

LAND USE COMMISSION
MEETING MINUTES
May 9, 2018 – 9:00 a.m.
Maui Arts & Cultural Center, Haynes Meeting Room
One Cameron Way, Kahului, Maui, Hawai`i, 96732-1137

COMMISSIONERS PRESENT: Arnold Wong
Nancy Cabral
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Lee Ohigashi
Dawn Chang

COMMISSIONERS EXCUSED: Edmund Aczon
(There are currently 8 seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

A

CALL TO ORDER

Chair Wong called the meeting to order at 9:00 a.m.

APPROVAL OF MINUTES

Chair Wong asked if there were any corrections or additions to the April 19, 2018 meeting minutes. There were none. Commissioner Cabral moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (7 ayes-0 nays- 1 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

- **MAY 23 at NELHA- Kailua Kona**

Status Reports-

- A00-730 Lanihau,
- A10-788 HHFDC,
- A06-767 Waikoloa Mauka,

MAY 24-at HNL airport conference meeting room #3

- DR18-61 Hartung Brothers - Oahu IAL Docket
- A92-682 Halekua Developments- Status Report

JUN 14- on Maui at DOT Highways office

- A89-649 Lanai Resorts Status Report
- LUC training

JUN 28-

- DR18-62 Kualoa Ranch- IAL

JUL 11

- A94-706 Ka`ono`ulu Ranch- Motion to Rescind OSC

September 26 - 28, 2018, HCPO Hawaii Island- Hilo

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Wong stated that the next agenda item was a hearing and action on SP08-402 -County of Maui, Environmental Management- Hana Landfill(Maui).

HEARING AND ACTION

SP08-402 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI

Consider Extension of A State Special Use Permit For An Approximately 14.615-Acre Portion Of The Existing 29.05-Acre Hāna Landfill And An Approximately 5.39-Acre Encroachment Area Situated Within The State Land Use Agricultural District At Hāna, Maui, Hawai`i, Tax Map Key: 1-3-06: Por. 7 And Por. 12

APPEARANCES

Elaine Baker, Department of Environmental Management (DEM), Applicant

Bob Schmidt, Operations Manager, DEM

Paul Fasi, Planner, County of Maui Planning Department (County)

Michael Hopper Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning

Tomas Oberding, State Office of Planning

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

None

Chair Wong called Applicant DEM to make their presentation.

APPLICANT PRESENTATION

Ms. Baker provided background information on why Applicant DEM was appearing before the Commission and described details of how the landfill operation had become more efficient and ecologically friendly for the Commission to consider while deciding whether to approve the application to extend the time permitted on Special Permit SP08-402.

County and OP had no questions for Ms. Baker.

Commissioner Cabral requested clarification on how far the landfill was from Central Maui; why all waste from Hana was not removed to the central landfill; and what "white goods" were.

Ms. Baker stated that the Department of Health had objected to shutting down the Hana landfill due to the remoteness of Hana and the difficulties in safely transporting waste materials on the highway; and that the distance was approximately 55 miles each way. Ms. Baker described "white goods" as large appliance items such as washers and dryers.

Commissioner Okuda requested clarification on whether an Environmental Impact Statement (EIS) or Environmental Assessment (EA) had been done or required for the application. Ms. Baker described how DEM had two EAs done to expand the boundaries of the landfill; and for a Makai side “clean-up” effort in 2016.

Discussion ensued on whether DEM’s application triggered the need for an EIS or EA. Ms. Baker described why DEM had not sought an EIS or EA; and how Maui County had routinely applied for time extensions to their special permits from the LUC without them in the past.

Commissioner Chang requested clarification on efforts DEM had made to satisfy SP08-402, Condition 16- Cultural Assessment. Ms. Baker described how DEM had complied with the condition and included the Office of Hawaiian Affairs in current and past communications; and had observed condition provisions to preserve the cultural landscape and provide adequate buffer zones.

Commissioner Scheuer requested clarification on how the need for a 30-year time extension had been determined. Ms. Baker described how the estimated remaining useful life of the landfill factored into the requested time period. Mr. Fasi and Mr. Hopper provided additional report information that was included in the DEM application.

Commissioner Ohigashi requested clarification on what future plans had been made for Hana waste removal and landfill operations. Ms. Baker described how future waste handling plans included seeking alternative sites and providing for expansion into adjacent areas if necessary. Mr. Fasi stated that the future plans had not been discussed at the Planning Commission sessions.

Additional clarification on State Department of Land and Natural Resources (DLNR) and community involvement and representation was requested by Commissioners Chang and Scheuer. Ms. Baker and Mr. Fasi described how the Hana Community Association, public meetings and DLNR input was considered during Maui Planning Commission deliberations on this matter.

There were no further questions or comments.

Chair Wong called on County to make its presentation.

COUNTY

Mr. Hopper stated that the main intent of the SP08-402 Petition was to extend the life of the permit for 30 years and described the factors that the Maui Planning Commission had considered during its review and approval of the application presented to the LUC; and that there were also some County Permit references that need to be deleted to editorially clarify the content of the proposed decision and order.

Commissioner Okuda requested clarification on what the County's position was on the need for an accompanying EIS or EA to support a decision to extend time to the life of a permit for the requested 30-year period. Mr. Hopper provided his perspective that the passage of time and similar continuing use needed to be balanced and assessed against providing an EIS or EA.

Commissioner Ohigashi requested clarification on the standards used by the Maui Planning Commission to grant the extension. Mr. Fasi provided the details of the Maui Planning Commission's proceedings. Discussion ensued to further clarify what evidence or supporting documents were used by the Maui Planning Commission during its deliberations before approving the SP08-402 application.

There were no further questions or comments for County.

OP

Ms. Apuna stated that OP had no objections to the extension of the special permit.

Commissioner Cabral requested clarification on the effectiveness of the Hana Landfill's program to reduce the amount of waste being put into the landfill. Ms. Baker described how calculations that the landfill could accommodate another 30 years of use were made and what policies were put in place to ensure the projected lifespan would be sufficient.

DECISION-MAKING

Commissioner Ohigashi moved to authorize a 30-year extension subject to the conditions suggested by the County and other LUC conditions; and that the LUC Chair be authorized to sign the Decision and Order. Commissioner Cabral seconded the Motion.

Discussion

Commissioners Scheuer, Okuda, Chang and Ohigashi shared their opinions and concerns about the subject docket.

When there were no further comments or questions, Chair Wong directed Mr. Orodener to poll the Commission.

The results of the poll were:

Ayes- Commissioners Ohigashi, Cabral, Chang, Scheuer, Mahi and Chair Wong (6)

Nay- Commissioner Okuda (1)

Excused- Commissioner Aczon.

The Motion passed 6-1-1 excused (8 Commissioners seated)

Chair Wong declared a recess at 9:52 a.m. and reconvened the meeting at 10:01 a.m., and moved on to the next agenda item.

STATUS REPORT AND ACTION (IF NECESSARY)

A05-755 HALE MUA PROPERTIES LLC (MAUI)

Chair Wong stated that this was a meeting to receive a status report and take any appropriate action on Docket No. **A05-755 HALE MUA PROPERTIES LLC (MAUI)**

APPEARANCES

Murray Smith, represented new owner Southwest 7 successor to Petitioner Hale Mua Properties (SW7)

Jefferey Dack, Planner, County of Maui Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Tomas Oberding, OP

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

None

Chair Wong called for the representative of the new owner SW7 to provide a status update on the A05-755 Petition Area.

New Owner SW7 Presentation

Mr. Smith provided background information and history of SW7's involvement with the Petition Area; and described how SW7 was currently dealing with "clouded title" issues, estate matters, and addressing the conditions imposed by the County and the LUC's decision and order. Mr. Smith requested additional time be granted to SW7 before the LUC took further action on SW7's failure to meet deadlines and comply with the conditions of the decision and order.

Commissioners Mahi, Okuda, Chang, Scheuer, Cabral, Ohigashi, and Wong requested clarification on Mr. Smith's testimony. Mr. Smith confirmed that the Petition Area had not changed its zoning from agriculture to urban and provided his understanding of what the lender of the loan money for the property acquisition should have considered before making a loan for the purchase. Mr. Smith stated that he was a civil engineer and described how he was assisting the current landowner in selling the property and the difficulties he was having. Mr. Smith also stated that SW7 was a Colorado based LLC that was seeking a purchaser interested in pursuing the development plans for the Petition Area; and that an amended EA would be needed for those efforts; and acknowledged SW7's non-compliance with various conditions cited by the Commissioners during their questioning.

There were no further questions for Mr. Smith.

Chair Wong asked if County or OP had any questions or comments.

County

Mr. Hopper stated that Mr. Smith had provided new information that the County had not been aware of regarding the Petition Area; and that County would cooperate in supplying any information it had to the LUC.

OP had no comments.

Chair Wong declared at recess at 10:37 a.m. and reconvened the meeting at 10:42 a.m.

There were no further questions or comments.

Chair Wong entertained a motion.

Commissioner Ohigashi moved that, as the status report given by the Petitioner indicated that there may not have been compliance with a number of conditions

contained in the Decision and Order and that it appeared that there had not been substantial commencement of use of the land, the commission issue an order to show cause, schedule a hearing and serve upon the Petitioner notice of the hearing, to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification..

Commissioner Scheuer seconded the motion.

Discussion

Commissioners Scheuer and Chang expressed their reasons for supporting the motion.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion. (7-0-1 excused).

Chair Wong stated that the Commission staff would contact and schedule a hearing date with Mr. Smith.

Chair Wong declared a recess at 10:47 a.m. and reconvened the meeting at 10:53 a.m.

Chair Wong moved on to the next agenda item.

ACTION

A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (ELC)

1. Consider Waikapu Development Venture LLC's Motion to be Copetitioner, or in the Alternative to Become a Party, or in the Alternative to Intervene
2. Consider Emmanuel Lutheran Church of Maui's Motion To Extend Time to Complete Project

APPEARANCES

Peter Horovitz, Esq., represented Waikapu Development Venture LLC (WDV)
Jennifer Lim, Esq. and Derek Simon, Esq., represented Emmanuel Lutheran Church of Maui (ELC)

Tara Furukawa, Planner, County of Maui Planning Department (County)
Michael Hopper, Esq., Deputy Corporation Counsel, represented County
Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)
Tomas Oberding, OP
Lorene Maki, OP

Chair Wong updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

DISCLOSURES

Commissioner Ohigashi disclosed that he knew Jennifer Lim and her husband socially; but did not feel that his personal relationship would impact his ability to remain fair and impartial.

There were no objections to Commissioner Ohigashi's continued participation.
Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

1. Stephen Kealoha- Catholic Charities Volunteer

Mr. Kealoha encouraged the Commission to grant a time extension to ELC and provided his reasons for supporting ELC's motion.
There were no questions for Mr. Kealoha.

2. Thelma Akita-Kealoha

Ms. Kealoha stated that she was the Director of Catholic Charities and shared her reasons for supporting ELC's motion.
There were no questions for Ms. Kealoha.

Commissioners Chang, Cabral and Ohigashi expressed their thanks and appreciation to the two public witnesses.

There were no further public witnesses.

Chair Wong called for Mr. Horovitz to make his presentation on WDV's motion.

Intervenor WDV's Presentation

Mr. Horowitz described why WDV wanted to be involved with the A07-773 docket proceedings, and what its interest in the Petition Area was.

Chair Wong asked if Parties had any comments.

ELC Comments

Ms. Lim provided the reasons why ELC supported WDV's motion, and described how WDV factored into ELC's future development plans for the Petition Area.

County and OP respectively stated that they had no opposition to WDV's Motion.

Chair Wong asked if Commissioners had any questions.

Commissioner Questions

Commissioner Okuda requested clarification on what specific capacity within the proceedings WDV preferred to appear. Mr. Horovitz expressed why he preferred to be a Party in the proceedings; and why he would still be content with other capacities that the Commission might grant.

Commissioner Ohigashi requested clarification on who the WDV entity was and why Mr. Horovitz did not feel an Intervenor role might be more appropriate; and what the current status of the proposed sub-division approval was. Mr. Horovitz provided details of the pending purchase contract and Mr. Hopper deferred the sub-division status to Mr. Horovitz to respond to. Mr. Horovitz described what the County's sub-division timeline for approval might be and estimated that it might take 6-9 months after initial filing to be processed.

Commissioner Chang requested clarification on how WDV would procedurally react if it were admitted as a Party and if a bifurcation were to occur. Mr. Horovitz described how WDV would react to facilitate proceedings under different scenarios.

Ms. Lim opined how ELC might react depending on what status WDV was granted by the LUC.

Commissioner Cabral expressed her perspective of what role WDV should consider assuming. Commissioner Scheuer called for the question.

There were no further questions or comments.

Chair Wong entertained a motion.

Commissioner Ohigashi moved to grant movant WDV Intervenor status and provided his reasoning for making the motion.

Commissioner Scheuer seconded the motion and provided his perspective of why he felt there were no negatives to the Intervenor role in these proceedings.

Discussion

Commissioners Scheuer and Chang expressed their reasons for supporting the motion.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion. (7-0-1 excused).

Chair Wong declared at recess at 11:31 a.m. and reconvened the meeting at 12:35 p.m.

Chair Wong moved on to ELC's Motion to Extend Time to Complete Project.

ELC Presentation

Ms. Lim described her client's role in developing parts of the Petition Area and why the Motion to Extend Time to Complete Project should be granted. Ms. Lim offered Michael Reiley as a witness to respond to questions regarding ELC's future development plans.

Chair Wong recognized Mr. Reiley and had the witness affirm that his testimony would be truthful.

Petitioner Witness- Michael Reiley

Mr. Reiley described his professional background and personal involvement in ELC property development effort. Mr. Reiley also provided information on how WDV and ELC had advanced their combined but separate development proposals at the County level; and why the requested 10-year time extension was needed.

Chair Wong asked if there were any questions for Mr. Reiley.

County-

Mr. Hopper confirmed that Mr. Reiley's testimony was limited to the original A07-775 decision and order and not including the proposed 201H housing project. Mr. Reiley affirmed his testimony was confined to the A07-773 decision and order.

OP-

Ms. Apuna requested clarification on whether new conceptual planning needed to be done for the proposed development and how the 30-year time period would be utilized. Mr. Reiley responded that updates would be needed, but since the desired zoning had been obtained, future plans would be easier to make and finance; and provided his perspective of how the 30-year time extension would be applied.

Commissioners

Commissioners Chang, Cabral, Ohigashi, and Scheuer requested clarification of Mr. Smith's testimony. Mr. Smith described how ELC's development plans could not

happen without the sale of property to WDV, the type of future housing that was being considered, why the original development plans had to be revised and explained why annual reports were not submitted to the Commission.

Commissioner Cabral disclosed that the company Mr. Reiley worked for (H Energy) had done a project for her business, but that she did not know Mr. Reiley personally. There were no objections to Commissioner Cabral's continued participation in the proceedings.

Discussion ensued to clarify specifics on what ELC had done since obtaining its original decision and order, what other witness would be provided, how the 30-year extension would be applied to the ELC and WDV portions of the Petition Area, how the motion for extension of time related to a potential order to show cause; and how the future sale of property to WDV would affect this docket and its relationship to the Commission. Ms. Lim and Mr. Horovitz shared their perspectives on how ELC and WDV would work together when the time extension was granted.

Commissioner Ohigashi moved for an Executive Session to consult with legal counsel in questions and issues regarding the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Chang seconded the motion. By unanimous voice vote, the Commission voted to enter Executive Session.

The Commission entered into Executive Session at 1:29 p.m. and reconvened in regular session at 1:50 p.m.

Chair Wong declared a recess at 1:50 p.m. and reconvened the meeting at 1:57 p.m.

Commissioner Ohigashi moved "to defer or continue action on the Motion to Extend Time to Complete Project for a period of 6 months and the details of the next hearing would be worked out between the Parties and LUC staff. Petitioner is to provide a detailed timetable of any and all State and County required approvals and actions necessary to bring Petitioner into full compliance with this D&O to the Commission at least 60 days prior to the next hearing. The Petitioner and Intervenor will also submit all status reports and motions they wish to have considered at least 60 days prior to the next hearing."

Before finalizing his motion, Commissioner Ohigashi questioned whether the 6 month period might be too short. Mr. Horovitz responded that it might take till the end of November, 2018 or till January 2019 before he would be ready to appear before the Commission; and that he would prefer 9 months.

Commissioner Ohigashi amended his motion so that the 6-month period remain, and if a continuance was needed, that the LUC Chair be authorized to grant a continuance not to exceed another 6-month time period and if an extension greater than

six months were needed or requested, the motion would be before the whole Commission.

Commissioner Mahi seconded the Motion and the modified Motion.

Discussion

Commissioner Scheuer requested clarification on how the additional 6 months would be granted and shared how he uniformly questions witnesses to avoid bias. Discussion ensued to determine what time period the Chair would be comfortable in granting and whether the original motion needed to be amended.

Chair Wong acknowledged that the motion needed to be amended and directed Commissioner Ohigashi to re-state his motion.

Commissioner Ohigashi re-stated his motion "to defer or continue action on the Motion to Extend Time to Complete Project for a period of 6 months and the details of the next hearing would be worked out between the Parties and LUC staff. Petitioner is to provide a detailed timetable of any and all State and County required approvals and actions necessary to bring Petitioner into full compliance with this D&O to the Commission at least 60 days prior to the next hearing. The Petitioner and Intervenor will also submit all status reports and motions they wish to have considered at least 60 days prior to the next hearing. The Chair will have the discretion to grant no more than an additional 6 months to defer or continue action on this matter. If a continuance of longer than 6 months is needed, it will have to be granted by the full Commission."

Chair Wong asked if Commissioner Mahi approved the amended Motion. Commissioner Mahi acknowledged that he did.

Commissioner Scheuer requested that the Motion be repeated for clarity.

Mr. Orodenker and Commissioner Ohigashi repeated various sections of the proposed Motion for the Commission.

Commissioner Chang requested clarification on what progress she might expect to see on the proposed development. Mr. Horovitz described the types of activities and accomplishments he expected to be reporting on.

There were no further questions or discussion.

Chair Wong directed Mr. Orodenker to poll the Commission.

The results of the poll were:

Ayes- Commissioners Ohigashi, Mahi, Okuda, Scheuer, Chang, and Chair Wong
(6)

Nay- Commissioner Cabral (1)

Excused- Commissioner Aczon.

The Motion passed 6-1-1 excused (8 Commissioners seated)

There being no further business to address, Chair Wong adjourned the meeting at 2: 10 p.m.

