

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Kamakahonu Ballrooms
King Kamehameha Hotel
75-5660 Palani Road
Kailua-Kona, Hawaii

approved
3/22/89

March 9, 1989

COMMISSIONERS PRESENT: Renton Nip, Chairman
Allen K. Hoe
Toru Suzuki
Robert Tamaye
Frederick P. Whittemore
Teofilo Phil Tacbian
Sharon R. Himeno
Allen Kajioka

COMMISSIONERS ABSENT: Lawrence Chun, Vice-Chairman

STAFF PRESENT: Esther Ueda, Executive Officer
Russell Suzuki, Esq, Deputy Attorney
General
Raymond Young, Staff Planner
Darlene Kinoshita, Chief Clerk

Holly Hackett, Court Reporter

Chairman Nip called the meeting to order.

ACTION

A88-621 - KAHALA CAPITAL CORPORATION (Awake'e, Hawaii)

Chairman Nip announced that the Commission would take action in the matter of the petition by Kahala Capital Corporation to reclassify approximately 349.05 acres of land currently in the Conservation District into the Urban District at Awake'e, North Kona, Hawaii, for intermediate resort and golf course uses.

Appearances

Sandra Pechter Schutte, Esq., Attorney for Petitioner

Norbert Schlei, Petitioner

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William Moore, Deputy Director, Planning Department,
County of Hawaii

Virginia Goldstein, Planning Department, County of
Hawaii

John Anderson, Esq., Deputy Attorney General, Office
of State Planning

Abe Mitsuda, Land Use Division, Office of State
Planning

Jean Nishida, Land Use Division, Office of State
Planning

Christopher Yuen, Esq., Attorney for Intervenors

Kenn Nagasawa, Intervenor

James Juvik, Intervenor

A motion to reopen hearing was filed by Petitioner's attorney, Sandra Schutte. At this time, Petitioner's Attorney, Sandra Schutte requested the Commission to approve withdrawal of their motion to reopen hearing.

Commissioner Kajioka moved to accept Petitioner's request to withdraw the motion to reopen hearing. The motion was seconded by Commissioner Suzuki and unanimously carried by voice votes.

A motion to withdraw petition was also filed by Petitioner's Attorney, Sandra Schutte. Arguments on this motion were heard from Sandra Schutte, John Anderson, William Moore, and Chris Yuen. After hearing arguments, questions were asked by the Commissioners.

Commissioner Himeno moved to grant the withdrawal of the petition. The motion was seconded by Commissioner Kajioka and unanimously carried by voice votes.

A88-624 - THE LUSK COMPANY (Oahu)

Chairman Nip announced that the Commission would take action in the matter of the petition by The Lusk Company to

reclassify approximately 26.445 acres of land currently in the Conservation District into the Urban District at Waiau, Ewa, Oahu, Hawaii, for single family residential use.

Appearances

Lincoln Ishida, Esq., Attorney for Petitioner

Brian Yahata, For Petitioner

John Anderson, Esq., Deputy Attorney General, Office of State Planning

Abe Mitsuda, Land Use Division, Office of State Planning

The City and County of Honolulu was not present to the proceeding.

Closing arguments were heard from Lincoln Ishida and John Anderson. After hearing arguments, parties were questioned by the Commissioners.

Commissioner Tacbian moved to go into executive session to consult with our Deputy Attorney General on legal matters. The motion was seconded by Commissioner Kajioka and unanimously carried by voice votes.

It was determined by Chairman Nip that all of the Commissioners present were eligible to participate in the action on the petition.

Commissioner Kajioka moved to approve the reclassification of the Property, consisting of approximately 26.4454 acres, being the subject of this Docket No. A88-624 by the Lusk Company, situate at Waiau, Ewa, Island of Oahu, City and County of Honolulu, State of Hawaii, identified as Oahu Tax Map Key Number: 9-8-02: Portion of 3, and approximately identified on Exhibit "A", attached hereto and incorporated by reference herein, from the Conservation District to the Urban District subject to the following conditions:

1. Petitioner, as it has offered to do in order to

address affordable housing concerns, shall make contributions as follows:

- A. Petitioner shall contribute the sum of \$1,100,000.00 to the Housing Finance and Development Corporation, State of Hawaii, for the development of affordable housing programs.
 - B. The aforesaid sum be paid in two installments:
 - (1) \$550,000.00 upon acquiring the building permit for the construction of the first house in the project, and
 - (2) \$550,000.00 upon sale of the first house.
 - C. The sum agreed to shall be reduced by the amount or corresponding value of any affordable housing requirement which may be required by the City and County of Honolulu for Petitioner's project.
2. Petitioner shall participate in the funding and construction of transportation improvements necessitated by the proposed development and identified by the State Department of Transportation.
 3. A drainage study, acceptable to the City and County of Honolulu, shall be provided by the Petitioner to assess both off-site and on-site drainage impacts associated with the proposed project.
 4. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.
 5. Petitioner shall provide water source transmission to service the subject project.
 6. Petitioner shall provide its pro rata share for police, park, and fire facilities, to the satisfaction of the City and County of Honolulu. Petitioner shall also provide its pro rata share for school facilities as may be required by and to the satisfaction of the State Department of Education.

7. Petitioner shall immediately stop work and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development.

8. Petitioner shall provide vehicular access through the subject property to the mauka Conservation District lands for public safety and public utility purposes.

9. Petitioner, and any of its successors and assigns, shall inform by way of deed for each prospective purchaser of residential property of possible physical hazards resulting from the topographical alterations of the property caused by the developer.

Language will be included which will release and discharge the State of Hawaii or any subdivision thereof from any and all liability relating to its decision which is based upon the Petitioner's expert testimony and representations, and shall be mutually arrived at between the Petitioner and the State within one week and subject to this Commission's approval.

10. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning and the City and County of Honolulu Department of General Planning in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed.

11. Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the subject Property.

12. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the property covered by the approved Petition prior to development of the property.

13. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

The motion was seconded by Commissioner Suzuki.

The motion to approve the petition by the Lusk Company subject to thirteen conditions was unanimously approved as follows:

Ayes: Commissioner Kajioka, Hoe, Tamaye, Himeno, Tacbian, Whittemore, Suzuki, and Chairman Nip.

SP89-379 - HEMMETER-VMS KAUAI COMPANY V (Kauai)

Chairman Nip announced that the Commission would take action on this special use permit.

Appearances

James Funaki, Esq., Attorney for Petitioner

Robert Uemura, For Petitioner

Warren Perry, Esq., Deputy County Attorney, County of
Kauai

Michael Laureta, Department of Planning, County of
Kauai

Petitioner moved to withdraw the special use permit at this time. The County of Kauai had no objections to the withdrawal.

Commissioner Tacbian moved to grant Petitioner's motion for withdrawal of its special use permit. The motion was seconded by Commissioner Whittemore and unanimously carried by voice votes.

A88-627 - GENTRY DEVELOPMENT COMPANY (OAHU)

Chairman Nip announced that the Commission would take action in the matter of Gentry Development Company to reclassify approximately 685 acres of land currently in the Agricultural District into the Urban District at Honouliuli, Ewa, Oahu, Hawaii for a planned residential community.

Appearances

William Yuen, Esq., Attorney for Petitioner

Norman Dyer, For Petitioner

John Anderson, Esq., Deputy Attorney General, Office
of State Planning

Abe Mitsuda, Land Use Division, Office of State
Planning

Rebecca Greenway, Esq., Attorney for the Department of
the Navy

The City and County of Honolulu was not present to the
proceeding.

Closing arguments were heard from Bill Yuen,
John Anderson, and Rebecca Greenway. After hearing arguments
questions were asked by the Commissioners.

It was determined by Chairman Nip that all of the
Commissioners present were eligible to participate in the
action on the petition.

Commissioner Hoe moved to grant Petitioner's request
to amend the district boundary and grant reclassification of
the property consisting of approximately 685 acres of land
currently in the Agricultural District into the Urban District
at Honouliuli, Ewa, Oahu, Hawaii for a planned residential
community subject to the following conditions:

1. Petitioner shall implement sound attenuation
measures on all residential units on the property that are
subject to noise levels from 60 Ldn to 65 Ldn as determined by
the State of Hawaii, Department of Transportation, Honolulu
International Airport Draft 1987 Noise Contour Map introduced
as OSP's Exhibit Number 2, herein referenced the HIA 1987 Ldn
Map.

Petitioner shall not construct residential units on
any portion of the property subject to noise levels 65 Ldn or
greater as indicated on the HIA 1987 Ldn Map.

2. Petitioner shall grant to the State of Hawaii an aviation easement in the form prescribed by the State Department of Transportation on any portion of the property subject to noise levels 60 Ldn or greater as determined by the HIA 1987 Ldn Map.

3. Petitioner shall be responsible for implementing sound attenuation measures to reduce noise levels from vehicular traffic in the Property and along Fort Weaver Road to acceptable levels. Petitioner shall coordinate its actions with the State Department of Health, DOT, and agencies of the City.

4. Petitioner shall provide housing opportunities for low, low-moderate and moderate income residents of the State by offering for sale or lease a number of units equal to at least thirty percent (30%) of the residential units in the Property at prices which families with an income range of up to one hundred twenty percent (120%) of Oahu's median income can afford, and a number of units equal to at least thirty percent (30%) of the residential units in the Property at prices which families with an income range of one hundred twenty to one hundred forty percent (120% - 140%) of Oahu's median income can afford.

This condition may be fulfilled through construction of units in the Property or in the adjoining Urban Area or through other projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State.

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation and/or the City, through construction of rental units to be made available at rents which families in the specified income ranges can afford.

In addition, Petitioner may obtain the special credit, as determined by the Housing Finance and Development Corporation, for the provision of housing affordable to persons with very low incomes (those earning less than fifty percent (50%) of Oahu's median income) and for the provision of housing for special needs groups, as determined by the Housing Finance and Development Corporation.

Insofar as possible, Petitioner shall implement this affordable housing requirement concurrently with the completion of market priced units in residential portions of the Property. The determination of median income, as the term is used in this condition, shall be based on median income figures published by the United States Department of Housing and Urban Development at the time that construction of such housing units is commenced.

5. Petitioner shall coordinate, with the Board of Water Supply, the Department of Land and Natural Resources, the Ewa Plain Water Development Corporation, adjoining land owners and developers, and/or other federal, state or county agencies, measures designed to develop water for the Property. Petitioner through its affiliates and together with the other members of the Ewa Plain Water Development Corporation shall develop, at the expense of the Ewa Plain Water Development Corporation, the necessary water source, storage and transmission facilities to provide an adequate supply of potable water to the Property prior to development of the Property.

6. Petitioner shall participate in the funding and construction of transportation improvements at access points to the Property as identified by the State Department of Transportation.

Petitioner shall also participate with all adjoining landowners and developers on a fair share basis in the funding and construction of other on-site and off-site transportation improvements necessitated by development of the property and in designs and schedules accepted by and coordinated with the State Department of Transportation, provided that the extent of Petitioner's participation shall not exceed Petitioner's share of the increased community traffic impacts in the Ewa and Central Oahu region, and provided further that, in the event that the City adopts an impact fee for transportation improvements, the foregoing requirements shall not include or double-count the cost of any specific traffic improvements which may also be included in the City's impact fee computation.

Such improvements may include, but not be limited to, Geiger Road, Iroquois Point Road and Fort Weaver Road, improvements to the Kunia Interchange, construction of the

proposed north-south road and its accesses to the H-1 freeway and Farrington Highway, and construction of the proposed east-west road to Kapolei Town Center.

7. Petitioner shall monitor the traffic attributable to the development proposed on the Property at on-site and off-site locations and shall undertake subsequent mitigative measures that may be reasonably required. These activities shall be coordinated with and approved by DOT.

8. Petitioner shall coordinate its transportation improvements with other land owners and developers in the Ewa region to ensure that all reasonably necessary improvements are operational in consonance with urban development.

9. Petitioner shall appoint a transportation manager whose function is the formation, use and continuation of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems. This transportation manager may provide similar services for Petitioner's other projects in Ewa and Central Oahu.

In the alternative, Petitioner may participate in a regional program for transportation management with other developers and/or land owners. This program shall address the formulation, use and continuation of alternate transportation opportunities that would optimize the use of existing and proposed transportation systems.

10. Petitioner shall provide drainage improvements in the Property and shall coordinate off-site improvements with Campbell Estate, Intervenor, adjoining land owners and developers and/or other federal, State or City agencies.

11. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

12. Petitioner shall participate in a study in coordination with the City and the State Department of Health to assess the odors emanating from the HWWTP on the Property. Petitioner shall make the results of such a study available to the State and the City upon its completion.

13. Petitioner shall connect the wastewater system for the development proposed on the Property to the HWWTP. Construction of residential and industrial uses within the Property shall not commence until Petitioner has obtained assurances from the City that the capacity at the HWWTP has been reserved for the development on the Property. Petitioner shall coordinate with the City Department of Public Works and the State Department of Health for the provision of adequate buffer measures, including appropriate land uses, between the development on the Property and the existing HWWTP and any proposed expansion of the HWWTP to minimize noise, odor and other impacts associated with HWWTP.

14. Petitioner shall immediately stop work on the impacted area and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bones, or charcoal deposits, human burial, or rock or coral alignments, paving or walls of historic or prehistoric significance be encountered during the development on the Property.

15. Petitioner shall provide, at no cost to the State, a public school site encompassing six (6) acres, if adjacent to a public park, or eight (8) acres if not adjacent to a public park, as the DOE may determine to be reasonably necessary to serve the needs of residents of the Property. The school site shall be provided, if there is a need for such site, in a location as may be mutually agreeable to Petitioner and the DOE. As an alternative, Petitioner may provide a share of the cost of classrooms or other educational facilities with the approval of DOE.

16. Petitioner shall disclose to all initial purchasers (a) possible aircraft noise and vibration and possible odor, air, noise, and dust pollution resulting from the Fort Weaver Road, Naval Air Station Barbers Point, Honolulu International Airport, the Honouliuli Wastewater Treatment Plant, and adjoining agricultural operations, (b) the Hawaii-Right-To-Farm Act, HRS Chapter 165, which limits the circumstances under which preexisting farm activities on adjacent lands may be deemed a nuisance, and (c) existence of the Explosives Safety Zone at West Loch Branch, Naval Magazine, Lualualei, (d) the transport of explosives and munitions on roadways through and in the vicinity of the property.

17. Petitioner shall maintain the alignment of existing cane haul roads or provide alternate cane haul roads pursuant to Petitioner's agreements with Campbell Estate and OSCO to assure uninterrupted agricultural operation of sugarcane cultivation areas.

18. Petitioner shall participate with City and State civil defense agencies, Intervenor, and adjoining land owners and developers in the formulation of an emergency preparedness and evacuation plan for residents of the Property due to the Property's proximity to the Explosive Safety Hazard Zone at the West Loch Branch, Navy Magazine, Lualualei.

19. Petitioner shall establish a forty (40) foot setback along the existing railroad right-of-way in a manner compatible with City Ordinance No. 84-94.

20. Petitioner shall not place along Geiger or Iroquois Point Roads or at the intersection of any road with these two roadways any obstruction which would hinder aircraft towing along these two roadways in order to maintain an obstruction-free corridor 80 feet in width and 25 feet in height along these roadways.

21. Petitioner shall coordinate with the Department of the Navy to assure that any work in the vicinity will not damage or in any way limit access to utility, communication or fuel lines.

22. Petitioner shall construct no road which enters from the Property onto Geiger or Iroquois Pt. Roads within 200 feet of any Navy installation's boundary.

23. Petitioner shall install a fence or other structure along the eastern boundary of the Property to minimize residents' inadvertent entrance into the Explosives Safety Zone, which commences at the petitioned parcel's eastern boundary, with the western boundary of Naval Magazine Lualualei West Loch Branch.

24. Petitioner shall complete the development on the Property in substantial compliance with the representations made before the Commission.

25. Petitioner shall notify the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property prior to visible commencement of construction on the Property; provided, however, that Petitioner may transfer ownership in the Property to an affiliate or in a manner consistent with prior representations to the Commission, and may mortgage the Property at any time without notice to the Commission.

26. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the City and County of Honolulu, Department of General Planning in connection with the status to the subject project and the Petitioner's progress in complying with the conditions imposed.

27. The Commission may fully or partially release these conditions as to all or any portion of the property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

The motion was seconded by Commissioner Tamaye.

The motion to approve the petition by Gentry Development Company subject to twenty-seven conditions was unanimously approved as follows:

Ayes: Commissioner Hoe, Suzuki, Tacbian, Kajioka, Himeno, Whittemore, Tamaye, and Chairman Nip.

MISCELLANEOUS

1. ADOPTION OF DECISION AND ORDERS

The Decision and Order for the following docket was adopted:

A85-595 - KUILIMA DEVELOPMENT COMPANY (Oahu)

2. ADOPTION OF MINUTES

The minutes for the following meeting dates were approved as circulated: February 23, 1989 and February 24, 1989.

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3. The Commission announced it would be taking a field trip to the project site on Docket No. A88-630 Palace Development Corporation and Hawaii Ka'u Aina this afternoon.

The meeting was adjourned at 1:27 p.m.