

ABENO

LAND USE COMMISSION
MINUTES OF MEETING

March 1, 2007

Hapuna Prince Hotel
62-100 Kaunao`a Drive
Kamuela, Hawaii

COMMISSIONERS PRESENT: Lisa Judge
Duane Kanuha
Kyong-su Im
Steven Montgomery
Reuben Wong

COMMISSIONERS ABSENT: Thomas Contrades
Michael Formby
Ransom Piltz
Nicholas Teves, Jr.

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Wade Kersey, Audio Technician

Chair Judge called the meeting to order at 11:45 a.m.

Chair Judge stated that the LUC would skip agenda items II and III and start with item IV, Hearing and Action of Docket No. A02-737 U of N Bencorp.

A02-737 U OF N BENCORP

Chair Judge stated that this was a hearing and action meeting for Docket No. A02-737 U of N Bencorp to consider U of N Bencorp's Motion to Change Petitioner's

Name and Amend Caption; and to consider U of N Bencorp's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order.

Chair Judge also noted that the LUC would take one witness out of order before receiving public testimony on the docket.

APPEARANCES

Steven Lim, Esq., represented Petitioner

Jennifer Benck, Esq., represented Petitioner

Bobbie-Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mr. Lim began his presentation and stated that the Petitioner filed the motion to change name and amend caption since the Board of Directors of the University of the Nations (U of N) Bencorp adopted a change of their corporate name which has since been filed with the Department of Commerce and Consumer Affairs (DCCA). Mr. Lim also noted that the U of N Bencorp is a 501C-2 organization.

Ms. Leithead-Todd stated that the county had no objections to the motion to change name and amend caption.

Mr. Yee noted that the state also had no objections.

Commissioner Kanuha moved to approve the Petitioner's motion to change name and amend caption. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

Ayes: Kanuha, Montgomery, Wong, Im, and Judge.

The motion passed with 5 yes, 4 absent.

Mr. Lim stated that Loren Cunningham, Founder of the Youth With A Mission (YWAM) was available to provide the LUC with testimony related to the history of the University, their financial capacity and objective of the development project which is the subject of this docket. Mr. Cunningham was taken out of order as Petitioner's Witness.

Mr. Lim noted the correct spelling of "Cunningham" in the First Amended U of N Bencorp's List of Witnesses

Petitioner's Witness

1. Loren Cunningham

Mr. Cunningham provided testimony on the ability of the U of N Bencorp to fund the development project, the history of the WYAM organization, and the concept of the University of the Nations. Mr. Cunningham stated that he had been involved with WYAM and the university since 1978. Mr. Cunningham described the global base and support available to the U of N through a network of private individuals, the current funding strategy for the proposed project, and the relationship between the funding, volunteer services, mission builder programs, and gifts in kind.

The county had no questions for Mr. Cunningham.

Mr. Yee posed questions to Mr. Cunningham regarding the number of campuses operated by WYAM and the U of N Bencorp worldwide, tuition levels, student living costs, the proposed price of housing for staff and students, the number of homes to be developed and sold to staff, estimated costs to maintain and run the rental units, and the amount of subsidy expected to be underwritten by WYAM.

Mr. Cunningham stated that the initial development concept advanced during the Commission's prior hearing on the docket, while well intended, was contrary to his vision for the university. He indicated his commitment to return the focus of the development project to serving the students and staff of the U of N. Mr. Cunningham also noted that all of the YWAM missionary societies meet regularly in Kona. Mr. Cunningham commented that Ambassador Choi from Korea is an example of those individuals who support the U of N financially, politically and in spirit.

Commissioner Kanuha posed questions of Mr. Cunningham regarding the methods of fundraising for YWAM's international activities.

Commissioner Im raised questions regarding the disposition of the 400 units proposed for development; the 100 units for sale to staff and for six key members of the movement; the 300 rental units, and dormitory rentals. Commissioner Im also had

questions and concerns related to the original plan at the time of the LUC reclassification hearings in 2003, the present change in concept and leadership, and the ultimate vision for the campus.

Chair Judge posed questions regarding the number of students and staff currently living off site, the 100 units proposed for sale to staff, and Mr. Cunningham's description of how the Pepperdine University model (that allows staff to buy units and build equity) might be applied to the U of N, and the proposed deed restrictions. Chair Judge also asked if the university was accredited.

Mr. Cunningham replied that they are not recognized as an accredited university, however, they do confer baccalaureate and master degrees.

After a discussion, there were no further questions posed by the parties or the Commission of Mr. Cunningham.

A recess break was taken at 1:00 p.m. The meeting reconvened at 1:20 p.m.

Public Witnesses

1. Walter Meake

Mr. Meake stated that he was from Vanuatu where they do not have a School of Communication. Mr. Meake expressed his appreciation to the University of the Nations for allowing him the opportunity to study in Kona. Mr. Meake requested that the LUC support the school and its program.

Vice Chair Montgomery asked if the University of the Nations had any facilities in Vanuatu.

Mr. Meake replied that they did not have any facilities in Vanuatu and added that upon completion of the program, he would return to Vanuatu and help educate the people there.

The county had no questions for Mr. Meake.

Chair Judge asked Mr. Meake how long had he been studying at the University of the Nations.

Mr. Meake stated that he had been at the University of the Nations Kona for 1 year and 2 months and intends to stay another 6 to 9 months to complete his program.

After a brief discussion, there were no further questions posed by the parties or the Commission of Mr. Meake.

2. Shaun Mitsuda

Mr. Mitsuda stated that he is originally from Hilo and had attended the University of the Nations in Scotland and Turkey. Mr. Mitsuda expressed his appreciation and support for the University of the Nations.

There were no questions posed for Mr. Mitsuda by the parties or the Commission.

3. Amber Norris

Ms. Norris stated that she had attended the Kona University of the Nations in 2002 and commented on the boundless educational opportunities available to the students. These opportunities include traveling to many different countries all over the world. Ms. Norris commented on the capacities of the University of the Nations' facilities and opportunities in the film industry which had been opened to her. Ms. Norris stated that she is presently a staff member and expressed her support for the development plans of the University of the Nations.

After a brief discussion, there were no further questions posed for Ms. Norris by the parties or the Commission.

4. Mary Kamahele Boyd

Ms. Boyd expressed her support for the University of the Nations and described her personal history with YWAM. Ms. Boyd urged the LUC to support the project.

Vice Chair Montgomery had a few questions and concerns regarding the initial proposal for a cultural committee for archeological and mitigation of the project site.

Ms. Boyd stated that she was originally a member of the advisory committee and was still in favor of retaining a cultural advisory committee for this project.

There were no further questions posed for Ms. Boyd by the parties or the Commission.

Admission of Exhibits

Ms. Benck described the Petitioner's revised list of exhibits and Petitioner's exhibits A, and 1 through 8. The parties had no objections to the admission of Petitioner's exhibits. Petitioner's exhibits A, and 1 through 8 were admitted into the record.

Ms. Leithead-Todd noted that the county had no exhibits.

Mr. Yee introduced the Office of Planning's (OP) exhibits 1 and 2. The parties had no objections to the admission of OP's exhibits 1 and 2. OP's exhibits 1 and 2 were admitted into the record.

A lunch recess was taken at 1:50 p.m. The meeting reconvened at 3:15 p.m.

Petitioner's Witness (continued)

2. George Atta

Mr. Atta described the planning which was undertaken for the current development project and the conditions of approval previously imposed by the LUC. It was noted that Mr. Atta was previously qualified on March 5, 2003 as an expert on planning. Mr. Atta discussed his involvement in the preparation of supporting documents in the application and the history of the project.

Ms. Leithead-Todd asked if the Petitioner was now seeking to delete requirement that cultural advisory committee be organized and formed by the Petitioner.

Mr. Atta replied in the affirmative.

Mr. Lim noted that Petitioner is working with the parties to craft a condition which would save the cultural advisory committee and indicated that such a proposal would soon be submitted.

Mr. Yee posed questions regarding the current status of the Petitioner application for change of zoning with the county, the for-sale condo units, deed restrictions, lot sizes and project design.

Vice Chair Montgomery posed questions related to the shortage of Hawaiian language teachers and its impacts.

Mr. Atta stated that the revenues from the proposed cultural center would have supported the Hawaiian language scholarships. Mr. Atta added that, however, the University of the Nations had promised to provide scholarships to two students and he believed that two students have received these scholarships and have graduated from the program.

Commissioner Kanuha referenced the aerial photograph (Petitioner's exhibit 7) and raised questions related to the date of the photo, the extent of construction, and what buildings presently exist.

Commissioner Im posed questions regarding the number of students and staff members who live on site and off site; the number of students and staff expected at full build-out, and particulars of the campus master plan.

Commissioner Wong had a few questions related to the use and planning of alternative energy devices; co-generation and solar for this project.

Vice Chair Montgomery referenced the February 27, 2007 letter from OHA regarding the archaeological survey, the difference in opinion, and its recommendations.

Mr. Yee stated that because this issue should have been raised at the initial hearing, OP was not trying to revisit the question. Mr. Yee added that it is not something that is being changed by the proposed modification of the Petitioner.

Mr. Lim discussed pedestrian and bike safety and noted that presently there is a shuttle system that takes people from the campus to Wal-Mart and Longs on a daily basis. Mr. Lim also discussed the project's open space, the preservation of the mauka makai trails, the water system and tank relocations.

After a brief discussion, there were no further questions of Mr. Atta by the parties or the Commission.

A recess break was taken at 4:40 p.m. The meeting reconvened at 5:05 p.m.

3. Warren Isrealson

Mr. Isrealson stated that he was employed at Progress Land Company and spoke on his background in real estate, licensed civil engineering, and land development for a variety of commercial, residential, and campus development in Brazil, Australia, and in the United States. Mr. Isrealson discussed his past involvement with YWAM projects similar to this project in Kona.

Mr. Lim offered Mr. Isrealson as an expert in land development and construction.

Ms. Leithead-Todd questioned the amount of development experience that Ms. Isrealson had within the State of Hawaii. After a brief discussion, Ms. Leithead-Todd stated that the county was willing to qualify Mr. Isrealson as an expert of land development and construction with the caveat that Mr. Isrealson had only 2 projects specific to Hawaii requirements.

Mr. Yee concurred with the county on the matter of Mr. Isrealson's qualifications as an general expert in land development and construction.

Chair Judge noted that the LUC would qualify Mr. Isrealson as an expert in general land development and construction.

Mr. Isrealson discussed his involvement with the Kona project and referenced Petitioner's exhibit 2 (the campus master plan). Mr. Isrealson added that this past week the Foundation Board met for the sole purpose of raising funds for this project and approved a capitol fund campaign of 16 million dollars.

Chair Judge posed a few questions regarding the leadership's construction priorities and the proposed phasing of the villages.

Mr. Isrealson noted that there is a need for both housing and academics and commented that they could build out the project in 10 years. Mr. Isrealson added that the University of the Nations is prepared to commit and work with the cultural advisory committee to mitigate the burial and archaeological sites.

Mr. Hayashi stated that the county had no questions.

Mr. Yee raised questions regarding the previous representations made by the Petitioner related to finances, current financing issues, the need for analysis and the development of pedestrian and bike plans, the square footage of the units, and whether Petitioner had already contracted with a construction company.

Commissioner Wong commented that Mr. Isrealson appeared to be one of the driving forces to make this project happen and questioned if he planned to implement renewable energy technologies in the project.

Mr. Isrealson replied in the affirmative.

Commissioner Kanuha posed questions regarding Mr. Isrealson's relationship with AEKO Hawaii.

Mr. Isrealson stated that Dwayne Betsill, Wes Reinheller from Canada, and he were the three directors of AEKO. Mr. Isrealson added that AEKO is now the successor to the University of the Nations.

Commissioner Kanuha asked what would be the estimated total cost of the project, as shown on the proposal.

Mr. Isrealson estimated the cost to be approximately 49 million dollars using the mission builders' labor force, and in terms of value, the project would cost 100 million dollars. Mr. Isrealson added that the remaining construction on the adjacent property would bring the total project value to approximately 150 million dollars.

Commissioner Im inquired as to the location of the cafeteria Hale Ohana, the Hualalai Village condos, and the project balance sheet that indicates a debt of 15.6 million dollars.

Chair Judge commented that the LUC is mandated by law to determine that the Petitioner had the financial capacity to proceed with the project and that the record was populated with facts relating to the project cost and financing strategy.

Commissioner Kanuha noted that the Commissioners were only trying to elicit appropriate facts regarding AEKO's ability to implement the project. Commissioner Kanuha referenced AEKO Hawaii's balance sheet (Petitioner's exhibit 6) and noted that it did not match the financial capability of the principals of the company.

Mr. Isrealson stated that AEKO owes him the 15.6 million dollars in cash and reiterated his position that contrary to appearances, AEKO was financially strong and capable.

Mr. Lim noted that the Petitioner would submit their business plan and associated financials to the LUC.

Chair Judge had a few questions related to Petitioner's exhibit 6, AEKO Hawaii's balance sheet and the Hualalai Villages.

After a brief discussion, there were no further questions posed by the parties or the Commission for Mr. Isrealson.

Mr. Yee requested that their Oahu witness be taken out of order to accommodate his schedule.

Neither the Petitioner or County raised any objection to taking the State's witness out of order.

State's Witness

1. Glenn Yasui

Mr. Yasui stated that he was the State Highways Administrator with the Department of Transportation. Mr. Yasui discussed the amended TIAR and noted that the Department had only received the document one week ago and had limited time to review it. Mr. Yasui discussed the concerns of traffic circulation patterns at the Hualalai intersection, the use of a gate card to control access to the mauka portion of the project, and other matters.

Mr. Lim noted that the current LUC condition #10 requires that the Petitioner submit a TIAR to the DOT for approval. The TIAR had been submitted to the DOT and Petitioner is waiting for approval.

The parties and the Commission had no further questions for Mr. Yasui.

The meeting adjourned at 6:30 p.m.

(Please refer to LUC Transcript of March 1, 2007 for more details on this matter.)

Steven S.C. Lim

From: Jennifer A. Benck
Sent: Wednesday, March 21, 2007 7:33 PM
To: Steven S.C. Lim
Subject: Aeko
Attachments: LUC Minutes March 1, 2007.pdf

Steve, don't know if you saw this yet, it's available online at the LUC site. Thanks. Jennifer

Jennifer A. Benck
Carlsmith Ball LLP
1001 Bishop Street, Suite 2200
Honolulu, Hawaii 96813
Direct Dial: (808) 523-2557
Fax: (808) 523-0842

NOTICE: This message contains confidential and privileged information. If it has been sent to you in error, please reply to inform the sender of the error and then delete this message.