

LAND USE COMMISSION
MEETING MINUTES
August 26, 2011 – 9:00 a.m.

KULA CATHOLIC COMMUNITY HOLY GHOST HALL
9177 Kula Highway
Kula, Maui, Hawai`i, 96753

COMMISSIONERS PRESENT: Normand Lezy
Ronald Heller
Nicholas Teves, Jr.
Chad McDonald
Kyle Chock
Thomas Contrades
Lisa Judge

COMMISSIONERS EXCUSED: Ernest Matsumura
Napua Makua

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the continued hearing on A11-790 Kula Ridge LLC to order at 9:15 a.m.

APPEARANCES

Steven Lim, Esq. and Jennifer Benck, Esq., represented Petitioner Kula Ridge LLC
Clayton Nishikawa, Managing Director, Kula Ridge LLC

Michael Hopper, Esq., Deputy Corporate Counsel, represented County of Maui
Planning Department

William Spence, Director, County of Maui Planning Department

Bryan Yee, Esq., represented State Office of Planning

Jesse Souki, Director, State Office of Planning

PUBLIC WITNESSES

Chair Lezy asked if there were any Public Witnesses who wished to give testimony. There were none.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Lim offered Petitioner's Exhibits 23A, 34A and 44A-44G. There were no objections to Petitioner's exhibits with the revisions as noted and they were admitted to the record.

County

Mr. Hopper offered County's Exhibits 9-12. Commissioner Heller requested clarification on what Exhibit 12 was. Mr. Hopper identified it as the Maui Island Plan. There were no objections to admitting County's exhibits 9-12 to the record.

OP

Mr. Yee offered Exhibits 14 to be admitted. There were no objections to admitting OP's exhibits 14 to the record.

PRESENTATIONS

PETITIONER'S WITNESSES

1. Pete Pascua- Traffic Expert

Mr. Lim described his perception of the stipulations that the Parties had agreed to regarding the credentials of the expert witnesses and requested that his understanding of the stipulations be confirmed. Chair Lezy confirmed with the Parties that the stipulations were accurate.

Mr. Pasuca described how his firm had prepared and conducted its traffic assessment and analysis report; what factors were considered and what adjustments had been made to better assess traffic conditions in the

area. Mr. Pascua provided his understanding of the report's recommendations to accommodate expected traffic from the proposed project.

Mr. Lim requested clarification on anticipated service levels, on the number of studies and reports conducted, and what recommendations, updates and improvements had been or would be done or proposed. Mr. Pascua stated that four (4) assessments had been done for the DOT and described how anticipated service levels were estimated, what meetings with various agencies had occurred, what recommendations had been made based on their findings to date and what updates/amendments to the traffic studies would be done in the future.

Mr. Hopper requested clarification on what portions of the Petition Area roadway system had been included in the traffic analysis; how operating levels of service would be impacted by the proposed project, what traffic mitigation measures had been recommended; and whether County Council recommendations regarding sidewalks had been considered. Mr. Pascua described the scope and methodology used for the traffic analysis study and stated that the service level "A" for the area would be retained if the proposed project was built and that the mitigation measures recommended in the traffic analysis were adequate. Mr. Pascua also shared his understanding of what was being done regarding the Petition Area sidewalks and commented that he had not been involved in any discussions related to the sidewalk issue between the Petitioner and other parties, and stated that the traffic mitigation proposed to the DOT were adequate for the Petition Area.

Mr. Yee requested clarification on the assumptions used to calculate the ambient growth for the Petition Area and on details of the revised testimony for the traffic impact analysis report. Mr. Pascua described how he had updated the methodology used for his testimony and how various aspects of the traffic impact analysis report were addressed. Mr. Yee asked what Mr. Pascua thought traffic safety conditions in the Petition Area would be with the proposed project. Mr. Pascua replied that he thought traffic safety conditions would be about the same.

Mr. Lim requested clarification on safety concerns that were mentioned by public witnesses earlier. Mr. Pascua described traffic calming devices/measures that he thought would reduce speeding in the local area.

Commissioner Judge requested clarification on when the traffic impact analysis report was submitted and subsequently revised. Mr.

Pascua replied that the initial submission occurred in July, 2006 and was revised shortly afterwards and identified as July, 2006 revised. Mr. Pascua stated that DOT still had not accepted the TIAR to date and that the update was being performed to complete the study; and described the progress that had been made regarding mitigation measures.

Commissioner Judge requested clarification on urban roadway standards for the Petition Area. Mr. Pascua provided his understanding of minimum roadway widths, and described the focus of his traffic study and what improvements he thought the Petitioner would be responsible for if the Petition were granted.

Commissioner Heller requested clarification on whether sidewalk improvements were included in mitigation measures suggested to the DOT. Mr. Pascua replied that sidewalk improvements were not normally included and described how he thought the DOT would review the sidewalk requirements for the Petition Area and how sidewalk and traffic/pedestrian safety issues would be resolved by Maui County and/or the DOT.

There were no further questions for Mr. Pascua.

2. Clayton Nishikawa- Kula Ridge LLC, Managing Director

Mr. Nishikawa described his architectural/developer background and what his motivation and reasoning was for attempting the proposed project and developing water sources in the Petition Area; and provided his understanding of the existing market conditions for real estate sales in the area and how his proposed project could provide homes for local residents.

Ms. Benck requested clarification on the sidewalk needs for the Petition Area. Mr. Nishikawa stated that he was willing to build sidewalks for the Petition Area and described his efforts to gain control of property to do so; and to work with the Department of Public Works on sidewalks and other traffic mitigation and safety issues.

Mr. Nishikawa also described the senior housing component of his proposed development and stated that he expected the proposed project's backbone infrastructure to be completed in 10 years or sooner.

Mr. Hopper requested clarification on what costs were involved in constructing sidewalks and other community fees for the Petition Area. Mr. Nishikawa described the considerations that were involved in determining how the sidewalks would be constructed and aligned and what community association costs he anticipated.

Mr. Hopper also requested clarification on how Mr. Nishikawa

would obtain and provide water for the Petition Area. Mr. Nishikawa described how he perceived he would develop water sources for the proposed project, what costs he foresaw to do so and how he would work with Maui County during the process.

Mr. Yee requested clarification on how Mr. Nishikawa would provide water for the Petition Area and how much money he would contribute. Mr. Nishikawa stated that he would commit \$2 million to help develop a water source and described the efforts that would be made to facilitate obtaining water for the proposed development.

Ms. Benck had no redirect and there were no further questions for Mr. Nishikawa from Mr. Hopper and Mr. Yee.

Commissioner Judge requested clarification on how Mr. Nishikawa determined the density for his proposed project and on how the senior housing units would be handled if they were not being bought. Mr. Nishikawa provided the factors and methodology he used to determine the density for the Petition Area, and described how the handling of the senior housing units had been negotiated with the Maui County Housing Department; and how a similar C. Brewer project had marketed different features.

Commissioner Judge asked if water was available for the proposed project at the current time. Mr. Nishikawa stated that he expected water to be available and described how water was expected to be provided by identified water sources, but that there was no official commitment from Maui County at the present time.

Commissioner Contrades asked if all the required infrastructure costs had been determined and factored into the costs that were being presented; and for clarification on how water would be obtained for the Petition Area. Mr. Nishikawa replied that the cost factors had been included in their representations to the public and that the estimated that infrastructure costs were \$8 million. Mr. Nishikawa described how he had worked with the County Water Department to develop potential water sources and how he envisioned water could be provided from a well source in the area.

Chair Lezy requested clarification on the amount of community outreach that had been done to address traffic, water and other concerns of local residents. Mr. Nishikawa described the activities that were done to provide information to community residents; and the anti-development community resistance that he had encountered during his outreach attempts.

There were no further questions for Mr. Nishikawa.

The Commission went into recess at 10:38 a.m. and reconvened at 10:58 a.m.

Chair Lezy asked if Mr. Lim had concluded his case in chief. Mr. Lim acknowledged that he had and requested time for rebuttal.

MAUI COUNTY'S WITNESS

1. William Spence- Director, Maui Planning Department

Mr. Spence identified and described the contents of documents submitted to the Commission (Exhibits 11-the Makawao-Pukalani-Kula Community Plan and 12- the Maui Island Plan Directed Growth Boundaries and Other Land Uses). Mr. Spence also provided the background and history of how the plans had been developed and implemented by Maui County.

Mr. Hopper requested clarification on whether or not the proposed project was consistent with the Maui General Plan and the Maui Community Plan. Mr. Spence described why he felt the proposed project conformed to the plans and updated the Commission on the status of the plans before Maui Council; and how rural growth boundaries were defined by his department. Mr. Spence also provided his perception of traffic in the area; why he preferred the construction of sidewalks on the makai side in the Petition Area; and what traffic mitigation measures he felt needed to be considered.

Mr. Lim asked how easements might affect sidewalk placement in the Petition Area, whether remarks from the Waldorf School representative about the school's capacity were heard, and how road improvements could be further studied. Mr. Spence provided his perception of how easements would impact sidewalk placement decisions, and responded that he had been present for the Waldorf School testimony, and that further traffic improvement studies would be conducted by the County Public Works Department during the subdivision approval process of the proposal.

Commissioner Judge requested clarification on the development of the Community Plan and the Maui Island Plan and how the number of units for the proposed project had been determined. Mr. Spence described his understanding of how the number of units had been calculated and the conflict he anticipated would be occurring during the final approval process. Mr. Spence identified the differences between earlier versions of the plans and what was currently being considered by Maui Council for adoption, and how rural design guidelines were used in evaluating the proposed project.

Commissioner Judge requested further clarification on water, traffic and roadway concerns in the Petition Area. Mr. Spence described how traffic and roadway issues were being studied and how recognized potential problems were being addressed. Mr. Hopper stated that Maui County could attempt to supplement the record with a written report or copy of the transcript of the presentation made to Maui Council by Mr. Taylor-Maui Board of Water Supply regarding available water sources. Commissioner Judge remarked that she felt that it was important for the Commission to receive that information. Chair Lezy asked if there were any objections from the Parties to Maui County providing that information. Petitioner and Office of Planning had no objections.

Commissioner Judge requested clarification on subdivision approval and roadway requirements and asked if the Department of Public Works would be available to respond to questions. Mr. Hopper replied that the Department of Public Works was not on the witness list and discussion ensued to determine how Commissioner Judge's concerns could be answered. Mr. Lim suggested that Petitioner's engineer Stacy Otomo might be able to respond to those concerns. Mr. Hopper stated that Maui County Director of Public Works could submit a response letter to address Commissioner Judge's concerns and clarified what questions needed to be answered in regards to requirements for roadway improvements for the Petitioner.

Mr. Hopper requested a redirect and requested clarification on when the proposed project was placed into the established rural growth boundaries. Mr. Spence replied that his staff had determined that the proposed project was placed into the Maui County Plan maps after its 201H approval by Maui Council and would be consistent with the rural growth boundaries.

Commissioner Judge requested clarification on what plans had been made to provide safe passage for the students from Kula School. Mr. Spence confirmed there was no sidewalk providing safe passage to the Kula Elementary School and that it would probably be a County responsibility.

There were no more questions for Mr. Spence.

Mr. Hopper stated that the County had completed its portion of the case. Chair Lezy asked that the additional County exhibits be identified for the record. Mr. Hopper responded that Dave Taylor would be contacted to provide a copy of his report to Maui Council regarding water availability and/or a transcript of the presentation; and that the Public Works Director would be contacted to provide what improvements would

be required for the subdivision (Exhibits 13 & 14). Chair Lezy asked if the exhibits could be submitted to LUC staff within two weeks. Mr. Hopper responded that they would, pending their availability and would advise the LUC staff on Friday, September 2, 2011 as to status.

STATE OFFICE OF PLANNING'S WITNESS

1. Jesse Souki- Director, State Office of Planning

Mr. Souki described how his office had reviewed Petitioner's information and prepared the position statement of the State Office of Planning to recommend approval of the proposed project with conditions.

Mr. Yee requested clarification on Mr. Souki's comments on water. Mr. Souki replied that his comments were in regards to wells and infrastructure to deliver the water, not the availability of water.

Ms. Benck requested clarification on the availability of basic services infrastructure. Mr. Souki responded that most projects requesting reclassification before the Commission did not have existing water infrastructure built and ready to implement and had a 10 year build-out period to comply.

Mr. Hopper requested clarification on the consequences of a Petitioner failing to comply with the Commission's deadlines. Mr. Souki provided his perception of how the Commission could react to the Petitioner's failure.

Commissioner Judge moved for an Executive Session. Commissioner Chock seconded the motion. By a unanimous voice vote (7-0) the Commission entered Executive Session at 11:59 a.m. and reconvened at 12:08 p.m.

There were no further questions for Mr. Souki.

PETITIONER'S REBUTTAL WITNESS

1. Stacy Otomo

Mr. Otomo described the planned Lower Kula Road improvements that would be need to be completed in conjunction with the proposed project.

Mr. Hopper requested clarification on the road widening improvements that Mr. Otomo mentioned. Mr. Otomo replied that the improvements were not exempted by the 201H process and county requirements needed to be complied with for subdivision approval.

Mr. Yee requested clarification on the area that the Maui County required roadway improvements applied to. Mr. Otomo described the applicable requirements for the Petition Area.

Mr. Lim stated that he had no redirect.

Commissioner Heller requested clarification on whether the 25 foot right-of-way requirement was a legal or physical measurement from side-to-side. Mr. Otomo provided his understanding of how the 25 foot requirement was a legal right-of-way.

Commissioner Judge requested clarification on what segment of Lower Kula Road would be affected by the proposed project. Mr. Otomo described the portions of Lower Kula Road that had been studied and expressed that only the northern side had been examined.

There were no further questions for Mr. Otomo.

Chair Lezy inquired if there were any more witnesses for the Petitioner. Mr. Lim replied that Mr. Otomo was his final witness and rested his case.

Chair Lezy declared the evidentiary portion of this proceeding to have been completed, subject to the receipt of various follow-up reports and/or answers that may have been requested during the course of this hearing and directed that the parties draft their individual proposed findings of fact, conclusions of law and decision and order based upon the record in this docket and serve the same upon each other and the Commission no later than the close of business on September 19, 2011; and that all responses or objections to the parties' respective proposals be filed with the Commission and served upon the other parties no later than the close of business on September 26, 2011. Any responses to the objections should be filed with the Commission and served on the other parties no later than the close of business on October 2, 2011.

Chair Lezy asked if there were any objections or questions from the Parties. Mr. Yee commented that his understanding was that it would be acceptable to the Commission if the OP either stipulated to the Decision and Order (D&O) or submit objections on September 26, 2011 and it was not necessary for the OP to submit its own D&O on September 19, 2011 and that exceptions to the D&O could be filed. There were no objections to Mr. Yee's comment. Mr. Hopper requested that Maui County be afforded the same treatment. Petitioner and OP had no objection.

Deliberation and decision-making was tentatively scheduled for November 3, 2011.

There being no further business to discuss, Chair Lezy adjourned the meeting at 12:27 p.m.