

LAND USE COMMISSION
MEETING MINUTES

January 8, 2010

Hale Kūpuna O Lana`i, 1144 `Ilima Avenue
Lanai City, Hawai`i, 96763

COMMISSIONERS PRESENT: Duane Kanuha
Ransom Piltz
Kyle Chock
Normand Lezy
Lisa Judge (Arrived at 11:01 a.m.)
Reuben Wong

COMMISSIONERS ABSENT: Thomas Contrades
Nicholas Teves, Jr.
Vladimir Devens

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIANS: Walt Mensching Jr.

CALL TO ORDER

Chair Piltz called the meeting to order at 10:31 a.m.

ADOPTION OF MINUTES

Chair Piltz asked if there were any corrections or additions to the minutes. There were none and the minutes were unanimously approved by voice votes (5-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson stated that the tentative meeting schedule for January, February and March had been distributed in the handout material for the Commissioners in a new format to allow for attendance response for separate meeting dates. In case of scheduling difficulties or any questions, the Commissioners were advised to contact LUC staff.

Commissioner Kanuha requested clarification on the new format. Instructions for using the new format were provided by LUC staff.

ACTION

A89-649 LANA'I RESORT PARTNERS

Chair Piltz stated that this was an action meeting to consider Castle & Cooke Resorts, LLC's Motion for Modification of Condition No. 10 and Dissolution of the 1996 Cease and Desist Order and to consider the Office of Planning's Revised Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Filed April 15, 1991.

APPEARANCES

Bruce Lamon, Esq. represented Castle & Cooke Resorts, LLC

Gary Yokoyama, Esq., Castle & Cooke Resorts, LLC

Jane Lovell, Esq., represented County of Maui Dept. of Planning (arrived at 11:01a.m.)

Bryan Yee, Esq. represented Office of Planning

Abbey Mayer, Office of Planning

Alan Murakami, Esq., represented Intervenor-Lanaians for Sensible Growth

Mr. Murakami requested clarification on the scheduling of times allotted for presentations before the LUC and asked to have 30 minutes for his portion. Chair Piltz advised that some leeway would be granted, time permitting.

PUBLIC WITNESSES

1. Sally Kaye

Ms. Kaye read from submitted written testimony against granting either motion and provided the reasoning for her position. There were no questions for Ms. Kaye.

2. Winifred Basques

Ms. Basques testified against water use for the golf course and explained her perspective on the existing situation. There were no questions for Ms. Basques.

3. Butch Gima

Mr. Gima submitted written testimony and shared his personal experiences of working on water issues for the island of Lana`i. He expressed his concerns for protecting the Lana`i water supply and provided his perception of why he felt that Condition 10 of the Decision and Order had been violated.

Mr. Yee requested clarification on the alternate water source referred to in the Lana`i Water Use and Development Plan. Mr. Gima replied that it was from the Draft Lana`i Water Use and Development Plan and identified the reference. There were no other questions for Mr. Gima.

4. Ron McComber

Mr. McComber expressed the importance of the Water Use and Development Plan and provided his perception of the deterioration of the water supply system on Lana`i. He also expressed his concerns over how much water was being consumed for landscaping in Mānele. There were no questions for Mr. McComber.

5. Fairfax Reilly

Mr. Reilly submitted written testimony and expressed why he supported the Water Use and Development Plan and why he felt there was a need to address the water issues on the island. There were no questions for Mr. Reilly.

6. Gloria Maker

Ms. Maker stated that she worked for Castle & Cooke as a Horticulturalist and provided her perspective of Castle & Cooke's efforts to sustain and conserve water resources on Lana`i. There were no questions for Ms. Maker.

7. Jackie Haraguchi

Ms. Haraguchi stated that she represented the Maui Contractor's Association and supported the current water use by Castle & Cooke. She provided her reasoning for why the LUC should continue to allow Castle & Cooke to operate.

Mr. Murakami asked if Ms. Haraguchi had read the Draft Water Use and Development Plan. Ms. Haraguchi replied that she had not. There were no other questions for Ms. Haraguchi.

8. Mr. Les Jeremiah Jr.

Mr. Jeremiah supported Castle & Cooke's position and stated that he was the Superintendent of two Lana`i Golf Courses for Castle & Cooke and described the water use, conservation and monitoring systems utilized by his company. There were no questions for Mr. Jeremiah.

9. Mr. Glenn Titcomb

Mr. Titcomb provided his reasoning for allowing Castle & Cooke Resorts to continue its current water use. There were no questions for Mr. Titcomb.

10. Nestor Riel

Mr. Riel expressed his support of Castle & Cooke's position. There were no questions for Mr. Riel.

11. David Green

Mr. Green stated that he was President of the Mānele Bay Homeowner's Association and described his participation in Lana`i water planning. Mr. Green provided his reasoning on why he supported the Castle & Cooke position.

Ms. Lovell asked Mr. Green to provide the average water use for the Mānele Bay Homeowner's Association residents and what his personal water consumption was. Mr. Green replied that he did not know what the residents' consumption was and that his personal consumption was about 1500 gallons/day- but not potable water. There was further discussion to clarify Mr. Green's awareness of

the water consumption of his personal or association's water use and how this use compared to what Lanai City residents consumed.

Mr. Murakami questioned Mr. Green about the Mānele Bay area consumption levels and what the CC& R limits were for association members. Discussion ensued over the accuracy of the reported consumption figures.

Commissioner Judge requested clarification on what organization(s) Mr. Green was speaking on behalf of. Mr. Green replied that he was speaking as the President of the Mānele Bay Homeowner's Association and as an individual. There were no further questions for Mr. Green.

12. Steven Chiekes

Mr. Chiekes stated that he was a resident at the Palms-Mānele Bay and questioned the reported water consumption levels. Mr. Chiekes shared his personal potable water consumption and clarified where non-potable water was used in the Mānele area.

Ms. Lovell questioned Mr. Chiekes about whether his personal consumption level was for a day or for a month. Mr. Chiekes replied that he was reporting daily consumption figures.

Mr. Murakami asked if Mr. Chiekes was aware of the heightened demand for water in the Mānele Bay area. Mr. Chiekes replied that he was. There were no further questions for Mr. Chiekes.

The Commission went into recess at 11:29 a.m. The Commission reconvened at 11:38 a.m. (Commissioner Wong returned at 11:39 a.m.)

PUBLIC WITNESSES (continued)

13. Tom Roelens

Mr. Roelens stated that he was General Manager of both resorts on Lana`i and provided details on what his company had been doing that deserved the continued allowance for irrigating the resort properties. There were no questions for Mr. Roelens.

14. Joe Felipe

Mr. Felipe testified in support of the Castle & Cooke Petition and provided his perspective of the issues. There were no questions for Mr. Felipe.

15. Michael Phoenix Dupree

Mr. Dupree shared his experiences and concerns within the community related to the water use issues and testified in support of the Castle & Cooke Petition. There were no questions for Mr. Dupree.

16. Donovan Kealoha

Mr. Kealoha stated that he was President of the Lanaians for Sensible Growth and provided his personal concerns for better accountability/responsibility to protect the water supply for future generations. There were no questions for Mr. Kealoha.

17. Kainoa Kanno

Mr. Kanno provided his concerns about the water supply and its impact on Lana`i's future. There were no questions for Mr. Kanno.

18. Gary Suzuki

Mr. Suzuki spoke about his perspective on the water issues. There were no questions for Mr. Suzuki.

19. Kelsey Tsuchiyama

Mr. Tsuchiyama described his work with the local Native Species Recovery Project and provided his personal concerns about the water supply on Lana`i. There were no questions for Mr. Tsuchiyama.

Mr. Murakami recognized and thanked Mr. Tsuchiyama's group for their conservation efforts.

20. Sol Kaho`ohalahala

Mr. Kaho`ohalahala shared his perspective of the water issues and provided his concerns about the water supply and its impact on the future of Lana`i. There were no questions for Mr. Kaho`ohalahala.

Commissioner Wong moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Judge seconded the motion. The Commission was polled by a show of hands and unanimously voted to enter into Executive Session.

The Commission exited and commenced the Executive Session at 12:12 p.m. The Commission reconvened the hearing at 12:39 p.m.

PRESENTATIONS

PETITIONER (MOVANT 1)

Mr. Lamson described his client's procedural position as a Movant. Mr. Lamson expressed the reasoning for Castle & Cooke Resorts, LLC's Motion and argued that the Lana`i aquifer was not fragile and was capable of sustaining current levels of use as reported by the State Water Commission.

Mr. Lamson provided explanations for why the motion had been filed, what the arguments were for granting the motion, and why the Castle & Cooke proposal was better than the State Office of Planning (OP) and Lanaians for Sensible Growth (LSG) recommendations.

Mr. Lamson identified that the motion had two parts. The first part would modify Condition No. 10 to incorporate a definition for the word "potable" and the second part would dissolve the Cease and Desist Order. Mr. Lamson argued that combined, both parts would moot the litigation and remove the existing controversy.

Commissioner Wong requested clarification on Petitioner's perception of the Hawai`i Supreme Court decision and its impact on the situation over asking that the Cease and Desist Order be dissolved.

There were no further questions for Mr. Lamson.

OP (MOVANT 2)

Mr. Yee clarified OP's position in regards to the Petitioner's Motion to Dissolve the Cease and Desist Order and provided his perception of the effects of the Supreme Court Decision. Mr. Yee reviewed the chronological timeline of the Docket and identified events and transcript passages which he felt were most important to the issues under consideration. Mr. Yee recognized the 2009 changes in the County of Maui Code which resulted in the OP Revised Motion, and argued the reasons why the OP motion should be granted.

Commissioner Wong requested clarification on audit and reporting requirements recommended by the OP motion. Commissioner Wong commented that the OP motion appeared to impose requirements and specialized knowledge beyond the LUC's jurisdiction.

There were no further questions for Mr. Yee.

COUNTY OF MAUI

Ms. Lovell stated that the County Planning Department generally supported the OP proposal and provided the rationale for the County of Maui's position that the LUC adopt its own definition of the word "potable" as it applies to golf courses. She argued that; the County of Maui did not intend, when it amended its definition of "potable", to remove any restrictions on the Mānele Golf Courses and that the Water Resources Committee of the Maui County Council was re-examining the definition of "potable" to be consistent with how they intended the definition to be applied; that the County of Maui did not agree with Mr. Lamon's contention that the Lana`i aquifer was not fragile nor with the Intervenor's description of water conditions. Ms. Lovell contended that the Lana`i aquifer should be designated a groundwater management area and that the LUC should focus on the mandate from the Supreme Court to define "potable".

Commissioner Lezy requested clarification on Maui County jurisdiction over water usage and allocation. Ms. Lovell described the role that the County had in water issues and provided her perspective of what the relationship should be between the County and the LUC in this matter.

Commissioner Wong requested clarification on Maui County's definition of "potable water". Ms. Lovell provided the current definition and the definition that applied at the time the golf course was approved. Ms. Lovell recommended that the definition that applied at the time the golf course was approved be used since it contained better technical definitions than the new definition.

Commissioner Wong requested clarification on what reference should be used for determining water level usage. Ms. Lovell recommended that Maui County zoning ordinance guidelines for the Mānele Bay project district be used by the LUC and that more technical details be handled by the Water Commission.

There were no further questions for Ms. Lovell.

INTERVENOR

Mr. Murakami argued what authority, transcripts and rulings the Commission should weigh while reviewing Petitioner's Motion and recapped the history of the Remand Order and using information from the draft Maui County Water Use and Development Plan, described how the current water supplies were being jeopardized, and what future provisions would be needed in water conservation efforts.

There were no questions for Mr. Murakami.

DECISION-MAKING

Chair Piltz polled the Commissioners on their readiness to deliberate on this matter. The Commissioners and Chair Piltz unanimously responded that they were ready to deliberate.

Commissioner Judge offered a two part motion:

1. Move the Commission find there was insufficient evidence to support the Commission's 1996 Order finding a violation of Condition No. 10 and that the 1996 Order be vacated.
2. Move to deny OP's motion to amend Condition No. 10 and its Revised Motion to Amend Condition No. 10, and further move to grant Petitioner's Motion to Amend Condition No. 10 with Condition No. 10 to read with the following modifications:
 - a. Petitioner shall not use ground water to irrigate the Mānele Golf Course, driving range and other associated landscaping if the chloride concentration measured at the well head is 250 milligrams per liter (250 mg/l) or less.
 - b. In the event the chloride concentration measurement of ground water to irrigate the Mānele Golf Course, driving range and associated

landscaping falls below 250 mg/l, Petitioner shall cease use of the affected well(s) producing such ground water for irrigation purposes until such time as the chloride concentration of the water drawn from such wells rises above 250 mg/l.

- c. The total amount of ground water used to irrigate the Mānele Golf Course, driving range, and other associated landscaping shall be consistent with Maui County Code Chapter 19.70.85(c) Mānele Project District I.
- d. As used herein, the term “ground water” shall have the meaning as set forth in section 174C-3 Hawaii Revised Statutes (State Water Code).
- e. Nothing in this condition shall limit the imposition of other restrictions by appropriate governmental agencies having jurisdiction, or affect the interpretation or enforcement of any private agreements between Petitioner and Intervenor Lanaians for Sensible Growth.

Commissioner Wong seconded the motion.

The Commission was polled and voted unanimously to approve the motion 6-0 with 3 excused.

There being no further business, the Commission adjourned at 2:14 p.m.