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LAND USE COMMISSION

STATE OF HAWAI'I

HEARING

All-792 DEPARTMENT OF HOUSING and)
HUMAN CONCERNS, COUNTY OF MAUI,)
LANA'I.)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing
at Hale Kupuna O Lana'i, 1144 'Ilima Avenue, Lana'i
City, Hawai'i, commencing at 9:30 a.m. on May 26,
2011, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

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A P P E A R A N C E S

COMMISSIONERS:

- VLADIMIR DEVENS (Chairman)
- RONALD HELLER
- LISA M. JUDGE
- NORMAND LEZY
- ERNEST MATSUMURA

EXECUTIVE OFFICER: ORLANDO DAVIDSON
 ACTING CHIEF CLERK: RILEY HAKODA
 STAFF PLANNERS: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. A11-792

For the Petitioner: CURTIS TABATA, ESQ.
 BENJAMIN MATSUBARA, ESQ.

For the County: JEFFREY UEOKA, ESQ.
 Deputy Corporation Counsel

For the State: BRYAN YEE, ESQ.
 Deputy Attorney General

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1 CHAIRMAN DEVENS: This meeting is called to
2 order. Today is May 26, 2011. Today's hearing's
3 being held on the Island of Lana'i. Before we get
4 started wanted to recognize and introduce our new
5 Commissioner from the Big Island, Ernie Matsumura.
6 Welcome aboard.

7 COMMISSIONER MATSUMURA: Thank you.

8 CHAIRMAN DEVENS: First item on the agenda
9 is the adoption of the minutes. Any corrections or
10 changes, Commissioners? There being none, is there a
11 motion to adopt?

12 COMMISSIONER JUDGE: Motion to adopt.

13 CHAIRMAN DEVENS: Is there a second?

14 COMMISSIONER HELLER: Second.

15 CHAIRMAN DEVENS: Commissioner Heller
16 seconds. Any discussion? All those in favor say aye.
17 (Aye) Unanimous. Dan, you want to go through our
18 schedule.

19 MR. DAVIDSON: Thank you, Chair. On June 8
20 the plan that we're working on is to conclude this
21 docket via video conference that we're going to be
22 investigating this afternoon. So that will be the
23 plan. I think other things are as noted. And as
24 always if there are any conflicts or questions contact
25 either Riley or myself. Thank you.

1 CHAIRMAN DEVENS: The only other docket on
2 the agenda is the docket before us which is All-792
3 Department of Housing and Human Concerns, County of
4 Maui, Lana'i, to amend the Agricultural Land Use
5 Boundaries into the Urban District for approximately
6 73 acres at Lana'i City, Island of Lana'i, State of
7 Hawai'i, Tax Map Key (2)4-9-2:058.

8 Start with the appearance of the parties,
9 starting with the Petitioner.

10 MR. TABATA: Good morning, Mr. Chair,
11 members of the Commission. Curtis Tabata and Ben
12 Matsubara appearing on behalf of the Petitioner,
13 Department of Housing and Human Concerns, County of
14 Maui. To my right it Buddy Almeida from the
15 Department of Housing and Human Concerns. Also
16 present is Councilmember Riki Hokama.

17 CHAIRMAN DEVENS: Good morning to you all.

18 MR. UEOKA: Good morning. Deputy
19 Corporation Counsel Jeffrey Ueoka representing the
20 County of Maui Department of Planning. With us today
21 is Director Will Spence and staff planner Joe Prutch.

22 CHAIRMAN DEVENS: Good morning to you all.

23 MR. YEE: Good morning. Deputy Attorney
24 General Bryan Yee on behalf of the Office of Planning.

25 CHAIRMAN DEVENS: Mr. Souki be appearing

1 today? No?

2 MR. YEE: No. The Office of Planning will
3 not have him.

4 CHAIRMAN DEVENS: Thank you. Let me update
5 the record. On February 28, 2011 the Land Use
6 Commission received Petitioner's Notice of Intent to
7 File a Land Use District Boundary Amendment Petition;
8 Exhibits A & B.

9 On March 14, 2011 the Commission received
10 Petitioner's Affidavit regarding: The Affidavits of
11 Publication, and Exhibit 1.

12 On April 19, 2011 the Notice of Hearing was
13 published in this docket as required by law.

14 On May 2, 2011 the Commission received this
15 Petition for Land Use District Boundary Amendment,
16 Exhibits 1 through 13, plus Appendix E, the Cultural
17 Impact Statement.

18 On May 16, 2011 the Commission held a
19 pre-hearing conference for this docket and received
20 written correspondence from the Office of the Mayor,
21 County of Maui regarding the Lana'i Affordable Housing
22 Project; Position Statement of County of Maui-Lana'i
23 Affordable Housing; OP's List of Witnesses, List of
24 Exhibits, and Exhibits 1 through 3; Petitioner's List
25 of Exhibits, List of Witnesses and Exhibits 16 through

1 25.

2 On May 18th, 2011, the Commissioner received
3 the County of Maui's Revised Position Statement --
4 Lana'i Affordable Housing and testimony Report of the
5 Maui Planning Department.

6 On May 24, 2011 the Commission received
7 Petitioner's Stipulated Findings of Fact, Conclusions
8 of Law and Decision and Order.

9 On May 25th, 2011 the Commission received an
10 Errata to the Office of Planning's Written Testimony
11 in Support of the Petition with Conditions.

12 That is the status of the record at this
13 time. Petitioner, as far as the policy regarding
14 reimbursement, I take it that your client will be
15 abiding by that policy?

16 MR. TABATA: Yes.

17 CHAIRMAN DEVENS: We're going to start by
18 taking public witnesses. Do we have any witnesses
19 signed up?

20 MR. DAVIDSON: Councilmember Riki Hokama.

21 CHAIRMAN DEVENS: Before we take the first
22 witness we're going to have Mr. Derrickson give a
23 quick orientation on the location of the Petitioned
24 property.

25 MR. DERRICKSON: Commissioners, Map No. 1

1 identifies the Petition Area in yellow. We're
2 currently located centrally within Lana'i City. The
3 Petition Area is roughly a mile and a half to the west
4 and downslope from where we are today. Adjacent to
5 the exiting urban area is the Department of Hawaiian
6 Home Lands project. There's another area which is a
7 future expansion for the Department of Education, and
8 the Petition Area lies adjacent to that.

9 CHAIRMAN DEVENS: Thank you very much.
10 Councilmember, you can give your testimony. If we
11 could first swear you in.

12 COUNCILMEMBER RIKI HOKAMA
13 being first duly sworn to tell the truth, was examined
14 and testified as follows:

15 THE WITNESS: I do.

16 CHAIRMAN DEVENS: Give us your name and
17 address please.

18 THE WITNESS: Thank you. My name is Riki
19 Hokama. I'm at 438 Fifth Street, Lana'i City. I'm
20 the current sitting councilmember from the Maui County
21 Council.

22 Commissioner Chair Devens, Commissioners,
23 thank you very much for being here on Lana'i this
24 morning. I'm here speaking in support of the Petition
25 requesting reclassification from Agriculture to Urban

1 land for a County of Maui affordable housing project.

2 I can tell you that the department under the
3 leadership of Director Jo-Ann Ridao and through our
4 consultants Pacific Architect and the engineering
5 firms and the planning consultants that are here today
6 to answer your questions, should you have any, have
7 been very diligent in coming before the community
8 multiple times asking for community input, their
9 thoughts on how they would like to see this project
10 move forward.

11 We thank you for allowing us to do a
12 phased-in project over a period of time that would fit
13 our community and unique criteria and situations that
14 we face here.

15 And again, Members, although we may be a
16 small community, what we're doing here is a total
17 island economic development consideration. We on
18 Lana'i believe that this is going to be a positive
19 step forward for our economic development. It also
20 provides an alternative to the current existing
21 housing practice of only having Castle & Cooke provide
22 housing for the community.

23 The county does not see this as competition
24 but as an adjacent opportunity and option for
25 residents of this island to have choices in housing.

1 There's also opportunities for us that the community
2 has asked for regarding long-term bed facilities to
3 reduce the dependency of our state hospital and using
4 acute beds for long-term care of our community
5 residents.

6 I would say it is my firm belief that this
7 community supports this project. We ask for your
8 affirmative decision, hopefully today. If not
9 possible, as soon as you can regarding the 201
10 conditions of timing. I'm happy to answer any
11 questions. Again, we would ask for your favorable
12 consideration. Thank you very much.

13 CHAIRMAN DEVENS: Thank you, Councilmember.
14 Any questions for this witness?

15 MR. TABATA: No questions.

16 CHAIRMAN DEVENS: County, do you have any
17 questions for this witness?

18 MR. UEOKA: No questions.

19 CHAIRMAN DEVENS: Mr. Yee?

20 MR. YEE: No questions.

21 CHAIRMAN DEVENS: Commissioners? There
22 being none, thank you for your testimony. We
23 appreciate it. That seems to be the only public
24 witness we have in this matter.

25 MR. DAVIDSON: That's correct, Chair.

1 CHAIRMAN DEVENS: Why don't we start with
2 the exhibits and see what exhibits are being offered
3 and what needs to be admitted into evidence.

4 Mr. Tabata, you have Exhibits 1 through 25, and
5 Appendix E as in echo?

6 MR. TABATA: Yes, Mr. Chair. And if I may I
7 have one housekeeping matter I'd like to address.

8 CHAIRMAN DEVENS: Sure.

9 MR. TABATA: Our Petitioner's Exhibit No.
10 13, which is a resolution for this matter, was
11 incorrectly stated on our Exhibit List as being
12 Exhibit 12 to the Petition. In fact it is Exhibit 13
13 to the Petition. I just wanted to clear that up.

14 CHAIRMAN DEVENS: All right. So that will
15 be marked for identification as 13, the resolution you
16 just referred to, correct?

17 MR. TABATA: Yes. Thank you.

18 CHAIRMAN DEVENS: In total there's
19 Exhibits 1 through 25 and appendix E that you're
20 moving into evidence?

21 MR. TABATA: That's correct.

22 CHAIRMAN DEVENS: Any objections from the
23 parties?

24 MR. UEOKA: No objections.

25 MR. YEE: No objections.

1 CHAIRMAN DEVENS: There being none those
2 exhibits will be received and admitted into evidence.
3 County, you have exhibits. Is it just Exhibit 1?

4 MR. UEOKA: Correct.

5 CHAIRMAN DEVENS: You're moving that into
6 evidence.

7 MR. UEOKA: Yes, please.

8 CHAIRMAN DEVENS: Parties have no objections
9 to that?

10 MR. TABATA: No objections.

11 MR. YEE: No objections.

12 CHAIRMAN DEVENS: So admitted. Mr. Yee,
13 your Exhibits are 1 through 3?

14 MR. YEE: Yes. We move them into evidence.

15 CHAIRMAN DEVENS: Any objections?

16 MR. TABATA: No objections.

17 MR. UEOKA: No objections.

18 CHAIRMAN DEVENS: So admitted. Petitioner,
19 you have, is it two witnesses that you listed? One
20 has submitted written testimony, Mr. Munekiyo?

21 MR. TABATA: Yes. At this time, however,
22 the Petitioner is prepared to rest on its case based
23 on its exhibits submitted. Our witnesses are present
24 to answer any questions the parties or the
25 Commissioners may have.

1 CHAIRMAN DEVENS: And the other witness was
2 Mr. Colin Oshiro?

3 MR. TABATA: Yes, our civil engineer.

4 CHAIRMAN DEVENS: County, you had Director
5 Spence submitted written testimony. Was there any
6 other witnesses you intended to present this morning?

7 MR. UEOKA: No. But we are also prepared to
8 rest on our exhibits.

9 CHAIRMAN DEVENS: Mr. Yee, Director Souki
10 did submit written testimony. Was there anyone else
11 you intended to call?

12 MR. YEE: We do not intend to call any
13 witnesses today.

14 CHAIRMAN DEVENS: I want to note for the
15 record that the Commissioners have all had a chance to
16 review all the pleadings that have been submitted and
17 filed in this case. My personal review of the
18 pleadings is that they were very thorough, very
19 complete, very informative.

20 And I think we have sufficient information
21 in the pleadings that have been filed along with the
22 exhibits and the written testimony to make a decision
23 in this matter.

24 Is there anything else that the Petitioner
25 would like to add as far as presentation in this case?

1 MR. TABATA: If we may, Mr. Chair, we'd like
2 to submit a final argument.

3 CHAIRMAN DEVENS: Sure. As far as any
4 exhibits, any witnesses, is there anything else that
5 the County wants to introduce?

6 MR. UEOKA: Nothing, thank you.

7 CHAIRMAN DEVENS: Mr. Yee?

8 MR. YEE: Nothing further.

9 CHAIRMAN DEVENS: There's also a Stipulated
10 Findings of Fact, Conclusions of Law that has been
11 signed off by the respective parties. Is that
12 correct, Petitioner?

13 MR. TABATA: That's correct. All parties
14 have signed off. And that was filed with the
15 Commission on May 24.

16 CHAIRMAN DEVENS: And as far as any concerns
17 or issues that may have been raised earlier, have they
18 all been addressed as far as your perspective, County?

19 MR. UEOKA: Yes.

20 CHAIRMAN DEVENS: Office of Planning?

21 MR. YEE: Yes.

22 CHAIRMAN DEVENS: Commissioners have any
23 questions for the parties, any clarification that's
24 needed, any additional informational any of us may
25 want from the parties? There appears to be nothing

1 else. We're familiar with the record, Mr. Tabata.
2 I'm comfortable with us moving into any type of
3 introduction. Or if you want to wrap it up as a
4 closing, however you want to present it.

5 MR. TABATA: If we could just wrap it up
6 with a closing argument. I'll try to keep it brief.

7 CHAIRMAN DEVENS: County, OP have any
8 objections to proceeding in that manner?

9 MR. UEOKA: None.

10 MR. YEE: No objection.

11 CHAIRMAN DEVENS: Go ahead, Mr. Tabata.

12 MR. TABATA: Thank you. Mr. Chair, Members
13 of the Commission. One of the nice things about being
14 a land use lawyer is that every once in a while we get
15 the chance to work on a project that seeks to promote
16 the public interest. Some of these projects that our
17 law firm has been honored to work on include the
18 Pupukeya Ridge preservation project, Pupukeya Paumalu
19 Preserve and the Salvation Army's Kroc Community
20 Center in Kapolei.

21 Today we have the privilege of working on
22 another project that essentially seeks to better the
23 lives of others. The Lana'i Affordable Housing
24 Project is a residential project that is 100 percent
25 affordable. It will deliver to the families of Lana'i

1 approximately 208 single-family lots of approximately
2 6,000 square feet and approximately 217 multifamily
3 units on approximately 13.29 acres of land.

4 The Project is situated on 73 acres of land
5 located in Lana'i City. And we are asking that the
6 Commission reclassify those 73 acres from the
7 Agricultural District to the Urban District.

8 To address the Project's impacts and
9 mitigation measures Petitioner worked with the Maui
10 Count Planning Department, the State Office of
11 Planning in drafting a Stipulated Findings of Facts,
12 Conclusions of Law and Decision and Order that was
13 filed with the Commission on May 24, 2011.

14 The result of this stipulated Decision and
15 Order is that the parties are in agreement with
16 respect to the facts and law of this case as well as
17 the reclassification of the 73 acres from ag to urban.

18 We would like to thank the Office of
19 Planning and the Planning Department for their
20 assistance, cooperation and hard work on this
21 Petition. We would also like to thank the people of
22 Lana'i for having us on their beautiful island and the
23 Commission and its staff for their time and
24 consideration of this Petition. Thank you.

25 CHAIRMAN DEVENS: Thank you, Mr. Tabata.

1 County?

2 MR. UEOKA: Nothing further.

3 CHAIRMAN DEVENS: Mr. Yee, you have anything
4 you want to close with?

5 MR. YEE: This is a 100 percent affordable
6 housing project. It is consistent with the goals and
7 principles of the Hawai'i State Plan as well as with
8 the priorities of the Administration's New Day.

9 We wanted to assure that the Office of
10 Planning has critically analyzed the Project and, for
11 example, has made different recommendations and
12 changes to the proposed D&O that you find stipulated
13 before you.

14 We have received cooperation from the
15 Petitioner. And based upon that we are able to
16 present to you a lean and efficient presentation.
17 The Office of Planning stands in support of the
18 Project and hopes you concur. Thank you.

19 CHAIRMAN DEVENS: Thank you, Mr. Yee.
20 Commissioners have any questions for the parties?
21 Commissioner Judge.

22 COMMISSIONER JUDGE: Mr. Yee, I'm sorry.
23 Did you say that you have different proposals?

24 MR. YEE: No. We have critically
25 analyzed -- I just wanted to assure you that we didn't

1 simply say "yes", that we critically analyzed what
2 they presented, that we discussed before this what
3 should be changed. We came to an agreement on all
4 those changes. For example, there's language in
5 archaeology and civil defense that were added because
6 of the Office of Planning's participation. So I just
7 wanted to assure you it's not a blank check that we
8 signed.

9 COMMISSIONER JUDGE: Thank you for that
10 clarification.

11 CHAIRMAN DEVENS: Any further questions?
12 Commissioner Heller.

13 COMMISSIONER HELLER: This actually may be
14 more a question for the Commission staff. But since
15 we just got the Proposed Stipulation and Decision and
16 Order a couple days ago, I'm wondering if the staff
17 has had an adequate opportunity to review it and make
18 sure that it complies with our normal standard terms
19 and conditions and meets all of our procedures.

20 CHAIRMAN DEVENS: That's a good point. I
21 believe they have. However, because we don't have a
22 quorum of six, we won't be able to move on the matter
23 today. If we did I'd be inclined to move on it right
24 now. And I'd be in favor of moving it and passing it
25 through. But, unfortunately, we don't have the sixth

1 member here. I apologize to the parties for that.
2 But we will be moving on this matter at the next
3 hearing and hopefully expedite it, move it through.
4 So hopefully the staff will have additional time to
5 review it.

6 COMMISSIONER HELLER: Thank you.

7 CHAIRMAN DEVENS: I appreciate that, Ron.
8 Unless the parties want to add anything more to the
9 record I think we've got everything. The Commission
10 really appreciates the presentations that have been
11 given in this case. I don't want anyone to think we
12 are trying to abbreviate anything.

13 But in this case the briefings have been so
14 thorough, the information presented to us so clearly
15 and completely that it's really made our job easier in
16 understanding what it is that we have before us.

17 But please understand that we read through
18 everything, study everything, and we take it very
19 seriously in considering the various factors that go
20 into the decision-making process. And we've all had
21 time to think that over.

22 Therefore, if we had six members I myself
23 would have moved today to pass this through. But
24 unfortunately we don't because of travel arrangements
25 scheduling conflicts.

1 But at this point unless the parties want to
2 add anything more we'll close the record and we'll
3 take this matter up at the next hearing and hopefully
4 get this done. Commissioners want to add anything to
5 the record? There being nothing further, we'll stand
6 adjourned. Thank you.

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8 (The proceedings were adjourned at 9:50 a.m.)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matter on the 26th day of May 2011;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

DATED: This _____ day of _____ 2011

HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter

