

LAND USE COMMISSION  
MINUTES OF MEETING

September 21, 2006

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

COMMISSIONERS PRESENT: Thomas Contrades  
Michael Formby  
Kyong-su Im  
Lisa Judge  
Duane Kanuha  
Ransom Piltz  
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Steven Montgomery  
Reuben Wong

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

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

ADOPTION OF MINUTES

Commissioner Kanuha moved to adopt the minutes of September 7, 2006 and the minutes of September 8, 2006. Commissioner Contrades seconded the motion. The minutes of September 7, 2006 and the minutes of September 8, 2006 were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Mr. Ching reported that the HCPO conference will be held on the first week of October. Mr. Ching polled the Commissioners with respect to the possibility of a Friday meeting on October 6 in Maui to allow for a continuation of the Hale Mua hearing especially if Director Foley has not completed his testimony.

Mr. Souki commented that they may have an alternate solution as Ms. Suyama could possibly answer the questions of Mr. Foley and that the parties are amenable with that suggestion.

Chair Judge stated that the Commission began with Mr. Foley and would prefer to complete questioning with him.

Vice Chair Formby noted that he had already cleared his calendar for October 3-5 for the HCPO conference and would need to check his calendar for October 6.

Commissioner Im commented that he too has committed October 3-5 for the conference and that it would be a hardship for him to attend another meeting on October 6.

Mr. Ching stated that given the Commission's input, he would seek to resolve this scheduling matter in another way and will report back to the Commission.

Chair Judge noted that the next item on the agenda, Executive Session, will be deferred until the full commission is present.

### A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that this was a continued hearing on Docket No. A05-755 Hale Mua Properties, LLC for the reclassification of approximately 232.135 acres of land currently in the Agricultural District into the Urban District, and 5.918 acres from the Rural District to the Urban District, at Waiehu, Maui, Hawaii for an approximately 466-lot single family residential subdivision.

## APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner

Sterling Kim, Hale Mua Properties

Jessie Souki, Esq., represented the County of Maui Department of Planning

Colleen Suyama, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Laura Thielen, State Office of Planning

Abe Mitsuda, State Office of Planning

## Public Witness

### 1. Douglas MacCluer

Mr. MacCluer distributed copies of his written testimony to the parties and the Commission. Mr. MacCluer stated that he was testifying as the Chairman of the Central Maui Soil and Water Conservation District. Mr. MacCluer also stated that he is a member of the State's Board of Agriculture and a member on the General Plan Advisory Committee. Mr. MacCluer indicated that he was not testifying on behalf of these groups. Mr. MacCluer commented that Hale Mua should remain in agricultural designation for reasons of shortage of agricultural lands, water supply, erosion control, drainage, sewage, and traffic.

Vice Chair Formby clarified if Mr. MacCluer was testifying as an individual on this docket.

Mr. MacCluer replied that he was testifying as the Chairman of the Central Maui Soil and Water Conservation District and that the Hale Mua parcel is within their boundaries.

Chair Judge inquired as to the mission of the Central Maui Soil and Water Conservation District.

Mr. MacCluer explained that they are a state organization comprised of 13 districts throughout the state and mandated to enhance and protect soil and water in the conservation districts. Mr. MacCluer added that the members are elected by the landowners of the area.

After a brief discussion, there were no further questions for Mr. MacCluer.

Chair Judge noted that there were no other public witnesses.

### Admission of Additional Exhibits

Mr. Kobayashi introduced and offered his letter to the LUC and attachment as petitioner's exhibit next in line. Mr. Kobayashi explained that his letter was in response to questions posed by the Commission at the last hearing regarding title and land commission awards.

Mr. Kobayashi also briefly described petitioner's exhibit 39, the corrected metes and bounds and accompanied map. At the last hearing, there was a slight discrepancy to the amount of acreage. The total acreage for the petition area is 238.181 acres. The amount being requested to reclassify from agricultural to urban is 232.032 and from rural to urban is 6.149 acres.

Chair Judge noted that there were several new exhibits being offered by the parties and called for a recess break to give the Commission time to review these exhibits.

A recess break was taken at 10:25 a.m. The meeting reconvened at 11:10 a.m.

Mr. Kobayashi clarified that the letter submitted as petitioner's exhibit next in line is exhibit 41. Mr. Kobayashi also described and offered petitioner's exhibit 42, an overlay of the land commission awards on appeal as they relate to the project's overall layout. There were no objections by the parties and the Commission. Petitioner's exhibits 39, 41, and 42 were admitted into evidence.

Mr. Souki described and offered the county's two new exhibit numbers 4 and 5. There were no objections by the parties and the Commission. The county's exhibits 4 and 5 were admitted into the record.

Mr. Yee described and offered OP's exhibit 1a, and exhibits 7 to 14. There were no objections by the parties and the Commission. The state's exhibits 1a, and 7 to 14 were admitted into evidence.

Chair Judge stated that the county has indicated that Mr. Foley would be available for questioning by the Commission at 10:00 a.m. tomorrow morning. The county also noted that they had no other witnesses.

## State's Witness

### 1. Sanford Beppu

Mr. Beppu stated that he is the Administrator of the Planning Section of the Facilities and Maintenance Branch, Department of Education (DOE). Mr. Beppu discussed the standard conditions imposed on new developments, education contribution agreements that offset project impacts, and the DOE's formula that is based upon the number of units in a project. Mr. Beppu also noted that for Hale Mua, the calculation was based upon the proposed 466 units, which would require 3.7 acres of donated lands and 1.3 million dollars in cash. Mr. Beppu commented that generally in lieu of land contributions, the DOE is willing to accept all cash contributions in the event that the developer is unable to contribute land or if the land is unsuitable. Mr. Beppu also discussed land and cash calculations, acceptable fair share contributions, standards for an elementary school, long range and mid-range plans, funding for design and construction, and the anticipated growth and needs of public school facilities in the area.

Mr. Souki posed questions relative to the schools in the area that are over capacity, including intermediate and high schools.

Commissioner Im posed questions regarding infrastructure built up to the property lines (sewer, water, road, electricity, etc.), potable and non-potable water use, traffic impacts, feasibility of the lands, and discussions between petitioner, the DOE, and the county.

Commissioner Kanuha had a few questions relative to the fair share contribution requirement, development of such BOE or DOE rule, regulation and/or board policy. Commissioner Kanuha also posed questions on the fair share contribution formula and asked if this information was available to the public.

Mr. Beppu briefly explained the calculations and noted that he would be providing more information on the formula in writing to the LUC, adding that the DOE's formula is available to the public.

Commissioner Piltz raised questions and concerns relative to imposing education fees and trying to catch up on past assessments.

Vice Chair Formby posed a few questions regarding the formula or standards used for the assessment and asked what the DOE uses to quantify that this standard is applied on a regular basis and not purely subjected to a particular project.

Chair Judge raised questions relative to the other proposed school that could handle the current and future student population growth in the area, design and construction monies, and the status of an agreement with Hale Mua.

Mr. Yee asked Mr. Beppu if the DOE would still accept the larger parcel of land offered by the petitioner if it could not be subdivided.

Mr. Beppu stated that in order for staff to maintain and supervise a school that is in excess of what the DOE needs, the DOE would be hesitant to accept a donation of lands that is far in excess of the 12 acres desired. However, Mr. Beppu added that he is generally familiar with the Hale Mua offer of the 18 acres of land and that the DOE would be willing to accept that acreage.

After a brief discussion, there were no further questions for Mr. Beppu.

A lunch break was taken at 12:10 p.m. The meeting reconvened at 1:45 p.m.

### EXECUTIVE SESSION

Commissioner Im 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 Contrades seconded the motion. The motion was unanimously approved by voice votes.

The Commission entered into executive session at 1:45 p.m.

The open meeting reconvened at 2:25 p.m.

Commissioner Contrades left the meeting at this time

### State's Witnesses

1. Roy Hardy

Mr. Hardy was qualified as an expert in water management. Mr. Hardy discussed the I`ao aquifer groundwater management area, total current pumpage at 18 mgd, sustainable yield as 20 mgd, and the difference between safe yield and sustainable yield. Mr. Hardy also noted that the I`ao aquifer is not at risk at this time and that the Waihe`e aquifer was under consideration for designation as a groundwater management area.

Mr. Souki posed questions regarding the other projects in the area that may service Hale Mua with drinking water, the Hamakuapoko well, and the I`ao aquifer.

Commissioner Piltz had a few questions relative to the county's control of the I`ao aquifer before designation, and the CWRM.

Commissioner Im raised questions regarding the DHHL planned construction at Central Maui and other upcoming projects that may need water.

Chair Judge posed questions related to the water use permits, private wells for individual residences, and infrastructure limitations.

After a brief discussion, there were no further questions for Mr. Hardy.

## 2. Laura Thielen

Ms. Thielen summarized the position of the Office of Planning and explained their role and recommendations in support of the petition. Ms. Thielen discussed issues of infrastructure upgrades, the need for affordable housing, and the purpose of the 201G process. Ms. Thielen also discussed the OP's change in position regarding the large lots, land donation and education fair share contributions, and commented that the OP recommends auto reversion for reclassification if the petitioner does not begin development within a specified time frame.

Mr. Souki posed questions regarding keeping the large lots in agricultural that may impact petitioner's ability to provide affordable housing, whether it is a substantial deviation from the 201G approval, and the petitioner needing to return to the county to revise the 201G approval.

A recess break was taken at 3:33 p.m. The meeting reconvened at 3:46 p.m.

Commissioner Im raised questions relative to the school impacts and their infrastructure requirements.

Chair Judge posed questions regarding the absence of a pro forma, market studies, and audited financial statements.

Commissioner Kanuha had a few questions related to OP's exhibit 9, King County School impact mitigation measures, and asked Ms. Thielen why the OP believes that this project should be exempted.

Ms. Thielen stated that the OP's perspective is that the fees do trickle down to the ultimate cost of the homes and that the OP is recommending that the impact fees be waived for the affordable homes. Ms. Thielen added that the DOE formula has an exemption for elderly housing since they believe that children would not be attending public schools from this type of project.

After a brief discussion, there were no further questions for Ms. Thielen.

Mr. Yee noted that they have no further witnesses and will rest their case except for the submittal of the fair share contribution formula from the DOE as requested by the Commission.

The meeting was at recess at 4:00 p.m.

*(Please refer to LUC Transcript of September 21, 2006 for more details on this matter.)*