

LAND USE COMMISSION
MEETING MINUTES
November 4, 2011- 9 a.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
Lisa Judge

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

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Presiding Chair Judge called the meeting to order at 9: a.m.

ACTION (continued)

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

Presiding Officer Judge announced that this was a continued 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 Agricultural Land Use District Boundary to the Urban District at Wailuku and Waikapū, County of Maui, State of Hawai`i.

APPEARANCES

Curtis Tabata, Esq., and Benjamin Matsubara, 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

Jesse Souki, OP

STAFF REPORT

LUC Staff Planner Bert Saruwatari provided a staff report to the Commission and described how the FEIS had addressed concerns mentioned by the public witnesses in regards to the docket and met the standards for acceptance by the Commission.

There were no questions for Mr. Saruwatari.

PRESENTATIONS

Petitioner

Mr. Matsubara argued the reasons why the FEIS should be accepted by the Commission and described how the FEIS met the legal requirements for acceptance and what parts of the FEIS contained information regarding efforts the Petitioner had made to address areas of concern regarding potable water, archaeological resources, burial sites in the Petition Area, endangered species, wastewater, and statutory and regulatory requirements.

Maui County

Mr. Hopper stated that Maui County Planning Department had no objection to the Commission's acceptance of the FEIS.

OP

Mr. Yee stated that OP had no objection to the Commission's acceptance of the FEIS and that the FEIS met statutory requirements. Mr. Yee acknowledged that there would be a number of issues that would be dealt with at the contested case hearing stage including archaeology, water and other concerns.

There were no comments or questions.

(Please refer to LUC Transcript for more details on this matter)
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Commissioner McDonald moved that the LUC accept the FEIS. Commissioner Heller seconded the motion. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Makua, Matsumura, McDonald, Heller and Judge.

Nays: None

Excused: Commissioners Chock, Contrades, Lezy, and Teves. The motion passed 5-0 with 4 excused.

The Commission went into recess at 9:12 a.m. and reconvened at 9:18 a.m.

ACTION

A96-717 C. EARL STONER, JR. on behalf of S&F Land Company, Inc. (Maui)

Presiding Officer Judge announced that this was a hearing and action Meeting for Docket No. A96-717 C. EARL STONER, JR. on behalf of S & F LAND COMPANY, INC. (Maui) to consider Petitioner's Motion to Release Conditions imposed by the LUC's Decision and Order dated November 13, 1996, filed on February 12, 2009.

APPEARANCES

William Crocket, Esq., represented Petitioner C. Earl Stoner/S&F Land Company

C. Earl Stoner, S&F Land Company

Robert Stoner, S&F Land Company

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

Presiding Officer Judge recognized Commissioner Heller. Commissioner Heller stated that he wished to make a disclosure that his law firm had done work for the Petitioner in the past and that he was not aware of any current ongoing work or involvement with the Petitioner at the present time that might influence his impartiality. There were no objections to Commissioner Heller's continued participation in this docket.

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

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

Presiding Officer described the procedures that would be followed for the hearing. There were no questions or comments from the Parties.

PUBLIC WITNESSES

Presiding Officer Judge asked if there were any Public Witnesses who wished to give testimony. There were none.

MAP ORIENTATION

LUC Staff Planner Scott Derrickson provided the Commission with a map orientation. There were no questions for Mr. Derrickson.

PRESENTATIONS

Petitioner

Mr. Crockett argued the reasons why Petitioner's Motion to Release Conditions imposed by the LUC's Decision and Order dated November 13, 1996, filed on February 12, 2009 should be granted and offered Mr. Earl Stoner to present the history and background information on Petitioner's activities to obtain the release of conditions from County and State authorities.

Mr. Stoner described how he had attempted to satisfy conditions 2, 7, 8, 10, 12, 13, 16, 18, 19, 23, and 26; and argued why all of the conditions should be released due to his efforts.

Maui County

Mr. Hopper presented the conditions that the Maui County Planning Department was willing to stipulate to releasing and argued why Conditions 7, 8, 10, 12, 13, 23 and 26 should not be released.

Presiding Officer Judge requested clarification on why County had no objection to the release of Conditions 2, 16, 18 and 19. Mr. Hopper described how County had assessed each condition and made its decision to retain or release it.

OP

Mr. Yee presented the conditions that the State Office of Planning was willing to stipulate to releasing and argued why conditions 7, 8, 10, 12, 13, 16, 18, 19, and 26 should not be released. Mr. Yee also described OP's concerns about the adequacy of the testing that Petitioner had done to resolve condition 2.

Petitioner's Rebuttal

Mr. Stoner argued how the wording for condition 2 could be interpreted differently; and how certain situations for various conditions had changed over the passage of time or due to Petitioner's efforts to resolve the condition; and restated Petitioner's efforts to comply with the civil defense requirements of condition 13.

Mr. Crockett argued that the language of condition 2's intent was satisfied by the EPA closure report submitted to the Commission.

Commissioner Questions

Commissioner Heller requested clarification on why Conditions 11 and 15 were covered by the stipulation and were being released. Mr. Hopper replied that 11 and 15 were perceived as ongoing obligations and duplicative to existing State Department of Health requirements. Mr. Yee described how meetings with the Petitioner had been conducted and how both conditions were evaluated and considered for release since they were covered by existing law.

Presiding Officer Judge requested clarification on whether conditions 18 and 19 were covered by State law. Mr. Yee described the factors that may have influenced the crafting of the conditions when the order was implemented and how subsequent development may have rendered the need for condition 18 unnecessary, and that 19 was still perceived as an ongoing obligation for Petitioner. Discussion ensued to determine the current status of the Petition Area versus when it was being developed. Mr. Stoner confirmed that all construction for the Petition Area had been completed, and that no further ground-disturbing activity was planned. Mr. Stoner added that any on-site work performed that required disturbing the ground would be done by a third party tenant and subject to County and State approvals.

Presiding Officer Judge requested further clarification on OP's position on retaining condition 2. Mr. Yee described how OP interpreted the language of condition 2 and why it felt the testing done on the facility was insufficient.

The Commission went into recess at 10:03 a.m. and reconvened at 10:16 a.m.

Presiding Officer Judge asked if Petitioner had anything further to add in regards to condition 2. Mr. Stoner argued why Petitioner had no control of the situation during its acquisition period and had relied on the EPA “clean closure” report. Mr. Stoner added that Petitioner had not experienced problems with chemical migration since obtaining the property; and described why he felt EPA reporting requirements and the terms of the lease made additional compliance and reporting to the Commission unnecessary.

The Commission went into recess at 10:20 a.m. and reconvened at 10:25 a.m.

Commissioner Makua moved to release conditions 1, 2, 3, 4, 5, 6, 9, 11, 14, 15, 17, 18, 20, 21, 22, 24, and 25; and to deny release of conditions 7, 8, 10, 12, 13, 23, and 26. Commissioner Matsumura seconded the motion.

Commissioner Heller requested clarification on whether condition 19 was being released or retained. Commissioner Makua replied that condition 19 was being retained.

Presiding Chair requested that Executive Officer Davidson restate the motion. Mr. Davidson stated that the motion was to release conditions 1, 2, 3, 4, 5, 6, 9, 11, 14, 15, 17, 18, 20, 21, 22, 24, and 25; and to deny release of conditions 7, 8, 10, 12, 13, 19, 23, and 26.

Mr. Yee noted that condition 16 had been overlooked. Presiding Chair Judge asked if Commissioner Makua wished to have condition 16 retained. Commissioner Makua acknowledged that condition 16 should be retained.

The Commission voted as follows:

Ayes: Commissioners Makua, Matsumura, McDonald, Heller and Presiding Chair Judge.

Nays: None

Excused: Commissioners Chock, Contrades, Lezy, and Teves. The motion passed 5-0 with 4 excused.

There being no further business to discuss, Presiding Officer Judge adjourned the meeting at 10:30 a.m.