

LAND USE COMMISSION
MINUTES OF MEETING

May 5, 2005

Maui Prince Hotel Makena Resort
5400 Makena Alanui
Makena, Maui, Hawaii

Commissioners Present: P. Roy Catalani
Isaac Fiesta
Michael D. Formby
Lisa Judge
Randy Piltz
Randall Sakumoto

Commissioners Absent: Kyong-su Im
Steven Montgomery
Peter Yukimura

Staff Present: Anthony J.H. Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Sandra Matsushima, Chief Clerk
Max Rogers, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

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

Chair Catalani welcomed the Commission's newest member, Randy Piltz, an electrical contractor and former Chair of the Maui County Planning Commission.

ADOPTION OF MINUTES

Vice Chair Sakumoto moved to adopt the minutes of April 20, 2005. Commissioner Fiesta seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- May 18-19 meetings will be held in Kona on the Big Island;
- June 2-3 the LUC will be returning to Maui;
- June 16 on Oahu;
- August 25 on Oahu. HCDCH and OP presentations will be moved from June 16 to August 25th;
- September 22-23 to Lanai for the Manele Bay docket.

Mr. Ching also noted that for Big Island meetings, the meeting dates may shift to Wednesdays and Thursdays if the Friday meeting dates conflict with the County's Planning Commission.

LEGISLATIVE UPDATE

Mr. Ching described the significant elements of HB 109, which included the prospective prohibition of golf courses in the Agricultural district, the inclusion of golf courses in the Rural district and the appropriation of \$50,000 for a rural district standards study. Mr. Ching also described HB 1640, the IAL package and legislation.

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

ELECTION OF OFFICERS

Commissioner Fiesta nominated Randall Sakumoto as Chair, Steven Montgomery and Lisa Judge as co Vice Chairs, effective July 1, 2005. Commissioner Formby seconded the motion. Said motion was approved by voice votes.

A04-754 MAUI LANI 100

Chair Catalani stated that this was a hearing to consider the reclassification of approximately 59.6 acres of land currently in the Agricultural District to the Urban District for a village mixed-use and open space district, and residential subdivision at Wailuku, Maui, Hawaii.

APPEARANCES

Blaine Kobayashi, Esq., represented Petitioner

Michael Foley, Director, County of Maui, Department of Planning

Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning

John Chang, Esq., Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Chair Catalani informed Mr. Kobayashi that the Commission has established a policy where hearing expenses associated with the docket are reimbursed by the Petitioner. Chair Catalani asked Mr. Kobayashi if staff had provided notice with respect to this reimbursement policy. Mr. Kobayashi replied in the affirmative and had no objections to the policy.

Staff Report

1. Max Rogers

Mr. Rogers provided a map orientation of the project site. Mr. Rogers briefly summarized the written staff report and the significant issues. These issues include:

- Removal of agricultural land;
- Affordable housing;
- DOE fair share contribution;
- Number, type, and location of housing units;
- Potential impacts from two former landfills;
- Potable water;
- Archaeological;
- Financial capacity to undertake the project.

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

Admission of Exhibits by the Parties

Mr. Kobayashi stated that Petitioner has previously submitted exhibits 1 to 15 and added that they now offer exhibits 16, 17, 18, 19 to 26, 27 to 34, 35, 36, 37, 38, 39, 40, and 41 for submittal. There were no objections by the parties. Said exhibits were admitted into evidence as the Petitioner's Exhibits 1-41.

Ms. Lovell commented that the order of presentation will have the State's water witness proceed after the County's water witness. Ms. Lovell added that the County has only one exhibit, the written testimony of the Maui Planning Department as Exhibit 1. There were no objections by the parties. Said exhibit was admitted into evidence as the County's Exhibit 1.

Chair Catalani noted that this was a late submittal and that timely submittals in the future will be appreciated.

Mr. Chang indicated that the State offers a total of four exhibits – exhibit 1, 1a, 2, and 3. There were no objections by the parties. Said exhibits were admitted into evidence as the State's Exhibits 1, 1a, 2 and 3.

Chair Catalani introduced into evidence the letter dated April 28, 2005 from Ms. Rae Loui, Assistant Superintendent of DOE, as LUC's Exhibit 1. There were no objections by the parties. Said exhibit was admitted into evidence as the Commission's Exhibit 1.

Petitioner's Presentation

Mr. Kobayashi began his presentation and provided a detailed vision of the Maui Lani project. He described a community with single and multi-family homes that offer walking distances to school, businesses, retail operations, open spaces and parks. He commented that they also propose much needed affordable housing with 51% of the units to be priced as affordable and that the entire project will utilize smart growth principles.

PETITIONER'S WITNESSES

1. Leiane Paci

Ms. Paci stated that she represents the Petitioner of this docket, Maui Lani Partners, and described her educational and business background. Her resume and written testimony were admitted as Petitioner's Exhibits 19 and 27. Ms. Paci summarized her testimony and described the motivating factors behind the village mixed-use project and provided the breakdown of the affordable housing units. Ms. Paci also discussed issues of water demand, treatment facilities, drilling of wells, traffic impacts, the DOE conditions of approval for a fair share contribution, and the closed Waikapu landfill site adjacent to the project.

A recess break was taken at 11:30 a.m. The meeting reconvened at 11:50 a.m.

Ms. Paci continued with her testimony and discussed issues of the Petitioner's financial capability and described their financial plan and strategy.

Ms. Lovell noted that the Maui Planning Commission has recommended approval of this project and that certain conditions for zoning were imposed. Ms. Lovell posed a few questions related to the water source treatment and transmission facilities and certain roadway improvements.

Mr. Chang raised a few questions related to the number of affordable housing units, the different median ranges, the breakdown of the petition area, and the 15 recommendations proposed by the Office of Planning in their written testimony.

Commissioner Formby posed a question as to how smart growth principles guided the formation of the project.

Commissioner Piltz had a few questions related to Petitioner's requested relief on the education contribution fees and also on matters related to the traffic flows and planned signalization.

Commissioner Judge had questions and concerns regarding table 4 on the FEA which described the breakdown and percentage of housing units, and the potential for landfill gases to be emitted from the closed landfill site and its risks on the proposed community.

Commissioner Formby raised a few questions on the number of single versus multi-family affordable housing units proposed for the project.

Vice Chair Sakumoto's questions and concerns were related to the dedication of the 13-acre school site as it relates to this petition area. He commented that it would be helpful if the Commission was provided with a schematic drawing, as they are having difficulty distinguishing the petition area and the overall plan area.

Commissioner Judge also had a few questions and concerns related to the school site that was dedicated as a requirement of the prior DBA. She also raised questions and concerns regarding the potential for contamination to the subject property from the former landfill site and recommended monitoring during grading and the possibility of fencing or enclosing the property.

Chair Catalani congratulated Ms. Paci and Maui Lani Partners for integrating the concept of mixing the affordable and market residential units. He raised a few questions related to the Petitioner's position relevant to the DOE fair share contribution, the affordable housing prices, the breakdown on rental and for sale units, and the Petitioner's financial capability.

Vice Chair Sakumoto referred to the April 28, 2005 memo from the DOE and questioned if there would be a live witness to respond to the comments made regarding the intermediate and high school.

Commissioner Judge commented that it would be helpful if the DOE could provide a timeline of their plans so that the Commission could have a clearer picture of the project's impact upon public school facilities.

Mr. Chang indicated that they will notify the DOE of the Commission's concern and will make every effort to have them come and testify on this docket.

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

Chair Catalani then closed this portion of the docket and announced that the Commission will reconvene with this matter beginning 8:30 a.m. tomorrow morning.

A recess break was taken at 1:45 p.m. The meeting reconvened at 1:55 p.m.

A88-634 ALEXANDER & BALDWIN, INC. (Maui)

Chair Catalani stated that the Commission would hear the testimony of the public witness for Docket No. A88-634 Alexander & Baldwin, Inc. at this time before moving on to the next agenda item.

Public Witness

1. Lance Holter

Mr. Holter stated that he represents himself at this hearing. He noted that he has been a realtor on Maui for 21 years, a general contractor since 1978, and a member of various organizations, such as the Habitat for Humanity, Maui's Affordable Task Force, Hawaii Sierra Club's Conservation Chairman, and Maui Tomorrow. He discussed issues of zoning entitlements, the affordable housing crisis, and proposed that given the great wealth of the landowner that they should fund, develop, and provide affordable housing to the thousands of people they employ.

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

Chair Catalani suggested that Mr. Holter review the housing study prepared by the Petitioner, which incorporates mitigation impacts.

A96-717 C. EARL STONER, JR. on behalf of S & F LAND COMPANY, INC.

Chair Catalani stated that this was a hearing and action meeting to consider Petitioner's Application to approve incremental redistricting from the Agricultural District to the Urban District and Motion to amend Condition Number 20 of the LUC's Decision and Order dated November 13, 1996.

APPEARANCES

C. Earl Stoner, Jr. President of S & F Land Company
Robyn Laudermilk, Staff Planner, County of Maui, Department of Planning
Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning
John Chang, Esq., Deputy Attorney General, represented State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning

Chair Catalani informed Mr. Stoner that the Commission has established a policy where hearing expenses associated with the docket are reimbursed by the Petitioner. Chair Catalani asked Mr. Stoner if staff had provided notice with respect to this reimbursement policy. Mr. Stoner replied in the affirmative and had no objections to the policy.

Chair Catalani noted that there were no public witnesses.

Admission of Exhibits by the Parties

Mr. Stoner introduced and described Exhibits A, B, and C which were submitted to the LUC on April 11, 2005. Mr. Stoner added that he has subsequently submitted Exhibit D, and has brought today maps identified as Exhibits E and F. There were no objections by the parties. Said exhibits were admitted into evidence as the Petitioner's Exhibits A, B, and C, and that Exhibits E and F will be admitted upon Petitioner's testimony.

Ms. Lovell offered the County of Maui's Exhibit 1, the written testimony of Michael Foley. There were no objections by the parties. Said exhibit was admitted into evidence as the County's Exhibit 1.

Mr. Chang introduced the State's 2 exhibits, Exhibit 1, the Statement of the Office of Planning, and Exhibit 2, the location map. There were no objections by the parties. Said exhibits were admitted into evidence as the State's Exhibits 1 and 2.

Staff Report

1. Anthony Ching

Mr. Ching briefly summarized the report and described the significant issues. These issues include:

- Clarification of the actual size of parcel 1c;
- Compliance with 26 conditions of approval; and
- Additional factors for consideration pursuant to §15-15-78(b), Hawaii Revised Statutes.

Mr. Ching then presented a video film of the project site that was taken earlier that morning.

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

Petitioner's Presentation

Mr. Stoner made his presentation and stated that he is the President of S & F Land Company. Mr. Stoner described parcels 1a, 1b and 1c and the history of his application for redistricting. Mr. Stoner also described Exhibits E and F, maps of the project site.

A recess break was taken at 2:55 p.m. The meeting reconvened at 3:10 p.m.

Chair Catalani asked if the parties had any objections to admitting the exhibit maps that Mr. Stoner had just described during his testimony. There were no objections from the parties. Said Exhibits were admitted into the record as Petitioner's Exhibits E and F.

Ms. Lovell offered a few comments related to the Maui Planning Department's proposed conditions.

Mr. Chang had some questions on issues such as condition number 3 of the original order, the right of way widening, civil defense measures, air quality monitoring, and DOH violations.

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

COUNTY'S WITNESS

1. Robyn Laudermilk

Ms. Laudermilk described her education and background in the field of planning and briefly summarized the main points of the County Planning Department's position that supports both the incremental redistricting and the modification of condition 20. Ms. Laudermilk added that the urgency for this docket is due to the high demand for heavy industrial lands, as this location is ideal for this type of uses, should the applicant go forward and establish the car crushing facility.

Mr. Chang had no questions.

Vice Chair Sakumoto raised a few questions related to condition 20 and the reasonable time periods for the zoning change.

After a brief discussion, there were no further questions.

STATE'S WITNESS

1. Abe Mitsuda

Mr. Mitsuda stated that he is the administrator of the Land Use Division of the Office of Planning for the past 20 years. He added that the testimony provided by the Office of Planning is in support of the application to approve the incremental redistricting.

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

Commissioner Judge moved to accept Petitioner's Application to approve incremental redistricting and amend Condition Number 20 to require written verification from the Maui Planning Department confirming that the Petitioner has submitted an application for a change in zoning from light to heavy. The motion was seconded by Commissioner Piltz.

Commissioner Judge clarified that the Commission would amend condition number 20 and approve the incremental redistricting as one motion.

The Commission was polled as follows:

Ayes: Commissioners Judge, Piltz, Fiesta, Formby, Sakumoto, and Catalani.

The motion passed with 6 ayes and 3 absent.

A recess break was taken at 3:40 p.m. The meeting reconvened at 3:55 p.m.

A88-634 ALEXANDER & BALDWIN, INC. (Maui)

Chair Catalani stated that this was an action meeting to consider (i) the redistricting of approximately 33.530 acres of land within Phase II of the subject docket currently in the Agricultural District into the Urban District; and (ii) the withdrawal of approximately 19.134 acres of land from Phase II at Kahului, Maui, Hawaii, for light industrial uses.

APPEARANCES

Ben Matsubara, Esq., represented Petitioner

Stanley Kuriyama, CEO, Alexander & Baldwin, Inc.

Michael Foley, Director, County of Maui, Department of Planning

Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning

John Chang, Esq., Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Admission of Additional Exhibit

Ms. Lovell noted that the affidavit of Captain Valeriano Martin of the Maui Fire Department was recently submitted to the LUC and offered the affidavit into evidence. There were no objections by the parties. Said affidavit was admitted into the record as County's exhibit next in order.

Commissioner Judge introduced and described her proposed findings of fact, conclusions of law, and decision and order for the subject docket.

Mr. Matsubara stated that the Petitioner fully supports and endorses Commissioner Judge's proposed order.

Mr. Foley commented on issues related to the 10 acres of lands previously donated by the petitioner for affordable housing, landscaping issues, potable water and irrigation.

Commissioner Piltz raised a few questions and concerns related to the previous contribution of 10 acres of land donated by the Petitioner for affordable housing.

Commissioner Formby also had a few questions and concerns related to previous testimony by County Housing Director Alice Lee in reference to this contribution of lands from the Petitioner.

After a discussion, there were no further questions or comments related to the proposed decision and order.

Chair Catalani asked Commissioner Piltz if he had a chance to review the record and files on this case. Commissioner Piltz replied in the affirmative and noted that he has spent several days reviewing the materials associated with this docket.

Commissioner Judge moved to approve the redistricting of approximately 33.530 acres of land within Phase II of the subject docket currently in the Agricultural District into the Urban District, and the withdrawal of approximately 19.134 acres of land from Phase II as noted in the findings of fact, conclusions of law, and decision and order which she had proposed with the amendments made by the Commission. Commissioner Formby seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Judge, Formby, Fiesta, Piltz, Sakumoto, and Catalani.

The motion passed with 6 ayes and 3 absent.

A recess break was taken at 4:40 p.m. The meeting reconvened at 5:05 p.m.

SP92-380 HAWAIIAN CEMENT (Maui)

Chair Catalani stated that this was an action meeting to consider a time extension to the special use permit which established a rock quarrying/crushing operation and related uses on approximately 105.957 acres of land within the State Land Use Agricultural District at Pulehunui, Wailuku, Maui, Hawaii.

APPEARANCES

Bill Horneman, Vice President Hawaiian Cement
Robyn Laudermilk, Staff Planner, County of Maui, Department of Planning
Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning
John Chang, Esq., Deputy Attorney General, represented State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning

Commissioner Piltz disclosed that as a former member of the Maui Planning Commission, he had reviewed and acted on this docket. There were no objections by the parties to the participation of Commissioner Piltz on this matter.

Ms. Erickson noted that if Commissioner Piltz believed that the information he received would not have prejudiced him from allowing the petitioner a fair hearing, he did not need to recuse himself from this meeting. Commissioner Piltz noted that he did not have any problems with that.

Staff Report

1. Anthony Ching

Mr. Ching provided a summary of the staff report, the procedural matters and staff's recommendations. Mr. Ching also summarized the conditions and sought clarification of the term of the permit, whether the 15-year extension would commence from July 13, 2002 or the date of original granting.

Mr. Horneman clarified that the 15-year extension request would commence from July 13, 2002.

Ms. Laudermilk stated that the County also confirms that the extension would commence from July 13, 2002.

Mr. Chang had a few questions related to DOT improvements, deceleration lanes, construction costs, and signalization. Mr. Chang added that Petitioner has addressed the DOT issues and is satisfied.

Vice Chair Sakumoto raised questions in reference to several conditions regarding air pollution and control permits, restoration plan, maintenance program for the quarry access road, solid waste management plan, drainage plan, and time frame for permit application.

Commissioner Judge posed a few questions and concerns in reference to condition 10, which was previously condition 12, and questioned why the submittal of the annual reports were being deleted.

Vice Chair Sakumoto asked if there was something in writing from the Planning Commission to validate Petitioner's true intention that the 15-year extension request would commence from July 13, 2002.

Commissioner Piltz noted that as a former member on the Planning Commission, he believed it was their intent to grant Petitioner the extension from that day. (July 13, 2002.)

After some discussion, there were no further questions posed by the parties and the Commission.

Commissioner Judge moved to approve the time extension for the Special Use Permit for the rock quarry operation for Docket No. SP92-380 as amended by the Commission. Commissioner Piltz seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Judge, Piltz, Formby, Fiesta, Sakumoto, and Catalani.

The motion passed with 6 ayes and 3 absent.

The meeting adjourned at 5:45 p.m.

(Please refer to LUC Transcript of May 5, 2005 for more details on this matter.)