

LAND USE COMMISSION
MINUTES OF MEETING

June 24, 2004

Makena Salon Ballroom
Maui Prince Hotel Makena Resort
5400 Makena Alanui
Makena, Maui, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Isaac Fiesta
Kyong-Su Im
Lawrence Ing
Steven Montgomery
Randall Sakumoto

COMMISSIONERS ABSENT: Pravin Desai
Peter Yukimura

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Caroline Lorenzo, Acting Chief Clerk
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 10:30 a.m.

ADOPTION OF MINUTES

Vice Chair Coppa moved to adopt the Land Use Commission meeting minutes of June 3 & 4, 2004. Commissioner Fiesta seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported on the following:

- The next meeting will be held at the Hapuna Prince Hotel on the Big Island and will include on the agenda a hearing on the petition by the Kamehameha Investment Corporation (KIC); the status report on traffic conditions at the Kamehameha Schools-East Hawaii; consideration of an EISPN for the Maui Pulelehua project; and a field trip to the Kamehameha Investment Corporation site.
- The second meeting in July will be held on Maui and will feature a hearing on the Waikapu 28 Investment petition.

- The only meeting in August (August 12-13, 2004) will be held on the Big Island and will feature a continued hearing on the KIC docket.
- The new commissioner's term begins July 2004. She has previously indicated that she will not be able to attend the first meeting in July.
- Election of Officers to be taken up at the August meeting on the Big Island.

EXECUTIVE OFFICER'S REPORT

Mr. Ching stated that he had no report and left it to the Chair to make an announcement regarding Aloha Noblehouse, Inc.

A04-749 ALOHA NOBLEHOUSE, INC. (Oahu)

Chair Ing announced that the Commission had received a written request from the Petitioner to withdraw its Draft Environmental Assessment (DEA) from the agenda for resubmittal at a later date. Given this action by the Petitioner and the public testimony on this docket, the matter was deferred until the Petitioner had resubmitted its DEA.

A03-744 HANOHANO, LLC (Maui)

Chair Ing announced that this was an action meeting to consider acceptance of Hanohano, LLC's Final Environmental Assessment for the reclassification of approximately 28.695 acres of land currently in the Agricultural District into the Urban District at Keahua, Kula, Maui, Hawaii, Tax Map Key: (2) 2-3-011: 001 and 002.

APPEARANCES

David Nakamura, Esq., represented Petitioner-Dowling Company
 Don Fujimoto, Vice President, Dowling Company
 Michael Foley, County of Maui, Department of Planning
 Ann Cua, County of Maui, Department of Planning
 Jane Lovell, Esq., represented County of Maui, Department of Planning
 Abe Mitsuda, State Office of Planning
 John Chang, Esq., represented State Office of Planning
 Mary Alice Evans, State Office of Planning

There was no public testimony.

Comments were provided by Ms. Cua for the County. Ms. Cua indicated that the County of Maui provided comments on the initial Draft Environmental Assessment (EA) dated April 5, 2004, and that the applicant had addressed many of those comments and continued to work with them to address the remainder of those comments. She further indicated that this project had been brought before the Cultural Resources Commission (CRC) on June 3, 2004 to review the archaeological preservation plan for the heiau structure located within the subdivision. One important issue was the retention basin being located within the limits of the 100-foot buffer around the heiau site. It was noted that the retention basin had subsequently

been moved out of that area and that the buffer would remain intact. The CRC was also informed that the applicant intends to place plaques in the vicinity in the heiau site to identify both the site as well as the access to the site. The CRC also had registered concerns about view corridors from the heiau and how the proposed development would impact these view planes. Ms. Cua indicated that a view easement dealing with project related landscaping and building should be placed on specific lots that may impact the view planes from the heiau site.

Ms. Cua noted that the project intended to provide landscaping along the Old Haleakala Highway as well as the eastern most boundary of the site. The EA also describes that pedestrian easements would enhance access to and from the project for the nearby King Kekaulike High School.

Mr. Chang indicated that the State did not have any comments because they had not yet received a copy of the Final EA. Mr. Chang also indicated that the State did file on June 23, 2004 its Statement of Position in support of the petition and provided a regional map of the area.

Mr. Nakamura indicated that the following persons were available for examination by the Commission. These consultants included:

- Warren Unemori of Warren S. Unemori Engineering, civil engineer for the project. Mr. Unemori prepared the preliminary engineering report attached as Appendix 1.
- Lisa Rotuno-Hazuka of Archaeological Services Hawaii, archaeologist for the project. Ms. Rotuna-Hazuka prepared the archaeological inventory report attached as Appendix B.
- Neal Kasumoto and Tara Lee of Austin Tsutsumi & Associates. They prepared the traffic analysis report attached as Appendix H.
- Paul Cool of John Child & Company, appraiser for the project who had prepared the market study, attached as Appendix F.
- Gwen Hiraga and Glenn Tadaki of Munekiyo & Hiraga, who prepared the technical portions of the Final EA.

Mr. Nakamura indicated that Petitioner requests the LUC's approval of the Final EA and that this Commission determine that the proposed action is not likely to have a significant affect on the environment. Mr. Nakamura also oriented the Commission to the petition area.

Mr. Nakamura further indicated that this EA was submitted in conjunction with the Petitioner's request to reclassify approximately 29 acres from Agricultural to Urban, and that the Commission agreed to be the accepting authority for the EA. Petitioner then published a Notice of Anticipated Negative Declaration in the OEQC bulletin. Petitioner had received comments from governmental agencies, individuals, and community associations and have consulted with a list of agencies as noted in the appendix of the Final EA. Petitioner has responded to every comment received, and based on the comments received, Petitioner increased the buffer zone to 100 feet around the heiau, moved the retention basin outside the 100-foot buffer area, increased the capacity of the retention basin, and reached agreement with County of Maui's Department of Housing and Human Concerns on the affordable housing

requirement for this project. The County and Petitioner have agreed that the County will donate \$125,000 to the Habitat for Humanities, which will be used to provide affordable housing. Mr. Nakamura further indicated that Petitioner has eliminated the stub out that was shown on the Draft EA, agreed to prohibit any ohana second dwelling on any of the lots, and are willing to accept from the Commission any condition that would prohibit a second dwelling on any of the 49 lots. Mr. Nakamura stated all of these changes in response to comments made during the 30-day comment period area reflected in the Final EA, and that the Final EA addresses the various impacts of the proposed subdivision on the environment.

Mr. Michael Foley, Director of the County of Maui Department of Planning entered the proceedings at this time.

There were no questions by the Commission on the above-mentioned comments.

Staff Report

Mr. Ching provided a PowerPoint presentation to the Commission, which provided a summary of the LUC findings, LUC determination required, agency comments received, and response by the Petitioner.

Motion

Vice Chair Coppa moved to accept Hanohano, LLC's Final Environmental Assessment and its Finding of No Significant Impact. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Coppa, Fiesta, Catalani, Im, Sakumoto, and Ing

Nays: None

The motion passed with a vote of 6 ayes and 3 absent.

A04-749 ALOHA NOBLEHOUSE, INC. (Oahu) - continued

Chair Ing asked if there were any public witnesses to testify on this docket. There being none, Chair Ing declared that action meeting on this docket was closed.

A recess break was taken at 11:05 a.m. The meeting reconvened at 11:20 a.m.

Mr. Chang requested clarification as to the precise intention of the Petitioner. Mr. Ching responded that the Commission received a letter from Petitioner regarding its withdrawal of this item from the agenda.

Mr. Chang also mentioned a letter received from the Department of Land and Natural Resources (DLNR), which indicated that DLNR was the fee owner of the property and had not authorized the filing of the subject petition. Mr. Chang expressed his opinion that DLNR's memorandum overrules any Draft EA.

Commissioner Montgomery entered the proceedings at this time.

DR02-26 KULEANA KU'IKAHI, LLC (Maui)

Chair Ing indicated that the parties were to report on the status report of its mediation efforts.

APPEARANCES

Richard McCarty, Esq., represented Petitioner, Kuleana Ku'ikahi, LLC

Benjamin Kudo, Esq., represented Interveners Makila Land Company, Kauaula Land Company, and Launiupoko & Associates

Jamie Cheng, Esq., represented Interveners Makila Land Company, Kauaula Land Company, and Launiupoko & Associates

Jane Lovell, Esq., represented County of Maui, Department of Planning

Michael Foley, County of Maui, Department of Planning

Abe Mitsuda, State Office of Planning

John Chang, Esq., represented State Office of Planning

Mary Alice Evans, State Office of Planning

Mr. McCarty reported that he had asked the developers if it was necessary to continue mediation efforts. He also reported that a new application had been filed to further pursue the Puunoa III affordable housing project. Mr. McCarty noted that pursuit of the Puunoa III project would stifle any potential that further mediation amongst the parties would be fruitful. Mr. McCarty felt that the mediation process was not getting anywhere and asked that the earlier petition be reinstated.

Mr. Kudo reported his belief that the inevitable outcome of resuming contested case proceeding in this matter will not be good for any party. He believed that mediation was the only hope between neighbors, but was extremely disappointed not to be able to reach an agreement. He reluctantly admitted that having not succeeded with mediation that contested case proceeding to decide the matter was necessary.

The County of Maui and the State provided similar comments as Mr. Kudo. The Commission discussed and provided its comments on the parties' mediation efforts.

Commissioner Im excused himself from the proceedings at 12:18 p.m., and returned to the proceedings at 12:28 p.m.

Vice Chair Coppa moved to enter into executive session to discuss the legal aspects with counsel. Commissioner Fiesta seconded the motion. Said motion was approved by voice votes.

Chair Ing announced that the Commission would now enter into executive session, followed by a lunch break, and reconvene at approximately 1:45 to 2:00 p.m.

The Commission entered into executive session at 12:30 p.m. The meeting reconvened at 2:25 p.m.

Chair Ing asked the Commission and the parties if there were any last minute comments. There were none.

Chair Ing announced that the next Maui meeting would be held on July 22-23, 2004 and stated that the Commission cannot enforce mediation but encourages it. He further indicated that the next July meeting would be an appropriate opportunity for the Commission to consider the pending matters on this docket.

A03-741 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui)

Chair Ing announced that this was an action meeting to adopt the form of order for said docket.

APPEARANCES

Jane Lovell, Esq., represented County of Maui, Department of Planning

Michael Foley, County of Maui, Department of Planning

Abe Mitsuda, State Office of Planning

John Chang, Esq., represented State Office of Planning

Mary Alice Evans, State Office of Planning

There were no public witnesses.

Mr. Ching indicated that staff had cleaned up the order to make technical non-substantive changes to findings that were indicated at the last meeting as well as changes to the conditions of approval indicated by the Commission. The affordable housing condition now included language suggested by Commissioner Sakumoto that Petitioner had committed to develop 125 affordable units at Pulelehua. Secondly, the transportation condition had been amended to reflect the exact language, which had been put forth by the parties. The revised transportation condition also reflected Commissioner Im's clarification that the impact fee was an agreement established amongst the parties and not a device of the Commission. For Conditions 18 & 19, the words "where feasible" were struck from the energy and water conservation conditions of approval.

Commissioner Fiesta moved to formally adopt the form of order with the single amendment indicated by the Chair with respect to the language of issuance of first building permit. Commissioner Montgomery seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Fiesta, Montgomery, Catalani, Coppa, Im, Sakumoto, and Ing

Nays: None

The motion was passed with a vote of 7 ayes and 2 absent.

MISCELLANEOUS

Chair Ing thanked everyone for their support throughout his two terms with the Commission. Commissioner Montgomery expressed his appreciation, as well as the State and the County.

Chair Ing announced that the site visit on June 25, 2004 would begin at 10:00 across the Upcountry Town Center triangle.

Commissioner Fiesta moved to enter into executive session to receive advice from counsel regarding pending applications from Docket No. A04-747 Kamehameha Investment Corporation, and from Docket No. A04-746 Waikapu 28 Investment, LLC. Commissioner Im seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 2:47 p.m.

The meeting was adjourned at 3:16 p.m.

(Please refer to the Land Use Transcript of June 24, 2004 for additional details on all above-mentioned matters.)