

LAND USE COMMISSION
MINUTES OF MEETING

June 7, 2006

Four Seasons Resort Lana`i
Manele Bay
Kaunolu Mauka Conference Room
Lana`i, Hawaii

COMMISSIONERS PRESENT: Michael Formby
Kyong-su Im
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Thomas Contrades
Lisa Judge
Duane Kanuha
Nicholas Teves, Jr.

STAFF PRESENT: Brian Aburano, Deputy Attorney General
Anthony Ching, Executive Officer
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Sakumoto called the meeting to order at 10:45 a.m.

ADOPTION OF MINUTES

Chair Sakumoto noted that the May 18, 2006 minutes were not circulated for review, therefore, the minutes will be taken up at the next meeting.

TENTATIVE MEETING SCHEDULE

Mr. Ching reported that on June 22 the LUC will take action on the Pulelehua docket at the Maui Prince Hotel. Mr. Ching noted that should the LUC not complete the Lanai matter this week, a meeting on June 23 in Lanai could be held as a contingency. Mr. Ching commented that the LUC's calendar is filled for this month, and asked the LUC's preference on the possibility of holding another meeting date in June.

Vice Chair Montgomery commented that he was acceptable to all the options.

Commissioner Im asked for the timeline for this docket, as his calendar is tight and the Lanai materials are too much in volume to digest in a short period.

Mr. Ching noted that the LUC is not constrained by time and this could easily be taken up at a later date. Mr. Ching added that there may be an opening in July and could possibly arrange for a July meeting.

Commissioner Im commented that he realized some of the Commissioners may not continue after June but given the amount of materials and the importance of the issues, he would like to err on the side of being cautious in reviewing the materials in a more careful manner.

Commissioner Formby added that he shares Commissioner Im's concern on the volume of materials and that if they continue meeting in July, they would be proceeding with new Commissioners who did not hear the previous meetings. Commissioner Formby asked if the June 22 meeting on Maui would be a 2-day meeting if the LUC does not meet in Lanai on June 23.

Mr. Ching replied that it would only be a 1-day meeting on June 22, in Maui.

Commissioner Piltz indicated that he would be available.

Commissioner Im concurred with Commissioner Formby and that reviewing this docket will be overwhelming for the new Commissioners. Commissioner Im noted that he could try to be available on June 23.

Chair Sakumoto commented that he also is available on June 23. Chair Sakumoto suggested that staff check with all of the Commissioners on their availability before scheduling this meeting.

Mr. Ching stated that he will take that under advisement and will poll the other Commissioners who were not in attendance today.

A89-649 LANAI RESORT PARTNERS

Chair Sakumoto stated that this was a meeting on Docket No. A89-649 Lanai Resort Partners to: i) conduct a hearing pursuant to the Hawai'i Supreme Court decision in *Lanai Company, Inc. v. LUC, et al.*, S.C. No. 22564, which remanded the case to the LUC to clarify its findings or conduct further hearings if necessary; and ii) other appropriate action, if any.

APPEARANCES

Bruce Lamon, Esq., represented Petitioner

Alan Murakami, Esq., represented Intervenor

Anthony T.J. Quan, Esq., represented Intervenor

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

Jeffrey Hunt, Staff Planner, County of Maui Department of Planning

Bryan Yee, Esq, represented the State Office of Planning

Laura Thielen, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that although the agenda indicated a meeting on June 9, the LUC will not have a quorum on this date and will only be meeting today and tomorrow (June 7 and 8) with no meeting on June 9.

Public Witness

1. Fairfax Reilly

Mr. Reilly stated that he is a Lanai City resident for the past 28 years and employed with the DOE as a high school counselor. Mr. Reilly expressed his concerns regarding the high level aquifer and the drinking water systems.

Mr. Murakami raised a few questions related to the chloride levels and the legal requirements of potability.

Mr. Lamon asked if Mr. Reilly was a member of the Lanaians for Sensible Growth (LSG).

Mr. Reilly replied in the affirmative and added that he was not speaking on their behalf, but as a concerned resident of Lanai.

Vice Chair Montgomery asked Mr. Reilly for his educational background or specialized field.

Mr. Reilly noted that his license was in school counseling and explained that he helps students transition out of high school and also has a background in engineering. Mr. Reilly added that he has attended some of the public forums and expounded on the need to protect the watershed since he believed that Lanai is a fragile place when it comes to potable water.

2. Ron McCumber

Mr. McCumber stated that he is a resident of Lanai City and the president of LSG, but was testifying today as a concerned citizen. Mr. McCumber also noted that he is a member of the Lanai Water Working Group and has been involved in water issues from day one. Mr. McCumber discussed the 1987 and 1990 MOA, ordinance 2408, the high level aquifer, the water advisory board, community impacts, and the water wells. Mr. McCumber asked the LUC to review this matter carefully as water is a precious commodity on Lanai.

Mr. Lamon raised a few questions regarding Lanai Water Company's new director, Cliff Jamile, and his extensive background and experience with water management.

Ms. Lovell posed a few questions in reference to the recent well and pump failures, DOH reports, and community notification.

Mr. Yee noted that the state had no questions for Mr. McCumber.

Mr. Murakami had a few questions related to water quality, DOH investigations, and monthly reports.

Commissioner Formby asked Mr. McCumber what the definition of “high level aquifer” meant to him.

Mr. McCumber stated that his definition was everything that have wells on since there is no other water sources available on the island and that all the wells are currently in the high level aquifer.

Vice Chair Montgomery had a few questions regarding Mr. McCumber’s belief that there is a lack of water except within the high level aquifer. Vice Chair Montgomery also posed questions regarding chemical testing of the wells.

Mr. McCumber explained that previous testimony by Lanai Company said that the company would find water outside of the high level aquifer and there was an expectation that they could use that water, but that did not work out as they anticipated. Mr. McCumber believed that there were no tests ever done for pesticides or DDT in the wells.

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

Chair Sakumoto noted that there were no other public witnesses.

EXECUTIVE SESSION

Commissioner Formby moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board’s attorney on questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities. Commissioner Im seconded the motion. Said motion was approved by voice votes.

The Commission entered into executive session at 12:00 p.m.

The open meeting reconvened at 12:25 p.m. A lunch recess was taken subsequently at 12:25 p.m. and the open meeting reconvened at 1:40 p.m.

Chair Sakumoto called the meeting to order and stated that the LUC will first address Castle and Cooke Resort’s objection to issue number 1 in the second prehearing order. The petitioner’s filing was received by the LUC on June 2, 2006.

Mr. Lamon stated that their position is based upon the prior record in the case, as well as the Supreme Court's decision and briefly summarized their filing.

Chair Sakumoto commented that this was the first time in his experience on the commission that the LUC has received an objection to the prehearing order. Chair Sakumoto asked Mr. Lamon if he had stated his objection at the time of the prehearing.

Mr. Lamon replied in the affirmative and added that he did not expect that there would be a hearing on their filing.

After a brief discussion on the filing, Chair Sakumoto stated that he was comfortable with the LUC's discussion on this matter and overruled the petitioner's objection.

Staff Report

1. Anthony Ching

Mr. Ching began his presentation and provided an orientation of three maps prepared by staff. The three maps included a GIS map rendering of the state land use boundaries; a map drawn to scale with petitioner's exhibit 37 (the John Mink depiction of the high level aquifer) overlaid; and a similar map of the high level aquifer that depicted the topography of Palawai Basin. Mr. Ching also summarized the staff's report, which included the procedural history and historical context for this docket.

A recess break was taken at 2:40 p.m. The meeting reconvened at 2:45 p.m.

Admission of Exhibits

Mr. Lamon introduced petitioner's exhibits 001 thru 128D.

Ms. Lovell commented that it was pretty hard to stipulate to the volume of petitioner's exhibits and noted that some of the exhibits were already in the record. Ms. Lovell added that the county had no objections but would like the opportunity to raise concerns, if any, at a later time.

Chair Sakumoto noted that he understood the county's position and suggested that each party introduce and summarize their exhibit, and also direct the LUC and the

parties to the particular exhibit upon presentation to help the proceedings move more efficiently.

Mr. Yee noted that the state concurs with the county and have no objections to admitting the petitioner's exhibits at this time.

Mr. Murakami stated that they also join in the concern and would not object to anything that has been previously submitted.

Chair Sakumoto noted that some of petitioner's exhibits were duplicated. As an example, exhibit 3 and 33 appear identical.

Mr. Lamon stated that Chair Sakumoto was correct and that there may be other duplicates.

Chair Sakumoto stated that petitioner's exhibits are admitted into the record, noting the reservations expressed by the parties with respect to the volume of these exhibits.

Ms. Lovell described and introduced the county's six exhibits. There were no objections by the parties. The county's exhibits 1R to 6R were admitted into the record.

Mr. Yee introduced the state's exhibits one through seven. There were no objections by the parties. The state's exhibits 1R to 7R were admitted into evidence.

Mr. Murakami introduced LSG's exhibits 1R to 25R. Mr. Murakami noted that the exhibits were introduced subject to duplications, which the other parties' may have submitted as their own exhibits.

Mr. Lamon noted that petitioner had no objections to the intervenor's exhibits, although they reserve the right to object to the admission of the testimony of Mr. Meyer in the event that he does not ultimately testify on this matter.

Mr. Murakami stated that Mr. Meyer was scheduled to appear via video conference on Friday, but will need to reschedule since Friday's meeting has been taken off the agenda.

Ms. Lovell noted that the county had no objections to the exhibits and concurred with Mr. Murakami that some exhibits may be duplicate to another parties' exhibits but will deal with that on a case-by-case basis.

Mr. Yee commented that the state had no objections to LSG's exhibits.

After a brief discussion on LSG's exhibit 17, the written testimony of Mr. Meyer, Chair Sakumoto suggested that Mr. Murakami introduce this exhibit at the time of Mr. Meyer's appearance via video conference. Chair Sakumoto also noted that since there are many duplicate exhibits, if a party is aware that their exhibit is the same as the other party, they could then remove the exhibit to keep the record clean as possible and the proceedings more efficient.

Petitioner's Witness

1. Tom Nance

Mr. Nance provided a brief summary of his background in education and professional experience. His testimony was admitted as petitioner's exhibit 87. Mr. Nance was requested to be qualified as an expert in hydrology and water resource engineering.

The county and the state had no objections.

Mr. Murakami noted that LSG objects and have objected previously as they believed that Mr. Nance is not qualified as an expert in hydrology. Mr. Murakami added that however, they do not have any objections to Mr. Nance being qualified as an expert in water resources.

Chair Sakumoto noted that the record of 1996 indicates that the Chair to that proceeding qualified Mr. Nance as an expert in hydrology. Chair Sakumoto added that they will note Intervenor's objection, but will proceed since Mr. Nance was previously qualified.

Mr. Nance discussed issues of the 1993 water management plan, the overview of the groundwater occurrence in exhibits 128A, 128C and 128D, design of well 14, and his 1996 testimony.

Commissioner Im asked for clarification on exhibits 128D and 128C, well number 10, and sea water levels in wells 1 and 9.

Mr. Nance further discussed the average use per day, sustainable yield pumped from the aquifer and the Palawai Basin, total pumpage, and water recharge. Mr. Nance discussed and referenced exhibits 119, 120, 121, and 122 regarding pumpage and the drop in chloride levels.

Commissioner Im commented that although he is not an expert, he believed that the more you use the water the higher the chlorides should be, rather than the chloride levels dropping.

Mr. Nance explained that all the wells show slight increases of salinity at the bottom regardless of where you are pulling from based on the permeability. Mr. Nance commented that in this instance the source of water and the source of the salts may not be one in the same. The leakage from the high-level ground water potentially has multiple compartments and they do not know how many compartments are intervening. In addition, all the water of Palawai Basin is geothermally heated and could also be a contributing factor. Mr. Nance noted that he did not have a short answer and could not tell what all the mechanisms are.

A recess break was taken at 4:00 p.m. The meeting reconvened at 4:10 p.m.

Mr. Nance continued to discuss the chloride levels of 250 ppm, exhibits 123 and 124 water level analysis and chloride trends, and exhibits 124, 125, and 127 water levels. Mr. Nance also referenced and discussed exhibits 111 through 118 to illustrate water leakage.

Commissioner Im posed questions in reference to the water sources in wells 1 and 9, leakage and dike compartments, the difference between the chloride levels, water altered by geothermal action, and desalinization.

Cross Examination

Ms. Lovell raised questions about exhibits 111 through 118, periodic water reports, titration issues, data on nitrates, and the proper distribution of wells both horizontal and vertical, and computing sustainable yield.

Mr. Yee posed questions regarding sustainable yield, existing infrastructure, chloride levels, and the Blackhawk analysis.

A recess break was taken at 5:30 p.m. The meeting reconvened at 5:45 p.m.

Mr. Murakami raised questions regarding the potential effects of the water introduced to wells 1 and 9, the combination of leakage and salt water convection, and the drop in well head levels and chlorides in the same period.

Commissioner Im noted that the question of whether the water was potable or not has been around for the last 15 years and that no tests were ever taken. Commissioner Im asked if the tests were too hard or expensive to test.

Mr. Nance noted that the cost is around three thousand dollars for each test and added that he could not answer why these tests were not done as it was up to the company.

Mr. Murakami continued and posed questions regarding the alternate sources of water to irrigate the golf course and the high level ground water resources.

Mr. Nance then discussed the Blackhawk study and tests that would determine the location of the outer limits of the high level aquifer.

After a discussion, Chair Sakumoto noted that Mr. Nance would need to return tomorrow morning to continue with the cross examination. The meeting will begin at 8:30 a.m.

The Commission went into recess at 7:00 p.m.

(Please refer to LUC Transcript of June 7, 2006 for more details on this matter.)