

LAND USE COMMISSION
MINUTES OF MEETING

September 12, 2008

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

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Vladimir Devens
Duane Kanuha
Lisa Judge
Normand Lezy

COMMISSIONERS ABSENT: Nicholas Teves, Jr.
Reuben Wong
Ransom Piltz (excused)

STAFF PRESENT: Orlando Davidson, Executive Officer
Bert Saruwatari, Staff 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 12:05 p.m.

Chair Kanuha noted for the record that Commissioner Piltz has missed the passed few meetings due to personal reasons and that those absences are excused. Chair Kanuha asked that the Executive Officer note that Commissioner Piltz is excused upon polling the Commissioners on any action item.

ADOPTION OF MINUTES

Vice Chair Devens noted an amendment to the minutes of August 22, 2008, on page 4, second paragraph to read "...comments by Mr. Yee and *the efforts by* the petitioner to try to streamline this process."

Commissioner Contrades then moved to adopt the minutes of August 21 and 22, 2008, as amended. Vice Chair Devens seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Davidson noted that the schedule is starting to fill up till October 2 and reminded the Commissioners to inform Sandy of any conflicts to the proposed schedule.

SP94-386 DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT, COUNTY OF MAUI (Lanai Sanitary Landfill (Maui))

Chair Kanuha stated that this was an action meeting to consider the County of Maui Department of Public Works and Environmental Management, Solid Waste Division's request for a ten-year extension and to delete Condition Nos. 3 and 4 of the Findings of Fact, Conclusions of Law, and Decision and Order issued on September 13, 1994.

APPEARANCES

Jane Lovell, Esq., represented the County of Maui Department of Planning
Michael Hopper, Esq., represented the County of Maui Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Chair Kanuha noted that there were no public witnesses.

Mr. Yee commented that the Office of Planning had no objections to the request.

Staff's Report

1. Bert Saruwatari

Mr. Saruwatari provided a map orientation referencing a 1994 LUC map of the project site and briefly summarized issues noted by staff, as referenced on pages 12 and 13 of the staff report.

County's Witness

1. Cheryl Okuma

Ms. Okuma stated that she is the Director of the county's Environmental Management Division and briefly described her educational and employment history. Ms. Okuma began a PowerPoint presentation and discussed the project's location, the request for a 10-year time extension to the year 2014, and the request to delete condition numbers 3 and 4, as they believed that the county has fulfilled and complied with these conditions.

Ms. Lovell clarified that the reason the department was requesting the deletion of these conditions was that they were fully complied with and no longer applicable.

Ms. Okuma continued with her presentation and discussed the CIP storm water project, negotiations with Castle & Cooke on the conveyance of the landfill property, and the necessary permits needed.

Commissioner Judge inquired if this was an expansion of the Lanai landfill and posed questions on the solid waste plan and the possibility of future landfill sites.

Ms. Okuma replied that the request was not for the expansion, as this project is currently at 35 acres with a life expectancy till the year 2020. However, the county plans to place the landfill on a standby status in the future and will try to divert or recycle as much as they can of the solid waste. Ms. Okuma also discussed the draft solid waste plan and noted that a future landfill site has not yet been determined.

Commissioner Lezy posed questions on the solid waste management plan and the landfill on a standby basis.

Ms. Okuma noted that the county plans to have programs in place to divert as much of the solid waste out of the landfill as possible. Ms. Okuma added that although they would keep the landfill on a standby or backup basis, they would still need all the necessary operating permits since they would not be taking the landfill out of service. Ms. Okuma commented that a conceptual blueprint could be found on their website and that further engineering and feasibility studies with finer details would need to be added.

Chair Kanuha stated that staff has raised a number of issues in their report and asked whether the county had the opportunity to review them.

Ms. Lovell noted that she believed that Ms. Okuma had addressed the issues in her testimony. Ms. Lovell added that they had no objections to the staff's recommended modification to condition no. 1 for clarity and the staff's recommended additional condition number 10.

Commissioner Judge requested to substitute the term "non-potable water" to "non-drinking water" in the planning commission's condition number 3.

Ms. Lovell replied in the affirmative.

Commissioner Judge then moved to approve the county's request for a 10-year time extension with the amendment to the conditions as discussed and as proposed by staff. The motion was seconded by Commissioner Contrades.

The Commission was polled as follows:

Ayes: Judge, Contrades, Chock, Lezy, Devens, and Kanuha.

The motion passed with 6 yes, 1 excused, 2 absent.

A recess break was taken at 12:40 p.m. The meeting reconvened at 12:50 p.m.

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

Chair Kanuha stated that this was a continued 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.

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

Michael Hopper, 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

Abe Mitsuda, State Office of Planning

Chair Kanuha commended the County of Maui for coordinating an excellent HCPO conference, particularly Ms. Kua, who was very instrumental in putting together a superb conference.

Chair Kanuha noted that there were no public witnesses.

County's Witnesses

1. Richard Mayer

Mr. Mayer stated that he retired from the Maui Community College after 34 years as a faculty member. Mr. Mayer discussed his educational and employment background in economics and cultural geography, and his community involvement in several boards and commissions. Mr. Mayer is currently the Vice Chair of the General Plan Advisory Committee (GPAC) and discussed his role on the committee, its process, and the general growth plan. Mr. Mayer noted that there are 16,000 housing units that are already entitled, adding that the GPAC recommends that no large project be approved by the LUC until the general plan is adopted and a comprehensive plan is in place.

Mr. Matsubara raised a few questions related to the countywide policy plan and the processing timeline for approvals.

Mr. Yee had a few questions and concerns regarding the classification and future zoning approvals, and inquired if the LUC's process in parallel would interfere with any other GPAC activities.

Mr. Mayer noted that the LUC's process would not be helpful as it would cloud or complicate the process of trying to determine the urban growth boundaries.

Commissioner Contrades asked if it was the position of Mr. Mayer or his committee that the LUC should not approve any petitions until this GPAC process is completed.

Mr. Mayer noted that GPAC recommends that the LUC wait until the GPAC's work is done.

Commissioner Lezy asked what date would the plan be completed, should everything go through seamlessly.

Mr. Mayer stated that they should be completed by August of next year; then the plan is transmitted to the county council and could be completed by the end of 2010 or early 2011.

Commissioner Judge commented that she has great respect for GPAC and that the plan's process and approval is a complicated, lengthy process. However, she would find it difficult to wait for two years, in the best case scenario for completion, as the LUC had time frames and does not have the ability to table petitions.

Commissioner Contrades questioned the number of affordable units out of the 16,000 units that have entitlements. Commissioner Contrades had a concern that this petition would need to return to the LUC in 2011 and begin the process all over, while the people in Maui desperately need housing now.

Commissioner Judge asked what the level of entitlement was for the 16,000 units.

Mr. Mayer replied that all 16,000 were fully entitled.

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

A recess break was taken at 1:40 p.m. The meeting reconvened at 1:50 p.m.

2. Jeff Hunt

Mr. Hunt briefly described his educational and employment background, and was qualified as an expert in the field of land use planning. Mr. Hunt summarized his written testimony and stated that the county was recommending denial of the petition based solely on the process and timing, adding that they had no concerns on the project itself. Mr. Hunt discussed the urban growth boundaries and the review process.

Mr. Matsubara raised a few questions regarding the preliminary draft plan and noted that the draft includes the project within the urban growth boundaries. Mr. Matsubara also referenced county's exhibit 1, page 2, and stated that the LUC's criteria for urban classification is similar to the Maui plan's review. Mr. Matsubara also posed a few questions related to the 16,000 units and whether they had the three layers of approvals to qualify for building permits.

Mr. Yee noted that the State had no questions for Mr. Hunt.

Commissioner Judge raised questions regarding the county's approval process for permits, and the urban growth boundaries and community plan amendments.

Vice Chair Devens noted that he sympathized with the county and appreciates their efforts, however with the amendment to HRS section 205-17, the LUC needs to consider the general plans that are already in place, as opposed to those that may be adopted in the future.

Mr. Hunt concurred and noted that the county would also interpret that as the plans that are already in place.

Commissioner Contrades posed questions related to the urban growth boundaries that would ultimately be approved by the council, the processing timeline, and the need for affordable housing now.

Chair Kanuha questioned if this time-out/pause policy was supported by the current administration, the county council, and other entities. Chair Kanuha also had a few questions on the planning history of Maui.

Mr. Hunt stated that it was supported by the Mayor and that they have not had a response from the council yet. Mr. Hunt added that GPAC has communicated this

policy with the Mayor, council, and the LUC. Mr. Hunt then discussed the county's six community plans, the urban growth boundaries, and the Maui Island plan.

Commissioner Lezy posed a few questions regarding the potential of lands classified as urban that would fall outside of the urban growth boundaries.

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

Admission of Additional Exhibits

Mr. Yee noted that the Office of Planning (OP) had been optimistic about reaching an agreement with the petitioner regarding energy conservation but that such an agreement did not occur. Mr. Yee added that the OP would be calling upon their witness (Gail Suzuki-Jones) to testify and described and offered OP's exhibits 13, 14, 15, and 16. There were no objections by the parties. Said exhibits were admitted into evidence.

Mr. Yee then requested to qualify Ms. Suzuki-Jones as an expert in the field of energy conservation. There were no objections. Ms. Suzuki Jones was qualified as an expert in the field of energy conservation.

State's Witness

1. Gail Suzuki-Jones

Ms. Suzuki-Jones stated that she was an energy analyst with the DBEDT/Strategic Industries Division. Ms. Suzuki-Jones briefly summarized her written testimony and stated that the DBEDT strongly supports the LEED Homes Silver level for the market units and LEED Certified for the affordable housing units. Ms. Suzuki-Jones discussed the benefits of green building for energy and water efficiency.

Mr. Matsubara posed a few questions regarding state laws, if any, that require LEED certification for private residential units.

Ms. Lovell commented that the county generally supports the idea of green building, however, they had concerns on the difficulties in enforcement. Ms. Lovell asked if there were resources available to help enforce these provisions.

Ms. Suzuki-Jones stated that it is the U.S. Green Building Council (USGBC) that approves and certifies the projects. Ms. Suzuki-Jones added that they are conducting LEED training for state employees and would gladly open it up to the interested county employees. Ms. Suzuki-Jones further discussed ways to accomplish energy saving goals, certification, and LEED projects on Maui.

Commissioner Lezy asked if there was any effort to encourage the state legislature to take action on mandatory LEED for residential homes.

Ms. Suzuki-Jones replied that there was none at this time.

Commissioner Chock asked why they are recommending LEED for homes versus LEED neighborhood design.

Ms. Suzuki-Jones stated that LEED for homes was thought to be the most appropriate for this type of project, primarily for residential homes, as the commercial component of the project was not yet well defined.

Chair Kanuha wondered if LEED for homes was undergoing another review.

Ms. Suzuki-Jones noted that all LEED programs are continuously improving. The larger commercial project will be modified in 2009, but the LEED for homes is always evaluating the applicability and will not be modified for a while. Ms. Suzuki-Jones added that the standards of today may not be the standards that the petitioner may need to comply with in the future, and that they could register early to establish that criteria.

Commissioner Judge asked if they are recommending LEED for the residential homes and not for the commercial component.

Ms. Suzuki-Jones stated that the LUC could consider extending something for the commercial component. However, they felt that they did not have enough information at this time to recommend anything for the commercial component. Ms. Suzuki-Jones further discussed different cost factors and estimates, registration and certification fees, and rater fees.

Commissioner Chock asked the number of LEED certified professionals in the State of Hawaii.

Ms. Suzuki-Jones noted that there are over 200 certified professionals in the state and two raters, one on Oahu and one on Maui.

After a brief discussion, there were no further questions for Ms. Suzuki-Jones.

Chair Kanuha stated that this hearing would continue on the October 16 and 17 meetings.

The meeting was adjourned at 3:25 p.m.

(Please refer to LUC Transcript of September 12, 2008 for more details on this matter.)