

LAND USE COMMISSION
MINUTES OF MEETING

December 5, 2003

Conference Room 405
Leiopapa A Kamehameha
235 So. Beretania Street
Honolulu, Hawaii

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

COMMISSIONERS ABSENT: Isaac Fiesta
Kyong-Su Im

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

Vice Chair Catalani called the meeting to order at 8:40 a.m.

ADOPTION OF MINUTES

Commissioner Coppa moved to adopt the Land Use Commission meeting minutes of November 20, 2003 and November 21, 2003. Commissioner Sakumoto seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that workload for the next Commission meeting will be quite intense. Attorney General Mark Bennett will advise the Commission on the Koa Ridge appeal. There will be a status report on Kuleana Kuikahi and the Kamehameha School's Big Island Campus special permit; the Shigekane motion for order to show cause; the Sierra Club's motion for Koa Ridge, with respect for

the designation with review to accept authority; and the potential for parties to the Moana docket to come before the Commission to discuss their progress and discussions with the county. We anticipate the February meetings to be held in Maui to discuss affordable housing and fast track projects, as well as Kapalua Mauka. We are also anticipating a number of filings from Maui, as well as the Big Island.

Commissioner Montgomery noted that the affordable housing issue should be included in the February meetings in Maui and questioned if the Commission would be addressed by the new director of the HCDCH, since she is formerly from Maui.

Mr. Ching stated that he anticipates the February 19th meeting schedule to include fast track affordable housing issues. Mr. Ching further stated that he spoke with Stephanie Aveiro, the new HCDCH director, who indicated that she would try to be available and participate in the hearing.

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

Vice Chair Catalani announced that this was a continued hearing on Docket No. A03-739 A & B Properties, Inc. (Maui), last heard on September 18, 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.

On November 14, 2003, the Commission received Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

On November 19, 2003, the Commission received the County of Maui Corporation Counsel/Planning Department's letter to the Executive Officer with comments and recommendations regarding Petitioner's November 14, 2003 filing.

On November 25, 2003, the Commission received the Office of Planning's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order dated November 14, 2003.

On December 3, 2003, the Petitioner submitted a letter to the Parties to consolidate Petitioner's position regarding the Office of Planning's Exception to the Petitioner's proposed decision and order and the County of Maui's November 19, 2003, comments.

APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner
Stan Kuriyama, President of A & B, Inc.

John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning
Jane Lovell, Esq., represented County of Maui Department of Planning
Jeff Mikulina, Sierra Club Hawaii Chapter

PUBLIC WITNESSES (Please refer to the LUC transcript for additional details.)

1. Jeff Mikulina

Mr. Mikulina stated that he is the Executive Director of Sierra Club Hawaii Chapter. He requested that the Commission defer decision making on this docket until the next regular scheduled meeting on Maui, due to a number of substantial issues affecting the project, which the Sierra Club believes remain unresolved. There were no further questions by the parties and the Commission.

Ms. Lovell stated that the county had no questions of Mr. Mikulina and added that the county would also prefer that matters affecting the county of Maui be held on Maui.

PETITIONER'S WITNESSES (Please refer to the LUC transcript for additional details.)

1. Benjamin Matsubara

Mr. Matsubara stated that A & B properties, Inc. is requesting to reclassify approx. 138.158 acres of land at Kahului Maui from the state land use Agricultural District to the Urban District for purposes of developing and building Phase II of the Maui Business Park.

Mr. Matsubara added that his argument will be comprised of two sections. The first section will be the significant issues raised during the course of the proceedings, and the evidence, representations and commitments submitted. The issues will be: 1) potable water resources; 2) the agricultural impact; 3) affordable housing; 4) market conditions; and 5) traffic. The second section will address the few points that remain unresolved between the Office of Planning and the Petitioner in relationship to a portion of the findings of fact, a condition relating to the Runway Protection Zone, and minor modifications of a condition.

After discussion, it was noted by Vice Chair Catalani that Meredith Ching of A & B Properties, Inc. provided clarification in reference to a question about a recent judicial ruling.

A recess break was taken at 9:45 a.m. The meeting reconvened at 10:00 a.m.

Mr. Chang stated that they have agreed to the proposed decision and order filed by the Petitioner, and noted that they have worked out most of the exceptions, except for the three that Petitioner had previously brought up during the morning's testimony. After discussion by the Commission, there were no further questions by the parties and the Commission.

Ms. Lovell noted that the county has stated its position in their letter to Executive Officer, Anthony Ching, dated November 19, 2003, indicating that in this letter, the county has submitted its proposed changes to the petitioner's proposed findings of fact, conclusions of law, and decision and order. Ms. Lovell requested that the letter be made a part of the official record.

Mr. Matsubara noted that they had no objections to Maui County's letter and a willingness to incorporate the requested changes.

After discussion, there were no further questions by the parties and the Commission.

Commissioner Ing proposed two new conditions. First proposal would be that the 32.33 acres portion be used for no more than 25% for retail purposes; the larger 105.822 acres portion be no more than 50% allowed for retail purposes. Secondly, in reference to affordable housing, a minimum of 10 acres to be located in Central Maui be contributed by the Petitioner to either the county of Maui or a non-profit corporation for affordable housing.

Commissioner Coppa noted that philosophically, he would like the market to dictate and impose the limits on retail and light industrial from a business standpoint. Commissioner Coppa added that a study would probably be warranted.

Commissioner Desai stated that he would like to hear from the Petitioner regarding the addition of these conditions.

Mr. Matsubara noted that Mr. Kuriyama could assist on the housing concerns and the percentage of retail versus light industrial.

Mr. Kuriyama stated that they want to assure the Commission that they take these residential projects very seriously and appreciate the Commission's approval of them. In reference to the affordable housing issues, they intend to provide additional housing as quickly as possible and are committed to satisfy the requirements of a study. Mr. Kuriyama added that there is a need for affordable housing and have no objections to providing that housing in Central Maui, where the project would be located.

Vice Chair Catalani stated that this exchange between the Parties and the Commission could be the reason why this discussion should be held on Maui, rather than on Oahu. Vice Chair Catalani requested that the Commission discuss with counsel the issue of where this hearing should be held as a statutory matter regardless of what the policy concerns are.

Commissioner Coppa moved that the Commission go in to executive session to discuss with counsel the issue of where this hearing should be held. Commissioner Montgomery seconded the motion. The motion was unanimously approved by voice votes.

The Commission exited regular session and entered executive session.

The meeting reconvened and Commissioner Montgomery moved that this hearing be continued to defer action on this matter until the February Board meeting. Commissioner Sakumoto seconded the motion adding that the Commission is not fine tuning some of the conditions, but rather still discussing the appropriateness of the substance in the conditions and would like time to review the language.

The commission was polled as follows:

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

Nays: Commissioner Coppa

The motion passed with a vote of 6 yes, 1 no, and 2 absent.

Vice Chair Catalani requested for the anticipated Commission schedule with respect to the February hearings.

Mr. Ching stated that the January meetings are slated for Honolulu. The February 5, 6, 19, and 20 meetings have tentatively been marked for Maui with Maui docket items.

Ms. Lovell indicated that she has a trial scheduled for the latter part of the month and would prefer the earlier of the two meeting dates. Vice Chair Catalani noted that the Commission would like to have Ms. Lovell present at these meetings and will try to accommodate her request.

Commissioner Coppa moved to adjourn the meeting, seconded by Commissioner Yukimura. The proceedings adjourned at 11:25 a.m.