

(Continued from page 5)

rent, better looking industrial areas and more efficient businesses. This would result in lower prices for consumers and more work and jobs would be competitively maintained in Hawaii rather than being outsourced to the Mainland or abroad.

If the existing long-term commercial/industrial ground leases were converted to fee simple, owners would be in a position to secure long-term financing to make major capital improvements to their properties. This would provide a further stimulus to the economy by providing jobs in the construction industry.

LEGISLATION IS NECESSARY TO CURE THE PROBLEM AND WOULD INCLUDE THE FOLLOWING:

For all ground leases between fee holders and tenants on full tax key parcels and of longer than 20 years;

The lessee shall have the right to purchase the fee interest at an amount determined by "Uniform Standards of Professional Appraisal Practice". i.e. fair market value.

The lessor shall retain a right of first refusal to buy back the property at the first resale, at the proposed sale price.

Lessors shall have the opportunity to demand condemnation in which case they will pay all incidental condemnation costs and lose the right of first refusal.

The above information is included in a "White Paper" put together by the Leasehold Reform Action Group (LRAG). For more information please visit the website at www.lraghawaii.org.

Hawaii Developers' Council

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Address Correction Requested



HAWAII DEVELOPERS' QUARTERLY

Dedicated to the promotion, protection and improvement of real estate development in Hawaii.

HAWAII DEVELOPERS' COUNCIL

Gov. Lingle Addresses HDC

Governor Linda Lingle was the keynote speaker at the Annual Membership Meeting for Hawaii Developers' Council on October 15, 2003.

She spoke a few weeks after Judge Ibarra halted the development of the Hokuleia project in Kona. She took the opportunity to speak of the need to reform the state's current land-use system. It is obvious, she said, that the system we have now "is not working." Among the ways to improve this situation, she said, would be giving counties more control over land-use decisions.

Using land zoned for agriculture for "gentleman farms" and exclusive residences is nothing new, Lingle said. The Legislature should have come up with a solution, but it has been unable to because it wants to get complete agreement from all parties involved, Lingle told the developers.

"The Legislature has had this issue for two decades. We couldn't get 100 percent buy-in from everyone -- the interests are so different. Its time to show leadership and make the right decisions."

Governor Lingle also called on the developers to lend their support to improving public education in Hawai'i. The public school system is failing our students, she said, and help is needed from the state's business leaders to bring about much-needed change.

She also encouraged the HDC members to get involved in electing individuals who agree with our positions. "You can speak with some people for hours and you'll never change their minds. What is more efficient and effective is to put people in office who already agree with you. It is more direct," Lingle said.



Governor Lingle spoke with HDC members on October 15th

UPCOMING EVENTS

Membership Luncheon

Keynote Speaker
TBA

Date and Location:

TBA

Boardroom Series X

Bonding, Insurance and Bank Requirements

Wednesday February 25th
7:45 AM to 9:00 AM
at
First Hawaiian Bank
Board Room
Coffee and Pastries
Free to HDC Members

2003-2004 HDC Officers and Directors

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Howard Bilkiss

Presidents Message

Our recent Boardroom series on Wednesday, November 5 was quite a success. Attendees gained knowledge from Keith Kurahashi about various permits, as well as marketing tips from Rick Hobson.

In the past, when the occasion presented itself, I commented on certain building requirements I've encountered around the country. Remember Santa Fe, New Mexico and the toilet rules?

The latest I discovered was in Orlando, Florida. There, in-depth and frequent inspections during the construction process are required. The authorities are considering allowing contractors to hire licensed non-governmental inspectors.

As I commence my term as your president, remarkable changes have occurred since I last served in this position in 1993 / 1994. No need to enumerate these now, but it behooves all of us to monitor governmental actions through the board and its committees. Potential changes will affect us dramatically. For instance, the Honolulu city council's recent failed attempt to change the size of parking stalls.

As we approach the holiday season, we think back on our good fortunes and we realize that there are people less fortunate than us. With that in mind, at our December meeting, the Board of Directors voted to distribute \$1,000 each to six various charitable organizations.

We have a dynamic board with old and new directors who are all committed to their profession, as well as the council. I hope to see you all at the next function and I wish you a peaceful, prosperous, and happy New Year.

HDC Board Makes Charitable Donations

The Board of Directors of Hawaii Developers Council, at their December meeting, noted that the financial position of the Council was strong enough to make several year end donations to community non-profits.

Recipients include five public charities and an issue related advocacy group.

Honolulu Habitat for Humanity is a great choice for our support as they strive to place individuals into their first homes by leveraging sweat equity form the future owners and volunteers.

The Institute for Human Services provides shelter, food and essential services for the homeless in Honolulu.

The Children's Alliance of Hawaii strives to make life better for sexually and physically abused children and their families.

Child and Family Services, an non-governmental organization that strengthens families and fosters the healthy development of children was another donee. Their services include: child and family abuse programs, foster home and adoption placement, and counseling for at-risk youth.

The Domestic Violence Legal Hotline, which provides legal assistance for men or women that are trapped in an abusive relationship.

And finally, the **Land Use Research Foundation**, the organization that has helped Hawaii Developers' Council stay up to date on legislative issues with the state and the counties.

Storm Runoff Prevention

After several high profile challenges by the Sierra Club against some local developers, The City Department of Environmental Services (ENV) encourages developers to enact effective strategies on preventing polluted runoff to protect Hawaii's waters. When polluted storm water runs from construction sites and on to streets, it flows into storm drains, and eventually, into streams and the surrounding coastline.

The City must comply with Federal National Pollutant Discharge Elimination System (NPDES) regulations under the Clean Water Act. The NPDES regulations mandate that cities keep municipal storm drains and sewer systems as free of pollution as possible. The City also administers a public education program on how to prevent nonpoint source pollution (NPS) under these regulations.



"We make a conscious effort to build and maintain partnerships, such as we have with the construction industry," said **Gerald Takayesu**, head of the ENV's Storm Water Quality Branch. "We provide informational materials and offer to conduct presentations on City regulations to help businesses train employees and avoid heavy penalties and fines."

For smaller projects, contractors can follow simple checklists with typical best management practices (BMPs), such as installing silt fences, ground cover and silt basins to protect storm drains. Larger projects, specifically those requiring State NPDES permit coverage, require an approved erosion control plan during construction. The plan must address scheduling of clearing and grading, and construction and maintenance BMPs to reduce ero-

sion and sediment runoff.

It is the responsibility of all businesses to stay abreast of current Federal, State and City regulations and enforce them at the workplace. Failure to implement proper BMPs can result in enforcement, including fines of up to \$25,000 per day, per violation.

Businesses should employ the following BMP guidelines for all construction projects:

- **Do all construction work in phases.** Complete clearing operations one stage at a time to take advantage of existing ground cover that provides a natural filter for sediment and other pollutants. Establish final vegetation and cover with mulch as soon as portions of the site are completed.
- **Keep work areas clean.** Clear out waste and litter at the work site daily. Sweep paved surfaces that flow to the storm-drain system. Collect and dispose of sweepings properly.
- **Control runoff during construction activities and divert it from areas of exposed soil** with berms, ditches or pipe drainage systems. Reduce runoff velocities with vegetation or check dams.

- **Locate and protect storm drains close to the construction site** against runoff with commercial filters or storm drain inlet protection.
- **Collect and dispose of concrete wash water** from construction sites promptly and properly. When cleaning concrete trucks and vehicles, use off-site facilities or wash in designated and contained areas only.
- **Prepare for and clean up spills with a Spill Response Plan** that includes key emergency contacts, clean up instructions and locations of spill containment and clean up devices.
- **Minimize the storage of hazardous materials and chemicals** by purchasing only what is needed and using it all. **Call 692-5411** for more information on hazardous waste management.

For more information, call the City's Storm Water Quality Branch at **692-5207**, or visit the website at **www.CleanWaterHonolulu.com**. Industry can help protect our waters for life!



Member Projects

Howard Bilkiss, Hawaii Developers' Council president, announces his current development, 739 Kinalau Pl., located near the Honolulu Academy of Art.

The project features three architecturally designed homes consisting of a 3 bedroom/ 2 1/2 bath, a 5 bedroom / 3 bath and a 6 bedroom/4 bath. They are all two story homes with hollow tile for the first floor walls and Hardy Plank on the second story.

The interiors are furnished with granite counter tops and Pergo-type wood laminate floors. "The development is turning out wonderful and if you have any questions or comments, please contact Howard at 524-4024.

Welcome New Members

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New Board Members

The members of Hawaii Developers Council elected three new Board members during the Annual Membership Meeting on October 15 at the Oahu Country Club.



HDC welcomes Abe Lee back to an active role on our Board of Directors. He was the first president of Hawaii Developers Council many moons ago and has served in many capacities over the years.

Abe started his own development firm in 1982 and has completed over 70 projects. He has a staff of 75 real estate agents under Abe Lee Realty and a development arm that does small in fill projects. They currently have 14 projects in progress.

He also teaches prelicensing courses for salespersons and brokers and continuing education classes on zoning, land use, construction methods, permits, contracts, wills and trusts, etc.

Peter Savio was born and raised in Hawaii, having graduated from St. Louis High School and University of Hawaii, Manoa. He majored in real estate and entered the industry in 1970 as Realtor-Associate. About ten years later, he became a developer when Savio Development Co., Inc. was incorporated to specialize in condominium conversions.

Peter is presently doing condominium conversions, new subdivi-



sions, agricultural projects, and shopping centers under his new development company, Hawaiian Island Development Co., Inc.



The third new board member is Jane Stubenberg of TransPacific Mortgage Co. Jane has been in the real estate business since 1980. She started with residential projects, then moved on to leasing and commercial sales.

In 2000, she started working as a mortgage broker, specializing in complex financing loans for individuals that are high end, stated, self employed based. She also specializes in construction/permanent and project development financing.

She is active in quite a few associations, including the professional ones for realtors as well as the mortgage banking groups..

Jane is active in legislative advocacy. Over the years, she has testified in support of reforming our land use laws and leasehold reform.

BEST WISHES TO ALL

By Ken Chong



Ken Chong-Pacific Realty Consultants

In my last column, I made certain comments about the layout, density and communications concerning a new Hawaii Kai condominium project. This was a follow up on an article on the project that appeared on the first page of the September 8 Advertiser.

The developer later wrote to me expressing displeasure about my comments because he felt they were unfair and critical of the company. They certainly weren't intended that way, and if they were so construed, I sincerely apologize. In fact, the company has a fine reputation in our community.

I did not name the company in my article, nor shall I now, because I don't believe it serves a positive purpose. It could have been any company, any project. What I was attempting to stress were lessons that could be learned from the experiences of others so we can avoid the types of problems that gave rise to the Advertiser article.

Again, my apology to the developer for what I had intended to be constructive comments.

On another matter, community forces sometimes can be supportive of a developer. Too often, it seems we hear about public groups being opposed to what we propose. However, the Kapolei community gave Luana Koa, a continuing care development group I'm affiliated with, its whole-hearted support on rezoning of 40 acres of Kapolei land near the library from ag to BMX-3. Everything moved along smoothly

Hokulia Owners in Honolulu

The owner of the Hokuleia development, Lyle Anderson, was in Honolulu recently to meet with leaders in the banking, development and construction industries in an effort to become more visible in the community. They also met with media representatives in an attempt to clear up some misconceptions that was created in their coverage of Judge Ibarra's court decision.

Judge Ibarra issued an order effectively shutting down the project on Sept. 9th, based on an alleged failure to comply with state land use rules. On October 21, the court amended the order to prohibit the Hokulia lot owners from building their homes, even though they were not a party to the litigation and had no opportunity to present their defenses.

Lyle was joined by key members of his management staff that included John De Fries, the executive director of the Hokulia project. They are trying to clear up what they consider to be two fundamental errors made by the court.

Please contact Gary Wiseman at 845-4887 if you would like details of the court decision and Mr. Anderson's rebuttals.

and the zoning was approved without a hitch. Community support helped. Mahalo to the Neighborhood Board and other public groups.

Best wishes to all at this yuletide season. May 2004 bring everyone prosperity, good healthy, much luck and lots of happiness.

Open Competition & Property Tax Credit



By: Gary Wiseman
 Associated Builders and Contractors

A prevailing wage construction requirement does NOT force a developer to use union construction companies. It only means that they must comply with a State law referred to as HRS Chapter 104.

The City and County of Honolulu provides a 7 year real property tax exemption for the increased value of improvements done on certain commercial properties in Honolulu. Within that law is a requirement that the construction must comply with the rules found in Hawaii Revised Statutes Chapter 104.

HRS chapter 104 requires that workers on state and county construction projects be paid prevailing wage rates. Our State has historically determined that these rates are equal to the rates found within the various construction union agreements. However the state allows both union and non-union companies to perform these governmental projects, as long as they comply with chapter 104.

Property owners, especially those who need renovations of less than \$10 million, might want to carefully consider if the added cost associated with chapter 104 exceeds the value of the real property tax credit. They would be wise to ask their bidders to provide two prices – one based on chapter 104 and one without.

Should the property owner decide that they want to take advantage of the real property tax credit, they should still invite all qualified construction companies to bid, regardless of their union affiliation. After all, the more companies bidding on a project, the lower the prices!

Updating Hawaii's Land Use Entitlement System



By Dean Uchida
Land Use Research Foundation

The recent Court decision on the Hokulia project focused attention on protecting our agricultural lands. While significant in its immediate impact on the developer, employees and investors, the decision identified a symptom of the larger problem involving the existing land use entitlement process in Hawaii.

The State Land Use Commission (LUC) classifies or designates all of the lands in the state into one of 4 land use districts: Urban, Conservation, Rural and Agriculture. In the Rural and Agricultural Districts, the LUC not only designates the lands within these Districts but also provides management oversight on uses within these two districts.

The existing overlapping jurisdiction in the Rural and Agricultural Districts seems to create confusion on the roles and responsibilities for the state and local government agencies. As lands were reclassified out of the Agricultural District into the Urban District, the Counties developed their own approval process as the planning for urban areas became more and more a County function. As each of the Counties developed their own approval process, the state reclassification process was not reduced or eliminated, thus creating an overlapping jurisdiction for the reclassification of lands from the Agriculture to Urban Districts.

While the LUC considers state-wide impacts in their reclassification analysis, many of the conditions imposed by the LUC on reclassification of lands are based on urban planning/zoning issues administered by the County. Given that the Counties are responsible for infrastructure planning (i.e. roads, water, sewer,

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Understanding Title Insurance & Financial Ratings

By: Olivia Morikawa, Old Republic Title & Escrow

Title insurance is your policy of protection against loss if any problems result in a claim against your ownership. If a claim is made against your property, title insurance will, in accordance with the terms of your policy, assure you of a legal defense and pay all court costs and related fees. Also, if the claim proves valid, you will be reimbursed for your actual loss up to the face amount of the policy.

Why do I need title insurance? Land is permanent and can have many owners over the years, various rights in land may have been acquired by others (such as mineral, air or utility rights) by the time you come into possession of it, even if the land has never before been built upon. So in order to transfer a clear title to a piece of land, it is first necessary to determine whether any rights are outstanding.

A title search is a detailed examination of the historical records concerning a property. These records include deeds, court records, property and name indexes, and many other documents. The purpose of the search is to verify the seller's right to transfer ownership, and to discover any claims, defects and other rights or burdens on the property.

A title search can also show a number of title defects and liens, as well as other encumbrances and restrictions. Among these are unpaid taxes, unsatisfied mortgages, judgments against the seller and restrictions limiting the use of the land. Title insurance is a "must have" for the purchase of any real property. Without it you are just asking for someone to challenge your ownership rights.

Understanding the Importance of Financial Ratings. Financial strength ratings represent an analysis of a wide variety of risks that could affect an insurer's long-term survival. It is based on a comprehensive analysis of relevant factors including the insurance company's liquidity, operating performance, financial flexibility, capital strength, management quality, competitive positioning and long-term business viability. Insurance companies can fail or cease to operate due to inadequate financial capabilities, competitive forces, or changing fundamentals in their marketplaces.

AA- is better than A+. Virtually all of the companies get an "A" of one form or another, while any company with a B or lower shouldn't be considered. An Insurer rated "AAA" is EXCEPTIONALLY strong. Insurers assigned this highest rating are viewed as possessing exceptionally strong capacity to meet policyholder and contract obligations. For such companies, risk factors are minimal and the impact of any adverse business and economic factors is expected to be extremely small.

An Insurer rated "AA" has VERY strong financial security characteristics. Insurers are viewed as possessing very strong capacity to meet policyholder and contract obligations. Risk factors are modest, and the impact of any adverse business and economic factors is expected to be very small.

Selecting the right title insurance company. One important consideration is the financial strength of the insurer. If the company cannot pay future claims or benefits, other considerations become unimportant. It is in your best interest to check out any company you intend to do business with.

This article courtesy of Olivia Morikawa, Commercial – Projects Development, Old Republic Title & Escrow of Hawaii Call 551-4962 for more information

(Continued from page 4)

utilities, etc.) in the Urban District, it maybe an appropriate time to question whether or not the over-lapping jurisdictions provide any benefit to the final decision.

We propose having the LUC focus only on the broader public policy issues (as mandated in the State Constitution) such as providing for: housing, a healthy environment, education, conservation and development of resources, agricultural lands, and, most importantly, the rights of individuals. The LUC would allow the Counties to determine the urban and rural zoning issues as the next step in the entitlement process.

The LUC, in consultation with the Counties, would balance the often times competing and conflicting mandates as it considers future growth and land use opportunities in advance of existing urban areas. Their role would be more pro-active and kept at a higher policy level to ensure that there are sufficient lands in each of the four land use districts to fulfill the constitutional mandate and accommodate the needs of the entire community.

In the case of Urban or Rural areas, the Counties will have the flexibility to re-zone lands to urban uses as the market conditions change. The bulk of the LUC actions would be based on pro-active planning and not requests by petitioners for redistricting. This would retain the two-tiered system; however, it would eliminate the redundancy as the LUC would focus on the larger public policy issues in providing sufficient lands for the Counties to subsequently zone.

Government's role must focus on establishing a fair and open land use entitlement process. It also must strive to minimize risk and provide some level of certainty. Finally, it must provide for an opportunity for interested parties to present information, for or against the proposal.

REFORM COMMERCIAL LEASEHOLD FOR THE GOOD OF ALL

John D. Nielsen
Executive Vice President, The Gretzinger Corporation



Mahalo for the opportunity to discuss with you one of the biggest long term problems faced by small businesses in Hawaii today – the broken long term ground lease system of commercial and industrial land. For those impatient readers, I'll give my conclusion up front and you can read on for the proof.

THE COST OF LIVING IN HAWAII IS INFLATED AND ECONOMIC GROWTH IS INHIBITED BECAUSE OF THE LONG TERM GROUND LEASE SYSTEM OF COMMERCIAL/INDUSTRIAL LAND IN HAWAII.

In Hawaii there is a finite amount of available land zoned for commercial purposes. Over half of the Industrial/ Commercial land on Oahu is not owned by the user but is under long-term ground lease, i.e., typically for 55 years. Of this leased land, fewer than ten landowners own the majority of the fee title. This system and the concentration of land ownership in Hawaii have resulted in an inequitable pricing of commercial and industrial land leases

The ground leases typically have a period of fixed rent and then periods of rent renegotiation based on a formula in the lease. Many leases contain provisions that do not allow the renegotiated rent to be lower than the previous rent even if the previous rent is higher than fair market value.

Typically the tenant pays for the improvements on the land. As a practical matter, at the end of the lease or on earlier termination, the improvements are usually not all removed and revert to the landlord. The result is the tenant has no bargaining power and the landowner has an incentive to see the tenant fail. Another result is over a period of years ground lease rents become inflated. This problem has been further compounded by the "Japanese Bubble" of the early 1990's, which forced up rents, which cannot fall back to the fair market value following the bubble period.

With all the improvements on leased land reverting to the landlord at the end of the lease, and banks not willing to lend beyond the known rent periods, tenants do not make improvements in the later years of their leases causing Honolulu to have large areas of substandard and inefficient commercial buildings. Take a drive through the lower Mapunapuna or Airport Industrial Areas for proof of this.

The inflated rents and unavailability of fee commercial/ industrial land flow through the economic chain from prime tenant to sub-tenant to small business. This means that the small service or manufacturing business that in other states would invest in improvement to its premises, cannot and are forced to operate in substandard inefficient premises. The businesses that survive do so by passing on their increased costs to the consumer. This is a large component of the higher cost of living in Hawaii.

If many small (or right sized) parcels of industrial land were available in fee simple, the marketplace would ensure their efficient use and pricing. This would result in businesses, particularly small businesses, having lower

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