

LAND USE COMMISSION
MINUTES OF MEETING

May 15, 2008

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

COMMISSIONERS PRESENT: Thomas Contrades
Vladimir Devens
Duane Kanuha
Ransom Piltz
Reuben Wong

COMMISSIONERS ABSENT: Kyle Chock
Lisa Judge
Normand Lezy
Nicholas Teves, Jr.

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Rodney A. Maile, Interim Executive Officer
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Wade Kersey, Audio Technician

Presiding Officer Kanuha called the meeting to order at 10:40 a.m.

ADOPTION OF MINUTES

Commissioner Devens noted a correction to the minutes of April 24, 2008, page 7, sixth paragraph to read "Commissioner Devens stated that he believed that the issues would be the same whether the LUC had a hearing on an order to show cause or by this petition for DR. However, Commissioner Devens noted that the LUC should keep in mind that the remedies that the LUC may be considering would be based on whether there is substantial compliance with the conditions."

Commissioner Wong then moved to adopt the minutes of April 24, 2008 as amended. Commissioner Piltz seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Maile noted that the proposed schedule was shifted to address the priority items filed and pressing timelines. The LUC would return to the Big Island for the next meeting on June 5 and 6, and will address the Oahu items on June 19 and 20.

There were no questions posed for Mr. Maile.

Presiding Officer Kanuha reminded the Commissioners to inform Sandy of any conflicts that they may have with the proposed schedule.

A07-772 A & B PROPERTIES, INC. (Maui)

Presiding Officer Kanuha stated that this was an action meeting to consider the acceptance of A & B Properties, Inc.'s Final Environmental Impact Statement for the reclassification of approximately 94.352 acres of land, identified as Tax Map Key: 3-8-04: por. 2, por. 22, and por. 30 from the Agricultural District to the Urban District for the planned Kihei Residential Project at Waiakoa, Maui, Hawaii.

APPEARANCES

Benjamin Matsubara, Esq., representing Petitioner

Curtis Tabata, Esq., representing Petitioner

Jane Lovell, Esq., represented the County of Maui Department of Planning

Ann Kua, County of Maui Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Debra Mendez, State Office of Planning

Presiding Officer Kanuha noted that for the purposes of this proceeding, the County of Maui and the State's Office of Planning were not parties to this matter.

Public Witnesses

1. Gene Zarro

Mr. Zarro stated that he is one of the founders of the South Maui Learning Ohana Kihei Charter School and voiced his support for the project. Mr. Zarro discussed the LUC's consideration of addressing educational impact fees for the project, adding that charter schools are also deserving to be included in the formula when calculating the educational impact fees.

There were no questions for Mr. Zarro

2. Melissa Prince

Ms. Prince stated that although she did not get a chance to read the EIS, she saw an article in the newspaper regarding this project development. Ms. Prince commented that she voluntarily records public meetings on Maui and believes that it is important to the community to know what is going on in their government. Ms. Prince discussed her concerns of the proposed development impacts, vog, air quality, health hazards, pollution, stream ecology, protecting the natural water resources, and the aquifer.

There were no questions for Ms. Prince.

Staff Report

1. Bert Saruwatari

Mr. Saruwatari briefly summarized staff's report and noted that based on the adequacy of the report, staff believed that the FEIS had generally complied and met the requirements of an FEIS, pursuant to chapter 343, HRS, and chapter 11-200, HAR.

There were no questions for Mr. Saruwatari.

Petitioner's Presentation

Mr. Matsubara began his presentation and briefly summarized the history of the petition filed with the LUC. Mr. Matsubara noted that the proposed project would include the development of 600 residential units and a 1.4-acre neighborhood commercial site. Mr. Matsubara added that they believed that the petitioner had complied with the requirements of the FEIS and respectfully requested that the LUC accept the FEIS as submitted.

Ms. Kua stated that the County Planning Department had no objections to the acceptance of the FEIS. However, the update of the county's general plan and the general plan process is currently being undertaken. Although this project is included in the urban growth boundaries, Ms. Kua noted that the county had a concern of the process period of the plan's schedule while this petition is being processed by the LUC.

Commissioner Piltz noted that the time period for the plan process could take years, adding that since this particular project is included in the plan under the urban district boundaries, it would be good for the LUC to consider this project and it may just coincide with the plan during its process.

Commissioner Wong asked whether the county was opposed to the acceptance of the FEIS.

Ms. Kua replied that the county was not in opposition to the LUC's acceptance of the FEIS. However, the county felt it was necessary to inform the LUC on their concerns regarding the general plan process. Ms. Kua added that the county is currently going through the plan update and the DBA process before the LUC requires the participation of the county. The county is a party to the proceedings and is required to present testimony and to take a position, which the county may have some challenges.

Presiding Officer Kanuha posed a few questions on the general plan process, the current underlying comprehensive plan, and the application to amend the plan.

Ms. Kua noted that the county had a general plan and community plans in place. However, it was the county's preference to have this DBA taken up when the county's land use application was filed and the Maui Plan process is completed. Ms. Kua added that it was a policy that as a department, they should be respecting the community plan boundaries and requested that the developer participate in this process. The department would not support any proposed development at this time, unless the project qualified as having exempted qualities. However, the department would not stop anyone from filing.

Mr. Yee noted that the OP had no objections to the acceptance of the FEIS. Mr. Yee added that their concerns would be addressed at the hearing.

Presiding Officer Kanuha stated that today, the LUC's action was to accept or not accept the FEIS, which is a part of the petition itself.

Commissioner Wong moved that the LUC accept the FEIS in Docket Number A07-772 A & B Properties, Inc. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Wong, Piltz, Contrades, Devens, and Kanuha.

The motion passed with 5 yes, 4 absent.

A recess break was taken at 11:25 a.m. The meeting reconvened at 11:50 a.m.

REVIEW OF PROCEDURES FOR DECLARATORY ORDERS AND CRITERIA FOR ACCEPTANCE OF ENVIRONMENTAL IMPACT STATEMENTS

Mr. Maile summarized the flow chart and briefly explained the process of the petitions for declaratory orders, pursuant to HRS §91-8, and HAR §15-15-98 through 15-15-104.

Mr. Maile continued to discuss the reviewing criteria for acceptance of final drafts of the environmental impact statements pursuant to HRS, chapter 343, HAR §15-15-50; and title 11, chapter 200.

Commissioner Devens had a question related to the declaratory orders and wondered if these petitions were limited to the issues dealing with the applicability of a statutory provision or ruling order of the agency.

Mr. Maile replied in the affirmative.

There were no further questions for Mr. Maile.

LEGISLATION

Mr. Maile briefly summarized the pending bills related to the LUC, and discussed HB 2450 HD1 SD2 CD1 related to the Right to Farm Act under chapter 165, HRS; HB2523 related to the LUC's decision making criteria and the County General Plan; SB2646 SD2 HD2 CD1 related to incentives and protections of viable agricultural operations on IAL; and SB2849 SD1 HD1 CD1 regarding agricultural lands to be used for agricultural-energy facilities.

Commissioner Wong had a few questions regarding SB2849 and questioned what the permitted uses would be, such as wind energy panels, solar panels, etc., without practicing actual farm activities.

Mr. Maile commented that he was unsure whether this was designed to permit additional uses on agricultural lands, as he believed that it was not intended to substitute for actual farming.

There were no further questions for Mr. Maile.

Presiding Officer Kanuha expressed the Commissioner's and his personal appreciation to Mr. Maile as this would be Mr. Maile's last meeting with the LUC. Presiding Officer Kanuha noted that Mr. Maile had served remarkably well as an interim executive officer and personally found that Mr. Maile's years of experience in the procedural aspects have been tremendously beneficial to the LUC. More importantly, was his demeanor in how he had assumed this interim role that had a lot to do with a smooth transition for the Commission. Presiding Officer Kanuha also

thanked Mr. Maile for being on top of the legislative session. Mr. Maile's contribution to the LUC was greatly appreciated.

The meeting was adjourned at 12:15 p.m.

(Please refer to LUC Transcript of May 15, 2008 for more details on this matter.)