

LAND USE COMMISSION
MEETING MINUTES
September 25, 2019- 09:30 a.m.
Maui Arts & Cultural Center
One Cameron Way, Alexa Higashi Meeting Room
Kahului, Maui, Hawai`i 96732-3157

COMMISSIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Dawn Chang
Nancy Cabral
Aaron Mahi
Edmund Aczon
Lee Ohigashi
Dan Giovanni

COMMISSIONERS EXCUSED: Arnold Wong
(9 Seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Lori Tanigawa, Deputy Attorney
General
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Rashmi Agrahari, Staff Planner
(departed at 12:23 p.m.)
Riley Hakoda, Staff Planner/Chief
Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were public witnesses to testify on the minutes. There were none. Chair Scheuer then asked if there were any corrections or additions to the August 29, 2019 meeting minutes. There were none.

Commissioner Mahi moved to approve the minutes and Commissioner Ohigashi seconded the motion. There were no comments or discussion on the minutes.

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

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener 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.
 - SEP 26- continuation of proceedings from SEP 25 and status reports
 - OCT 9-10 SP09-403 Waimanalo Gulch Sanitary Landfill Special Permit on Oahu
 - OCT 24-25 DR19-67 Kanahahele -Mauna Kea (Hilo) on Hawai'i
 - OCT28-if needed DR19-67 continued on Hawai'i
 - OCT 31- video conference- adoption of order for DR19-67- & A02-737 U of N Bencorp adoption of order
 - respective video conference centers
 - NOV 6-7- SP19-410 Sacred Earth Assembly (Maui) on Maui
 - NOV 20- mtg for DR19-66 Poma'ikai Partners IAL, & A87-610 Waiawa on O'ahu at airport
 - NOV 21-A17-804 Hawaiian Memorial Life Plan on O'ahu at SOT 2nd floor
 - DEC 4-5- Kauai – A11-791 Hokua Place
 - DEC 18-19 open
 - JAN 8- Kona for A02-737 U of N Bencorp & A90-660 HHFDC status reports
 - JAN 9- TBD
 - JAN 22-23 on Oahu for A17-804 Hawaiian Memorial Life Plan (JAN 22 at Koolau Ballroom/ JAN 23 at HNL airport)

Any questions or conflicts, please contact LUC staff.

Commissioner Giovanni requested confirmation that the October 31st, 2019 meeting would be via videoconference. Mr. Orodenker acknowledged that a videoconference was scheduled.

There were no other questions or comments on the schedule.

Chair Scheuer stated that the next agenda item was an action item on Docket No. A19-809 Lanai Resorts, LLC, and updated the record and described the procedures for the proceeding.

ACTION

A19-809 (LĀNA`I)

Consider Petitioner's Amended Motion Requesting Land Use Commission to be the Approving Agency for an Environmental Assessment ("EA") and for Issuance of an Anticipated Negative Declaration or Anticipated Finding of No Significant Impact ("FONSI")

APPEARANCES

Yvonne Izu, Esq., represented Lanai Resorts LLC ("LR")

Lynn McCrory, LR representative

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Michele McClean, Director, County

Kurt Wollenhaupt, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Aaron Setogawa, Planner, OP

DISCLOSURES

None

PRESENTATIONS

PETITIONER

Ms. Izu provided a historical overview of the Motion before the Commission and argued why the motion was vital to providing for a prospective project to meet the future needs of Lāna`i and should be approved.

Commissioner Okuda requested clarification on whether the proposed project was part of a greater development plan for the island. Ms. Izu replied that the proposed project was a "stand-alone" project and described why she took that position.

Discussion occurred over details of the proposed project and Ms. Izu offered Lynn McCrory, LP representative to field questions regarding the proposed project.

Ms. Izu and Ms. McCrory responded to various questions from Commissioner Okuda over the legal authorities and project compliance requirements that were parts of the Motion before the Commission. Ms. Izu shared Chapter 343 compliance measures that Petitioner had taken and indicated where the current state of the development plans could be located in the submitted materials.

Commissioner Cabral requested clarification on what information the proceedings should be focused on. Chair Scheuer commented that the focus of the meeting was to consider granting a motion for the LUC to be the approving agency for an Environmental Assessment and for the issuance of an anticipated findings of no significant impact.

Chair Scheuer requested clarification on the water resources information contained in the EA. Ms. Izu provided her understanding of how the EA water resources assessment was conducted and what findings were reflected in the reports.

There were no further questions from Commissioners.

COUNTY

Mr. Hopper stated that County was not opposed to the LUC being the accepting authority.

There were no questions for County.

OP

Ms. Apuna stated that OP had no objections to the Amended Motion.

There were no questions for OP.

REBUTTAL

Ms. Izu stated that she had no need for rebuttal and had no further comments.

ACTION

Commissioner Ohigashi moved that the Commission be the approving agency for an EA and for issuance of an Anticipated Negative Declaration or FONSI. Commissioner Aczon seconded the Motion.

Commissioner Aczon stated that he would be voting in favor of the Motion and described why he believed the Petition was worthy.

Commissioner Okuda requested clarification of the Motion.

Chair Scheuer restated the Motion that was under consideration.

Commissioner Okuda stated that he was not in favor of the Motion and described his concerns about possible inadvertent non-compliance issues.

Commissioner Chang stated that she was in favor of the Motion and described the considerations that prompted her decision.

Commissioner Cabral stated that she echoed Commissioner Chang's sentiments and encouraged the Petitioner to diligently move forward.

Chair Scheuer stated that he would be voting in favor of the Motion but shared his concerns about sustainable water yields and how the EA might be impacted by them.

There was no further discussion and Chair Scheuer called for Mr. Orodener to poll the Commission.

The Commission voted as follows:

Ayes- Commissioners Ohigashi, Aczon, Mahi, Chang, Cabral, Giovanni and Chair Scheuer.

Nay- Commissioner Okuda.

The Motion passed by a vote of 7 ayes- 1 nay with 1 excused. (7-1-1)

Chair Scheuer declared a recess at 10:06 a.m. and reconvened the meeting at 10:11 a.m.

Chair Scheuer stated that the next agenda item was an action item on Docket No. A04-751 Maui Land & Pineapple Company.

ACTION

A04-751 Maui Land & Pineapple Company

Consider Petitioner Maui Oceanview LP's Motion to Amend Decision and Order dated June 30, 2006.

APPEARANCES

Gil Keith- Agaran, Esq., represented Maui Oceanview LP “MO”

Paul Cheng, “MO” representative

Tom Coppin, “MO” consultant

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)

Michele McClean, Director, County

Ann Cua, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Aaron Setogawa, Planner, OP

DISCLOSURES

Commissioner Ohigashi disclosed that he was familiar with Mr. Keith-Agaran socially through their mutual legal practices, but that he felt that he could remain fair and impartial during the proceedings.

Chair Scheuer disclosed that his consultant practice is involved with the Honokohau ditch water supply, but that he felt that he could remain fair and impartial during the proceedings.

There were no objections or comments to Commissioner Ohigashi and Chair Scheuer continuing their participation in the proceedings.

PUBLIC TESTIMONY

Chair Scheuer called for public testimony.

Public Witnesses

1. Kai Nishiki-

Ms. Nishiki expressed her concerns regarding the proposed project. There were no questions for Ms. Nishiki.

2. Tiare Lawrence

Ms. Lawrence voiced her opposition to the proposed project and described areas that the Commission should pay special attention to. There were no questions for Ms. Lawrence.

Commissioner Chang requested clarification on how cultural practices had been affected by the lack of water in the area.

There were no further questions for Ms. Lawrence.

3. Dick Mayer

Mr. Meyer submitted written testimony regarding his concerns for the proposed project and described how little community outreach had been done.

Chair Scheuer requested clarification on Mr. Mayer's comments regarding double counting affordable housing units.

There were no further questions for Mr. Mayer.

4. Etan Krupnick

Mr. Krupnick shared his concerns about how the proposed project addressed housing needs, water usage, and traffic concerns.

There were no questions for Mr. Krupnick.

5. Lucienne de Naie

Ms. De Naie provided her perspectives on the proposed project.

Chair Scheuer requested clarification on what the acronym "IIFS" represented. Ms. de Naie responded that it was for "Interim Instream Flow Standards."

There were no further questions for Ms. de Naie.

6. Stan Franco

Mr. Franco shared his housing concerns with the Commission.

There were no questions for Mr. Franco.

7. Tamara Paltin, West Maui Councilmember

Ms. Paltin shared what the West Maui Council's concerns were about the proposed project and responded to questions from Commissioners Okuda, Chang, Cabral and Chair Scheuer regarding compliance with the 2006 Decision and Order, the granted land use entitlements for the proposed project, past and present development progress on the site, accountability for affordable housing

requirements, community engagement efforts of the Petitioner, and activity in the surrounding areas. Ms. Paltin responded that she frequently passed by the Petition Area but had not noticed any activity occurring on the site and described what Council activity that she was aware of that involved the area.

There were no further questions for Ms. Paltin.

Chair Scheuer declared a recess at 11:10 a.m. and reconvened the meeting at 11:20 a.m. calling for continued public testimony.

8. Albert Perez, Maui Tomorrow Foundation

Mr. Perez stated that he echoed the concerns of the previous testifiers and urged denial or deferral of the Petition till portions of the plan that he considered out of date could be updated.

Commissioner Chang and Chair Scheuer requested clarification on certain parts of Mr. Perez's testimony. Mr. Perez described how the next County Community Plan meeting was set for January 2020 and why a denial or deferral beforehand was appropriate. Chair Scheuer shared his perspective of how "trade-offs" might be useful in allowing concurrent development.

There were no further questions for Mr. Peres.

9. Melissa Harding

Ms. Harding commented on the benefits of homeownership.

There were no questions for Ms. Harding.

10. Aggie England, Hawaiian Air Representative

Ms. England shared her company's concerns about the proposed project and requested a deferral of the matter to allow time for studies on the possible impacts to aviation operations could be done.

Commissioner Chang requested clarification on when Hawaiian Airlines became aware of the Petition. Ms. England described how Hawaiian Airlines became aware of the Petition and why Hawaiian's request to defer should be considered.

There were no further questions for Ms. England.

11. Michaellyn Burke

Ms. Burke described her affordable housing concerns
Commissioner Okuda requested clarification on a personal situation that Ms. Burke mentioned. Ms. Burke shared how her family had endured waiting for housing to be available over the years.

There were no further questions for Ms. Burke.

12. Michael Wildberger

Mr. Wildberger described why he felt not enough community outreach had been done for the proposed project and requested that the Commission consider denying or deferring the matter till the community had more of a chance to participate.

There were no questions for Mr. Wildberger.

There were no other Public Witnesses.

Chair Scheuer declared the Public Testimony portion of the proceedings closed and called for the Petitioner's presentation.

PRESENTATIONS

PETITIONER

Mr. Gil Keith-Agaran provided a background history of the Petition and described how he would be making his presentation by having various members of the Kimley Horne development team provide information on various sections of the development proposal.

Mr. Agaran offered Mr. Tom Coppin as his first witness.

Petitioner's Testifiers

1. Tom Coppin-Kimley Horne- Project Consultant

Mr. Coppin described his role on the development team and provided a general overview of the site plans, supporting documents and considerations about possible housing densities, open space and infrastructure requirements and other features that had gone into designing the Petitioner's proposed project.

Chair Scheuer declared a recess at 12:13 p.m. and reconvened the meeting at 1:18 p.m. calling for the continuation of Petitioner's presentation.

2. Tyler Fujiwara, Austin Tsutsumi & Associates Traffic Consultant

Mr. Fujiwara described how the traffic studies for the proposed project were developed, implemented, evaluated and reported.

3. Roy Montoya, Project Manager- Wastewater/Water Treatment

Mr. Montoya described Petitioner's plan to provide and satisfy the water demand of the proposed project.

4. Thomas Holliday- Marketing

Mr. Holliday described his educational and professional background and how he had determined the housing product mix needs for the proposed project.

5. Paul Cheng- Maui Oceanview LLC President

Mr. Cheng summarized why he purchased the property and described his efforts to move his proposed project forward by working with the Maui County Planning Department; and how his team had determined the rental/affordable housing inventories for the development proposal.

Commissioners Cabral, Ohigashi, Chang and Okuda requested clarification on how resales in the project would be addressed; whether a copy of the residential workforce housing agreement was provided to the Commission; how development plans could be and were shared with the existing community, and what conditions of purchase and considerations to develop the property were made.

Mr. Cheng described how deed restrictions were in place to address resale situations; how surprised he was by the public testimony since the information about the proposed project had been available on his website for 3 years; and how he had assessed and analyzed attempting his proposed project. Mr. Agaran stated that Exhibit "T" contained the housing rental agreement.

Chair Scheuer declared a recess at 2:21 p.m. during Commissioner Okuda's questioning and stated that proceedings would continue when the Commission reconvened. The Commission reconvened at 2:31 p.m.

Commissioner Okuda resumed requesting clarification on what extent Mr. Leung was aware of existing D&O conditions and compliance requirements and what the records of the Petition contained. Mr. Leung described what he knew of

the Petition Area before he acquired it and what he thought his obligations would be as the new owner. Mr. Agaran identified what the records of the Petition did not contain.

Commissioner Giovanni requested clarification and confirmation on Petitioner's community outreach efforts and what each buildout phase's housing mix included. Mr. Cheng and Mr. Agaran described Petitioner's discussions with the Maui Planning Department in determining what the various phases of construction would include and what each phase's housing inventory percentages would be.

Commissioners Chang, Giovanni, Ohigashi, Cabral, Mahi and Chair Scheuer sought additional clarification on Mr. Cheng's testimony. Mr. Cheng and Agaran responded to why an amendment to the existing D&O was being sought; how deficiencies in the Petition identified by the County's most recent filing would be addressed; how the commercial component of the project was expected to function; what "good cause" was shown to justify requesting an amendment to the original D&O and how the fallow fields reflected the failure of the original Petitioner to fulfill its development plans. Mr. Agaran deferred Commissioner Mahi's questions on the naming of streets in the Petition Area to his cultural witness, Tanya Lee Greig.

6. Tanya Lee Grieg

Ms. Greig stated that she did not know how the streets were named and supposed that the former land owner, Maui Land and Pine, may have been responsible. Discussion ensued over the use of the word "Akahele" (beware; be careful or cautious) for the street approaching the Petition Area.

Recalled Petitioner Witnesses

Tom Holliday

Mr. Holliday was recalled by Mr. Agaran to respond to more detailed questions on the affordable housing component.

Commissioner Okuda requested clarification on how affordable and market housing units and rentals mixes for the proposed project were determined. Mr. Holliday described how he had assessed current and future housing market conditions to make his conclusions.

Chair Scheuer requested clarification on the due diligence requirements attended to with providing information to the public about the Petition Area and whether members of the public who had listed themselves as being interested in the former Maui Land & Pine proposed project had been transferred to the Maui Oceanview LP entity. Mr. Holliday provided his perspective on how housing and rental needs had been addressed.

Mr. Agaran offered Preston Cheng to address the proposed project's position on providing information to the public.

7. Preston Cheng

Mr. Preston Cheng described how the Maui Oceanview LP website contained information about the new proposed development for its viewers. Chair Scheuer and Commissioners Ohigashi, Chang, and Okuda requested clarification on whether members of the public who had signed up on the Maui Land & Pine housing interest lists had been transferred to Maui Oceanview LP; whether County affordable housing units were included, how slope mitigation would be addressed; whether an adequate archaeological survey had been done and if higher percentages of affordable housing units could be attained. Preston Cheng stated that he was not sure whether the list of interested housing purchasers had been transferred. Paul Cheng and Mr. Agaran responded to how the affordable housing percentages could include higher income ranges; and how the proposed project planned to address the slope mitigation and archaeological survey issues.

Chair Scheuer asked if there were further questions for any of the Petitioner's witnesses. Mr. Agaran commented that Petitioner's Exhibit "T" could provide a lot of the desired information for the Commission; and stated that he would provide it for the benefit of the Commission on September 26th.

Commissioner Okuda commented on why he thought a supplementary EIS might be required.

Chair Scheuer requested additional clarification on water issues from Mr. Montoya. Mr. Montoya stated that he was familiar with the original Decision & Order and provided additional data on the available water supply and the sources that would provide for replenishing it.

Paul Cheng described how additional arrangements had been made with Maui Land & Pine to provide water for the Petition Area.

Commissioner Chang obtained confirmation that an Archaeological Inventory Survey (AIS) had been done in 2004.

Chair Scheuer requested clarification on the parameters of the traffic study that had been performed and what the TIAR recommendations were for the proposed project. Mr. Fujiwara described how the parameters for the traffic study had been determined and provided additional details on the various recommendations that been made based on the TIAR results.

There were no further Commissioner questions for Petitioner's witnesses.

COUNTY

No questions.

OP

No questions.

Chair Scheuer assessed the progress of the proceedings.

Commissioner Ohigashi requested procedural clarification on the submittal of additional documents and the remaining proceedings. Discussion ensued to clarify what documents were expected to be provided to the Commission and how County and OP presentations would be received on Day 2 of the proceedings.

Chair Scheuer declared a recess at 3:50 p.m. and stated that the hearing would resume in the Haynes Room of the Maui Arts and Cultural Center at 09:00 a.m., September 26, 2019.

