guidelines used are from the California boating standards. Mr. Yuasa noted that all of the 19 small boat harbors are 24-hour public facilities. He added that he knew of only one that was not open for 24-hours.

Chair Kanuha wondered if Mr. Yuasa was involved with the review, construction, or any other capacity of the old boat ramp at the marina, and whether this would come under his department's purview.

Mr. Yuasa stated that normally the DLNR works closely with the DOT and that the DOT would refer plans to their department if it involved a small boat harbor facility. Mr. Yuasa further stated that although he was not at the branch at the time of the original ramp construction, he believed that his department would have had some involvement, but only if the DOT had provided them the opportunity to comment. Mr. Yuasa added that the DOT allowed his department to comment on the Phoenician ramp repairs, which they did.

Mr. Yee wondered why only one of the small boat harbors was not a 24-hour facility.

Mr. Yuasa stated that the ramp is a part of a larger complex, the Sand Island Marine Center and they secure the gate at night. Mr. Yuasa added that the closure does not inconvenience the boaters since there is another public ramp facility across the bridge and boaters would use that facility at night since it is open for 24-hours.

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

A recess break was taken at 2:15 p.m. The meeting reconvened at 2:20 p.m.

Admission of Additional Exhibit

Mr. Yee offered the written testimony of Creighton Chang as OP's exhibit 20A. There were no objections. OP's Exhibit 20A was admitted into evidence.

3. Creighton Chang

Mr. Chang briefly summarized his testimony and stated that he was employed at a local construction company for the past 35 years and his expertise was in building concrete bridges, retaining walls, foundations, grading and slab construction. Mr.

Chang then presented a PowerPoint presentation of the various public ramps across Oahu and compared them to the Phoenicians ramp.

Mr. Chang commented that he speaks for approximately 275 fishermen and boaters. OP's exhibit 11 lists the people that he represents in the Consent and Authorization letter with list of signatures.

Commissioner Lezy raised questions regarding Mr. Chang's understanding of how the decision was made that the ramp be relocated to the Phoenicians site. Commissioner Lezy asked whether the proposed improvements would make the ramp safe and useable.

Mr. Chang stated that even with the proposed improvements, the ramp is not in the marina. Mr. Chang added that should an offer be made by the petitioner to put a ramp within the marina, he would be willing to compromise on the access hours. However, Mr. Chang noted that he would be speaking on behalf of himself. Mr. Chang believed that the people he represents would want 24-hour access.

Chair Kanuha wondered if Mr. Chang interpreted the LUC condition to read that the petitioner was to provide a 24-hour public boat ramp.

Mr. Chang replied in the affirmative adding that there is no restriction on a public boat ramp.

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

4. Abbey Mayer

Mr. Mayer stated that he is the Director of the State's Office of Planning. OP's supplemental position statement was entered into evidence as the OP's exhibit 1B. Mr. Mayer briefly summarized his testimony and stated that the OP had diligently weighed and balanced the issues of both sides and in looking at the past efforts of the petitioner, and in reviewing findings of fact number 33 and the representations made, clearly indicated that the boat launch ramp is to be within the marina. Mr. Mayer noted that they had come to this conclusion after trying to weigh all sides to the best of their ability. Mr. Mayer further noted that living harmoniously would mean that both sides would need to give a little. Should the ramp be moved back to the marina, the public would need to recognize that it is on private property and according to his understanding of the order, he did not see anything in reference to the 24/7 access. Mr.

Mayer added that they would urge the LUC to use this Declaratory Ruling process to its fullest extent to avoid issuance of the Order to Show Cause. Mr. Mayer believed that the petitioner would comply with the best of their abilities to heed to the LUC's final decision.

Mr. (Ben) Matsubara commented that as much as they had hoped that the OP would agree with their position on this matter, they would respect the OP's position and had no questions for Mr. Mayer.

Commissioner Lezy posed questions regarding OP's final recommendation, the recommended user hours, and what he (Mr. Mayer) believed would have been the most appropriate measures to take.

Mr. Mayer commented that it was the petitioner's failure to return to the LUC, as much of these issues could have been avoided. Mr. Mayer further commented that there was never anything included in their status report. If a boat ramp was to be set in a marina, there would have been a CDUP process and that the City would address the hours of operation at that permitting stage, not at the LUC.

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

Chair Kanuha called for a recess and informed the parties that they would continue this matter the following morning.

The meeting was at recess at 3:15 p.m.

(Please refer to LUC Transcript of August 7, 2008 for more details on this matter.)