

LAND USE COMMISSION

MEETING MINUTES

October 24, 2018 – 10:00 a.m.

Courtyard by Marriott King Kamehameha's Kona Beach Hotel

75-5660 Palani Road, Kailua - Kona, HI 96740

Meeting Ballroom #1

COMMISSIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Lee Ohigashi
Dawn Chang
Edmund Aczon
Nancy Cabral

COMMISSIONERS EXCUSED: Aaron Mahi
(8 Seated Commissioners) Arnold Wong

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Randall Nishiyama, Deputy Attorney
General
Scott Derrickson, Staff Planner
Rasmi Agrahari, Staff Planner
Riley Hakoda, Staff Planner/Chief
Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 10:02 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the September 27, 2018 meeting minutes. There were none. Commissioner Ohigashi moved to approve the minutes and Commissioner Cabral seconded the motion.

The minutes were unanimously approved by voice vote (6 ayes-0 nays- 2 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

October 25, 2018- Continued business on Docket No. A06-767 and Adoption of Order for DR18-62 Kualoa Ranch IAL

November 14, 2018- at Honolulu International Airport Conference Room

- A06-763 Kapolei Development –(O`ahu) – Extend Time

November 28, 2018 (Hawai`i) at NELHA

- Status Reports- A10-788 HHFDC and A00-730 Lanihau
- OSC A06-770 Shopoff Group
- A18-805 Church – Motion to Accept FONSI

November 29, 2018- (Maui) at Malcom Center

- A07-773 Emmanuel Lutheran- (Maui) – Various Motions

December 12, 2018- (Maui) at MACC

- A94-706 Ka`ono`ulu Ranch status report
- Completion of A18-805 Church Motion

December 13, 2018- IAL Site visits on Oahu

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Scheuer stated that the next agenda item was a hearing and action on A06-767 Waikoloa Mauka (Hawai`i).

HEARING AND ACTION

A06-767 WAIKOLOA MAUKA LLC, (HAWAI`I)

Hear evidence, deliberate and take action on order to show cause issued June 4, 2018

APPEARANCES

Steven Lim Esq. represented Petitioner Waikoloa Highlands Inc. (WHI)

Valery Grigoryants, WHI (Russian-speaking WHI Representative using Interpreter)

Irina McGriff, Interpreter for WHI

LUC Meeting Minutes (*Please refer to LUC transcript for more details on this matter*)

October 24, 2018

Natalia Batichtcheva, WHI
Joel La Pinta, WHI
Jeff Darrow, Program Manager, County of Hawaii Planning Department (County)
Ron Kim Esq., Deputy Corporation Counsel, represented County
Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, Planning Program Administrator, OP

Chair Scheuer requested that Mr. Orodener introduce the new LUC planner, Rasmi Agrahari. Ms. Agrahari was introduced and welcomed to the proceedings.

Commissioner Okuda requested that the WHI Interpreter, Irina McGriff, be sworn in and qualified to provide interpreter services for the record. Chair Scheuer acknowledged Commissioner Okuda's request.

Mr. Lim qualified Ms. McGriff on her experience, background and work history with providing interpretation services for the record. Chair Scheuer also requested a resume or similar formal documents be provided to the Commission to affirm Ms. McGriff's qualifications for the record. Mr. Lim responded that he would provide the material for the record as requested. (Copies of Ms. McGriff's curriculum vitae were provided later during the hearing.)

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. Ms. Apuna stated that she wished to make a correction to the Condition citations and page numbers that she had used in OP's position statement and provided the proper corrections. There were no other questions, comments or objections to the procedures.

Chair Scheuer asked if there were any disclosures that the Commissioners wished to make.

DISCLOSURES

Commissioner Cabral stated that she knew Mr. LaPinta through her real estate business and wished to disclose that Joel LaPinta, WHI representative, had approached her to discuss her position on the OSC.

Chair Scheuer questioned Mr. Lim regarding this incident and confirmed that Mr. Lim was familiar with HRS Chapter 91, and HAR 15-15; and noted for the record that a member of the WHI "new" management team attempted to have ex-parte communication with Commissioner Cabral to influence her vote, in violation of HRS 91 and LUC administrative rules.

Chair Scheuer stated that this was an extremely serious matter and warned Mr. Lim to advise his clients to avoid any further ex-parte communication, and to direct

future communication through the Commission's Executive Officer, staff, or deputy Attorney General. Mr. Lim acknowledged Chair Scheuer's comments.

There were no objections to Commissioner Cabral's continued participation.
There were no further disclosures.
Chair Scheuer called for Public Witnesses

PUBLIC WITNESSES:

1. Julia Alos-

Ms. Alos provided written testimony, described her community efforts and shared her concerns about the lack of development of the Petition Area and Petitioner's failure to meet obligations to provide needed infrastructure improvements.

Mr. Lim requested clarification of Ms. Alos concerns regarding development of the Petition Area. Ms. Alos reviewed and confirmed the items of concern that she had testified on.

There were no further questions for Ms. Alos.

2. Anita Glas

Ms. Glas stated that Ms. Alos had covered the items that she wanted to testify about and declined her turn to testify.

There were no other public witnesses.

EXHIBITS

Chair Scheuer called for the Parties to offer their exhibits into evidence.

Petitioner

Mr. Lim offered Petitioner Exhibits "1"- "37". There were no objections or questions/comments by County or OP.

Chair Scheuer admitted Petitioner Exhibits "1"- "37" to the record.

County

Mr. Kim stated that he had no exhibits to offer.

OP

Ms. Apuna offered OP's Exhibits "1"- "4". There were no objections or questions/comments by Petitioner or County.

Chair Scheuer admitted OP's exhibits to the record.

PRESENTATIONS

Chair Scheuer called Petitioner to make their presentation.

Mr. Lim described how he planned to make his presentation and stated that he would have Valery Grigoryants, and Joel La Pinta, as his witnesses.

Petitioner's Witnesses

1. Valery Grigoryants, (Russian-speaking WHI Representative using Interpreter Irina McGriff)

Mr. Grigoryants, through his interpreter, provided his work background and WHI corporate position and role to the Commission. Mr. Grigoryants described the events that had occurred which resulted in WHI failing to fulfill its representations and complying with the Conditions imposed by the 2008 Decision and Order issued by the Commission; and how a former member of his organization, Stefan Matirosian, had negatively impacted its development efforts since it began as Waikoloa Mauka LLC and transitioned to WHI.

Chair Scheuer declared a recess at 10:58 a.m. and reconvened the meeting at 11:11 a.m.

Mr. Grigoryants continued his testimony and provided further details about WHI's "new management" team and how this "new team" would pursue its plans to develop the Petition Area. Mr. Grigoryants stated that he had the corporate authority to commit WHI to completing the proposed project; and confirmed that the proposed WHI actions that had been made before the Commission would be performed.

Mr. Grigoryants apologized for being absent from the previous hearings and summarized the efforts that WHI make to ensure the proposed development would progress if allowed to continue.

Mr. Lim reserved time for rebuttal and offered Mr. Grigoryants for questioning by County, OP and the Commission.

Questions for Mr. Grigoryants

County

Mr. Kim had no questions or comments.

OP

Ms. Apuna requested clarification on Mr. Grigoryants' involvement with the management and ownership of the Petition Area; the extent of his oversight of past, present and future operations; Petitioner's Exhibit #32 and the details surrounding the resignation or release of Mr. Matirosian as a member his organization.

Mr. Grigoryants described how he became acquainted and involved with business dealings with Mr. Matirosian and had trusted and relied upon him to handle development matters in Hawai'i on the behalf of the WHI organization; and how that relationship had deteriorated after the failure of Mr. Matirosian to properly fulfill his fiduciary duties for the WHI entity. Mr. Grigoryants stated that Mr. Matirosian was no longer affiliated with WHI and had no ownership or management interest in the WHI organization and provided various dates of separation from the different business capacities and entities Mr. Matirosian was involved with.

Commissioners

Commissioners Aczon, Cabral, Okuda, Chang, and Ohigashi requested clarification of Mr. Grigoryants testimony regarding his authority to make decisions/commitments for his organization(s); the ownership structure of WHI, how Arch Limited, and Vitoil were structured; the organizational interaction between the WHI, Arch and Vitoil entities; the chain of command/authority within and between the entities; Exhibit 28- Corporate Structure of Waikaloa Highlands as of October 11, 2018; development efforts since the inception of the proposed project; the identities and roles of all the key players in the development effort; the financing and methods used to acquire, manage and attempt to comply with the decision and order conditions; details of the affordable housing compliance negotiations with the County of Hawai'i; what course of action the WHI, Arch and Vitoil entities would take if the property were reverted to agriculture; Exhibit 5-WHI Shareholder Action regarding Natalia Batichtcheva's corporate roles; specifics on Ms. Batichtcheva's role and authority in the situation; and other matters related to his knowledge of transactions, decisions, commitments, or corporate performance related to the Petition Area and its past and present management team.

Through his interpreter, Mr. Grigoryants described the history and organizational structure and operational relationships between WHI, Arch, and Vitoil; the transition from Waikaloa Mauka LLC to WHI; past expenditures to acquire and develop the Petition Area, WHI's ability to obtain financing through Armbusinessbank to complete development of the Petition Area; what his role had been and would be in advancing the proposed project; and his perception of how development efforts would proceed; what might happen if the Petition Area was reverted; and how the "new

management team” would assist him. (Mr. Lim intermittently assisted the interpreter in clarifying questions from and responses to the Commission.)

Chair Scheuer declared a recess at 12:19 p.m. and reconvened the meeting at 1:28 p.m.

Commissioner Questions (continued)

Questioning of Mr. Grigoryants by the Commissioners resumed.

Commissioners Aczon, Chang, and Chair Scheuer requested further clarification on Mr. Grigoryants testimony and his responses to Commissioner questions regarding the “new” WHI management team, the various roles and events that individuals associated with the AHI, Arch and Vitoil entities participated in; ownership and transactions involved with various portions of land within the Petition Area; specifics on the ownership activities and actions that involved Mr. Matirosian, Ovasafyan Aykaz, Vitaly Grigoriyants, and Natalia Batichcheva; the accuracy of the information contained in Petitioner’s Exhibit 5 and Exhibit 33- Certification Letter from Mr. Ayaks re: Vitaly and Valery Grigoryants; satisfaction of County of Hawai`i obligations; financing arrangements that will be initiated to ensure completion of the proposed project; details of how the affordable housing segment of the Petition Area factored into the proceedings; and how corrections to the erroneous documents would be made.

Mr. Grigoryants described what transpired during the span of time that Mr. Matirosian was involved with his organization; and how the former and “new” management team members performed their roles before and after his departure. Mr. Grigoryants also described what his corporate span of authority and control was, and referred to a trust agreement that Chair Scheuer requested to be submitted for the record.

Mr. Grigoryants provided his understanding of why submitted exhibit documents contained erroneous information and how investment funds were spent at different time periods; and how the additional funds for the development of the Petition Area would be committed by his brother, Valery. Mr. Lim stated that Petitioner would stipulate that the majority of funds were spent prior to the 2008 reclassification.

Commissioner Ohigashi and Mr. Orodener excused themselves from the meeting at 2:13 p.m. and returned at 2:15 p.m.

Redirect

Mr. Lim requested clarification on the ownership of the companies involved in the proceedings. Mr. Grigoryants stated that he and his brother were responsible for the decisions in connection with all American companies and all the companies in other countries; and that he would be taking charge of development along with Ms. Batichtcheva and Mr. LaPinta.

Commissioner Final Questions after Redirect

Commissioner Okuda requested clarification on what documents contained discrepancies or erroneous information. Mr. Lim identified Exhibit 5 and the organizational chart that were discussed and stated that there would be no correcting documents that would be filed, but that the corrections were made by Mr. Grigoryants' during his testimony.

Chair Scheuer declared a recess at 2:25 p.m. and reconvened the meeting at 2:38 p.m..00

Chair Scheuer commented that the Commission had received Ms. Griffin's curriculum vitae and asked if Mr. Lim wished to make it an exhibit. Mr. Lim stated that he would like to admit it as Petitioner's Exhibit 38. There were no objections to Petitioner's Exhibit 38 and it was admitted into the record.

There were no further questions for Mr. Grigoryants. Mr. Lim offered his next witness.

2. Joel LaPinta, WHI Management Team

Mr. Lim offered and qualified Mr. LaPinta as an expert witness in the area of real estate development and sales. There were no questions for Mr. LaPinta from County or OP. Chair Scheuer requested clarification on Mr. LaPinta's development experience. Mr. LaPinta described how he had brought a past project through its entitlement process.

There were no objections to Mr. LaPinta as an expert witness.

Mr. LaPinta described his association with WHI and what he had been working on since becoming a member of the "new management team". Mr. LaPinta described the various topics that he had been investigating and researching to evaluate and determine feasibility of the proposed project to advance it through its approval/permitting process; efforts being made by Petitioner to satisfy an affordable housing agreement with the County Office of Housing and attempt to obtain a release of the agreement.

Mr. Kim objected to Mr. LaPinta's testimony regarding a legal document (Petitioner's Exhibit 11). Chair Scheuer sustained the objection. Discussion ensued to clarify why the objection was sustained and to determine where Mr. Lim was going with his line of questioning. Mr. Lim stated his offer of proof and commented that Petitioner was trying to show the Commission how it was assisting the County develop its affordable housing project. Mr. LaPinta provided the details of his discussions with the County Office of Housing and how WHI had worked with County to better configure properties in and about the Petition Area to better suit the County's needs.

Commissioners Chang and Ohigashi requested clarification on the relevance of the testimony and for more specifics on whether it was addressing the affordable housing condition or a separate private transaction between Petitioner and County. Mr. Lim described how County had disagreed on whether a release agreement from the County was valid; and what the final position of the County was going to be in this matter. Mr. LaPinta stated that the County wanted to use the Petition Area land and not County land due to failure to clear the land from unexploded ordinance.

Mr. Lim stated that he would like to reserve time for rebuttal and made Mr. LaPinta available for questions.

County

County had no questions.

OP

Ms. Apuna requested clarification on Mr. LaPinta's duties and familiarity with the Petition Area and its development plans and accomplishments. Mr. LaPinta described his duties and what his knowledge was about Petitioner efforts to work on backbone infrastructure and satisfying its DOT agreement (D&O Condition 6); the project development timeline by major tasks and phases; and affordable housing efforts (D&O Condition 9).

Ms. Apuna concluded her questioning.

Chair Scheuer declared a recess at 3:28 p.m. and reconvened the meeting at 3:44 p.m.

Commissioners

Chair Scheuer asked if the Commissioners had any questions.

Commissioners Aczon requested clarification on who Mr. LaPinta reported to; what his role, employment status and responsibilities were; what the proposed project's financial requirements were; what the proposed development/marketing plan and

timeline were; and how the transfer of approximately 11 acres to the Plumeria entity. Mr. LaPinta described his duties as an independent contractor on the WHI management team; and stated that \$45M would be sufficient funding to have the project shovel ready in 26-30 months; and provided his perspective of how D&O Conditions 6 and 9 had been addressed. Discussion ensued to further clarify Petitioner's performance in addressing both conditions. Mr. Lim asked additional questions of the witness for the benefit of the Commission to clarify matters.

Commissioner Chang requested clarification on the estimated costs involved and how preliminary funding had been spent; and whether earlier initial environmental and archaeological studies were still viable. Mr. LaPinta responded that the forecasted \$45M amount was sufficient; that about \$900K of initial funding had been spent on engineering costs and studies; and that the environmental and archaeological studies were useable.

Commissioner Ohigashi requested clarification on what the impact of land use designation reversion from rural to agriculture would be. Mr. LaPinta provided his perspective of how the proposed project would be affected by a land use designation change and how County plans would also need to be adjusted.

Commissioner Okuda had additional questions that Chair Scheuer requested be reserved for closing arguments.

Commissioner Cabral and Chair Scheuer requested clarification on the market analysis and estimated sales prices if the proposed project was ready now; on previous events and studies associated with the Petition Area; and why the studies were still relevant; and what recent issues related to aquifer resources, ground water, EIS requirements, County housing requirements and Environment Hawai'i article information Mr. LaPinta was aware of. Chair Scheuer noted the Environment Hawai'i articles would be included for the record.

Mr. Lim had no re-direct and confirmed he had time reserved for rebuttal.

Chair Scheuer stated that the Commission would reconvene at 8:00 a.m., October 25, 2018, in the same meeting room and declared a recess at 4:33 p.m.