

LAND USE COMMISSION
MEETING MINUTES
September 26, 2019- 09:30 a.m.
Maui Arts & Cultural Center, Haynes Meeting Room
One Cameron Way, Kahului, Maui, Hawai`i 96732-3157

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

COMMISSIONERS EXCUSED: Arnold Wong
(9 Seated Commissioners) Edmund Aczon

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Lori Tanigawa, Deputy Attorney
General
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Rashmi Agrahari, Staff Planner
Riley Hakoda, Staff Planner/Chief
Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:37 a.m.

ACTION (Continued)

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

Chair Scheuer recognized Commissioner Cabral. Commissioner Cabral thanked the Parties for their participation and requested that everyone be mindful to speak into their microphones to make it easier for everyone to hear.

Chair Scheuer stated that Petitioner had concluded its presentation and that County and OP would be heard next.

Presentations

County

Mr. Hopper stated that County had filed its Position Statement and argued why County supported the amended Decision & Order (D&O) but had noted in its filing that accompanying documents in support were incomplete and reserved its right to supplement the Position Statement with additional filings and oral testimony and argument at the LUC hearing on the matter. Mr. Hopper added that County had filed a list of deficiencies in the Amended Decision & Order to address the incomplete documents at the start of proceedings and apologized for the late filing.

Commissioner Questions for County

Commissioner Cabral requested clarification on how County perceived affordable housing requirements, parks and recreation issues, and infrastructure concerns. Discussion ensued regarding how to obtain responses from County Counsel. Commissioner Ohigashi suggested the Mr. Hopper offer a Planning Department

witness to respond to questions posed to the County. Mr. Hopper offered Ms. Ann Cua, Planner, Maui County.

Petitioner Questions for County

Mr. Agaran requested clarification on what the planned quantity of work-force housing units were and for details about the West Maui Technical Plan. Ms. Cua provided her understanding of what the amount of planned workforce housing units were and stated that she did not have information on the West Maui Technical Plan.

Chair Scheuer questioned how County handled proposed projects and for more information on the West Maui Community Plan- Housing Technical Resource Paper. (Petitioner Exhibit "W"). Ms. Cua described how the Maui Planning Commission and County Council interacted when considering various proposals. Chair Scheuer requested additional information on the West Maui Community Plan.

Mr. Hopper offered Ms. Michele McClean to respond to the West Maui Housing Technical Resource Plan questions. Ms. McClean stated that Ms. Cua's work group was not involved in the West Maui Housing Technical Plan and answered various questions from Mr. Agaran to clarify details and contents of the Technical Plan.

OP questions

Ms. Apuna stated that OP had no questions for Mr. Hopper.

Commissioner Questions

Commissioner Okuda requested clarification on the differences between the old and the new D&Os. Ms. McClean indicated that there were 4 primary differences 1) the affordable housing percentages, 2) the housing/rental product mix, 3) the site plan housing types and 4) the water/wastewater specifications.

Commissioner Okuda requested clarification on how the housing needs of Maui would be served and whether a supplementary EIS (SEIS) might factor into the process. Ms. McClean described how County had considered the appropriate housing percentages and Mr. Hopper opined that the SEIS was an LUC decision. Discussion ensued on how the community benefit from a SEIS and why a SEIS should be considered..

Commissioner Chang requested clarification on whether the proposed amended D&O housing percentages were in line with County expectations. Ms. McClean described how the County code amendment by the County Council had attempted to address affordable housing issues; and how various types of housing projects offered different affordable percentages. Ms. Cua described how County had kept the LUC's original D&O expectations in mind while considering the proposed amended petition.

Commissioner Giovanni requested clarification on why the affordable housing percentages were changed from 51% to 31%. Ms. Cua and Ms. McClean shared what considerations had been made by County and how the original proposed project was redesigned to be viable. Paul Cheng affirmed that the proposed redesign was his attempt to satisfy the County and to move his development forward; and described the community outreach efforts that he had made. Ms. McClean commented that County had also suggested seeking community input and there was discussion on why County negotiations had been held before holding the community meetings.

Chair Scheuer sought clarification on County's late submittal of a list of deficiencies in the proposed amended D&O and confirmation of what County's position currently was after making the late submittal. Mr. Hopper described why County made the late filing and discussion ensued to clarify what units were being used for rentals/single family counts. Chair Scheuer and Commissioner Okuda expressed concerns about what constituted "good cause" for the requested amendment to the Petition. Mr. Hopper noted that County code compliance had guided the balance of rental/single family units and concluded his presentation.

Chair Scheuer declared a recess at 10:39 a.m. and reconvened the meeting at 10:49 a.m. stating that OP's presentation was due.

Mr. Agaran made an oral motion that Petitioner be granted a deferral of decision making. Chair Scheuer acknowledged Mr. Agaran's comment and asked whether OP would like to complete its presentation before addressing the deferral request. Ms. Apuna agreed to complete OP's presentation.

OP Presentation

Ms. Apuna stated that OP's position was for the LUC to approve the amended Petition conditionally and described what concerns needed to be addressed within it.

Chair Scheuer asked what OP's position was on Mr. Agaran's deferral request. Ms. Apuna responded that OP was agreeable to the deferral.

Commissioner Ohigashi requested clarification on the progress of the proceedings. Chair Scheuer stated that he would return to asking whether any further questions for OP remained.

Petitioner and County had no questions for OP.

Commissioner Questions for OP

Commissioner Ohigashi requested clarification on what DOT-Airport's comments were since the Hawaiian Airlines' public testifier had commented on needing additional time to consider the amended petition. Ms. Apuna deferred to OP's planner, Aaron Setogawa, to respond to the query. Mr. Setogawa provided the comments that DOT had provided.

Commissioner Giovanni questioned whether the 2004 EIS required an update. Discussion followed -Ms. Apuna opined that further analysis was required; Commissioner Okuda stated that he shared Commissioner Giovanni's concerns; and Commissioner Cabral described why she thought a deferral would be helpful and requested that the Parties work on organizing their presentations into clearer and easier to reference formats.

Chair Scheuer declared a recess at 11:03 a.m. and reconvened the meeting at 11:10 a.m.

Chair Scheuer assessed the state of the proceedings and stated that he would like the Parties to address and comment on what they would be working on during the Petitioner's requested deferral period (tentatively till December 4-5, 2019).

Deferral of Decision Making Discussion

Petitioner

Mr. Agaran described how Petitioner would use the deferral period to work further with the County on the details of the proposed amended D&O with attention to having more community meetings and a more detailed development site plan.

County

Mr. Hopper stated that County was agreeable to deferring proceedings till December 4-5, 2019 and described how County would retain the existing Findings of the proposed amended D&O and gather more County agency input.

OP

Ms. Apuna agreed with Petitioner and County on deferring proceedings and requested that the Parties brief on the supplementary EIS and “good cause” questions to provide a clear draft of proposed changes and allow more community engagement. OP would also use the deferral time to seek further input from State agencies.

Chair Scheuer encouraged the Parties to provide the Commission with a stipulation if possible. All Parties expressed a desire to stipulate to an amended D&O.

Commissioners

Chair Scheuer requested that the Commissioners share their expectations of what needed to be addressed during the deferral period. The Commissioners individually shared:

- How additional community engagement would be beneficial;
- that more low-cost housing and qualification information should be provided;
- that “good cause” should be demonstrated to justify making an amendment to the original D&O;
- how all documents related to this matter should be filed by November 15, 2019 for processing;
- how a better index matrix for locating Petitioner’s exhibits needed to be provided for easier referencing,
- how an analysis on whether a SEIS was warranted for the Petition Area was needed;
- what housing units would satisfy the County’s affordable housing requirements;
- whether workforce housing units of the Kapalua Makua project would be built to meet obligations within the proposed Pulelehua project;
- whether compliance with various HRS requirements was met;
- whether the affordable housing agreement between Petition and DHHC needed to be reopened to adjust to proposed changes in the amended D&O; and
- that more information on the efforts to secure a long-term water source; and an analysis of the various impacts of providing rental versus family housing be provided.

Chair Scheuer summarized what the Commission expected of the parties for the record and entertained a motion.

Commissioner Ohigashi moved to defer action on Docket No. A04-751 till December 4, 2019 or another date determined by the Chair; and that all documents related to the specific issues of the docket identified by the Chair during the proceedings be filed by November 15, 2019; and that electronic copies of the documents be in a form that was useable and could be posted to the LUC website in a format that could easily be identified and reviewed by the LUC and the general public.

Commissioner Mahi seconded the Motion.

Discussion on the Motion

Commissioner Ohigashi shared his concerns about the proposed project and encouraged the Parties to cooperatively produce a better amended petition.

Commissioner Giovanni expressed his interest in seeing an economically feasible project that would provide maximum affordable housing.

Chair Scheuer shared his reasons for voting in favor of the Motion and then asked Mr. Orodener to poll the Commission.

The Commission unanimously voted in favor of the motion. (7-0-2 excused)

Chair Scheuer declared a recess at 11:49 a.m., reconvened the meeting at 11:57 a.m. and stated that the Commission would next be hearing the status reports on the agenda.

Status Report

A94-706 Ka`ono`ulu Ranch (Maui)

Chair Scheuer announced that this was a status report meeting on Docket No. A94-706 Ka`ono`ulu Ranch (Maui) and called for Public Witnesses.

Public Testimony

1. Mike Moran- Kihei Community Association

Mr. Moran shared how the community appreciated the responsive efforts of the Commission to address the concerns about the Petition Area.

There were no questions for Mr. Moran.

Chair Scheuer temporarily halted Public Testimony and stated that he had overlooked having the Parties identify themselves and had the Parties do so.

APPEARANCES

Randall Sakumoto, Esq. represented Pi'ilani Promenade North LLC, and Pi'ilani Promenade South LLC, ("PP")

Curtis Tabata, Esq. represented Honua`ula Partners, LLC ("HP")

Tom Pierce, Esq., represented Intervenor Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele,

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

Ann Cua, Planner, County

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

Aaron Setogawa, Planner, OP

Chair Scheuer resumed the call for Public Witnesses.

Public Witnesses (continued)

2. Lucienne de Naie

Ms. de Naie provided her perspective of how the Petitioner's community outreach efforts were progressing.

Commissioner Chang requested clarification on what cultural practices protections were being considered. Ms. de Naie replied that she could not discuss more details on the matter due to confidentiality reasons.

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings.

There were no questions, comments or objections to the procedures.

Chair Scheuer made a final call for public witnesses and recognized a public member who wanted to testify.

3. Clare Apana

Ms. Apana shared her concerns about cultural resources that she felt were endangered by the proposed project.

There were no questions for Ms. Apana.

There were no further Public Witnesses.

Pi'ilani Promenade

Petitioners' Presentations (PP and HP)

Chair Scheuer called for Mr. Sakumoto to make his status report presentation.

Mr. Sakumoto stated that he and Mr. Tabata had a joint status report presentation and described how both Petitioners had participated in meetings to move the proposed project forward.

There were no questions for Petitioner.

Intervenor Presentation

Mr. Pierce confirmed that Mr. Sakumoto's presentation was accurate and shared how he thought good effort was being made by the Parties to reach a compromise.

There were no questions for Mr. Pierce.

County

Mr. Hopper stated that County planned to meet with Petitioner and Intervenor further on this matter.

There were no questions for County.

OP

Ms. Apuna stated that OP had participated in the settlement hearings and continued to monitor the progress being made.

There were no questions for OP.

Chair Scheuer described his participation in the settlement hearings and provided a general summary update of the matter to the Commission.

There were no further questions or comments.

Status Report

A89-642 Campbell Estate (Maui)

Chair Scheuer announced that this was a status report meeting on Docket No. A89-642- C. Brewer (Maui) and had the Parties identify themselves.

APPEARANCES

Jason McFarlin, Esq. represented Wailuku Plantation LLC. ("WP")

Vernon Lindsey, WP representative

Randall Sakumoto, Esq. represented current owner RCFC ("RCFC")

Brian Ige, RCFC representative

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

Jordan Hart, Deputy Director, County

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

Aaron Setogawa, Planner, OP

Chair Scheuer updated the record. Mr. McFarlin clarified how the record needed to better address WP's action regarding a district project approval request and withdrawal. Chair Scheuer acknowledged and accepted his correction.

There was no public testimony.

WP Presentation

Mr. McFarlin provided a printed handout of the Petition Area and stated that the respective Docket No. A89-642 Petitioners would be presenting their status reports separately. Chair Scheuer confirmed that Mr. Sakumoto had agreed to make separate presentations and called for WP's presentation.

Mr. McFarlin stated that WP intended to move forward with the plan that the original Petitioner, C. Brewer had presented to the Commission and provided a general summary of how Petitioner intended to move forward.

RCFC

Mr. Sakumoto provided background and historical information on RCFC's portion of the Petition Area and described how the RCFC portion was nearly built out.

Chair Scheuer asked if a motion for bifurcation was under consideration and how the two landowners planned to handle it. Mr. Sakumoto replied that there was no formal agreement yet and both he and Mr. McFarlin concurred that there was still no definite timeline for the bifurcation and that they were preparing to discuss the matter further.

County Questions

Mr. Hopper expressed concerns about the Piihana District Plan and requested clarification from Mr. McFarlin about the schedule for completion of the proposed project, its financing plan and Petitioner's ability to complete the development.

Mr. McFarlin offered Vernon Lindsey of Wailuku Plantations, LLC to respond to specific questions regarding the proposed development. Mr. Lindsey described how he had acquired ownership of the property and had been organizing himself to advance his project.

Chair Scheuer requested clarification of the ownership and property sales of the WP portion of the property that had occurred. Mr. Lindsey described how some parcels had been sold after he had acquired the land.

Discussion ensued between Mr. Hopper and Mr. Lindsey about what specific properties had been sold and how County records did not reflect the sales. Mr. Lindsey stated that 4 lots had been sold and Mr. Hopper contended that 7 lots were. Chair Scheuer noted that clarification was needed and requested that the tax map keys be provided to confirm the information being provided to the Commission and asked if OP had any questions.

OP Questions

Ms. Apuna shared that OP also was interested in the detailed scheduling plans for the proposed project and what financing was in place.

Commissioner Chang requested clarification on how Mr. Lindsey purchased and consolidated his land ownership. Mr. Lindsey described how he had acquired portions of the property over time and shared his perspective on the bifurcation effort to divide and separate the land within the Petition Area. Mr. McFarlin volunteered that it appeared to him that there were 7 transactions to buy land in the Piihana portion of the Petition Area.

Chair Scheuer directed LUC staff to work with Mr. Lindsey to ascertain what the accurate status of Piihana's proposed project was and Commissioner Chang suggested updating the Piihana annual report. Mr. Lindsey responded that the reported sales were made in ignorance of what he was obligated to do.

Commissioner Ohigashi suggested adding the status of the bifurcation to the requested report and that both landowners consider working on a stipulation to resolve their predicament.

Chair Scheuer declared a recess at 2:06 p.m. and reconvened the meeting at 2:13 p.m.

Chair Scheuer called for the status report for Docket No. A97-721 ATC Makena.

Status Report

A97-721 ATC Makena (Maui)

Chair Scheuer announced that this was a status report meeting on Docket No. A97-721 (Maui):

APPEARANCES

Jennifer Lim, Esq. represented Honua`ula Partners, LLC ATC Makena aka Makena Golf and Beach Club ("ATC")

Kaimi Judd, representative, ATC

Randall Sakumoto, Esq. represented H2RC ("H2RC")

Leilani Pomano, representative, H2RC

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

Michele McClean, Director, County

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

Aaron Setogawa, Planner, OP

Chair Scheuer updated the record and called for Public Witnesses.

Public Witnesses

1. Dick Mayer

Mr. Mayer urged discussions between the Parties to make progress on this docket and described how dated the existing Environmental Impact Statement (“EIS”) was and why a supplementary EIS was due.

There were no questions for Mr. Mayer.

2. Lucienne de Naie

Ms. de Naie shared her concerns about cultural sites in the Petition Area and how pertinent information about the Petition Area had been overlooked.

There were no questions for Ms. de Naie.

Presentations

ATC

Ms. Lim stated that she and Mr. Sakumoto would be doing a shared presentation for the status report and provided a historical background and an overview of what ATC had been working on over the past year. Ms. Lim offered Mr. Kaimi Judd to respond to detailed questions about ATC’s efforts.

Mr. Judd provided ATC’s concept plan and future expectations for its portion of the Petition Area. Ms. Lim deferred to Mr. Sakumoto to present H2RC’s report.

H2RC

Mr. Sakumoto described the property area owned by H2RC and how possible development of the property was being considered.

Commissioner Ohigashi requested clarification on what the initial settlement agreement between the ATC and H2RC entities covered. Mr. Sakumoto responded that ATC had the main responsibilities within the agreement.

Commissioner Chang requested clarification on what the EIS included. Mr. Sakumoto described what the EIS covered and used Petitioner’s Exhibit Map 2 to describe the areas covered by the EIS and stated that an Environmental Assessment (“EA”) for the area had been done.

There were no further questions for Petitioners.

County Questions

Mr. Hopper stated that County had nothing to present.

OP Questions

Ms. Apuna requested clarification on D&O Condition #12 – pro rata funding. Ms. Lim described the efforts that ATC had made to meet with H2RC and the DOT over the issue and how a verbal agreement was in place.

Chair Scheuer asked if there were further compliance issues or ownership concerns and Ms. Lim replied that a draft agreement had been sent to DOT for review but that an inter-developer agreement was not been determined yet; and that the composition of entities involved with the ATC Makena Entities group needed to be verified and finalized.

There were no questions for Ms. Lim.

Chair Scheuer commented that the upcoming October 9-10 and 24-25, 28 meetings would require the Commission to provide meals as an integral part of the meeting due to time constraints and remote locales of the meeting to complete business in the allotted time. Mr. Orodener acknowledged the comment and confirmed that preparations to provide for “working lunches” would be taken.

There being no further business, Chair Scheuer adjourned the meeting at 2:52 p.m.