

LAND USE COMMISSION
MINUTES OF MEETING

January 19, 2007

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

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Kyong-su Im
Lisa Judge
Duane Kanuha
Ransom Piltz
Nicholas Teves, Jr.
Reuben Wong

COMMISSIONERS ABSENT: 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 Judge called the meeting to order at 8:40 a.m.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that this was an action meeting to consider the reclassification of approximately 232.135 acres of land currently in the Agricultural District into the Urban District, and 5.918 acres from the Rural District to the Urban District, at Waiehu, Maui, Hawaii for an approximately 466-lot single-family residential subdivision

APPEARANCES

Martin Luna, Esq., represented Petitioner
Sterling Kim, Hale Mua Properties, LLC

Jane Lovell, Esq., represented the County of Maui Department of Planning
Colleen Suyama, County of Maui Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Luna stated that Mr. Kobayashi was not present as he had a previously scheduled mediation. Mr. Luna commented that he has previously appeared before the LUC, but not on this matter.

Commissioner Piltz began his presentation and stated that under Commission rules 15-15-82 (b) HAR, he has filed this proposed order. Commissioner Piltz noted that his primary objective for taking this action is to ensure that an order that appropriately conforms to the Commission's decision-making criteria and the facts in the record was efficiently prepared and considered. Commissioner Piltz added that as prescribed by the land use law and the Commission's rules, he has taken the petitioner's partially stipulated order, which was previously filed with the LUC, and discussed the changes that he had made in his proposed order.

Commissioner Piltz discussed the changes to the procedural findings and noted the major differences between the partially stipulated order and the proposed order. Commissioner Piltz stated that should his order be adopted as the LUC's own proposed order, staff would also be authorized to make technical non-substantive changes.

Commissioner Im moved that the Commission adopt Commissioner Piltz's order as their own proposed order. The motion was seconded by Commissioner Wong.

The Commission was polled as follows:

Ayes: Im, Wong, Teves, Kanuha, Formby, Contrades, Piltz, and Judge.

The motion passed with 8 ayes and 1 absent.

Chair Judge expressed the Commission's appreciation to Commissioner Piltz for all his efforts in bringing forth his order. Chair Judge then polled the petitioner and the parties as to their willingness to waive the Commission's rule 15-15-80 (b) requiring that the parties receive the proposed order at least seven days prior to the Commission's meeting on this matter. The Commission's rule 15-150-80 (c) also requires that the parties are provided the opportunity to provide its comments three days after the service of the proposed order.

Mr. Luna stated that on behalf of the petitioner, they were willing to waive the rule or the requirement.

Ms. Lovell noted that the County of Maui was also willing to waive. Ms. Lovell commented that they had previously received Commissioner Piltz's draft and had been able to review it and make comments.

Mr. Yee stated that the Office of Planning also waived the requirement.

Chair Judge stated that after hearing the comments and exceptions of the petitioner and the parties, the Commission would enter into deliberations. During its deliberations, the Chair will not entertain any additional input from the parties or the public unless those individuals or entities are specifically requested to do so by the Chair. If called upon, the comments are limited to the question at hand. Chair Judge will then poll the Commissioners to ensure that each one of them had received the record and/or reviewed copies of the transcripts of these proceedings and were prepared to participate in the deliberations.

A recess break was taken at 9:20 a.m. The meeting reconvened at 9:40 a.m.

Mr. Luna stated that petitioner agreed with the DOE fair share position and had a few comments on findings of fact 193, 209, 237, 238, and 239.

Ms. Lovell made two friendly amendments to the proposed order. Ms. Lovell added that in summary, the county supported the draft order and urged the LUC to adopt it.

Mr. Yee commented that the state had some significant disagreements and discussed their concerns as to time limits, the 19 large lots in agricultural designation, the need for affordable housing, and automatic reversions. Mr. Yee added that the OP respectfully requested that the order be amended to include their concerns as discussed.

Commissioner Kanuha raised questions regarding the 201G resolution and current county zoning. Commissioner Kanuha questioned whether the resolution specifically allowed for single family use within the 19 acres of the petition area and if the county council is the policy making body for the county.

Ms. Lovell stated that the present zoning for the county and state land use was designated agricultural. Ms. Lovell noted that when the council is presented with the 201G application the entire project must be accepted as presented so it is difficult to see whether the council objected to certain areas of the application, as they need to vote on the entire project as presented. Ms. Lovell added that with respect to residential or farm dwellings, this project will conform to the agricultural zoning ordinance and that the county has important policymaking responsibilities.

Vice Chair Formby raised a few questions regarding the 19 large lots and required farm uses to keep the land consistent with its agricultural classification.

Mr. Kim commented that the difficulty lies with the difference between urban and agricultural uses. Mr. Kim discussed the process needed for subdivision approval and its requirements. Mr. Kim noted that all the lots were configured for standard urban use.

Ms. Suyama stated that as long as the site plan does not change, the petitioner will still be in compliance with zoning and would still be able to proceed under the same configuration.

A recess break was taken at 10:50 a.m. The meeting reconvened at 11:10 a.m.

Commissioner Wong posed a few questions related to the 201G process and whether the county could have suggested that the 19 large lots be kept in agricultural at the time of its approval process.

Ms. Lovell stated that council accepts the entire 201G application as a package and if the council wanted to change a part of the project application, they would need to reject the entire project. Ms. Lovell added that their department could not make changes to the application as proposed.

Commissioner Wong had a concern whether the county council could challenge this decision should the LUC keep the 19 lots in agricultural.

Ms. Lovell stated that and there is always the possibility that someone may find fault in any decision.

Commissioner Kanuha had a few questions related to the zoning and residential uses in agricultural zoning.

Commissioner Teves posed questions regarding the 201G process and whether or not the county's planning department was able to testify before the council prior to their decision.

Ms. Lovell stated that the department does not make recommendations before the council, but would inform them of their concerns. The council has the ability to either vote yes or no without amendments on the entire application. Ms. Lovell added that this was one of the reasons why the county has come before this body to state their concerns.

Commissioner Im commented that he is concerned about the important policy matter of preserving prime agricultural land versus developing affordable housing. Commissioner Im asked how long the process would take should the petitioner need to re-apply for the 201G if the 19 large lots are kept in agricultural.

Ms. Lovell stated that she believed it would not take too much time as the county has limited time to act on a petition and cannot string it out.

Commissioner Im also had questions and concerns regarding the auto reversion and whether the LUC has the authority to require it.

After some discussion, Chair Judge polled the Commissioners to confirm that each one had reviewed the record and/or copies of the transcripts and were prepared to deliberate on this matter.

The Commission was polled as follows:

Ayes: Contrades, Formby, Im, Kanuha, Piltz, Teves, Wong, and Judge.

Mr. Ching reviewed the first section of the document, the procedural matters and the findings of fact.

Chair Judge suggested adding another findings of fact 75 regarding the applicant to show clear title before applying for final subdivision approval.

Vice Chair Formby discussed the development timeline in findings of fact 87. He asked that the LUC staff construct an appropriate findings of fact that would specify a 5-year deadline to complete the project and citing to the record added a new findings of fact specifying Phase I and 77 homes to be built.

A recess break was taken at 12:20 p.m. The meeting reconvened at 12:40 p.m.

Commissioner Kanuha discussed findings of fact 237-241, and their conformance to state land use.

A recess break was taken at 12:45 p.m. The meeting reconvened at 12:50 p.m.

Mr. Ching then referenced the conclusions of law.

After a discussion, Vice Chair Formby moved that the Commission accept and approve the findings of fact, conclusions of law and decision and order for a state land

use district boundary amendment in Docket No. A05-755 as proposed by Commissioner Piltz and as amended by the Commission today. The motion was seconded by Commissioner Im.

Commissioner Kanuha stated that notwithstanding the excellent amount of effort that Commissioner Piltz had put into drafting this proposed order, he had difficulties supporting the proposed motion. Commissioner Kanuha commented that he believed that the legislative body of the county of Maui has spoken through their approval of this resolution and he found it hard to go against that. Commissioner Kanuha added that the analysis has not shown to him that there is a need to distinguish between the additional agricultural potential based on the findings that they have adopted today and for these reasons, he would not be supporting this motion.

Chair Judge commented that the 201G process is a difficult process for the county council because it is an all or nothing process. Chair Judge added that the difference in the LUC's process is that they do not have those constraints and can support both the affordable housing and the preservation of prime agricultural lands, therefore, she supports the motion before them today.

Commissioner Contrades stated that he believed it was unfair for a developer to go before the county council for approval for the 19 large lots, then come before the LUC and have that taken away. Commissioner Contrades added that he believed this would be a deviation from the 201G and therefore cannot support this motion.

Commissioner Teves noted that he also could not support this motion, as he believed that when the council passed this resolution they considered the affordable housing versus prime agricultural lands and for the LUC to override what the county had decided upon is not what the LUC should do in this matter.

Commissioner Piltz commented that the main purpose of this subdivision is to deliver the affordable housing to the people of Maui. Commissioner Piltz expounded on the need to have this petition processed, as he did not want to see this project fail.

Vice Chair Formby noted that he sees both sides and has heard great arguments today. He stated that the reason he supports this order as proposed is that he would like the lands to remain classified in their use, as in this case involves 117 acres of prime agricultural land.

Commissioner Wong commented that the 19 large lots appear to be the largest problem and that he would like to see the affordable housing built, but asked if there could be some amendment to the order regarding agricultural zone tax rates.

Commissioner Im stated that this is a difficult decision of prime agricultural land versus affordable housing. Commissioner Im noted that he believed that this was a compromise to accept the affordable housing, market housing, economic viability, and still have a buffer to save some lands for the future.

A recess break was taken at 2:00 p.m. The meeting reconvened 2:10 p.m.

Commissioner Teves asked Mr. Kim if the project would still be feasible if the 19 large lots were to remain in agricultural designation.

Mr. Kim stated that the project would entail added costs and time, but would be feasible if a condition is imposed restricting the use of overspray, livestock noise, odor, etc. to mitigate any conflicts between the agricultural and urban high-density areas. Mr. Kim added that lot 464 in exhibit 38 is the site for the future school and that he would request to have that one lot excluded and included in the reclassification to urban.

A recess break was taken at 2:15 p.m. The meeting reconvened at 2:20 p.m.

EXECUTIVE SESSION

Commissioner Wong moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Contrades seconded the motion. The motion was approved by a show of hands.

The Commission entered into executive session at 2:20 p.m.

The open meeting reconvened at 2:45 p.m.

Vice Chair Formby withdrew his motion to accept the proposed findings of fact, conclusions of law, and decision and order as proposed by Commissioner Piltz.

Commissioner Im withdrew his second to the motion.

Mr. Luna proposed that the LUC restrict uses on those large lots and change from agricultural to rural, as previously proposed by the state.

Chair Judge stated that the LUC cannot make that change to rural classification since there was nothing in the record, as discussed, to make that a case.

Commissioner Wong called for a deferment of this matter.

Vice Chair Formby commented that it appeared that the Commission may not be able to come to a meaningful solution today.

Commissioner Contrades again asked Mr. Kim if he would be willing to accept the agricultural designation for the 19 large lots.

Chair Judge noted that if this matter is deferred, the LUC would be able to take this matter up again sometime in March.

Mr. Kim stated that as time is of the essence, he preferred to not have this matter deferred and was willing to take the agricultural designation with no restrictions.

Commissioner Piltz then moved that the Commission accept his proposed decision and order as amended with an additional amendment that the exception of lot 464 be urbanized and that the LUC staff insert the appropriate findings of fact for the urbanization for this specific lot. Commissioner Teves seconded the motion.

There was discussion amongst the Commission, and Commissioner Piltz subsequently withdrew his suggestion that the action to reclassify include lot 464. Commissioner Teves reaffirmed his second to the motion.

After some discussion, Commissioner Wong moved to defer this deliberation to another day. There was no second to the motion.

On the motion made by Commissioner Piltz to adopt the Commission's decision and order as amended providing a partial approval and partial denial for reclassification, the Commission was polled as follows:

Ayes: Piltz, Teves, Kanuha, Im, Formby, Contrades, and Judge

Nay: Wong

The motion passed with 7 ayes, 1 nay, and 1 absent.

The meeting adjourned at 3:00 p.m.

(Please refer to LUC Transcript of January 19, 2007 for more details on this matter.)