

LAND USE COMMISSION
MEETING MINUTES

July 15, 2010

King Kamehameha's Kona Beach Hotel
Ballroom 1 & 2
75-5660 Palani Rd.
Kailua- Kona, Hawai'i 96738

COMMISSIONERS PRESENT:

Vladimir Devens
Kyle Chock
Nicholas Teves, Jr.
Duane Kanuha
Thomas Contrades
Ronald Heller

COMMISSIONERS ABSENT:

Normand Lezy
Charles Jencks
Lisa Judge

STAFF PRESENT:

Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER:

Holly Hackett

AUDIO TECHNICIANS:

Walter Mensching

CALL TO ORDER

Chair Devens called the meeting to order at 9:47 a.m.

APPROVAL OF MINUTES

Chair Devens asked if there were any corrections or additions to the minutes. There were none. Commissioner Chock moved to adopt the minutes. Commissioner

Teves seconded the motion. The minutes were unanimously approved by a show of hands (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2010 was distributed in the handout material for the Commissioners.
- The next meeting will be on August 18 and 19 on Oahu.
- A new spreadsheet scheduling tool for upcoming LUC meetings and a calendar for the first 6 months of 2011 based on the recent announcement of the various County furlough schedules is also included and will be adjusted if necessary.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

ACTION

A10-787 MAUI R&T PARTNERS LLC

Chair Devens announced that this was an action hearing to determine whether the Land Use Commission is the proper accepting authority pursuant to chapter 343, Hawaii Revised Statutes, of an environmental impact statement relating to the development and reclassification of approximately 253.05 acres of land in Kīhei, Island of Maui, from the Agricultural District to the Urban District; and to determine whether the proposed action may have a “significant effect” to warrant the preparation of an environmental impact statement (EIS) pursuant to chapter 343, Hawaii Revised Statutes.

APPEARANCES

Jennifer Benck, Esq., Carlsmith Ball co-counsel, represented Maui R&T Partners LLC on behalf of Martin Luna, Esq. and Blaine Kobayashi, Esq.

Stephen Lim, Esq., Carlsmith Ball co-counsel, represented Maui R&T Partners LLC on behalf of Martin Luna, Esq. and Blaine Kobayashi, Esq.

Chris Summers, Chris Hart & Partners

Steve Perkins, Maui R&T Partners LLC

Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, Director, State Office of Planning
(Maui County had contacted the LUC previously and advised that they would not be appearing, but did not have any objections to the LUC being the accepting authority and agreed that the proposed action did have a “significant effect” to warrant the preparation of an EIS.)

Commissioner Heller disclosed that his law firm, Torkildson, Katz, had previously done legal work for the Petitioner in the general area of labor and employment law, and stated that this limited relationship with the Petitioner would not affect his impartial participation in the proceedings. There were no objections to Commissioner Heller’s continued participation on this docket.

Chair Devens acknowledged receipt of written email correspondence from Dick Mayer in regards to this docket.

Ms. Benck expressed that LUC staff had advised her of Petitioner’s responsibility for reimbursement of hearing expenses and responded that Petitioner would comply with the LUC conditions and policy.

PUBLIC WITNESSES

None

PETITIONER

Ms. Benck described the proposed project and the Petition Area and provided the reasons why Petitioner believed that the LUC was the appropriate accepting authority and why Petitioner believed that preparation of an EIS was warranted.

OP

Mr. Yee commented that OP had no objections to the LUC being the accepting authority and supported the preparation of an EIS.

Commissioner Kanuha moved that the LUC determine that it is the proper accepting authority and that the proposed action will have a “significant effect” to warrant the preparation of an EIS pursuant to chapter 343 Hawaii Revised Statutes. Commissioner Contrades seconded the motion.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Kanuha, Contrades, Chock, Heller, Teves, and Chair Devens

Nays: None

The motion passed 6-0 with 3 excused.

The Commission went into recess at 9:57 a.m. and reconvened at 10:05 a.m.

CONTINUED HEARING

A07-774 NORTH KONA VILLAGE, LLC ('O`oma 2nd – Kaloko, North Kona, Hawaii)

Chair Devens announced that this was a continued hearing on Docket No. A07-774 NORTH KONA VILLAGE, LLC, to consider Petition to reclassify Conservation Land District to Urban District and explained the procedures for the hearing.

There were no questions on the procedures for the hearing.

APPEARANCES

Jennifer Benck, Esq., represented Petitioner `O`oma Beachside Villages LLC (North Kona Village)

Steven Lim, Esq., represented Petitioner `O`oma Beachside Villages LLC (North Kona Village)

Brandon Gonzalez, Esq., Deputy Corporation Counsel, represented Hawaii County Planning Department

B.J. Leithead-Todd, Director, Hawaii County Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, Director, State Office of Planning

Gregory Lind, Esq., Solicitor's Office represented National Park Service

Sally Beavers- Buchal, National Park Service

PRESENTATION OF EXHIBITS

Petitioner

Ms. Benck offered Petitioner's Exhibit 96- Petitioner's Witness, Tom Witten's PowerPoint presentation.

Hawaii County and the National Park Service (NPS) had no objections. Mr. Yee

reserved the right to object if the material contained in the presentation did not constitute rebuttal testimony. Chair Devens acknowledged Mr. Yee's request and accepted Exhibit 96.

OP

Mr. Yee offered OP's Exhibits 9A- the Amended Testimony of Brennon Morioka and Exhibit 31- the Noise Compatibility program update for the Kona International Airport. Mr. Gonzalez requested clarification on whether OP Exhibit 31 was a draft or final document. Discussion ensued to identify that the submitted material was a final document.

There were no objections to the acceptance of the exhibits.

Hawaii County

Mr. Gonzalez had nothing to submit.

National Park Service (NPS)

Mr. Lind had nothing to submit.

OP's WITNESSES

1. Brennon Morioka, Director State Department of Transportation.

Mr. Morioka affirmed that Exhibit 9A had been prepared under his direction and testified that the Department of Transportation (DOT) has no objections to the proposed project if conditions mentioned in the DOT written testimony (Exhibit 9A) were accepted. Mr. Morioka identified the airport and highway issues that the written testimony addressed and described the various concerns, considerations and disclosure requirements.

Mr. Yee requested clarification of the DOT's position on dealing with any noise mitigation efforts in the event of future airport expansion and the reasoning for requesting an aviation easement for the Petition Area. Mr. Morioka responded that the intent for the aviation easement condition was to allow flexibility for future State airport planning if the project was approved and elaborated on the details involved with the condition.

Mr. Yee requested clarification on the forecasted highway improvements and the reasoning used to install them. Mr. Morioka explained how the DOT foresaw future traffic conditions that prompted the need for traffic flow improvement designs and described the transitional planning necessary to achieve them.

Ms. Benck requested clarification on past DOT comments on the EIS and the process involved with preparing the proposed conditions of approval mentioned in the DOT testimony for the highway and airport concerns. Mr. Morioka responded that the conditions contained in the DOT testimony were the result of long-time ongoing negotiations with the Petitioner and that the existing conditions regarding airport noise should address current and future airport expansion concerns.

The National Park Service and Hawaii County did not have questions.

Commissioner Heller requested clarification on how the aviation easements would be documented as a recorded encumbrance in the deeds of potential property owners. Mr. Morioka provided his perception of how the DOT conditions would dictate that deeds include provisions for aviation easements.

Commissioner Kanuha requested clarification on how the DOT was planning to handle concerns about highway traffic in the region if the Petition Area before the project was approved. Mr. Morioka described how the DOT was planning to incrementally achieve its highway design plans and would be requiring periodic Traffic Impact Assessment Report (TIAR) studies and reviews from the petitioner to be submitted for DOT review and approval. He also explained the challenges that the proposed project presented for allowing access, connectivity, and interfacing with other external residential components in the area.

Commissioner Kanuha inquired if the neighboring Kohanaiki Shores project had a similar analysis done. Mr. Morioka could not recall and described how he believed the Kohanaiki project was dealing with its access situation.

There were no further questions for Mr. Morioka.

2. Abbey Mayer

Mr. Mayer provided the reasoning and considerations that were involved in determining OP's position of conditional support for the Petition for reclassification and summarized OP's conditions and their justifications to address the major concerns about the Petition Area.

Mr. Yee requested clarification on the location of the State right-of-way in the Petition Area and how it would be affected if the Petition were approved. Mr. Mayer provided his perspective of how the State would relinquish ownership.

Ms. Benck requested clarification on the proposed 100' structure setback and quarter-mile buffer spaces requested by NELHA that were not included in the original OP testimony. Mr. Mayer provided his understanding of what types of setback and buffer arrangements might be requested by NELHA and how these arrangements were intended to deal with the various mitigation, disclosure and conditional requirements for the Petition Area and its neighboring properties.

Mr. Gonzales requested clarification on the conditions that NELHA would require based on the types of intended uses on its property. Mr. Mayer replied that he would be speculating on the NELHA uses due to lack of zoning approvals.

Mr. Lind requested clarification on page 6 of OP's written testimony (Exhibit 1); on the desalinization efforts for potable water in the area, and on the factors involved with determining NELHA's buffer requirements.

Mr. Yee requested clarification on the notification to potential purchasers of the proposed project to address NELHA concerns. Mr. Mayer responded that the notification was to disclose information and make potential purchasers aware of activities occurring on NELHA property.

Commissioner Teves requested clarification on why OP would consider conditionally supporting a change in land use from Conservation to Urban. Mr. Mayer provided OP's analysis and evaluation of the proposed project

and explained how OP had determined it would conditionally support the Petition.

PETITIONER'S REBUTTAL WITNESS

Ms. Benck offered Tom Witten as Petitioner's Rebuttal Witness. Discussion ensued over the materials included in Petitioner's Exhibit 96 to determine if it should be allowed as rebuttal testimony. Chair Devens determined that he would allow Mr. Witten to testify and that objections could be raised during the presentation.

Tom Witten

Mr. Witten stated that he had 3 main points on the regional planning aspects of Kona at the State Land Use and County Land Use levels that he wanted to cover and began to provide a historical recap of development in the area. Mr. Yee objected that this information was inappropriate at this stage of the proceedings. Chair Devens agreed and sustained the objection. Discussion ensued on why certain information had been included in the presentation to address and respond to the public's testimonies and concerns that had been brought up during the proceedings. Chair Devens stated that he would hear more testimony.

Mr. Witten provided additional historical information on development activity in the region that reflected changes from Conservation to Urban land use, coastal open space preservation, and the county subzone changes that were being done. Mr. Yee argued that the material content was still inappropriate. Discussion ensued on whether the material was appropriate or not. In light of OP's objections, Chair Devens asked if Mr. Witten could get to the rebuttal material .

Mr. Witten identified how public and vehicular access to the shoreline could be achieved by referencing a map of the Petition Area; and explained how mitigations to the noise compatibility issues had been addressed by the Petitioner.

There were no questions for Mr. Witten.

Ms. Benck had no further witnesses and rested her case.

Chair Devens recognized the large number of public witnesses and explained the time criteria that would be applied for providing public testimony before the Commission.

PUBLIC WITNESSES

1. Jing Jing Tsong

Ms. Tsong provided her reasons for keeping the Petition Area in the Conservation District.

There were no questions for Ms. Tsong

2. Tom Lamont

Mr. Lamont stated that he was a flight instructor and shared his concerns about locating the proposed project near the existing Kona airport.

There were no questions for Mr. Lamont

3. Greg Trebon

Mr. Trebon provided his concerns about locating the proposed project near the existing airport.

Commissioner Kanuha requested clarification on what Mr. Trebon considered compatible uses that could be located next to an airport. Mr. Trebon described his perception of what compatible uses could be placed next to an airport.

There were no further questions for Mr. Trebon.

4. Mary Jo Lake

Ms. Lake shared her reasons for preserving open space in Kona.

There were no questions for Ms. Lake.

5. Stefan Buchta

Mr. Buchta provided his perspective on the impact that the proposed project would have on tourism, the business plan for the proposed development, and other unknown considerations that might be associated with the project.

There were no questions for Mr. Buchta.

6. Ben Dysart

Mr. Dysart provided his reasons for keeping the Petition Area in the Conservation Use District.

There were no questions for Mr. Dysart.

7. Pete Lindsey

Mr. Lindsey submitted written testimony and shared his reasons for supporting the proposed development.

There were no questions for Mr. Lindsey.

8. Jonathan Lee

Mr. Lee stated he was a union representative and expressed the reasons why his union supported the project.

There were no questions for Mr. Lee.

9. Diane Corcoran

Ms. Corcoran provided her reasons why the Petition Area should be left as open space.

There were no questions for Ms. Corcoran.

10. Curtis Muraoka

Mr. Muraoka shared that he was affiliated with a charter school located in

the NELHA area and described why he supported the Petition and how he would be able to occupy the designated school site space in the Petition Area if the proposed project was allowed.

There were no questions for Mr. Muraoka.

11. Janice Palma-Glennie

Ms. Palma-Glennie stated that she was representing the Surfrider Kaea Chapter and expressed the reasons her organization opposed the proposed project.

There were no questions for Ms. Palma-Glennie.

12. Malia Chaul

Ms. Chaul provided her perception of what the community concerns were for the proposed project.

There were no questions for Ms. Chaul.

13. Kathleen McMillen

Ms. McMillen shared her reasons why the DOT should take a more active role in regards to her concerns about the future development plans for the airport.

There were no questions for Ms. McMillen.

14. Shannon Jacob Kync

Ms. Kync expressed her concerns about the loss of open space and natural resources in the Petition Area.

There were no questions for Ms. Kync.

15. Chac Robbins

Mr. Robbins explained why he opposed the proposed project.

There were no questions for Mr. Robbins.

16. April Sutton

Ms. Sutton provided her concerns about the loss of the local identity if the development was allowed.

There were no questions for Ms. Sutton.

17. Cheryl Kornberg

Ms. Kornberg shared her opinions on why the proposed project should not be allowed.

There were no questions for Ms. Kornberg

18. Shannon Rudolph

Ms. Rudolph provided her concerns and reasons for opposing the Petition and commented on a photograph she had submitted to the Commission of a neighborhood rally that had occurred to protest the locking of a gate to deny beach access.

Commissioner Teves inquired when the neighborhood meeting had occurred. Ms. Rudolph replied that it happened about 6 months ago and described the details that prompted the meeting.

Mr. Yee commented that the incident occurred near the Petition Area and that the locking of the gate was done by NELHA and not the Petitioner. There were no further comments or questions for Ms. Rudolph.

19. John Funk Jr.

Mr. Funk shared his perspective of what was occurring in Kona and gave his reasons for being against the proposed project.

There were no questions for Mr. Funk.

20. Sandor Baranyz

Mr. Baranyz explained why he thought the proposed project should not be permitted.

There were no questions for Mr. Baranyz.

21. George Wilkins

Mr. Wilkins shared his past experiences working in the field of hydrology in the area and expressed his concerns about the negative impacts the proposed project would have on the environment.

There were no questions for Mr. Wilkins.

22. Curtis Crabb

Mr. Crabb commented that the LUC should consider holding its meetings in the evening to allow more participation from community members who are unable to attend during the day due to work and shared his concerns about the potential problems he foresaw if the proposed project was allowed.

There were no questions for Mr. Crabb.

23. David Carlson

Mr. Carlson stated that he was a former aviator and expressed his concerns about the airport's proximity to urban areas.

There were no questions for Mr. Carlson.

24. Winfield Chang

Mr. Chang commented on the allowed time limit for public testimony and read from his submitted written testimony and provided his reasons for opposing the proposed project.

There were no questions for Mr. Chang.

25. Mark Travalino

Mr. Travalino provided his reasons for supporting the project.

There were no questions for Mr. Travalino.

26. Kawika Marquez

Mr. Marquez shared his perspective of why the Petition should be granted.

There were no questions for Mr. Marquez.

27. Charles Flaherty

Mr. Flaherty submitted written testimony for himself and Mary Aguilar and expressed his opinions for opposing the proposed project.

Mr. Lim requested clarification on remarks made about him during the testimony.

There were no further questions.

28. Toni Owen

Ms. Owen provided her reasons for wanting to keep the Petition Area in the Conservation District.

There were no questions for Ms. Owen.

29. Karen Eoff

Ms. Eoff shared her reasons for opposing the Petition.

There were no questions for Ms. Eoff.

Chair Devens acknowledged that the Commission had received the materials submitted by Mr. Flaherty and Ms. Aguilar and would make them part of the record.

30. Glennon Gingo

Mr. Gingo provided his reasons for supporting the proposed project.

There were no questions for Mr. Gingo.

31. Ron Michell

Mr. Michell described his experiences as a caretaker of the Petition Area and its adjoining property and provided his reasons for supporting the Petition.

There were no questions for Mr. Michell.

32. Hannah Kihalani Springer

Ms. Springer provided her family history and relationship to the Petition Area and expressed her reasons for opposing the proposed project.

There were no questions for Ms. Springer.

The Commission went into recess at 1:00 p.m. and reconvened at 1:19 p.m.

Chair Devens declared the evidentiary portion of the hearing closed and provided the timetable for the Parties to comply with in filing their closing proposals by close of business on August 23, 2010; all comments or objections to the respective proposals shall be served upon the other parties no later than September 7, 2010; and any responses to objections must be filed by close of business on September 17, 2010.

There were no questions on the timetable.

There being no further business, the meeting was adjourned at 1:22 p.m.