

LAND USE COMMISSION
MEETING MINUTES

November 3, 2011 – 1:00 p.m.
Molokini Room, Mākena Beach and Golf Resort
5400 Mākena Alanui
Mākena, Maui, Hawai`i, 96753

COMMISSIONERS PRESENT: Ronald Heller
Ernest Matsumura
Napua Makua
Chad McDonald
Thomas Contrades
Lisa Judge

COMMISSIONERS EXCUSED: Nicholas Teves, Jr.
Kyle Chock
Normand Lezy

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

Presiding Officer Judge called the meeting to order at 1:10 p.m.

APPROVAL OF MINUTES

Presiding Officer Judge asked if there were any corrections or additions to the October 20-21, 2011 minutes. There were none. Commissioner Contrades moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2011 was distributed in the handout material for the Commissioners.
- The December LUC meeting will most likely be a one day meeting on December 1, 2011 and the January meeting will involve a return to Maui...
- Any questions or concerns- please contact LUC staff.

A11-790 KULA RIDGE, LLC (Maui)

Presiding Officer Judge announced that this was Oral Argument on Docket No. A 11-790 Kula Ridge, LLC (Maui) to consider the reclassification of approximately 34.516 acres of land from the Agricultural District to the Urban District and approximately 16.509 acres of land from the Agricultural District to the Rural District at Kula, Maui, Hawai'i for a mix of residential, park and open space uses TMK Nos. 2-3-001:174 and 023 (por.)

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 (arrived at 1:15
p.m.)

Bryan Yee, Esq., represented State Office of Planning (OP)

Jesse Souki, Director, OP

Presiding Officer Judge recognized Commissioner Matsumura.
Commissioner Matsumura disclosed that his company had used the legal services of Mr. Lim and Carlsmith Ball in the past, but that he did not believe this past relationship would interfere with his impartiality or influence him during decision-making on this docket. There were no objections to Commissioner Matsumura's continued participation in this matter.

Presiding Officer Judge updated the record and described the procedures to be followed for the hearing. There were no comments and/or objections to this course of action.

PUBLIC WITNESSES

1. Rick Adams

Mr. Adams stated that he was a local contractor and shared his reasons for supporting the proposed project.

There were no questions for Mr. Adams.

2. Cole Sturdevant

Mr. Sturdevant submitted written testimony and shared why he supported approving the Petition.

There were no further questions for Mr. Sturdevant.

3. Steve Sturdevant

Mr. Sturdevant stated that he supported the proposed project and provided his perspective of why the Petition should be granted.

There were no questions for Mr. Sturdevant.

4. Scott Loomer

Mr. Loomer stated that he supported the Petition and shared his reasons why.

There were no questions for Mr. Loomer.

5. Dutch Akana

Mr. Akana shared his reasons for supporting the Petition.

There were no questions for Mr. Akana.

6. Ron Deppe

Mr. Deppe shared his daughter's housing situation and provided his reasons for wanting to have the Petition granted.

There were no questions for Mr. Deppe.

7. Lori Yoshisato

Ms. Yoshisato stated that she supported the Petition and provided her reasons why.

There were no questions for Ms. Yoshisato.

8. Mike Williams

Mr. Williams stated that he supported the proposed project and described how his family and others in the community could benefit from it.

There were no questions for Mr. Williams.

9. Roger Dix

Mr. Dix stated his reasons for supporting the Petition.

There were no questions for Mr. Dix.

10. Dustin Heiner

Mr. Heiner provided his reasons for supporting the proposed project.

There were no questions for Mr. Heiner.

11. Priscilla Mikell

Ms. Mikell described how she envisioned the proposed project would benefit the community and why she supported the proposed project.

There were no questions for Ms. Mikell.

12. Michael Yap

Mr. Yap stated that he supported the Petition and shared his reasons for supporting the proposed project.

There were no questions for Mr. Yap.

13. Joey Cremar

Mr. Cremar shared his family's history and described why he supported the proposed project.

There were no questions for Mr. Cremar.

14. Clivan Cremar

Mr. Cremar provided his reasons for supporting the Petition.

There were no questions for Mr. Cremar.

15. Juno Comilang

Mr. Comilang described his experiences in becoming a homeowner and shared his reasons for supporting the proposed project.

There were no questions for Mr. Comilang.

16. Ed Lamb

(Please refer to LUC Transcript for more details on this matter)

November 3, 2011 meeting minutes

Mr. Lamb described why he supported the proposed project.
There were no questions for Mr. Lamb.

17. Joel Corcino

Mr. Corcino stated that he supported the Petition and provided his reasons for wanting the project approved.

There were no questions for Mr. Corcino.

The Commission went into recess at 1:50 p.m. and reconvened at 1:57 p.m.

18. Teresa Winterfeld

Ms. Winterfeld shared her opinion of Mr. Nishikawa's character and described why she supported the proposed project.

There were no questions for Ms. Winterfeld

19. Cheryl Zarro

Ms. Zarro expressed how difficult it was for younger families to afford local housing and described why she supported the proposed project.

There were no questions for Ms. Zarro.

20. Gene Zarro

Mr. Zarro described how he thought the proposed project would benefit the community and why he supported the Petition.

There were no questions for Mr. Zarro.

21. Warren Orikasa

Mr. Orikasa shared his community experiences and described his reasons for supporting the Petition.

There were no questions for Mr. Orikasa

22. Dave Gleason

Mr. Gleason described why he supported the proposed project.

There were no questions for Mr. Gleason.

23. Penny Humphries

Ms. Humphries described how the local community was against the Petition and why she was against the proposed project.

There were no questions for Ms. Humphries.

24. Brian Lustig-Thurman

(Please refer to LUC Transcript for more details on this matter)

November 3, 2011 meeting minutes

Mr. Therman shared his reasons for supporting the Petition.
There were no questions for Mr. Thurman.

25. Pastara Monces

Ms. Monces shared her opinion of the poor economy and described why she supported the proposed project.

There were no questions for Ms. Monces.

26. Ron Montgomery

Mr. Montgomery stated that he represented the Kula Community Association and referred to his previously submitted written testimony that provided the reasons why his organization opposed the Petition.

There were no questions for Mr. Montgomery.

27. Morgan Gerdel

Mr. Gerdel stated that he was an architect involved with the proposed project and described the design considerations he used for it and why he supported the Petition.

There were no questions for Mr. Gerdel.

28. Randy Piltz

Mr. Piltz stated that he was appearing on behalf of the Maui Mayor's office and provided the reasons why the County of Maui supported the project.

There were no questions for Mr. Piltz.

29. Dr. Marcus Griffin

Dr. Griffin stated that he was a local physician and expressed why he supported the proposed project.

Executive Officer Davidson asked if Dr. Griffin was also testifying on behalf of Marilyn Griffin. Dr. Griffin responded that he was. There were no further questions for Dr. Griffin.

30. Maria Rawe

Ms. Rawe submitted written testimony, and described why she opposed the proposed project.

There were no questions for Ms. Rawe.

31. Jerry Fornelia

Mr. Fornelia described why he opposed the proposed project

There were no questions for Mr. Fornelia.

32. Godwin Pelissero

Mr. Pelissero stated that he opposed the Petition and questioned the affordability of units in the proposed project.

There were no further questions for Mr. Pelissero.

33. Ann Pirsch

Ms. Pirsch stated that she opposed the proposed project and shared her concerns and reasons why.

There were no questions for Ms. Pirsch.

34. Dick Mayer

Mr. Mayer provided written testimony and shared his reasons why the Commission should reject the stipulation document (i.e., the stipulated decision and order) for the docket and deny the Petition.

There were no further questions for Mr. Mayer.

Executive Officer Davidson commented that the documents that Mr. Mayer submitted would be part of the record.

35. C. Mike Kido- Pacific Resource Partnership

Mr. Kido submitted written testimony and described why his organization supported the proposed project.

There were no questions for Mr. Kido.

36. Al Chiarella

Mr. Chiarella stated that he was a real estate broker and described how he thought the proposed project would help with the local housing situation.

There were no questions for Mr. Chiarella.

37. Victor Reyes

Mr. Reyes submitted written testimony and described the agricultural value of the Petition Area and why he opposed the Petition.

There were no questions for Mr. Reyes.

Commissioner Makua excused herself at 3:03 p.m. and returned at 3:08 p.m.

38. Jim Bushlow

Mr. Bushlow stated that he echoed Mr. Mayer's opposition to the proposed project and described why he had that opinion.

There were no questions for Mr. Bushlow.

The Commission went into recess at 3:12 p.m. and reconvened at 3:23 p.m.

39. Lucienne de Naie

Ms. de Naie described why she opposed granting the Petition.

There were no questions for Ms. de Naie.

40. Jackie Haraguchi

Ms. Haraguchi stated that she was Executive Director of the Maui Contractors Association and described why her organization supported the Petition.

There were no questions for Ms. Haraguchi

41. Cathy Riley

Ms. Riley described her knowledge of Mr. Nishikawa's community achievements and why she supported his efforts to have the Petition granted.

There were no questions for Ms. Riley.

42. Durwin Kiyabu

Mr. Kiyabu stated that he was an architect and described how he thought the proposed project conformed to various County requirements and why he supported it.

There were no questions for Kiyabu.

There were no further Public Witnesses.

ORAL ARGUMENT

Petitioner

Mr. Lim described Petitioner's efforts to address various community, County and State concerns and requirements and argued the reasons why the Petition should be granted.

County

Mr. Hopper stated that the Maui Planning Department was in support of the Petition and described the considerations, assessments and evaluations that the County had performed to determine the conditions that would be imposed if the Petition were granted.

OP

Mr. Yee stated that OP supported the Petition with conditions and argued why the Commission should grant the Petition since it was a workforce housing project, it would help the County fund improvements to its water system, and would conform to the existing County ordinance on providing water. Mr. Yee also described the various considerations, assessments and evaluations that OP had performed to determine the proposed conditions in the stipulated decision and order.

Petitioner Rebuttal

Mr. Lim stated that the Petitioner recommits to the representations that had been made to the Commission and thanked the Commission for its attention and consideration in this matter.

Commissioner Questions

Commissioner Heller requested clarification on how the intent of paragraphs 2 and 3, on page 56 of the proposed stipulated decision and order differed. Mr. Lim replied that he would agree to having the revisions refer to the CC&Rs recorded against the proposed project and described how he initially intended for each paragraph to include the conditions in the initial deed and CC&Rs to preserve the conditions if the ownership of the units changed. Commissioner Heller asked if Mr. Lim would revise paragraph 3 to refer to the CC&Rs. Mr. Lim concurred.

There were no further questions.

Presiding Officer Judge announced that as previously noted, the Commission would take this matter under advisement.

The Commission went into recess at 4:05 p.m. and reconvened at 4:18 p.m.

A10-789 A&B PROPERTIES, INC (WAI'ALE) (Maui)

Presiding Officer Judge announced 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 545.229 acres currently in the

(Please refer to LUC Transcript for more details on this matter)

November 3, 2011 meeting minutes

Agricultural Land Use District Boundary to the Urban District at Wailuku and Waikapū, County of Maui, State of Hawai`i.

APPEARANCES

Curtis Tabata, Esq., represented Petitioner A&B Properties Inc.

Dan Yasui, A&B Properties Inc.

Grant Chun, A&B Properties Inc.

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 (OP)

Jesse Souki, Director, OP

Presiding Officer Judge recognized Commissioner McDonald.

Commissioner McDonald stated that he wished to disclose that the law firm Matsubara -- Kotake had provided legal services to his firm in the past, but he had not been personally involved and did not believe that this relationship would affect his decision-making in this matter. There were no objections from the Parties to Commissioner McDonald's continued participation..

Presiding Officer Judge updated the record and described the procedures to be followed for the hearing. There were no comments or objections to the procedures.

Presiding Officer Judge asked if Petitioner had been informed about the LUC's policy on hearing reimbursements. Mr. Tabata acknowledged that Petitioner had been informed and that Petitioner agreed to the LUC's policy.

PUBLIC WITNESSES

1. Irene Bowie- Maui Tomorrow Foundation, Inc.

Ms. Bowie submitted written testimony and expressed her concerns about the EIS and asked that the Commission not accept the FEIS.

There were no questions for Ms. Bowie.

2. Hōkūao Pellegrino

Mr. Pelligrino expressed his concerns that more studies needed to be conducted in the Petition Area regarding cultural and natural resources. Mr. Pelligrino described his concerns about the sand dunes in the Petition Area and why he felt the EIS needed to study the dunes more carefully.

There were no questions for Mr. Pelligrino

3. John Duey- Hui O` Na Wai eha

Mr. Duey shared his concerns about water issues and how future development on Maui and a County contested case hearing might impact the Petition Area.

There were no questions for Mr. Duey.

4. Daniel Kanahele

Mr. Kanahele provided his opinion on why the EIS was incomplete and requested that the EIS process be re-evaluated to better address his concerns about the Federal Section 106 consultation process of the Historic Preservation Act.

Presiding Officer Judge requested clarification on what Mr. Kanahele's section 106 concerns were. Mr. Kanahele described the "triggers", which he felt initiated Federal involvement, that were overlooked and needed further attention.

There were no further questions for Mr. Kanahele.

5. Mark G. Hyde

Mr. Hyde shared his concerns about water and climate issues in the FEIS; provided his proposed courses of action to address them and submitted his written testimony.

There were no questions for Mr. Hyde.

6. Dick Mayer

Mr. Mayer stated that the Maui County Plan was still under study and described his position that the Commission should wait till the Council had finally approved it; and why the Commission should not be in a rush to make a decision on this matter. Mr. Mayer also described why he believed water, wastewater and schools were not adequately addressed in the FEIS.

There were no questions for Mr. Mayer.

7. Lucienne de Naie- the Sierra Club, Maui Group

Ms. de Naie stated that she was speaking on behalf of the Sierra Club Maui Group and shared the concerns of her organization about how the EIS addressed water issues and cultural resources; and that different maps were used to represent the proposed project to the community; and commented that the EIS should not be “rushed” for approval.

There were no questions for Ms. de Naie.

8. Jacob Verkorke- President, Waikapū Community Association (WCA)

Mr. Verkorke stated that he represented the WCA and described various issues that the WCA felt that the EIS had not adequately addressed. Mr. Verkorke noted that he would later submit his testimony in a digital format to the Commission.

There were no questions for Mr. Verkorke.

9. Clare Apana

Ms. Apana shared her participation experiences with the Cultural Impact Assessment group; her concerns about the interviews that she participated in as part of the EIS; and why she felt the EIS had not been done thoroughly; and submitted 5 photographs of sand dunes in the Petition Area.

There were no questions for Ms. Apana.

There were no further Public Witnesses.

Presiding Officer Judge announced that the Public Witness portion of the docket was completed and that the Commission would be resume its meeting at 9:00 a.m., November 4, 2011 and recessed the meeting at 5:15 p.m.