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LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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Chief Clerk/Planner

FRED A. TALON
Drafting Technician

December 11, 2019

Steven S. Lim
Katherine A. Garson
Derek B. Simon
ASB Tower, suite 2100
1001 Bishop Street
Honolulu, HI 96813

Re: Docket No. A02-737, University of Nations, Kona, Inc, State of Hawaii Office of Planning and County of Hawaii, Planning Department's Joint Stipulation for protective Order Regarding Confidential Financial Information

Dear Mr. Lim, Ms. Garson and Mr. Simon;

We are in receipt of your stipulation dated November 14, 2019. While section 15-15-71.1 HAR allows parties to enter into stipulations for a protective order, such stipulations are subject to the Commission's approval. At this time, the Commission does not believe there is a legitimate basis for approval of such a protective order.

Pursuant to matters raised at the hearing held on May 22, 2019 and the subsequent decision, the Commission will require evidence that the Petitioner has the financial ability to undertake development of the petition area in the manner proposed. Specifically, Section 15-15-77 HAR subsection (b)5 requires the Petitioner to show, and the Commission to find, that Petitioner has the economic ability to carry out the representations relating to the proposed use or development.

Under HAR 15-15-50 subsection (c)(9) a statement describing the financial condition and a current certified balance sheet and income statement and a clear description of how the petitioner intends to finance the proposed development is required. A petitioner can request a protective order if such information is protected under HRS 92F.

HRS 92F, the Uniform Information Practices Act, provides guidance in such matters. It specifically states:

“Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.”

Section 92F provides some examples of information in which the individual has a significant privacy interest:

(1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;

(2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;

(4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:

(A) Information disclosed under section 92F-12(a)(14); and

(B) The following information related to employment misconduct that results in an employee's suspension or discharge:

(i) The name of the employee;

(ii) The nature of the employment related misconduct;

(iii) The agency's summary of the allegations of misconduct;

(iv) Findings of fact and conclusions of law; and

(v) The disciplinary action taken by the agency;

The stipulation that has been provided does not state a statutory authority under which Petitioner would be entitled to a protective order, or what specific privacy interest is being claimed. In sum, we do not see anything in the presented stipulation that justifies the level of protection sought or why the privacy interest of the individual outweighs the public interest in disclosure.

The LUC regularly requires information from a petitioner on their financial capability to undertake and complete a proposed project. There is a significant public interest in the information. The public policy behind requiring such information is intended to stop speculation on properties and to ensure timely development.

Any decision the LUC might make with regard to the status of this project will necessarily include the financial capability of the Petitioner. Generally, in matters of this type, there should be a public discussion about the Petitioner's financial capability rather than the information being withheld from the public and subject to a protective order.

Unless the Petitioner can provide specific reasons pursuant to HRS 92F that that information is subject to protection, the stipulation cannot be agreed to by the Land Use Commission.

Sincerely



Jonathan Likeke Scheuer
Chair, State Land Use Commission