

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Discovery Room, Kona Hilton Hotel
Kailua-Kona, Hawaii

June 23, 1987

approved
7/14/87

COMMISSIONERS PRESENT: Teofilo Phil Tacbian, Chairman
Sharon R. Himeno
William Yuen
Richard Choy
Toru Suzuki
Robert Tamaye
Lawrence Chun
Everett Cuskaden

COMMISSIONERS ABSENT: Frederick P. Whittemore, Vice-Chairman

STAFF PRESENT: Esther Ueda, Executive Officer
Annette Chock, Deputy Attorney General
Raymond Young, Staff Planner
Darlene Kinoshita, Chief Clerk
Jean Marie McManus, Court Reporter

Chairman Tacbian called the meeting to order.

REOPENED HEARING

A86-602 - KAHALA CAPITAL CORPORATION (Kona)

The present matter before the Commission is a reopening of the hearing which had begun on July 8, 1986, December 16, 1987, December 17, 1987, and March 3, 1987.

Appearances

Benjamin Kudo, Esq., Attorney for Petitioner

Gary Wong, Esq., Attorney for Petitioner

Norbert Schlei, Petitioner

Albert Lono Lyman, Planning Director, County of Hawaii

Everett Kaneshige, Esq., Deputy Attorney General,
Department of Planning and Economic Development

Abe Mitsuda, Land Use Division, Department of Planning and Economic Development

Chairman Tacbian allowed further testimony from public witnesses.

PUBLIC WITNESSES

1. Representative Virginia Isbell
2. Bill Cook of the Kona, Kohala Chamber of Commerce
3. George Lockwood, Hawaii Abalone Farms
4. Bob Kapaona, Operating Engineers, Local Union #3
5. Clinton Taylor
6. Boyd Hansen

Further written public testimonies were accepted into evidence. Also accepted as evidence was Rep. Isbell's brochure, "The Creation of New International "Aeropolis" in Complete Harmony with the Kansai International Airport."

EXHIBITS

Petitioner's Exhibit 18 through Exhibit 30 were admitted into evidence.

It was noted that Petitioner's Exhibit No. 28, County of Hawaii's Ordinance was not signed by the Mayor, but should be signed shortly.

ACTION

A86-602 KAHALA CAPITAL CORPORATION (Kona)

Chairman Tacbian announced that the Commission would take action in the matter of the petition by Kahala Capital Corporation to reclassify approximately 313.66 acres of land currently in the Conservation District into the Urban District at O'omā II, North Kōnā, Hawaii for an intermediate resort.

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

Closing arguments were heard from Benjamin Kudo and Everett Kaneshige. After hearing arguments, parties were questioned by the Commissioners.

Commissioner Chun moved for approval of Docket No. A86-602 - Kahala Capital Corporation to reclassify approximately 313.66 acres of land currently in the Conservation District at O'oma II, North Kona, Hawaii for an intermediate resort subject to the following conditions:

1. Petitioner shall provide housing opportunities for low and moderate income Hawaii residents and for employees employed on the Property by constructing and offering for sale or rent, on a preferential basis on its own or in cooperation with either or both the Hawaii Housing Authority and the County of Hawaii, within or without the Property, a number of residential units not less than ten percent (10%) of the residential units to be developed on the Property to residents of Hawaii and/or employees employed on the Property of low or moderate income as determined by the Hawaii Housing Authority or County of Hawaii from time to time, or by contributing to the development of such housing without the Property. The preferential residential units, if offered for sale, shall be offered for sale at prices that would enable such purchasers to qualify for and obtain State-assisted financing or Federally-insured or assisted financing intended to encourage home ownership by low and moderate income families or employees.

2. Petitioner shall provide public access from Queen Kaahumanu Highway to the shoreline. Petitioner shall provide space for parking stalls at the access(es). Petitioner shall maintain a continuous pedestrian trail along the seaward boundary of the Property and such access shall be integrated with the shoreline trails on adjacent lands. The accesses shall be available to the public for recreational use. Petitioner shall coordinate plans for public access with the Department of Land and Natural Resources and the County of Hawaii.

3. Petitioner shall prepare preservation and data recovery plans for all significant historic sites which plans shall be submitted to the Department of Land and Natural Resources and the County of Hawaii Planning Department for their review and approval. Petitioner shall submit said plans in consultation with both agencies.

4. Petitioner shall develop and maintain on-site facilities such as sewage treatment plants, dry wells, ponding areas and irrigation systems to insure that the nearshore, offshore and deep ocean waters remain in a pristine condition as acceptable to the Natural Energy Laboratory of Hawaii, Hawaii Ocean Science and Technology Park and the Department of Health. Petitioner shall also develop and coordinate a monitoring system with the Natural Energy Laboratory of Hawaii, the Hawaii Ocean Science and Technology Park and other appropriate agencies to insure the quality of the nearshore, offshore, and deep ocean waters.

Petitioner, in addition, shall do the following:

a. For a period of one year prior to any construction of the property, Petitioner shall develop and conduct a program for monitoring the nearshore waters, which program will establish the baseline date for the quality of the waters.

The program shall meet with the approval of HOST Park, NELH, and the State Department of Health. The parameters of the baseline date shall comply with those prescribed in Title 11, Chapter 54 of the Department of Health Administrative Rules relating to water quality standards.

b. During the period of construction on the property, Petitioner shall conduct a monitoring program for any potential pollution of the nearshore waters, which program shall meet with the approval of HOST Park, NELH, and the State Department of Health.

Said program shall provide for precautionary measures to be taken sufficient to prevent eroded soils and other suspended sediments, construction materials, waste and debris from passing into the nearshore waters. In the event that pollution is discovered, the activity causing the problem shall immediately cease and the problem remedied.

c. After the completion of construction on the property, Petitioner and Petitioner's successors and interest shall conduct a monitoring program for any potential pollution of the nearshore waters which program shall meet with the approval of HOST Park, NELH, and the State Department of Health.

In the event that pollution is discovered, Petitioner, petitioner's successors, and/or the then existing property owners shall immediately correct the problem. If the pollution is determined by NELH, HOST Park, and the Department of Health to be caused by the disposal of effluent from wastewater, and the existing facilities cannot be altered to resolve the problem satisfactorily, 100 percent of the then existing property owners and lessees of the property shall submit a petition and participate in an improvement district with the County of Hawaii for the installation of an alternative sewage treatment system and alternative method of wastewater disposal.

The requirement of correcting any potential pollution problems and the participation in an improvement district hereunder shall be the covenant of each and every deed, mortgage, lease or other interest of covenants running with the land, and shall be an encumbrance binding upon all future persons claiming thereunder.

Said covenant should provide that if a property owner or lessee fails or refuses to sign an improvement district petition when required hereunder to do so, or said owner or lessee cannot be located from his last known address, the clerk of the Third Circuit Court of the State of Hawaii shall be authorized to sign the improvement district petition on his behalf. The conditions and covenants contained in this section may be released if determined appropriate by this Commission.

d. NELH and HOST Park shall be kept informed of all current practices and proposed changes in practices on the property regarding construction activities, use of fertilizers and other soil treatments, and the operation of any sewage treatment plant. Petitioner shall work with NELH and HOST Park to preserve water quality, and to solve any potential problems regarding water quality.

5. Petitioner shall grant to the State of Hawaii and record in each deed of the Property, a noise or avigation easement in a form prescribed by the State Department of Transportation.

6. Petitioner shall not construct residential or resort condominium units on any portion of the Property subject to noise levels greater than 60 LDN as determined by the Department of Transportation Noise Contour Map provided by the Department of Transportation for the year 1990. This condition shall also apply to any land uses not compatible with Keahole Airport operations as determined by the State Department and the Federal Aviation Administration.

7. Petitioner, in developing the Property, shall not exceed the building height limitations as imposed by the State Department of Transportation, Airports Division, in their Airport Zoning Map.

8. Petitioner shall develop a full service hotel on the Property in conjunction with recreational, residential and commercial projects in order to assure greater employment opportunities.

9. Petitioner shall fund the design and construction of improvements to the Queen Kaahumanu Highway for access to the Property and any other improvements as may be required by the State Department of Transportation provided that said highway improvements are rationally related to the mitigation of impacts caused by the Petitioner's proposed project.

10. Petitioner will notify the 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.

11. Petitioner, for itself, its successors and assigns, shall indemnify and forever hold harmless and defend the State of Hawaii or any agency or employees thereof from any and all liability resulting from said noise, vibration, fumes, dust, fuel and lubricant particles, and any other incidences of flame affecting the property, including but not limited to suits based on nuisance or inverse condemnation theories.

12. 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 Cuskaden.

The Commission were then polled as follows on the motion to approve Kahala Capital's Petition subject to twelve conditions:

Ayes: Commissioner Chun, Suzuki, and Cuskaden

Nays: Commissioner Tamaye, Yuen, Choy, Himeno, and
Chairman Tacbian

The motion, failing to receive the required six votes to pass, was lost.

A87-611 - DANIEL TSUGIO GRAHAM AND CHARLOTTE KOBAYASHI GRAHAM
(Oahu)

Chairman Tacbian announced that the Commission will act to determine whether the anticipated effects discussed in the Graham's Environmental Assessment to reclassify approximately 7.074 acres of land currently in the Conservation District into the Urban District at Niu Valley, Oahu, Hawaii for a residential subdivision constitutes a "significant effect" pursuant to Chapter 343, H.R.S.

Commissioner Yuen moved that the Commission find that the proposed petition does not constitute a significant effect on the environment, and therefore, the Commission does not require petitioner to prepare an environmental impact statement. The motion was seconded by Commissioner Choy and carried with the following votes:

Ayes: Commissioner Yuen, Tamaye, Suzuki, Choy, and Himeno.

Nays: Commissioner Chun, Cuskaden, and Tacbian

SP87-364 - KAHILI ADVENTIST SCHOOL (Kauai)

Raymond Young, Staff Planner, gave a summary report of the special use permit request by Petitioner to allow the establishment of school use from grades kindergarten through junior college to include classroom buildings; homes for students, faculty, staff, and retirees; administration and recreational buildings, and a cafeteria/bakery; a chapel,

retirement/health conditioning center, furo, museum, lodge, retreat areas and buildings and maintenance/vocational training shops; agricultural maintenance and sales and parking; and sewage disposal facilities on approximately 197.463 acres of land situated within the State Land Use Agricultural District at Kahili Mountain Park, Koloa, Kauai.

After hearing comments from Avery Youn, Planning Director, County of Kauai, and Mr. Arakaki and Mr. Among, representing petitioner, Chairman Tacbian deferred action on this petition until the next meeting to be held on July 14, 1987. Mr. Youn was requested to submit his recommendations in writing.

MISCELLANEOUS

1. ADOPTION OF MINUTES

The Minutes for the following meeting date was approved as circulated: June 5, 1987

2. The Commission voted unanimously to appoint Benjamin Matsubara, Esq., as Hearing Officer on Docket No. A87-611 - DANIEL TSUGIO GRAHAM AND CHARLOTTE KOBAYASHI GRAHAM.

3. The Commission requested staff to obtain a status report on the Petitioner's compliance with the conditions imposed in Docket No. A82-530 AMFAC PROPERTY DEVELOPMENT CORPORATION.

The meeting was adjourned at 2:02 p.m.