

LAND USE COMMISSION
MINUTES OF MEETING

November 17, 2005

Sheraton Maui Kaanapali Beach Resort
2605 Kaanapali Parkway
Lahaina, Maui, Hawaii 96761

COMMISSIONERS PRESENT: Michael Formby
Kyong-su Im
Lisa Judge
Duane Kanuha
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Thomas Contrades
Steven Montgomery

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Bert Saruwatari, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

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

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of November 4, 2005. Commissioner Kanuha seconded the motion. The minutes of November 4, 2005 approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- January 5-6 hearings will be held on Oahu to commence with the Pupukea Ridge docket.
- January 19-20 meeting dates will be held in Hilo for the McCully hearings and field trip. The first day will be a field trip to the McCully site and the hearing will be held on the second day. Mr. Ching noted that there are no quorum requirements for the field trip.
- February 2-3 meetings are scheduled to be on Oahu.
- February 16-17 meetings will be held in Maui.
- March 2-3 meetings are scheduled to be held in Kona.
- March 16-17 meetings are tentatively scheduled for the island of Lanai.

Mr. Ching noted that the meeting dates have not changed, and added that the docket items and meeting sites are beginning to fill in.

There were no questions posed by the Commission.

DOCKET NO. A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui)
PULELEHUA

Chair Sakumoto stated that this was a hearing on Docket No. A04-751 Maui Land & Pineapple Company, Inc. –Pulelehua for the reclassification of approximately 310.437 acres of land currently in the Agricultural District to the Urban District at Mahinahina, West Maui, Hawaii for multi- and single-family residential homes and retail commercial spaces.

Chair Sakumoto also noted that on November 16, 2005, the Commission received letters of support from:

- June Higa, employee of Kapalua Land Company
- Greg Hansen, private citizen and West Maui Worker
- Lehua Kalua, resident of Maui
- Chloe Okada, resident of Maui
- Giovanni Rosati, Maui Nui Housing Task Force

APPEARANCES

William Yuen, Esq., representing Petitioner

Robert McNatt, Executive Vice President, Maui Land & Pineapple Company

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

Michael Foley, Director, County of Maui Department of Planning
John Chang, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Sakumoto asked Petitioner if staff had informed them of the Commission's policy regarding reimbursement of hearing expenses. Mr. Yuen replied in the affirmative and added that they have no objections.

Public Witnesses

1. William Kennison

Mr. Kennison stated that he is the Division Director of the ILWU, Local 142, representing 7700 members of Maui County, including Lanai and Molokai. Mr. Kennison added that the Union's position is in support of the project as they believe it is a well planned community for the working families on West Maui and that the project will better utilize agricultural lands with benefits for their members.

There were no questions posed by the parties or the Commission.

2. Nell Woods

Ms. Woods expressed her appreciation to the LUC for scheduling this meeting in West Maui. Ms. Woods stated her concerns on matters of density caused by this project and other developments in West Maui, such as the Hawaiian Homelands development, the population growth, traffic impacts, and health impacts for the homebuyers of the proposed units situated near the Kapalua Airport.

Vice Chair Judge asked if Ms. Woods had any medical data supporting her claim of potential health impacts, such as asthma, caused by living next to an airport. Ms. Woods replied that she did not have that study with her, but noted that there is medical data supporting that if you live next to an airport you are exposed to fumes and dust, causing asthma.

Commissioner Formby raised questions related to Ms. Woods' knowledge on the frequency of flights and the type of aircraft used at the airport.

After a brief discussion, there were no further questions posed by the Commission.

3. Terry Eoff

Mr. Eoff stated that he is employed with the Lahaina Kaanapali Railroad and commutes 26 miles to work. Mr. Eoff noted his support for this project adding that if they could work and live in West Maui, it will reduce traffic caused by the employees commuting to work and also help them to own a home in an attractive neighborhood in West Maui.

Commissioner Piltz asked Mr. Eoff the number of times they were stuck in traffic on the highway coming to or going from work. Mr. Eoff replied that there were times when they were held up for 4 hours till all night. Mr. Eoff added that it would be an advantage for the employees to live on this side and would save a minimum of 2 hours traveling time per day plus the cost of gasoline.

Vice Chair Judge asked if the density and the size of the proposed Pulelehua community would be appropriate for this area. Mr. Eoff replied that the size would not bother him and noted that in Hawaii with the demographics, most homes do not have large yards.

After a brief discussion, there were no further questions posed by the Commission.

4. Lehua Kalua

Ms. Kalua stated that she is an employee of Maui Land & Pineapple Company and has lived on this side of the island for a long time, but currently reside in Wailuku. Ms. Kalua added that new technology separates us and that she got involved with the proposed Pulelehua project because she believes it will bring a community together with its new working concept. Ms. Kalua noted that she moved to Kahului since her rent was too high in West Maui.

Vice Chair Judge asked which components Ms. Kalua believed would bring the community together. Ms. Kalua replied that the senior center, school, library and medical clinic were attractive elements.

Chair Sakumoto asked Ms. Kalua what her position with the Maui Land & Pineapple Company was and if she was here testifying on own her free time.

Ms. Kalua replied that she is the fruit estimator in the Agricultural Research Department and is not here on her own free time, but has been allowed to come here today to testify.

There were no further questions posed by the Commission.

5. Chloe Okada

Ms. Okada commented that she has submitted her testimony in writing to the LUC and expounded on the need for affordable housing.

There were no questions posed by the parties or the Commission.

6. Sharon Matin

Ms. Matin stated that she is a resident of Kaanapali Shores and testifying on behalf of the West Maui Preservation Association, a non-profit volunteer community benefits association, supporting lifestyle, Hawaiian culture and shoreline resources. Ms. Matin commented that she is an administrative law judge and personal litigation attorney. Ms. Matin stated that although there is a critical need for affordable housing, West Maui is a unique area and believes that the infrastructure needs to go in before the housing. Ms. Matin added that they have a concern regarding the traffic tie-ups since there is no parallel roadway system. There is a road closure every time a critical accident or fire occurs, adding that road closures happen every two weeks, cause serious problems for visitors who cannot make their flights out and medical emergencies. Ms. Matin referenced an incident in Sacramento where a jet did not make it off the runway and hit an ice cream parlor across the street from the airport. Ms. Matin asked that the LUC consider first addressing parallel roads so that the residents and visitors can evacuate in the event of a disaster, and that the infrastructure, drainage and streams also be addressed.

Commissioner Formby raised a few questions related to the type of aircraft that Ms. Matin sees from her residence, the traffic impacts that she believes will affect the businesses and grocery store, North Beach interventions, and her judicial appointment. Ms. Matin replied that she currently is an administrative law judge for the Sacramento County Retirement Board via telecommunication and works out of her home.

Commissioner Im noted his concern regarding emergency situations and posed questions relative to sustainable growth in West Maui, balancing the need for affordable housing, and sufficient infrastructure. Commissioner Im asked Ms. Matin if she has met with Petitioner to see if their plans and studies could mitigate some of her concerns. Ms. Matin replied that she has met with Mr. McNatt and have agreed to continue their discussions.

Commissioner Kanuha asked Ms. Matin if she feels that this project should not be approved until the infrastructure and other issues are addressed. Ms. Matin replied in the affirmative.

Chair Sakumoto asked Ms. Matin for the number of members in her organization. Ms. Matin replied that there are 4 directors, but the organization does not maintain a membership list, but relied on supporters, donors and input from throughout the community. Ms. Matin added that the number of members or supporters for her organization changes from project to project.

After a discussion, there were no further questions posed by the Commissioners.

A recess break was taken at 11:25 a.m. The meeting reconvened at 11:45 a.m.

Chair Sakumoto reconvened the meeting and noted that the LUC has also received written testimony expressing concerns regarding this development from Don Gerbig and Stan Sajack.

7. Richard "Dick" Meyer

Mr. Meyer stated that he was a former planning commissioner and remembers when the Kapalua project was first proposed. Mr. Meyer added that he has been a resident of Maui for 38 years and raised his concerns regarding the segmentation for all these projects by the same land owner and argued that Maui Land & Pineapple should have prepared a single EIS for the region. Mr. Meyer voiced his concerns regarding the hundreds of cars generated from these projects, agricultural lands being taken out of agriculture, the inadequacies of affordable housing buy back policies, economic analysis, soil contamination, impact fees for schools, and the state not receiving revenues that it needs because these homes will be time share or second homeowners who only pay income taxes in their own states.

Vice Chair Judge posed questions in reference to Mr. Meyer's letter of May 6, 2005, and his concerns regarding the potential growth of the Kapalua Airport.

Commissioner Formby raised questions relative to Mr. Meyer's concern of segmentation. Commissioner Formby commented that there may be factors why the developer would take on portions of the project at a time, i.e. funding, timing, etc. and noted his understanding of Mr. Meyer's concern, but does not believe that it is improper segmentation.

Commissioner Im had questions regarding the airport expansion and the proposed residential homes to be built on the makai side of the runway.

After a brief discussion, there were no further questions posed by the Commission.

8. Lucienne deNaie

Ms. deNaie stated that she is representing Maui Tomorrow and noted that they had submitted substantial comments to the EIS. Ms. deNaie also stated that Lance Holter of the Sierra Club has asked her to address the Sierra Club's concerns as well. Ms. deNaie noted that they are supportive of the affordable housing component, but voiced their concerns regarding planning and density.

There were no questions posed by the parties and the Commission.

9. Vicki McCarty

Ms. McCarty expressed her appreciation to the LUC for convening on this side of the island so more of them could attend the meeting. Ms. McCarty stated her concerns related to traffic and its impacts, emergency vehicles, and the Honokowai treatment plant, the opening date of the proposed school, and the impacts from other proposed developments in the same area.

There were no questions posed by the parties and the Commission.

10. Loren Shim

Mr. Shim was not at the meeting at this time but has left his written testimony in support of the petition.

11. Don Gerbig

Mr. Gerbig stated that he is a retired sugar plantation worker residing in West Maui and noted that he believes that the infrastructure issues were not fully addressed. Mr. Gerbig reiterated similar concerns of gridlock and traffic problems, emergency medical services, capacity of the water pumps and the Lahaina sewage treatment plant. Mr. Gerbig added that although he supports affordable housing, he requested that the LUC defer any decisions on this development until these issues are resolved.

There were no questions posed by the parties or the Commission.

12. Dennis Harmon

Mr. Harmon stated that he is a resident of Kahana and noted his support for the project because of its community planning, the ability to live and work in the same area, proposed school nearby, and anticipated reduction in traffic. Mr. Harmon added that he is an architect and has conducted a lot of planning studies for livable communities.

Vice Chair Judge asked if the nearby airport impacts his home. Mr. Harmon replied that they barely notice it at all.

A lunch break was taken at 12:55 p.m. The meeting reconvened at 2:20 p.m.

DOCKET NO. A04-748 CONSOLIDATED BASEYARDS, LLC (Maui)

Chair Sakumoto stated that this was an action meeting on Docket No. A04-748 Consolidated Baseyards, LLC to consider approval of Petitioner's housing study pursuant to Condition No. 1 of the Findings of Fact, Conclusions of Law, and Decision and Order dated May 24, 2005, which reclassified approximately 23.164 acres of land from the Agricultural District to the Urban

District at Waikapu, Maui, Hawaii, for a light industrial subdivision.

On July 18, 2005, the Commission received (i) the Notice of Imposition of Conditions by the Land Use Commission, recorded in the bureau of Conveyances of the State of Hawaii as Document No. 2005-135530; and (ii) the Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, recorded in said Bureau of Conveyances as Document No. 2005-135531.

On August 5, 2005, the Commission received the Amended and Restated Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, recorded in said Bureau of Conveyances as Document No. 2005-150248.

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner
Jane Lovell, Esq., represented the County of Maui Department of Planning
Michael Foley, Director, County of Maui Department of Planning
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Kobayashi began his presentation and stated that pursuant to condition number 1 of the LUC's decision and order filed in May 2005, Petitioner was required to submit a housing study. Mr. Kobayashi then provided the history of the study prepared by Glen Kunihiha.

Mr. Kobayashi summarized the change in zoning process and noted that in October 2005, the County approved Petitioner's change in zoning and imposed a county affordable housing requirement to provide 4 affordable housing units in Central Maui or an in-lieu fee to not exceed \$50,000 per unit or a total of \$200,000. The Petitioner will be providing the 4 affordable units and will provide a copy of the executed Housing Agreement to the LUC.

Ms. Lovell stated that the County has no questions and believes that Mr. Kobayashi has accurately reflected the facts in this matter.

Mr. Chang asked whether there was an in lieu fee. Mr. Kobayashi explained that the County Council's change in zoning approval required that

Petitioner provide 4 units and that Petitioner plans to provide those homes within the adjacent Spencer Homes 201G project. Consolidated Baseyards is entering into an agreement with Spencer Homes to subsidize four of their units.

Vice Chair Judge asked if the agreement has any time frame by which the units need to be provided. Mr. Kobayashi replied that there is no time frame but actual payment will be as the affordable units come on line.

After a brief discussion, Commissioner Piltz moved to accept the housing study. The motion was seconded by Vice Chair Judge.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Judge, Im, Formby, Kanuha, and Sakumoto.

The motion passed with 6 ayes and 2 absent.

A recess break was taken at 2:35 p.m. The meeting reconvened at 2:50 p.m.

DOCKET NO. A87-617 BRIDGE AINA LE`A and BANTER, INC.
fka Puako Hawaii Properties (Hawaii)

Chair Sakumoto stated that this was an action meeting to adopt the order approving Petitioner Bridge Aina Le`a LLC and Banter, Inc.'s Motion To Amend Conditions 1 and 8 of Amended Findings of Fact, Conclusions of Law, and Decision and Order Dated July 9, 1991.

Chair Sakumoto noted that the County of Hawaii will not be attending today's proceedings.

Chair Sakumoto stated that there were no public witnesses.

APPEARANCES

Bernard Bays, Esq., represented Petitioner
Hoolae Paoa, Bridge Aina Le`a and Banter, Inc.
John Chang, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Ching discussed the decision and order as amended after reviewing the verbatim record that staff compiled from the action taken on Kauai. Mr. Ching noted that staff recommends changes that represents what the LUC has acted on and requested the LUC's favorable consideration of these recommended changes.

Vice Chair Judge noted three comments on findings 22, 26, and 27.

Chair Sakumoto had one comment on page 1, forth line, and on finding number 22.

Vice Chair Judge moved to adopt the decision and order as amended. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Commissioners Judge, Kanuha, Piltz, Im, Formby, and Sakumoto.

The motion passed with 6 ayes and 2 absent.

Chair Sakumoto recommended that the Commission authorize the Executive Officer to formalize the order with the amendments as described and obtain all signatures today so that this docket would not need to be on the next meeting agenda. There were no objections to Chair Sakumoto's request for finalizing the order and obtaining signatures on the order today.

Mr. Bays asked if the correct date of the order would be on November 17, 2005. Mr. Ching replied that the rules specify that the orders are effective upon the issuance of the order and upon certification the Executive Officer. Mr. Ching added that staff will make the changes as indicated with November 17, 20005 as the operative threshold date and that the order should be issued no later than one week from this date.

A recess break was taken at 3:00 p.m. The meeting reconvened at 3:10 p.m.

Vice Chair Judge left the meeting at this time.

DOCKET NO. DR04-30 KULEANA KU'IKAHU, LLC (Maui)

Chair Sakumoto stated that this was an action meeting of the Land Use Commission on Docket No. DR04-30 Kuleana Ku'ikahi, LLC to set a date and time for the hearing on the Exceptions to Hearings Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order For a Declaratory Order to Address Certain Controversies and Uncertainties Involving Lands at Puepuehuiki, Pahoia, Polanui, Lahaina, Maui, Hawaii, and to set the time limit for oral argument on the Exceptions.

APPEARANCES

James Geiger, Esq., represented Intervenor Kauaula Land Company

Paul Horikawa, Esq., represented Intervenor Cuevas

Blaine Kobayashi, Esq., represented Intervenor Bergson, et al.

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto stated that the sole purpose for today's meeting is to discuss and set a date and time for the hearing on this matter and to also establish the time limit for oral presentations by the parties. Chair Sakumoto noted that the LUC will not be entertaining any comments from the parties today, but will allow for any public testimony.

Chair Sakumoto noted that the LUC will set the matter for hearing on Maui and noted that the next meeting will be on December 1 & 2, 2005. Chair Sakumoto proposed that the LUC set 1:00 p.m. on December 1, 2005 to allow for sufficient time to review and to take appropriate action on that date.

Commissioner Formby asked if this matter is set at 1:00 p.m. and the remainder of the day will be solely for this docket item.

Chair Sakumoto commented that the LUC would have 3 special permit agenda items in the morning, and then hear this docket item at 1:00 p.m. Chair Sakumoto added that the Pulelehua continued hearings will be on December 2, 2005.

Chair Sakumoto entertained a motion to set the date of December 1, 2005 at 1:00 p.m. for the date and time of the hearing on this matter.

Commissioner Kanuha moved to set this matter for hearing on December 1, 2005 at 1:00 p.m. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Commissioners Kanuha, Piltz, Formby, Im, and Sakumoto.

The motion passed with 5 ayes, 1 recused, and 2 absent.

Chair Sakumoto stated that since the parties have already submitted their legal memorandum, he suggested 30 minutes as the limit for presentation by each of the parties. The matter was then opened for discussion.

Commissioner Formby commented that although he believes 30 minutes is a bit short, he is optimistic and supports Chair Sakumoto's recommendation to set a time limit of 30 minutes per party and intervenor.

Commissioner Piltz moved to set 30 minutes as the time limit for presentations by the parties and intervenors. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Kanuha, Formby, Im, and Sakumoto.

The motion passed with 5 ayes, 1 recused, and 2 absent.

Chair Sakumoto noted that there were no public witnesses.

A recess break was taken at 3:25 p.m. The meeting reconvened at 3:35p.m.

DOCKET NO. A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui)
PULELEHUA – continued

Vice Chair Judge returned to the meeting at this time.

APPEARANCES

William Yuen, Esq., representing Petitioner

Robert McNatt, Executive Vice President, Maui Land & Pineapple Company

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

Michael Foley, Director, County of Maui Department of Planning

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto expressed his appreciation to Mr. Yuen for yielding the floor so that the LUC could continue with the other dockets on the agenda.

Admission of Exhibits

Mr. Yuen stated that Petitioner has submitted a revised exhibit list, which refers to 36 exhibits, although 35 exhibits have been submitted and exhibit 36, will be submitted after the power point presentation. Mr. Yuen introduced and offered into evidence Petitioner's exhibits 1 to 35. There were no objections by the parties. Petitioner's exhibits 1 to 35 were admitted into the record.

Ms. Lovell stated that the County described and offered the County's exhibits 1 to 5. There were no objections by the parties. County's exhibits 1 to 5 were admitted into evidence.

Mr. Chang commented that the State has 18 exhibits numbered 1 thru 8. Mr. Chang described and offered the State's exhibits 1 to 8 into evidence. There were no objections by the parties.

Chair Sakumoto asked how the exhibits were numbered. Mr. Chang replied that the exhibits are numbered 1 to 5, 5a, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 7a, 7b, 7c, 7d, and 8.

Chair Sakumoto noted that the State's exhibits 1 to 8 were admitted into the record.

Mr. Yuen began with the presentation of his case.

Petitioner's Witness

1. Robert McNatt

Mr. McNatt stated that he is the Executive Vice President and General Manager of Maui Land & Pineapple and Kapalua Land Company. Mr. McNatt provided a brief description of the company's core values and West Maui holdings.

Mr. Yuen stated that Mr. McNatt's testimony has been submitted as Petitioner's exhibit 21 and will recall Mr. McNatt for questions and asked to reserve his cross until his recall. There were no objections by the parties.

2. Victor Dover

Mr. Dover stated that he is a planner with Dover Kohl & Partners. His resume was submitted into evidence as Petitioner's exhibit 12. Mr. Dover summarized his educational background and work experience, particularly in new urbanism, and was qualified as an expert in architecture and urban planning. There were no objections by the parties or the Commission.

Mr. Dover described the planning process for the Pulelehua project and stated that they went through a charette process with hundreds of residents and business owners and came out with ideas for the planned community. Mr. Dover summarized the master plan.

Ms. Lovell stated that the County had no questions,

Mr. Chang raised questions in reference to the public witness testimony regarding the 8% grade, and the area of topography.

Commissioner Im also raised questions and concerns related to the slope on the topography and the average percentage or grade in the area.

Vice Chair Judge posed questions regarding the roadway access to the airport. She also asked Mr. Dover to explain the basic principles of new urbanism.

Commissioner had a few questions in reference to exhibit 25, the maximum height of the 3-story structures, and the net density of the project.

Commissioner Kanuha asked for examples of new urbanism projects that Mr. Dover's company has been involved in.

Commissioner Formby posed questions regarding affordable housing that is disbursed within the community.

Commissioner Im had questions and concerns relative to the constraints on the development of residential homes near the airport and its operations, traffic impacts, and density.

Commissioner Piltz raised a few questions in reference to the mixed use facility and the types of businesses.

Vice Chair Judge posed questions on the 5 proposed highway connections.

Chair Sakumoto posed questions regarding Mr. Dover's familiarity with other lands owned by Maui Land & Pineapple, the Pulelehua site selection, the philosophy of the company, the number of issues raised this morning by the public witnesses, emergency services, solid waste disposal, the timing of construction for school facilities, and occupancy of the homes.

Chair Sakumoto also asked if Mr. Dover's company had other projects in Hawaii. Mr. Dover replied that this is their first.

After a discussion, there were no further questions posed by the Commission.

The meeting adjourned at 5:10 p.m.

(Please refer to LUC Transcript of November 17, 2005 for more details on this matter.)