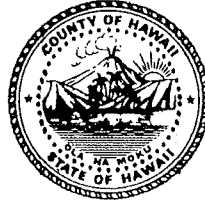


William P. Kenoi
Mayor




Molly A. Stebbins
Corporation Counsel
William V. Brillhante, Jr.
Assistant
Corporation Counsel

COUNTY OF HAWAI'I OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawai'i 96720 • (808) 961-8251 • Fax (808) 961-8622

TRANSMITTAL LETTER

DATE: October 3, 2016
TO: State Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804
FROM:  Amy Bautista, Legal Technician I to
Amy G. Self, Esq., Deputy Corporation Counsel

2016 OCT -5 P 12:08
LAND USE COMMISSION
STATE OF HAWAII

RE: In the Matter of the Petition of Y-O LIMITED PARTNERSHIP To Amend the Agricultural Land Use District Boundary to the Urban Land Use District for Approximately 408.719 Acres of Land at Kaloko and Kohanaiki, North Kona, Hawaii, Hawaii TMK Nos.: 7-3-09:19, 20, 32, and 57 to 62.

COPIES/ITEMS	DATE	DESCRIPTION
Ori/ (1) Copy	10/3/16	<i>Respondent County of Hawai'i Planning Department's Memorandum in Opposition to 1. Petitioner's Motion for an Order Regarding Satisfaction of Affordable Housing Condition, filed July 19, 2016; 2. Petitioner's Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition, filed September 1, 2016; and 3. Petitioner's Second Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition, filed September 27, 2016; Certificate of Service</i>

TRANSMITTED FOR:

- Your information and files
- Your signature and return
- Your signature and forwarding as noted below
- Per your request
- Your approval
- Your review and comments
- See remarks below
- Filing with the LUC

REMARKS: Enclosed are the original and one copy of the above referenced document emailed to you on October 3, 2016. As always, should you have any questions with regard to the enclosed please do not hesitate to contact our office. Thank you.

ORIGINAL

MOLLY A. STEBBINS
Corporation Counsel

8639

LAND USE COMMISSION
STATE OF HAWAII

WILLIAM V. BRILHANTE JR.
AMY G. SELF

8010

7628

2016 OCT -5 P 12:08

Deputy Corporation Counsel
County of Hawai'i
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720
Telephone: (808) 961-8251
Facsimile: (808) 961-8622
E-mail: Amy.self@hawaiicounty.gov

Attorneys for Respondent COUNTY OF HAWAII PLANNING DEPARTMENT

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

Y-O LIMITED PARTNERSHIP

To Amend the Agricultural Land Use District
Boundary to the Urban Land Use District for
Approximately 408.719 Acres of Land at
Kaloko and Kohanaiki, North Kona, Hawaii,
Hawaii TMK Nos.: 7-3-09:19, 20, 32, and 57
to 62.

DOCKET NO. A81-525

RESPONDENT COUNTY OF HAWAII
PLANNING DEPARTMENT'S
MEMORANDUM IN OPPOSITION TO
1. PETITIONER'S MOTION FOR AN
ORDER REGARDING SATISFACTION OF
AFFORDABLE HOUSING CONDITION,
FILED JULY 19, 2016; 2. PETITIONER'S
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION FOR AN ORDER
REGARDING SATISFACTION OF
AFFORDABLE HOUSING CONDITION,
FILED SEPTEMBER 1, 2016; and
3. PETITIONER'S SECOND
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION FOR AN ORDER
REGARDING SATISFACTION OF
AFFORDABLE HOUSING CONDITION,
FILED SEPTEMBER 27, 2016;
CERTIFICATE OF SERVICE

RESPONDENT COUNTY OF HAWAI'I PLANNING DEPARTMENT'S
MEMORANDUM IN OPPOSITION TO

1. PETITIONER'S MOTION FOR AN ORDER REGARDING SATISFACTION OF AFFORDABLE HOUSING CONDITION, FILED JULY 19, 2016;
2. PETITIONER'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER REGARDING SATISFACTION OF AFFORDABLE HOUSING CONDITION, FILED SEPTEMBER 1, 2016; and
3. PETITIONER'S SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER REGARDING SATISFACTION OF AFFORDABLE HOUSING CONDITION, FILED SEPTEMBER 27, 2016

COMES NOW Respondent COUNTY OF HAWAI'I PLANNING DEPARTMENT (hereinafter simply "County"), by and through its attorneys and respectfully submits this Opposition to 1. *Petitioner's Motion for an Order Regarding Satisfaction of Affordable Housing Condition*, filed July 19, 2016 ("Motion"); 2. *Petitioner's Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition*, filed September 1, 2016 ("Supplemental Memo"); and 3. *Petitioner's Second Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition*, filed September 27, 2016 ("2nd Supplemental Memo").

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 19, 2016, RCFC Kaloko Heights, LLC, Successor Petitioner ("Petitioner") to Y-O Limited Partnership in the above-captioned docket, filed a *Motion for an Order Regarding Satisfaction of Affordable Housing Condition*, filed July 19, 2016 ("Motion"). In the Motion, Petitioner requests the Land Use Commission ("LUC") to issue an order stating that a donation by Petitioner of a 10.775 acre parcel of land identified as Hawai'i Tax Map Key Nos. 7-3-09:32 (the "Affordable Housing Parcel") to Hawai'i Island Community Development Corporation ("HICDC") to build housing units to be rented or sold on a self-help or other affordable basis to Hawai'i residents of low or moderate family income ("Affordable Units") satisfies the requirements of Condition 1 of the LUC's Decision and Order dated January 20, 1983 for Phase

I of the Petition Area and later amended and entered by the LUC on November 17, 1992 (as amended, “Condition 1”). In addition, Petitioner requests the LUC’s order include language to permit Petitioner to apply the excess number of Affordable Units constructed, if any, to Petitioner’s obligation to satisfy Condition 1 on Phase II of the Petition Area.

On September 1, 2016, Petitioner filed *Petitioner’s Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition*, filed September 1, 2016 (“Supplemental Memo”). In the Supplemental Memo, Petitioner requests the LUC to amend Condition 1 by adopting Petitioner’s proposed language, which provides that it will satisfy Condition 1 for Phase 1 of the Petition Area by donating the Affordable Housing Parcel to HICDC and shifts the burden of developing and constructing the Affordable Units to HICDC.

Finally, on September 27, 2016, Petitioner filed *Petitioner’s Second Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition*, filed September 27, 2016 (“2nd Supplemental Memo”). Again, the 2nd Supplemental Memo requests the LUC to amend Condition 1 by adopting yet another version of Condition 1 proposed by Petitioner.

II. ARGUMENT

The County opposes (1) Petitioner’s Motion requesting the LUC to issue an order accepting the donation of 10.775 acres of land as satisfaction of its affordable housing obligations for Phase 1 (“Requested Order”), (2) Petitioner’s request to be permitted to apply the excess Affordable Units in Phase 1 to satisfy its affordable housing requirements for Phase 2 of the Petition Area, and (3) Petitioner’s proposed amendments to Condition 1 submitted in its

Supplemental Memo and 2nd Supplemental Memo (“Proposed Amendments”) for the reasons set forth below.

- A. Petitioner’s Requested Order provides no assurance that actual affordable housing units will be constructed within Phase 1 of the Petition Area beyond the donation of land.

The County opposes the Petitioner’s Requested Order because the donation of land to HICDC as satisfaction of Condition 1 provides no assurance to the LUC and the County that the required number of Affordable Units will be constructed within Phase 1, especially since the County zoning for the Petition Area relies on Condition 1 of the LUC decision and order rather than stating a separate affordable housing condition. While the County’s opposition is in no way reflective of HICDC’s sterling reputation for providing affordable housing units within the County of Hawai‘i, it is reflective of the simple fact that the donation of land will not ensure the provision of affordable housing units within the Petition area. Once released from its affordable housing obligation by its donation of land, there will be no further obligation upon the Petitioner.

Furthermore, the County is aware of the intricacies of project financing and, in this particular matter, the need for the Petitioner to release its ownership interest in the 10.775-acre Affordable Housing Parcel to eliminate an investment risk upon HICDC. However, the Petitioner’s Motion essentially places total reliance upon HICDC to successfully provide for affordable housing units in a timely manner as anticipated by the Commission. Therefore, the County opposes such an order by the LUC.

- B. Petitioner’s Requested Order to allow it to apply excess Affordable Units to Phase 2 is inappropriate for a LUC Order and is better left to the County to determine.

Section 11-15 (Transfer of excess credits) of the Hawai‘i County Code provides the mechanism for a developer to apply to the housing administrator to transfer excess affordable housing units earned on the project site to another project within a fifteen-mile radius of the

project site. Once the excess affordable housing units are approved by the housing administrator, the developer is required to enter into an agreement with the County. Because the County already has a detailed procedure for approval and application of excess affordable housing units, the County opposes any such language proposed by the Petitioner in the Requested Order.

C. Petitioner's proposed amended Condition 1 is insufficient to accommodate affordable multiple family residential units as proposed by Petitioner through its Affordable Housing Agreement with HICDC.

Neither the amended Condition 1 offered in Petitioner's Supplemental Memo nor the amended Condition 1 offered in Petitioner's 2nd Supplemental Memo would accommodate affordable multiple family residential units as proposed by the Petitioner through its Affordable Housing Agreement with HICDC. As currently constructed, the amended Condition 1 proposed by Petitioner appears to prohibit the reassignment of affordable residential units to a multiple family residential complex and, instead, to designate select vacant lot and house-lot packages to be offered as affordable. Furthermore, it unnecessarily identifies a potential affordable housing agreement with HICDC because the manner by which affordable units are ultimately provided must still be determined by HHFDC and the County's housing administrator. Therefore, the County suggests the following revisions to the Petitioner's amended Condition 1 to provide an option of satisfying the Petitioner's affordable housing obligations through the development of a multiple family residential project in lieu of designated affordable vacant lots and house and lot packages originally prescribed by Condition 1 of the LUC's decision and order:

Petitioner shall provide housing opportunities for low and moderate income residents, by offering for sale or rental on a preferential basis, on its own or in cooperation with both the Hawaii Housing Finance and Development Corporation ("HHFDC") and the County of Hawaii, affordable housing units equivalent to ten per cent (10%) of the lots [or houses and lots] and residential units to be developed in the Petition Area, to residents of the State of Hawaii of low and moderate family income as determined by HHFDC and the County of Hawaii Office of Housing and Community Development ("OHCD") from time to

time (the "Affordable Housing Requirement"). The [~~preferential lots, houses and lots and rental units (the "Affordable Units"),~~ affordable housing units shall be offered for sale or rent at prices or rents not exceeding prices or rents (Affordable Prices") that enable such purchasers and renters to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families, or that provide affordable rental housing opportunities to such families. [~~Petitioner may provide some or all of the Affordable Units through development in the Petition Area in cooperation with Hawaii Island Community Development Corporation, a Hawaii nonprofit corporation ("HICDC").~~]

[Deleted material is bracketed and struck-out with added material underscored.]

III. CONCLUSION

For the reasons set forth above, Petitioner's Motion, Supplemental Motion and 2nd Supplemental Motion should be denied.

DATED: Hilo, Hawai'i, October 3, 2016 .

Respondent COUNTY OF HAWAI'I
PLANNING DEPARTMENT

By



AMY G. SELF

Deputy Corporation Counsel
Its attorney

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

Y-O LIMITED PARTNERSHIP

To Amend the Agricultural Land Use District Boundary to the Urban Land Use District for Approximately 408.719 Acres of Land at Kaloko and Kohanaiki, North Kona, Hawaii, Hawaii TMK Nos.: 7-3-09:19, 20, 32, and 57 to 62.

DOCKET NO. A81-525

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on the parties below at their respective last known address(es) by depositing the same in the United States mail, postage prepaid, on October 3, 2016 :

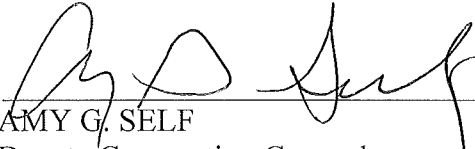
WILLIAM W.L. YUEN
SARAH CHADWICK COCKE
Alston Hunt Floyd & Ing
1001 Bishop Street, Suite, 1800
Honolulu, Hawai'i 96813

RODNEY FUNAKOSHI
Office of Planning
State of Hawai'i
235 Beretania Street, 6th Floor
Honolulu, Hawai'i 96813

DAWN TAKEUCHI-APUNA, ESQ.
Deputy Attorney General
Commerce and Economic Development
Department of Attorney General
425 Queen Street
Honolulu, Hawai'i 96813

DATED: Hilo, Hawai'i, October 3, 2016 .

Respondent COUNTY OF HAWAI'I
PLANNING DEPARTMENT

By 
AMY G. SELF
Deputy Corporation Counsel
Their attorney