

LAND USE COMMISSION
MINUTES OF MEETING

August 21, 2008

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

COMMISSIONERS PRESENT: Thomas Contrades
Kyle Chock
Vladimir Devens
Lisa Judge
Duane Kanuha
Normand Lezy
Nicholas Teves, Jr.
Reuben Wong

COMMISSIONERS ABSENT: Ransom Piltz (excused)

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

Chair Kanuha called the meeting to order at 10:35 a.m.

ADOPTION OF MINUTES

Commissioner Wong moved to adopt the minutes of August 7 and 8, 2008. Commissioner Judge seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Davidson noted that the schedule is filled until October 16 & 17. Mr. Davidson reminded the Commissioners to let Sandy know of any conflicts that they may have with the schedule.

A07-772 A & B PROPERTIES, INC. (Maui)

Chair Kanuha stated that this was a hearing on Docket No. A07-772 A & B Properties, Inc. (Maui) to consider the reclassification of approximately 94.352 acres of land, identified as Tax Map Key: 3-8-04: por. 2, por. 22, and por. 30 from the Agricultural District to the Urban District for the planned Kihei Residential Project at Waiakoa, Maui, Hawaii.

APPEARANCES

Benjamin Matsubara, Esq., representing Petitioner

Curtis Tabata, Esq., representing Petitioner

Dan Yasui, A&B Properties, Inc.

Kimberly Sloper, Esq., represented the County of Maui Department of Planning

Ann Kua, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Debra Mendez, State Office of Planning

Chair Kanuha asked petitioner if staff had informed them of the Commission's policy regarding reimbursement of hearing expenses.

Mr. Matsubara replied in the affirmative, adding that his client gladly accepted the reimbursement policy.

Chair Kanuha noted that there were no public witnesses.

Staff's Report

1. Bert Saruwatari

Mr. Saruwatari provided a map orientation of the project site and briefly summarized staff's report.

There were no questions for Mr. Saruwatari.

Admission of Exhibits

Mr. Matsubara described and offered petitioner's exhibits 1 through 8, 9a, 9b, 10a through 10d, 11a, 11b, 12, and 13 through 16. There were no objections by the parties.

Chair Kanuha clarified that petitioner's exhibit 8 included items A through H. After a brief discussion, petitioner's exhibits were admitted into evidence.

Ms. Sloper described county's exhibits 1 through 4. There were no objections by the parties. Said exhibits were admitted into the record.

Commissioner Teves entered the meeting at this time.

Mr. Yee described the Office of Planning's (OP) exhibits 1, 1a, 2 through 8, and 9 through 12. There were no objections by the parties. The OP's exhibits were admitted into evidence.

Petitioner's Presentation

Mr. Matsubara briefly summarized the petitioner's witness list and noted that they would be calling upon five live witnesses for today. Mr. Matsubara added that the state and county had no objections in qualifying the witnesses as experts in their fields.

Commissioner Lezy noted a disclosure that his firm provides legal services to Matson Navigation, a subsidiary of petitioner's parent company, A&B. Commissioner Lezy noted that he did not believe that there was a conflict. There were no objections by any party for Commissioner Lezy's continued participation in this matter.

Petitioner's Witnesses

1. Grant Chun

Mr. Chun stated that he was the Vice President of A&B Properties, Inc. and briefly described the project's description. Mr. Chun discussed the project's affordable housing component, commercial site, pedestrian convenient services, and noted that the project is focused on workforce housing designed for Maui residents.

Mr. Chun also addressed issues on water resources, treatment facilities, and the county's process of their general and community plans.

Mr. Chun discussed the agricultural issues and activities on the petition area, the fair share agreement with the DOT regarding traffic related improvements, and the ongoing discussions with the DOE to reach an agreement.

Ms. Sloper noted that the county had no questions for Mr. Chun.

Mr. Yee raised questions and concerns related to the water resources, the county's general plan, and the number of acres of agricultural lands outside of the petition area that would be leased to Monsanto.

Mr. Matsubara stated that the amount of agricultural lands to be leased to Monsanto is 485 acres for 10 years.

Mr. Yee asked whether petitioner had any objections to the OP's proposed conditions, with exceptions to conditions 16, 19, and 20.

Mr. Matsubara noted that they would continue to discuss all the conditions and that many of them appear to be acceptable to the petitioner.

Mr. Yee continued to pose questions related to the estimated deadline of 2016 for completion of the entire project, with the infrastructure completed before the 2016 projected completion date.

Mr. Matsubara clarified that the 2016 projected date would anticipate having gone through the county's zoning process. Mr. Matsubara added that the projected time schedule is still subject to additional entitlement approvals.

Commissioner Judge raised questions on the affordable housing units and wondered if there would be any affordable rentals.

Mr. Chun noted that this topic would be addressed at the county's Department of Housing and Human Concerns. However, the current proposal for the affordable housing is "for sale" units. Mr. Chun added that this is a unique product as the project is conceived to be detached condos with shared amenities and maintenance. The affordable housing will be mixed throughout the project.

Commissioner Wong posed questions and concerns regarding the county's plans and whether this project would be in concert with and not in conflict with the process to develop/amend the county's general plan.

Mr. Chun commented that their concern was to be able to deliver the product efficiently and believed that the petition and the county general plan amendment could proceed on parallel tracks.

Chair Kanuha raised questions on the status of the fair share agreements with the DOT and the DOE.

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

A recess break was taken at 11:40 a.m. The meeting reconvened at 11:55 a.m.

2. Keith Niiya

Mr. Matsubara noted that the parties agreed to qualify Mr. Niiya as an expert on transportation and traffic engineering.

Mr. Niiya stated that he is the Chief Transportation/Traffic Engineer with Austin Tsutsumi & Associates. Mr. Niiya's written testimony was submitted as petitioner's exhibit 9a. Mr. Niiya briefly summarized his testimony and stated that he prepared or supervised the development of the traffic impact studies and the TIAR for the project. Mr. Niiya discussed three different scenarios: 1) the existing conditions; 2) the 2016 base year traffic projection; and 3) the future year with the projected traffic added to the base year. Mr. Niiya also discussed his recommendations for traffic mitigation and added that he believed the TIAR had addressed the traffic impacts of the project.

Ms. Sloper raised questions regarding the comments of the Maui Department of Transportation, the public transportation system, and plans for incorporating bus stops.

Mr. Yee posed questions related to discussions with the state's DOT.

Commissioner Judge had questions related to the improvements identified on page 63 of the FEIS.

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

A lunch break was taken at 12:25 p.m. The meeting reconvened at 2:00 p.m.

3. Bert Toba

Mr. Toba stated that he was the Operations Manager/Senior Vice President at RM Towill Corporation. Mr. Toba stated that he prepared the Kihei engineering report and erosion drainage control. Mr. Toba's written testimony was admitted as petitioner's exhibit 10a. Mr. Toba discussed the existing infrastructure and whether it was capable of supporting the proposed project, and the proposed improvements.

Ms. Sloper noted that the county had no questions.

Mr. Yee raised questions on the mitigation improvement measures.

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

4. Glenn Kunihisa

Mr. Kunihisa stated that he was the President of CRE/ACM Consultants. Mr. Kunihisa was qualified as an expert in Real Estate and Market Analysis. Mr. Kunihisa's written testimony was admitted into evidence as petitioner's exhibit 11a. Mr. Kunihisa briefly summarized his written testimony and discussed economic trends, supply and demand, single-, residential- and multi-family sales. Mr. Kunihisa noted that the workforce community has a strong desire to live in the Kihei area and that this project would provide additional choices to the consumer and healthy competition.

Ms. Sloper stated that the county had no questions.

Mr. Yee noted that the state also had no questions for Mr. Kunihisa.

Commissioner Judge commented that the study was done in February 2007 and that it is already August 2008. Commissioner Judge wondered if that would change the pricing on the report.

Mr. Kunihisa stated that this project would address the low end and that there is a good demand in this area. Mr. Kunihisa added that in times like these, demand always exists. Having this product and the petitioner to commit to the subdivision would help to suppress prices in the long run.

Chair Kanuha wondered on the length of the entitlement process and what year did they use to determine what the market would be when the product hits the market.

Mr. Kunihisa stated that at the time he wrote the report, the current market was at a decline, and that they factored in the entitlement process and felt that the economy goes through different cycles. Mr. Kunihisa added that they believed that to proceed with this now would be advantageous to the petitioner.

There were no further questions for Mr. Kunihisa.

5. Michael Munekiyo

Mr. Munekiyo stated that he was the President of Munekiyo and Hiraga, Inc. Mr. Munekiyo was qualified as an expert in the field of Land Use Planning. Mr. Munekiyo stated that he prepared the EIS and discussed issues related to the Kihei

Makena community plan, the land use criteria relating to urban designation, and the status of the proceeding before the Maui Water Commission.

Ms. Sloper raised questions regarding the county's community plan, the application (if any) to amend the community plan, Act 26 (county's exhibit number 2), and the county's affordable housing policy.

Mr. Yee posed questions regarding the status of available water, the in-stream flow standards, and conservation measures for this project.

Commissioner Judge posed questions and concerns related to the ongoing general plan update process and community plan amendment.

Commissioner Wong commented on the county's general and community plan process parallel to the state level approval.

Chair Kanuha had questions related to the general and community plans and whether this petition would be consistent with the plan's designation.

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

Mr. Matsubara noted that he may recall Mr. Munekiyo to testify again in the future.

Chair Kanuha stated that this matter would be continued tomorrow morning at 8:30 a.m.

Commissioner Judge noted that she would be recusing herself for the next agenda item, Makena Resort Corp. Commissioner Judge left the meeting at this time.

A recess break was taken at 2:55 p.m. The meeting reconvened at 3:00 p.m.

Chair Kanuha stated that he would be recusing himself from this agenda item. Chair Kanuha left the meeting at this time.

A97-721 MAKENA RESORT CORP. (Maui)

Presiding Officer Devens stated that this was an action meeting to consider Petitioner's Motion for Fourth Amendment to the Findings of Fact, Conclusions of Law and Decision and Order, filed on February 19, 1998.

APPEARANCES

Randall Sakumoto, Esq., representing Petitioner

Don Fujimoto, Makena Resort Corp.

Roy Figueroa, Makena Resort Corp.

Kimberly Sloper, Esq., represented the County of Maui Department of Planning

Ann Kua, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Debra Mendez, State Office of Planning

Presiding Officer Devens noted that there were no public witnesses.

Presiding Officer Devens asked petitioner if staff had informed them of the Commission's policy regarding reimbursement of hearing expenses.

Mr. Sakumoto replied in the affirmative adding that his client had no objections to the policy.

Petitioner's Presentation

Mr. Sakumoto began his presentation and referenced an aerial photo.

Mr. Fujimoto briefly discussed the project's location and the regional traffic improvements.

Mr. Sakumoto stated that petitioner was seeking an extension of time on condition number 12, which requires the petitioner to enter an agreement with the DOT regarding regional and local traffic improvements. Mr. Sakumoto added that his client had acquired an interest in the petition area and was trying to diligently satisfy the LUC's condition.

Ms. Sloper stated that the county had no questions.

Mr. Yee noted that the state also had no questions for Mr. Sakumoto.

Commissioner Wong questioned the status of the agreement between the petitioner and the DOT.

Mr. Figueroa stated that he was directly involved in the discussions with the DOT and three other developers in the area for regional improvements. Mr. Figueroa commented that they were also going through a change in zoning and entitlement process with the county. Mr. Figueroa added that all three developers have come to an agreement with the fair share agreement and have a collective traffic impact report.

Ms. Sloper noted that the county continues to process the change in zoning application for lands that Mr. Fujimoto had identified and that action on the land use application change in zoning has not been granted to date.

Mr. Yee commented that the state had no questions.

Commissioner Wong moved that petitioner's motion For Fourth Amendment to the Findings of Fact, Conclusions of Law and Decision and Order be approved to extend the deadline within 10 years from June 1, 2000 to June 1, 2010. Commissioner Lezy seconded the motion.

The Commission was polled as follows:

Ayes: Wong, Lezy, Chock, Contrades, Teves, and Devens.

The motion passed with 6 yes, 2 recused, and 1 absent.

Presiding Officer Devens noted that the Commission would be in recess until 8:30 a.m. tomorrow morning.

The meeting was at recess at 3:20 p.m.

(Please refer to LUC Transcript of August 21, 2008 for more details on this matter.)