

LAND USE COMMISSION
MINUTES OF MEETING

September 2, 2004

Elleair Ballroom
Maui Beach Hotel
170 Kaahumanu Avenue
Kahului, Maui, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Isaac Fiesta
Lisa M. Judge
Kyong-Su Im
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai
Michael D. Formby
Steven Montgomery

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Catalani called the meeting to order at 10:00 a.m.

ADOPTION OF MINUTES

Commissioner Fiesta moved to adopt the Land Use Commission meeting minutes of August 12, 2004 and August 13, 2004. Commissioner Yukimura seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- September 16-17 meetings will be held at the Maui Prince Makena Resort;
- September 8-10 HCPO conference at the Hilton Hawaiian Village, Oahu;

- October 7-8 meetings will be held at the Hilo Hawaiian Hotel, as all of the Kona venues were booked;
- December 9-10 meetings will be held at the King Kam Hotel to hear the Hiluhilu docket.

Mr. Ching asked the Commission if they had any preferences to a one day workshop in Oahu on December 2nd or 3rd. The Commission indicated no preferences for either day.

DOCKET NO. A03-745 HANOHANO LLC (Maui)

Chair Catalani stated that this was a hearing to consider the reclassification of approximately 28.695 acres of land currently in the Agricultural District in to the Urban District at Keahua, Kula, Maui.

APPEARANCES

David Nakamura, Esq. representing Hanohano LLC
Don Fujimoto, Vice President of Dowling Company
Jane Lovell, Esq., represented County of Maui
Ann Cua, County of Maui, Department of Planning
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning

Chair Catalani informed Mr. Nakamura that the Commission has established a policy where hearing notices and court reporter fees associated with the docket are reimbursed by the Petitioner. Chair Catalani asked Mr. Nakamura if staff had provided notice with respect to this reimbursement policy. Mr. Nakamura replied in the affirmative and agreed to reimburse the Commission for their publication and court reporting fees.

PUBLIC WITNESS

1. Sherri Dodson

Ms. Dodson stated that she is the Executive Director of Habitat for Humanity (Maui) and that they are in support of the petition. Ms. Dodson reported that their group receives donations to build homes utilizing sweat equity and have come to agreement with the Petitioner and the County of Maui to receive a donation of \$125,000.

Mr. Chang asked if Habitat for Humanity presently have lands set aside to build these homes. Ms. Dodson replied that they presently have been building homes on Hawaiian Homestead lands.

Commissioner Im asked if Hanohano is making a separate donation to Habitat for Humanity in lieu of Maui County's required affordable housing contribution. Mr. Nakamura concurred and replied that Hanohano is making the donation to satisfy Maui County's affordable housing contribution.

After a brief discussion, there were no further questions by the parties and the Commission.

Staff Report

1. Maxwell Rogers, Staff Planner, provided a GIS map orientation of the area and briefly summarized the staff report before the Commissioners. There were no questions by the parties and the Commission.

Admission of Exhibits by the Parties

Chair Catalani asked the parties to proceed with the identification of exhibits by the parties.

Mr. Nakamura introduced and described Petitioner's Exhibits 1 to 43. There were no objections by the County and the State. Said exhibits were admitted into the record.

Ms. Lovell introduced and described three of Maui County's exhibits. The State and the Petitioner had no objections and said exhibits were admitted into the record.

Mr. Chang introduced and described the Office of Planning's Exhibits 1 - Statement of Position, 1a - testimony, and 2 - location map. The Petitioner and the County had no objections. Said exhibits were admitted into the record.

PETITIONER'S WITNESSES

1. Gwen Ohashi Hiraga

Ms. Hiraga stated that she is a principle of the planning and consulting firm at Munekiyo and Hiraga and was retained by Hanohano to prepare the technical portions of the final environmental assessment.

Mr. Nakamura stated that Ms. Hiraga's resume was attached as exhibit 33 noting her credentials and educational background. Mr. Nakamura then offered Ms. Hiraga as an expert in land use planning. There were no objections by the parties.

Ms. Lovell had questions and concerns relating to the County's interim zoning for residential use in that area.

Commissioner Im offered questions and concerns relating to the slope on the property, drainage and flooding issues, and the home sale prices.

2. Don Fujimoto

Mr. Fujimoto stated that he is the Vice President of Dowling Company. Mr. Fujimoto stated that Hanohano was formed with Goodfellow Construction as equal partners in May 2003 to develop these 49 lots. Mr. Fujimoto gave an overview of the Hanohano project and Dowling Company's history in development and business ventures.

Ms. Lovell's questions and concerns were related to potential chemical and/or hazardous waste and soil contamination associated with 55 gallon drums found on the property.

Mr. Chang's questions and concerns were in reference to the other projects within the area, a current Dowling development, and also a vacant lot situated makai of the proposed project area.

Commission Yukimura had some questions and concerns relative to the heiau site, the buffer zone, and the property line.

Commissioner Im's questions were in reference to entitlement, property interest and ownership issues.

Vice Chair Sakumoto had questions and concerns regarding the Hanohano contract to purchase the land, its legal obligations, and maintenance issues related to the heiau.

Chair Catalani offered questions and concerns related to the heiau, its maintenance, the selection committee, the curator, and the cultural and religious activities on the site. Chair Catalani also had questions relative to the affordable housing requirement formula and agreement reached with Habitat for Humanity.

A lunch break was taken at 11:40 a.m. The meeting reconvened at 1:05 p.m.

Mr. Nakamura indicated that he previously has spoken to both the County and State's counsel and they have no objections to excuse certain proposed witnesses of the Petitioner from the proceedings. Mr. Nakamura asked for the following to be excused from the proceedings:

- Kevin Nishida, Accountant
- Russell Gushi, Landscape Architect
- Thomas Holliday, Economic Analysis
- John Vuich, Environmental Assessment

Chair Catalani noted that there were no objections to excuse these witnesses, however, there were a few questions for Mr. Holliday. Chair Catalani excused the three witnesses and asked Mr. Holliday to testify at this time.

3. Thomas Holliday

Mr. Holliday stated that he is the Senior Analyst of the Hallstrom Group.

Chair Catalani had questions and concerns in reference to the target buyer's population, and the market population's average income.

Commissioner Im's questions were based on the construction costs, marketing, and home sale prices.

There were no questions by the County or the State.

4. Warren Unemori

Mr. Unemori stated that he is the President of Warren S. Unemori Engineering. Mr. Unemori was qualified as an expert in the field of engineering, land surveying and structural engineering. There were no objections by the parties.

Mr. Unemori described the drainage improvements, the topography of the slope and the proposed drain system and run off retention basin.

The County and the State had no questions.

Commissioner Im had questions and concerns in reference to the walls around the heiau and the proposed drainage system.

5. Jeffrey Pantaleo

Mr. Pantaleo stated that he is the Principal Investigator for Archaeological Services Hawaii and has conducted an archaeological survey of the site, submitted as Exhibits 21a and 21b. Mr. Pantaleo was qualified as an expert in the field of archaeology. There were no objections by the parties.

The County had no questions.

Mr. Chang's concerns were for the heiau and its maintenance, preservation, and future plans for restoration.

Commissioner Im had questions relating to the maintenance of the heiau and the obligations of the association upon ownership of historical sites, such as the heiau on this property.

Chair Catalani's questions and concerns were based on the historical and religious site's maintenance, stewardship of a native Hawaiian group, the selection committee of a curator who is familiar with the site, and the buffer zone.

There were no questions posed by the County.

Mr. Chang's questions were relating to the recommended preservation, clearing of the vegetation, and maintenance of the area within the buffer zone.

A recess break was taken at 2:00 p.m. and the meeting reconvened at 2:20 p.m.

6. Kahu Charles Maxwell, Sr.

Mr. Maxwell stated that he is the Principle of CKM Cultural Resources and was hired to provide a cultural assessment of the Hanohano property and the heiau pertaining to the historic preservation laws and acts of OHA. Mr. Maxwell expounded on the historical significance of the heiau and answered questions relating to the view plains, the preservation, and the maintenance of the area. Mr. Maxwell added that he agrees with Petitioner that the selection committee should consist of one homeowner and two representatives from OHA.

After discussion, the County and the State had no further questions.

Commissioner Im moved that the Commission enter into executive session to discuss with its Deputy Attorney General the legal aspects of property interest upon

applying for a petition for reclassification under HAR 15-15-50, C5. The motion was seconded by Vice Chair Sakumoto. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 2:45 p.m.

The open meeting reconvened at 3:20 p.m.

Chair Catalani stated that in respect to Commissioner Im's concern of property interest held by the petitioner in relation to HAR 15-15-50 C5, the Commission has asked their counsel to research this issue. Chair Catalani then asked the Petitioner to submit a brief that addresses the Petitioner's conformance with the Land Use Commission rules cited previously by September 16.

7. Neil Kasamoto

Mr. Kasamoto stated that he is the Senior Transportation Engineer at Austin Tsutsumi & Associates and was hired to prepare the traffic study for the project, submitted as Exhibit 25a. A supplemental report, submitted as Exhibit 25b, was prepared after the Petitioner received a comment letter from Mr. Haraga of the DOT. Mr. Kasamoto testified that the conclusions and the original study was still valid.

There were no questions posed by the parties and the Commission.

8. Paul Cool

Mr. Cool stated that he is the Vice President of John Child & Company, who conducted a market assessment for the proposed development. He is a certified general appraiser and member of the State of Hawaii's Appraisal Institute.

The County had no questions.

Mr. Chang had questions relating to the profile of the potential homebuyers, the current inventory of homes in the \$425,000 price range, and the market demand in the Wailuku-Kahului areas.

Commissioner Im had questions and concerns in reference to the average prices of \$250,000 to \$350,000 for the vacant lots, the infrastructure to be provided and other improvement issues.

COUNTY'S WITNESS

1. Ann Cua

Ms. Cua stated that she is the Senior Planner at the Maui County Department of Planning. Ms. Cua noted that the County of Maui had provided written testimony from its Director, Michael Foley, and explained that Mr. Foley was unavailable to testify. Comments were provided by Ms. Cua for the County supporting the petition.

Mr. Chang had questions in reference to the agreement with the Habitat for Humanity, which satisfies Maui County's affordable housing requirement.

Chair Catalani also had concerns about fulfilling the 10% affordable housing requirement and subsequent cash contribution by the petitioner.

After a brief discussion, there were no further questions.

A recess break was taken at 4:15 p.m. and the meeting reconvened at 4:20 p.m.

STATE'S WITNESSES

1. Abe Mitsuda

Mr. Mitsuda stated that he is the Administrator of the Land Use Division, Office of Planning. Mr. Mitsuda noted that the State is in support of this project and added that he originally worked on this docket in 1981, but the proposed subdivision was never developed and the Commission down-zoned the project back to the agricultural district.

Commissioner Yukimura had a few questions relating to the past county council's zoning of the subject property.

2. Charlene Shibuya

Ms. Shibuya stated that she is the design engineer and acting construction engineer from the Department of Transportation (DOT). Comments were provided by Ms. Shibuya for the State, relative to the first traffic study and the supplemental traffic study. She added that the DOT has come to a consensus with the petitioner regarding the local and regional improvements in lieu of the fair share contribution requirement.

The County had no questions.

Commissioner Judge had questions and concerns relating to the pedestrian traffic, as well as the vehicle traffic in these studies.

After a brief discussion, there were no further questions by the parties and the Commission.

Chair Catalani closed the evidentiary portion of the docket except for the limited purpose of the submittal of the following items:

- A brief from the Petitioner regarding the property interest issue by close of business on September 15.
- A possible agreement between the DOT and the petitioner.
- A submission by the County of the formula used to calculate the affordable housing in-lieu fee.
- A review from Kahu Maxwell for heiau protection and maintenance issues.

Chair Catalani adjourned the meeting at 4:50 p.m.

(Please refer to the Land Use Commission transcript of September 2, 2004 for additional details on all of the above matters.)