

LAND USE COMMISSION
MINUTES OF MEETING

September 18, 2003

Maunaloa/Ilima Room
Wailea Marriott, an Outrigger Resort
3700 Wailea Alanui
Wailea, Maui, Hawaii 96753-8332

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Lawrence Ing
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Bert Saruwatari, Staff Planner
Caroline Lorenzo, Acting Chief Clerk
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 9:39 a.m.

Commissioner Montgomery was not present to the proceedings at this time.

ADOPTION OF MINUTES

Vice Chair Catalani moved to adopt the Land Use Commission meeting minutes of September 4-5, 2003. Commissioner Sakumoto seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that there will be an HCPO conference on October 8 -10, 2003 followed by a field trip to view the Kapalua Mauka project on October 10, 2003.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Chair Ing announced that this was an action meeting to adopt the Findings of Fact, Conclusions of Law, and Decision and Order, regarding the petition to reclassify approximately 336.984 acres of land currently in the Conservation District into the Urban District at Honokohau, North Kona, Hawaii for the development of a mix of light industrial and industrial-commercial uses for the Kaloko-Honokohau Business park.

APPEARANCES

John Chang, Esq., represented the Office of Planning

Abe Mitsuda, Office of Planning

Mary Alice Evans, Office of Planning

Stanley Bond, Kaloko-Honokohau National Historical Park

Mr. Ching provided the Commission and parties with a three-page comparison, which indicated the red line version of the findings of fact that the Park had objections to. It also described the Park's and staff's comments. Mr. Ching also stated that only technical, non-substantive changes were to be made to ensure the integrity of the document.

Mr. Ching indicated the following:

- Changes recommended by the Park Service were made to Findings of Fact (FOF) #150 and #125.
- FOF #126: The Park objected to the word "exquisite" that was deleted from the finding of fact and felt that exquisite in front of "resource" acknowledged it as a fact and that a resource was identified. The term exquisite was considered non-substantive.
- FOF #129 and #130: The term KAHO took the place of National Park.

Commissioner Montgomery was present to the proceedings at this time.

- FOF #135: The objection was still the same that from the Park's standpoint, the finding should apply to all National Parks and not just the Kaloko-Honokohau National Park.
- FOF #141: The objection was that there was a change in the meaning from the general to the narrow and specific. Staff removed "such as the proposed business park" and noted "the project." The last sentence was also deleted because it did not add to the substance of the finding.

- FOF #162: The objection was that the new finding did not include the substance for the prior finding of fact from the TSA docket and that this was an unlawful change. Staff believed that for clarity, the new language consolidated the facts of the deleted finding of facts with the intent of providing a clear and factual representation of the intent.
- FOF #168: The objection was that the direct quote from the TSA docket was altered and that this specific statement was made more general and this change was not discussed by the Commission at its meeting on August 7, 2003.

Mr. Ching further indicated that staff's effort was designed to clarify and not alter.

Mr. Chang felt that the Commission's staff did not make any substantial changes to the findings and agreed that the changes clarified and did not alter the findings.

Mr. Bond provided a historical background on the process of how the parties had developed a stipulated decision and order, which was presented to and heard by the Commission on June 16, 2003. Mr. Bond indicated that the evidentiary part of that hearing was closed on June 27, 2003 and further indicated that the Commission adopted the stipulated order at its August 7, 2003 meeting, and staff was directed to make technical, grammatical changes to the stipulated order. Mr. Bond felt that substantive changes were made to the document, and that in order for the Commission to accept the order with substantive changes would require the reopening of the hearing.

There was much discussion amongst Mr. Bond and the Commissioners regarding staff's changes and the Park's objections.

Commissioner Sakumoto moved to enter into executive session to consult with counsel regarding the legal aspects of this case. Commissioner Yukimura seconded the motion and said motion was unanimously approved by voice votes.

The Commission exited regular session at 10:16 a.m. and entered executive session at 10:18 a.m. The meeting reconvened at 10:24 a.m.

Chair Ing indicated that the Commission would like to have more time to read the presentation of both the National Park and staff. This item was deferred until the afternoon.

A break was taken at 10:25 a.m. The meeting reconvened at 10:42 a.m.

A03-739 A&B PROPERTIES, INC. (Maui)

Chair Ing announced that this was a continued hearing, last heard on September 5, 2003, to consider reclassifying approximately 138.158 acres of land currently in the Agricultural District into the Urban District at Kahului, Maui, Hawaii, for a light industrial subdivision.

APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner

Curtis Tabata, Esq., represented Petitioner

Dan Yasui, A&B Properties, Inc.

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

Michael Foley, County of Maui Department of Planning

Clayton Yoshida, County of Maui Department of Planning

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

PUBLIC WITNESSES

1. Steven Bronstein

Mr. Bronstein provided the Commission with a brief summary of his written testimony. Mr. Bronstein indicated that he was in favor of big box developments but did not feel the location in the 1990 report was appropriate. There were no questions by the parties or the Commission.

2. Richard Mayer

Mr. Mayer expressed concerns about the scale of this project and its relationship to affordable housing. He commented that the employees generated by this development would need affordable housing. Mr. Mayer asked that the Commission carefully investigate the relationship between this project and the ability of the employees of this project to be housed. He also asked that the Commission set as one of its conditions the donation of 100-200 acres to the County or to the Maui Economic Opportunity for the purpose of developing affordable housing. Mr. Mayer also expressed concerns on long-term care facilities, traffic, and schools. There were no questions by the parties or the Commission.

3. Craig Henderson

Mr. Henderson expressed concerns regarding the placement of a traffic light at Hookele Street. He also noted that the new Krispy Kreme would increase traffic backing

up from the airport. He suggested that the infrastructure (sewers and water) for retail be put in to solve a potential problem. There were no questions by the parties and the Commission.

4. Daniel Grantham

Mr. Grantham provided the Commission with a videotape of the council's meeting of September 24, 2001. He then gave a brief summary of the meeting, clarifying the basis for the council's previous disapproval of this project.

Vice Chair Catalani posed the following questions to which Mr. Grantham could not provide a response:

- Why did the county council reject the community plan amendment?
- What factors made the county council change their minds?
- What initially concerned them and how were those concerns resolved?

There were no other questions by the parties and the Commission.

5. Lance Holter

Mr. Holter expressed concerns regarding affordable housing on Maui and pointed out the institutional ownership of Alexander & Baldwin. He also noted that water was a public trust and should not be owned by large private corporations. He further noted that Alexander & Baldwin needed to provide land for housing for Maui's working families.

Commissioner Coppa asked questions regarding real estate. There were no other questions from the parties or the Commission.

6. Sally Raisbeck

Ms. Raisbeck expressed concerns over water issues. She provided information on the county water system and on how it was divided. She pointed out that the sources of water and the control of water were both in flux on Maui.

Commissioner Yukimura commented that he heard the Mayor being interviewed on a local radio station. He noted that in the interview, the Mayor indicated that the County of Maui still issued water meters, which gave the appearance that water was still available.

Ms. Raisbeck clarified that the Mayor stated had that the County will not take any more water meter reservations, and that the Board of Water Supply supported that decision.

A lunch break was taken at 11:53 a.m., and the meeting reconvened at 1:15 p.m.

A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Chair Ing announced that this was a continuation of the action meeting to adopt the Findings of Fact, Conclusions of Law, and Decision and Order, regarding the petition to reclassify approximately 336.984 acres of land currently in the Conservation District into the Urban District at Honokohau, North Kona, Hawaii for the development of a mix of light industrial and industrial-commercial uses for the Kaloko-Honokohau Business park.

APPEARANCES

John Chang, Esq., represented the Office of Planning
Abe Mitsuda, Office of Planning
Mary Alice Evans, Office of Planning
Stanley Bond, Kaloko-Honokohau National Historical Park

Commissioner Coppa moved to the adopt the decision and order with amendments to FOF 50, 125, 129, 130, 141, and 168. The Commission was polled as follows:

Ayes: Commissioners Coppa, Desai, Sakumoto, Yukimura, Montgomery, Catalani, and Ing

The motion passed with 7 ayes and 2 absent.

A03-739 A&B PROPERTIES, INC. (Maui)

Benjamin Matsubara, Esq., represented Petitioner
Curtis Tabata, Esq., represented Petitioner
Stanley Kuriyama, A&B Properties, Inc.
Jane Lovell, Esq., represented County of Maui Department of Planning
Michael Foley, County of Maui Department of Planning
Clayton Yoshida, County of Maui Department of Planning
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning

Chair Ing announced that this was a continued hearing to consider reclassifying approximately 138.158 acres of land currently in the Agricultural District into the Urban District at Kahului, Maui, Hawaii, for a light industrial subdivision.

PUBLIC WITNESSES

7. Sean Lester

Mr. Lester provided the Commission with a summary of his written testimony.

Mr. Lester testified that he would like the Commission to deny the Petitioner's Petition because the development was proposed on prime agricultural land in the primary corridor traversed by airport visitors, for the incomplete nature of the application, and for the uncertainty of water resources. He believed that a comprehensive examination of alternative land uses for this area would be fruitful before it was considered for non-agricultural purposes. Mr. Lester also stated that it would be prudent to obtain traffic mitigation studies for the area, with such studies paid for by the developer and reviewed by this Commission and the appropriate Maui county agencies. He noted that approvals should not be considered until there were assurances that there would be coordination among the landowner and the various state and county agencies. There were no questions by the parties and the Commission.

8. Lucienne D'Naie

Ms. D'Naie expressed concerns regarding planning issues and the need for promoting sustainable solutions for long-term growth on Maui. She also expressed the need for housing for senior citizens and walkable communities that were not dependent upon transportation. She further expressed the need for affordable housing. There were no questions by the parties and the Commission.

The County introduced Exhibit C-9. There were no objections, and said exhibit was admitted into the record by the Commission.

The State introduced an amended list of witnesses and an amended list of exhibits along with Exhibit 9. There were no objections and said amended witness and exhibit lists and Exhibit 9 were admitted into the record by the Commission.

STATE'S WITNESSES

1. Abe Mitsuda

Mr. Mitsuda stated that the State was in support of the proposed light industrial project and the reclassification of the 138-acre petition area from agricultural to urban

with conditions. Mr. Mitsuda also stated that the State agreed that the reclassification of the petition area will not have a significant negative impact on Maui's agriculture; however, he indicated that traffic problems existed in the vicinity of the proposed development.

Mr. Mitsuda indicated that the State's main concern was the compatibility of the project with existing and future plans for Kahului Airport to ensure that this major facility remained functionally viable. He also outlined conditions pertaining to adequate water source for the proposed development, aviation easements, traffic impacts, fair share, best management practices, storage and disposal of hazardous materials, wastewater transmission and treatment, drainage systems, the Right-to-Farm Act, and a solid waste management plan.

Commissioner Sakumoto asked for clarification on the proposed conditions related to the aviation easement. Mr. Mitsuda indicated that due to the proximity of the airport, it should be protected with an aviation easement.

Vice Chair Catalani asked for an explanation as to how the State came up with the conclusion that there was ample land for agricultural and that there would be no significant impacts. Mr. Mitsuda indicated that if the development was planned well and mitigation measures were in place, the development would be a logical extension in terms of urbanization. He further indicated that there was a statewide process to identify the best agricultural lands in the State.

A break was taken at 2:22 p.m., and the meeting reconvened at 2:37 p.m.

Vice Chair Catalani was not present to the proceedings at this time.

2. Roy Hardy

Mr. Hardy stated that he was the Groundwater Regulation Branch Chief with the State Commission on Water Resource Management. Mr. Hardy also stated that the decision to designate a water management area was performed under the jurisdiction of the Water Commission. Mr. Hardy explained the water resource management area designation process and the role of the State and County in this process.

Ms. Lovell asked Mr. Hardy if he disagreed with the County of Maui Department of Water Supply's conditions for this project. Mr. Hardy responded in the negative.

Vice Chair Catalani was present to the proceedings at this time.

Commissioner Coppa asked about recycled water. Mr. Hardy indicated that one of the provisions in the code provided the Commission with the authority to require dual systems that used recycled water.

Commissioner Desai asked if there was a concern in Maui County about the lack of water in the present and future. He expressed a concern that although private developers were able to take care of their water needs, the public's interest was not often addressed. Mr. Hardy explained the planning side of the process. He referenced the Water Use and Development Plan that the County used as a vehicle to identify availability of water for future needs.

Chair Ing commented that there was confusion as to whether water permits were no longer being issued. Mr. Hardy clarified that the County will not be taking any further reservations for water.

3. Benjamin R. Schlapak

Mr. Schlapak stated that he was the district manager for the O'ahu District Airports Division.

Mr. Schlapak indicated that the State's current position on the expansion of the Kahului Airport was to proceed with the planned improvements, and that the most immediate requirement involved terminal improvements to reduce congestion in light of the new security requirements. Mr. Schlapak also indicated that in the near term, the State will proceed with projects involving the cargo apron, the alien species inspection facility, additional fuel storage, additional helicopter facilities, and lease lots. The State would then proceed with the new Airport Access Road and the runway extension for Main Runway 2-20.

Mr. Chang asked why the aviation easement was necessary. Mr. Schlapak indicated that it was required as a runway protection zone, which ran 2,500 feet from the end of a major runway.

Mr. Chang also asked if the aviation easement was federally mandated. Mr. Schlapak responded in the affirmative and indicated that the FAA required that the airport owner either own the runway protection zone or have it under its control.

Mr. Chang offered Exhibit 10 as evidence into the record. There were no objections and said exhibit was admitted into the record by the Commission.

Ms. Lovell asked what steps would be taken in the next 5 years in regard to construction of the runway extension. Mr. Schlapak responded that a decision had to be made as to which runway length was necessary. He noted that a reclassification

application needed to be processed by the Commission involving land needed for the runway extension and other improvements.

A break was taken at 3:45 p.m., and the meeting reconvened at 4:00 p.m.

Ms. Lovell asked Mr. Schlapak to describe the lands that will need reclassification. Mr. Schlapak indicated that there were lands that needed to be reclassified from agricultural to urban located above Hana Highway. He added that there was part of the Naval Air Station Kahului that needed reclassification.

Commissioner Coppa expressed concern to hear that this issue was being discussed for the last 6 months and only now being revived when this Petition was filed.

The proceedings recessed at 4:30 p.m. and will resume on September 19, 2003 at 8:00 a.m.

(Please refer to the LUC transcript for more details on the above matters.)