

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room - Kohala 3
Hyatt Regency Hotel
Waikoloa, Hawaii

*approved
10/13/88*

September 29, 1988

COMMISSIONERS PRESENT: Renton L.K. Nip, Chairman (Portion of Proceeding)
Lawrence Chun, Vice-Chairman
Allen K. Hoe
Toru Suzuki
Robert Tamaye
Frederick P. Whittemore (Portion of Proceeding)
Allen Kajioka
Sharon R. Himeno (Portion of Proceeding)
Teofilo Phil Tacbian

COMMISSIONERS ABSENT:

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

Vice-Chairman Chun called the meeting to order.

Chairman Nip did not participate in this proceeding due to a declared conflict of interest.

ACTION

SP88-369 - AINAKO RESORT ASSOCIATES AND GROVE FARM PROPERTIES, INC. (Kauai)

Vice-Chairman Chun announced that the Commission would take action in the matter to allow the establishment of an 18-hole golf course, a driving range, a clubhouse including limited retail and food service, and a parking and maintenance facility on approximately 210 acres of land within the Agricultural District between Weliweli and Mahaulepu, Koloa, Kauai.

Appearances

Dennis Lombardi, Esq., Attorney for Petitioner

Lorna Nishimitsu, Esq., Deputy Corporation Counsel,
County of Kauai

Tom Shigemoto, Director, Planning Department, County
of Kauai

Teresa Tico, Esq., Attorney for Malama Mahaulepu

Napua Emery, Malama Mahaulepu

Stephen Levine, Esq., Attorney for Ohana Maha'Ulepu
was not present to the proceeding.

Commissioner Himeno moved to go into executive session to consult with our Deputy Attorney General on legal powers of the Land Use Commission regarding special use permits and court cases pertaining to these permits. The motion was seconded by Commissioner Whittemore and unanimously carried by voice votes.

Raymond Young, Staff Planner, gave a summary report of the special use permit request by Petitioner and also oriented the Commission to the area on the USGS and tax maps.

A lunch recess was taken at 12:00 p.m. to reconvene at 1:00 p.m.

- 1:24 p.m. -

Mr. Lombardi, Ms. Nishimitsu, Ms. Tico, and Ms. Emery were allowed 15 minutes oral arguments. After hearing arguments, parties were questioned by the Commissioners.

Commissioner Hoe moved to go into executive session to discuss legal issues with our Deputy Attorney General regarding this special use permit. The motion was seconded by Commissioner Suzuki and unanimously carried by voice votes.

Commissioner Tacbian moved that Special Use Permit Docket Number 88-369 filed by Ainako Resort Associates and Grove Farm Properties, Inc. to establish a golf course and accessory related uses and structures on the Property,

consisting of approximately 210 acres, situate within the State Land Use Agricultural District at Pa'a, Koloa, County of Kauai, Kauai Tax Map Key Number 2-9-01: portion of parcel 1, be approved subject to 28 conditions by the Kauai Planning Commission.

The motion was seconded by Commissioner Suzuki.

The Commissioners were polled as follows:

Ayes: Commissioner Tacbian, Kajioka, Whittemore, Suzuki, and Vice-Chairman Chun.

Nays: Commissioner Himeno, Tamaye, and Hoe.

Commissioner Himeno was absent from the proceeding at this time and Chairman Nip joined the proceeding at this time.

A88-620 - KOHALA JOINT VENTURE (Hawaii)

Chairman Nip announced that the Commission would take action in the matter of the petition by Kohala Joint Venture to reclassify approximately 1,288 acres of land currently in the Agricultural District into the Urban District at Kahua and Waika, North Kona, Hawaii for a residential community.

Appearances

R. Ben Tsukazaki, Esq., Attorney for Petitioner

Harry Otsuji, Petitioner

Albert Lono Lyman, Planning 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

Closing arguments were heard from Mr. Tsukazaki, Mr. Lyman, and Mr. Anderson. After hearing arguments, parties were questioned 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 Chun moved that the Property, consisting of approximately 1,288 acres, being the subject of this Docket Number A88-620 by Kohala Joint Venture, situate at Kahua and Waika, North Kona, Island of Hawaii, and identified as Hawaii Tax Map Key Numbers 5-9-01: Portion of 10, 5-9-09: Portion of 54, 5-9-10: 31-55, 57, 58, 60, and portion of 56, and 5-9-11:1, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, for reclassification from the Agricultural District to the Urban District, shall be and hereby is approved and the district boundaries are amended subject to the following conditions:

1. The affordable housing requirement shall be satisfied as follows:

A. The Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale at least ten percent (10%) of the units at prices which families with an income range below 80% of Hawaii County median income can afford, twenty percent (20%) of the units at prices which families with an income range of 80 to 120 percent of Hawaii County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Hawaii County's median income can afford. This condition may be fulfilled with the approval of the State Housing Finance and Development Corporation and the County of Hawaii through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation or other appropriate County or State governmental agency. This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation and the County of Hawaii, through the construction of rental units to be made available at rents which families in the specified income ranges can afford.

B. The affordable housing requirements may also be satisfied in a manner that meets with the approval of the

County of Hawaii and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site or off-site housing units or cash payments or other in lieu of contributions that satisfy the then current housing needs, or other necessary or desirable community or infrastructural facilities as determined above.

2. Petitioner shall coordinate its project planning with the Department of Hawaiian Home Lands and County of Hawaii Planning Department with respect to urban design, as well as infrastructural and service systems.

3. The Petitioner shall participate in the funding and construction of transportation improvements at project access points as identified by the State Department of Transportation. The Petitioner shall also participate in the funding and construction of other on-site and off-site transportation improvements necessitated by the proposed development and in designs and schedules accepted and coordinated with the State Department of Transportation and the Department of Hawaiian Home Lands, provided that the extent of the Petitioner's participation shall not exceed Project IV's share of the increased community traffic impacts in the region and, provided further, that in the event the County 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 County's impact fee computation.

4. The Petitioner shall fund and develop the necessary measures to obtain the required water for the proposed Project IV development.

5. A drainage study, acceptable to the County of Hawaii shall be provided by the Petitioner to assess both off-site and on-site drainage impacts associated with the proposed project.

6. The Petitioner shall provide at no cost a site or sites for police, park, and fire facilities, to the satisfaction of the County of Hawaii, and shall also provide at no cost, a site for an elementary school as may be required by and to the satisfaction of the State Department of Education.

7. The Petitioner shall provide an archaeological survey acceptable to the State Historic Sites Section of the Department of Land and Natural Resources and the County of

Hawaii Planning Department. This survey shall include an assessment of how the proposed drainage system will impact archaeological sites known to exist within the proposed project boundaries, and on adjacent properties as applicable. The Petitioner shall also provide professional archaeological monitoring of the project site during all grading, digging, or other earthworking phases of project development. 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, the Petitioner shall immediately stop work and contact the State Historic Site Section and County of Hawaii Planning Department.

8. The Petitioner shall inform all prospective occupants of possible odor, noise, and dust pollution resulting from surrounding agricultural operations, and that the Hawaii Right-To-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

9. The Petitioner shall provide an analysis of the commercial and office park proposals as they relate to proposed commercial and industrial uses at Kawaihae and the Department of Hawaiian Home Lands' master plan for the area. The analysis shall be submitted with any subsequent application for County land use approvals for the proposed commercial and office park uses.

10. The Petitioner shall submit an application for approval of the proposed project through the County of Hawaii's rezoning process.

11. 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.

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

13. Petitioner shall provide annual report to the Land Use Commission, the Office of State Planning and the County of

Hawaii Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed.

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

The motion was seconded by Commissioner Kajioka.

The motion to approve Kohala Joint Venture's petition subject to fourteen (14) conditions was unanimously approved as follows:

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

CONTINUED HEARING

A87-617 - SIGNAL PUAKO CORPORATION (Hawaii)

Chairman Nip announced that the present matter before the Commission is a continuation of the hearing which had begun on July 21 and 22, 1988.

Appearances

Jan Sullivan, Esq., Attorney for Petitioner

Roy Takeyama, Esq., Attorney for Petitioner

Robert McIntosh, Petitioner

Albert Lono Lyman, Planning 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

Matthew Bailey's untimely letter dated July 19, 1988 was admitted into evidence by the Land Use Commission.

EXHIBITS

1. Petitioner's Exhibits GG through LL were admitted into evidence by the Land Use Commission.

2. County's Exhibits Nos. 2 through 4 were admitted into evidence by the Land Use Commission.

3. State's Exhibit No. 2 was admitted into evidence by the Land Use Commission.

PETITIONER'S WITNESS (Recalled)

1. Robert McIntosh
2. Francis Oda

COUNTY'S WITNESS (Recalled)

1. Albert Lono Lyman

Chairman Nip instructed all parties of the post-hearing procedures and declared the hearing closed.

Commissioner Whittemore was absent from the proceeding at this time.

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

Chairman Nip announced that the present matter before the Commission is a continuation of the hearing which had begun on July 14 and 15, 1988.

Appearances

Sandra Pechter Schutte, Esq., Attorney for Petitioner
Glenn Hara, Esq., Attorney for Petitioner

Albert Lono Lyman, Planning Director, Planning Department, County of Hawaii

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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

Kristy Van Pernis' untimely letter dated September 29,
1988 was admitted into evidence by the Land Use Commission.

PETITIONER'S WITNESS

1. Mark Hastert (Continued)

The meeting was adjourned at 6:30 p.m.