

LAND USE COMMISSION  
MINUTES OF MEETING

August 8, 2008

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

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

COMMISSIONERS ABSENT: Thomas Contrades  
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 Kanuha called the meeting to order at 9:05 a.m.

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

Chair Kanuha noted that there were no public witnesses.

Closing Statements

Mr. (Ben) Matsubara began his closing argument and noted that the filing of the petition for declaratory ruling was to provide the LUC with greater flexibility. Mr. Matsubara added that although previous missteps were made, he believed that with the proposed improvements and based on the entitlement history with the City, petitioner could be found to be in substantial compliance.

Mr. Yee stated that both the OP and the engineers from the State have reviewed petitioner's proposal and have concluded that in order to substantially comply with the LUC's order, a public boat ramp must be built inside the marina. Mr. Yee added that the operating hours could be worked out with the City. Moreover, substantial compliance would be that the marina must have a public boat launch ramp inside the marina itself and be part of the whole development.

Chair Kanuha then noted that the matter would be submitted to the Commission for deliberation and directed the parties to draft their individual findings of fact, conclusions of law and decision and order based upon the record in this docket and served to the parties and the LUC no later than the close of business on September 5, 2008. The parties would have until the close of business on September 15, 2008 to serve any exceptions or responses. The Commission would convene for an action meeting on October 2, 2008.

Mr. Yee commented that the parties could stipulate to most of the facts and designate what they may agree and/or disagree to.

Chair Kanuha concurred that it would be good for the parties to stipulate.

There were no further questions.

A recess break was taken at 9:35 a.m. The meeting reconvened at 9:45 a.m.

### A83-562 WEST BEACH ESTATES (Oahu)

Chair Kanuha stated that this was an action meeting to consider the issuance of an Order to Show Cause.

### 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

Chair Kanuha noted that there were no public witnesses.

### Petitioner's Presentation

Mr. (Ben) Matsubara argued that based on the statutory rules and legislative history when dealing with vacant property the Order to Show Cause (OSC) remedy could seem appropriate. However, Ko`Olina Resort has developed hotels, individual residences, a marina, and that substantial commencement has occurred. Mr. Matsubara argued that the utilization of an OSC may not be appropriate for this matter and that instead, the Declaratory Ruling proceeding would allow the LUC the flexibility to have petitioner satisfy the LUC's concerns of non-compliance.

Mr. Yee commented that the OSC is a procedure with substantive authority to downzone, and OP believed that it was unnecessary at this time to issue the OSC in this matter.

Chair Kanuha then entertained a motion to either defer action or dismiss this docket for reasons of being premature at this time.

Vice Chair Devens moved to defer this matter in light of the declaratory ruling being considered in Docket No. DR08-36 Ko`Olina. The motion was seconded by Commissioner Teves.

Commissioner Judge commented that she would not be able to support this motion as she believed that the LUC would be able to clarify what substantial compliance would be through the declaratory ruling process.

Commissioner Lezy concurred with Commissioner Judge and did not feel it necessary to keep the OSC on the table at this time.

On the motion to defer this matter, the Commission was polled as follows:

Ayes: Devens, Teves, and Kanuha.

Nays: Judge, Lezy, and Chock.

The motion failed with 3 yes, 3 no, and 3 absent.

Commissioner Judge then moved to dismiss the OSC without prejudice in that the LUC could always issue that motion again. The motion was seconded by Commissioner Lezy.

The Commission was polled as follows:

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

The motion passed with 6 yes, and 3 absent.

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

Commissioner Wong entered the meeting at this time.

SP87-364 KAHILI ADVENTIST SCHOOL (Kauai)

Chair Kanuha stated that this was an action meeting to receive a status report and to take action, if necessary.

APPEARANCES

Mark Valencia, Esq., represented Petitioner  
Ron Lindsey, Kahili Adventist School  
Terryl Loeffler, Kahili Adventist School  
Wanda Lee, Principal, Kahili Adventist School  
Greg Kam, Consultant for Kahili Adventist School  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Kanuha noted that there were no public witnesses.

Mr. Valencia commented that the status report had been filed with the LUC and since the last report, petitioner hired an expert, Mr. Kam, to expedite the county's permitting process. Mr. Valencia added that the school's enrollment and tuition had drastically declined due to rumors that the school would be closing down. The impact of the pending litigation has taken a toll on the school and they are trying to have this matter resolved as soon as possible.

Mr. Yee commented that the state would recommend that petitioner work with Steve Kiyono of the DOT concerning the roadway issues. Mr. Yee also recommended that the petitioner return to the LUC with the county approvals, to ensure compliance to the LUC's order.

Commissioner Judge wondered if petitioner had a timetable on the county permitting process.

Mr. Kam stated that he was a planning consultant on Kauai and discussed the county's permitting process. Mr. Kam noted that the application would be ready for submittal in approximately 45-60 days. Once the application is accepted, it would take approximately three to four months before a decision is rendered. Mr. Kam added that

he was able to speak with Mr. Kiyono of the DOT and is working with him on the State's concerns.

Ms. Lee stated that she was the principal of the school and commented that they are a small K-12 grade school with approximately 40 students, significantly less in enrollment than in the previous years. Ms. Lee added that the school is situated in the country, uninhibited by distractions and was grateful for the opportunity to have a school there and looked forward to continuing to educate children there.

Commissioner Lezy questioned the status of the underlying litigation.

Mr. Valencia stated that it is on appeal, briefed, and waiting on a decision. Mr. Valencia added that it's conceivable that they could possibly get a decision by next year.

Commissioner Judge moved that the petitioner provide a written status report as soon as the application to modify the special permit is submitted to the County, and a further written status report in six months in light of the current status report received and the application's progress with the county's special permit process. The motion was seconded by Vice Chair Devens.

Commissioner Wong offered a friendly amendment to change the time period from six months to one year recognizing the pending litigation and county planning process.

Commissioner Judge concurred and accepted the friendly amendment of one year.

Vice Chair Devens seconded the friendly amendment to the motion.

The Commission was polled as follows:

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

The motion passed with 7 yes, and 2 absent.

Mr. Lindsey stated that he would be leaving the state on October 1<sup>st</sup> because of his permanent disability and physical condition. Mr. Lindsey expressed his appreciation to the LUC for their consideration in this matter and will be praying for this matter to come to a conclusion. Mr. Lindsey added that they are most interested in

having a fine school in a beautiful setting and hope to continue operating and providing quality education on the island of Kauai.

A recess break was taken at 10:40 a.m. The meeting reconvened at 10:45 a.m.

## DISCUSSION

Mr. Davidson discussed the amendments to the Commission's administrative rules and commented on a proposed course of action that would be in two parts. The first part would include the non-controversial, procedural and operational rules to assist the LUC and the parties. This amendment would have one public hearing on Oahu, with statewide publication. The second part would include the potentially more controversial and substantive rules, including those implementing Act 222, 223, IAL, etc. The second set of rules would entail meetings statewide (i.e., in all counties). An alternative would be to put everything together, although that process would take much longer.

Vice Chair Devens wondered what type of rules were in the operational rules.

Mr. Davidson noted that these would generally be the ones that were submitted to the LUC last year for consideration and deemed routine or for clarification.

Ms. Erickson added that it would be more of the procedural matters.

Commissioner Judge noted her support for the two-step proposal.

Commissioner Chock commented that when the LUC starts on the IAL rules, he would like to have some information in the form of a workshop or briefing before the LUC.

Vice Chair Devens wondered how the review process would work.

Mr. Davidson stated that on the September 18 meeting, the LUC would have a set of rules for action to take the rules to public hearing. After the public hearing, staff would bring the rules back to the LUC for adoption. The process would be similar to the second set of rules, although there would be more public participation.

Ms. Erickson stated that she understood that if the LUC approves the rules for public hearing, then it would go to the Governor for approval and various agencies for comments. Assuming there are no changes, then the rules could go to public hearing.

Commissioner Wong asked if they need a motion to authorize the staff to proceed with the drafting of the rule changes.

Mr. Davidson replied that staff was only requesting for a sense of direction at this time.

Commissioner Wong posed a few questions regarding when the OP becomes a party to the EIS process.

Vice Chair Devens had concerns amending the LUC's administrative rules in two phases as proposed.

Mr. Davidson commented that the goal is to have the first set with basic procedural amendments and anything that is tricky would be in the second round.

After a brief discussion, Chair Kanuha stated that the LUC would support staff's recommended approach.

The meeting adjourned at 11:15 a.m.

*(Please refer to LUC Transcript of August 8, 2008 for more details on this matter.)*