

LAND USE COMMISSION  
MINUTES OF MEETING

February 5, 2004  
Kapalua/Napili Meeting Room  
Sheraton Maui Kaanapali Beach Resort  
2605 Kaanapali Parkway  
Lahaina, Hawaii

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

COMMISSIONERS ABSENT: Bruce Coppa  
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

Chair Ing called the meeting to order at 10:00 a.m.

ADOPTION OF MINUTES

Commissioner Fiesta moved to adopt the Land Use Commission meeting minutes of January 15, 2004 and January 16, 2004. Commissioner Montgomery seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that changes on the calendar includes the cancellation of two meetings, March 4 and 5, and the April 22 and 23 meetings. The Commission will be returning to Maui on February 19 and 20 to continue the hearing for Kapalua Mauka, Docket No. A03-741.

Chair Ing noted that the Commission has received a Writ of Prohibition filed by the Kingdom of Hawaii Nation Ministry Trust. In reading the submittal, it refers to the reclassifying of land in Kahului for expansion of the airport and facilities. Chair Ing added that there is no such item on the Commission docket for today, however, the Commission will take this under advisement.

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

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

This is a continued hearing on Docket No. A03-739 A & B Properties, Inc. (Maui), last heard on December 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.

On January 27, 2004, the Commission received the Stipulated Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Exhibit A.

APPEARANCES

Benjamin Matsubara, Esq., represented A & B Properties, Inc.  
Stanley Kuriyama, President of A & B Properties, Inc.  
Jane Lovell, Esq., represented Maui Planning Office  
Michael Foley, Maui Planning Office  
John Chang, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning  
Mary Alice Evans, State Office of Planning

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

1. Daniel Grantham

Mr. Grantham stated that he is the Chair of the Maui Sierra Club and expressed his appreciation to the Commission for returning to Maui to consider this docket item. Mr. Grantham commented that these big boxes will impact the Maui small business local communities. He added that he strongly supports local businesses and desires to help keep the local people to live, work, and shop within their communities.

Commissioner Montgomery noted that at the December meeting, the applicant was asked to consider 10 acres for affordable housing and questioned if Mr. Grantham believes the 10 aces is sufficient for affordable housing.

Mr. Grantham stated that 138 acres for affordable housing would be more sufficient due to the number of jobs that would be created. Mr. Grantham added that more information could be provided from Lance Holter, who will also be testifying and providing information.

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

## 2. DeGray Vanderbilt

Mr. Vanderbilt stated that he is a resident of Molokai and expressed his concern regarding the need for affordable housing for the local people of Maui. He added that the 138 acres for affordable housing is warranted.

Commissioner Montgomery questioned if there are residents who still live on Molokai's affordable housing and commuting to work via the ferry.

Mr. Vanderbilt replied that there are people who work in Maui and live on Molokai, as the island has taken a lot of steps in their community plans to provide for affordable housing there.

Commissioner Desai asked if there has been a study done for this project to determine how much housing might be needed for the employees and the types of jobs available. He understood the need for affordable housing but did not think it reasonable to burden a single developer with a demand for 138 acres for affordable housing.

After a brief discussion, there were no further questions by the Commission or the parties.

## 3. Sean Lester

Mr. Lester stated that he is a resident of Pukalani. Mr. Lester made reference to the Focus Maui Nui's Executive Summary and commented that 60 percent of Maui's population rents. He added that this percentage could increase with the possibility of the 5,000 new jobs this project will create. Mr. Lester commented that A&B is a very profitable and large corporation, which also has a great impact on all levels of life for Maui residents and believes that the 138 acres for affordable housing is a reasonable amount. Mr. Lester indicated that the big box stores have negatively impacted the community and continues to drive out small businesses.

There were no further questions by the Commission or the parties.

4. Mahealani Ventura Oliver

Ms. Ventura-Oliver stated that she is a title examiner and that there is a criteria of legal ownership to the lands that the petitioners must prove. She added that people are aware that they have inherited interests and that legal ownerships must be thoroughly examined.

Commissioner Fiesta questioned why Ms. Ventura-Oliver believes that A&B does not have legal ownership and if the Petitioner has brought the title before the Commission.

Ms. Ventura-Oliver stated that as a title examiner, she would need to examine the title before she could make any decision or recommendations.

Mr. Matsubara indicated that the petitioner has filed, as part of the petition, the requisite title documents for ownership.

There were no further questions by the Commission or the parties.

A recess break was taken at 11:05 a.m. and the proceedings reconvened at 11:30 a.m.

5. Lance Holter

Mr. Holter stated that he is a citizen of Paia, Maui. He added that facts from the Maui Data Book 2002 indicates that the average price of a home in Maui is \$509,000, and that the median income on Maui per average working individual is \$26,000 per year. The cost for a family to live on Maui would be \$52,250, of which 35% allows a family to afford a mortgage of \$1300. Paia has always been linked to Kahului, where the volume of traffic is coming thru Paia. The land that was previously donated for affordable housing is in this area. The traffic impact statement will not allow the traffic to come thru this intersection. All this land was designated but no affordable homes were built because of the inadequate transportation corridors. He added that since A&B owns 37,000 acres of land on Maui, he believes that a donation of 138 for affordable housing is sufficient.

Mr. Matsubara noted that the 37,000 acres of land mentioned by Mr. Holter is being actively used for sugar production and cultivation.

Commissioner Fiesta noted the creation of 7,800 more jobs and where they will find these people to fill the jobs. He questioned if Mr. Holter knew what is the unemployment rate for Maui.

Mr. Holter believed that Maui has the lowest unemployment rate in the state of about 3 percent.

Commissioner Fiesta commented that although the figure appears low, 3 percent could be in the thousands. He added that if there is no true accurate number, it may not be that 7,800 more people will be moving to Maui to work there.

After a brief discussion, there were no further questions from the Commission and the parties.

6. Zandra Souza Amaral

Ms. Souza Amaral stated that she is a realtor and a member of the Maui Nui Task Force, a committee tasked to look at affordable housing and have presented their proposal to the county. She added that the Maui Nui Task Force has also helped to build affordable housing on DHHL lands.

There were no questions from the Commission and the parties.

7. Lissa Kahiamoe

Ms. Kahiamoe stated that she was here today, not as a member of the public, but by special appearance of His Royal Majesty Akahi Nui, King of the Hawaiian Islands and trustee of the Kingdom of Hawaii Nation Ministry Trust. She added that she has brought to the Commission information pertaining to all land matters and urged the Commission to research these matters at the Bureau of Conveyance.

There were no questions from the Commission and the parties.

8. Foster Ampong

Mr. Ampong stated that he is testifying as an individual resident and appeared in front of the Commission to exercise his inherited rights. He noted that in reference to rezoning, issues such as inadequate infrastructure, and land titles need to be addressed. Mr. Ampong also had concerns about the water and how much of it will be used for these planned developments within the next five to twenty years. He noted that if there are answers, to please forward to his PO Box number 12566.

There were no questions by the Commission and the parties.

Mr. Lester requested to comment on more information regarding the affordable housing issue, and stated that the Affordable Housing Task Force will look into long-

term, permanent affordable housing, as found in the Vermont model. There were no questions by the Commission or the parties.

### Staff Report

#### 1. Anthony Ching

Mr. Ching, Executive Officer, provided a GIS map orientation of the area and briefly summarized the staff report before the Commissioners. Mr. Ching noted that staff received a partial stipulation filed on January 27. Staff will make certain recommendations should the Commission adopt the partial stipulation, advanced by the parties. These recommendations reflect necessary procedural updates, which staff believe are a part of the existing record and should be reflected in the final order. Staff will also offer technical amendments to ensure that the findings are appropriately connected to the decision-making criteria and conditions of approval. After a brief discussion, there were no further questions.

A lunch break was taken at 12:45 p.m. The proceedings reconvened at 1:55 p.m.

Mr. Matsubara indicated that the Petitioner had no objections to the recommended changes proposed by staff.

Ms. Lovell indicated that the County has worked with the Petitioner on this language and they are satisfied and agree to the changes recommended by staff.

Mr. Chang added that the State had no comments.

Commissioner Sakumoto had a concern regarding the cap of 50 percent retail/commercial for the project or petition area. Commissioner Sakumoto asked if that percentage could rise above 50 percent if the demand for light industrial space decreased. Mr. Matsubara replied that the 50 percent cap on commercial/retail uses applied to all of the petition area.

Chair Ing noted that light industrial zoning in the county of Maui also allows for office spaces and apartment buildings.

Vice Chair Catalani had a concern regarding condition 19 and the 50/50 mix and questioned if the eight years were to anticipate traffic patterns.

Mr. Matsubara stated that the traffic concerns would result if the retail activity were to exceed the light industrial percentage. Mr. Matsubara added that the eight-year timeframe would allow new roadway improvements, the Airport access plan, and the

widening of other roadways to be completed. He added that they also have a sales period of approximately five years to assess the market mix.

Vice Chair Catalani stated that he is not confident of the assumptions detailed in the first traffic study regarding traffic mix. He added that while the initial project called for a light industrial, it appeared that the end result was more of a retail project.

Mr. Matsubara replied that they anticipate completing entitlements in 2005, infrastructural construction by 2013, with sales to run between 2008 to 2023. Mr. Kuriyama added that both light industrial and retail land will be made available to the public, and suggested that whatever product was made available for purchase or lease to be no more than 50 percent for retail use during this eight-year period.

Vice Chair Catalani stated his concern regarding affordable housing was that there was no housing study. He questioned if the minimum 10 acres contribution by the Petitioner was sufficient for the project.

Mr. Matsubara stated that the minimum contribution was based on Chair Ing's comments at the December meeting. He added that if more stringent housing conditions are requested by Maui County, then they would comply with them. He also noted that if the study requires a need for greater than 10 acres, they will comply with that donation, as the 10 acres serves as a minimum.

Chair Ing noted that the Commission will assume that the parcel of land voluntarily donated will already be in the urban classification to alleviate reclassification and/or re-zoning. Mr. Kuriyama stated that the intent is that they have discussions with the County to accept agricultural lands because of their ability to re-zone more efficiently.

Commissioner Montgomery stated that housing is a long-standing problem in Maui with no housing policy. He suggested that the county could revert the lands back to A&B if the lands are not developed within a specific period of time.

Mr. Kuriyama stated that the affordable housing is a definite problem and added that they have had discussions with the Mayor and intends to have an important role in affordable housing. He added that when the appropriate amount of land for affordable housing development is determined, that they would prefer to leave it to the county or non-profit to develop.

Commissioner Montgomery questioned whether the number of units developed within the minimum 10 acres would be sufficient, since they anticipate thousands of workers to be employed by the project.

Mr. Kuriyama stated that the number would depend on the development. He noted that if they were to develop multi-family townhouses, then you could develop ten to twelve units to an acre.

Commissioner Montgomery questioned if the County had a policy today regarding the 10 acres.

Ms. Lovell stated that a minimum of 10 acres will be donated and it may be more. The stipulation is that the acres will be located in Central Maui. She added that the petitioner has the opportunity to donate it to the county or a non-profit agency.

Commissioner Fiesta moved to accept the proposed stipulation with amendments. The motion was seconded by Commissioner Yukimura.

Commissioner Sakumoto had concerns regarding the affordable housing condition. He offered a friendly amendment to the maker of the motion that the 10 acres of land donated be 10 acres of useable land. Commissioner Fiesta accepted the friendly amendment.

Commissioner Montgomery stated that the Commission would have until June to take final action and would prefer to defer this docket due to the absence of the housing study.

Commissioner Yukimura agreed with Commissioner Sakumoto that there is a concern about affordable housing but disagreed that for every number of acres you want to develop, that you be required to donate an equal amount of land for affordable housing. He added that he would not like to set precedence such as this.

Commissioner Desai concurred and indicated that there is no need to increase the acreage from 10 to 138.

Commissioner Fiesta stated that A&B has met their requirements and has agreed to donate lands. The county could increase the amount of land to be dedicated for affordable housing and it is unreasonable for the Commission to ask for more.

Vice Chair Catalani stated that he had issues regarding the housing study and that this study would provide some structure and utilization of the 10 acres for affordable housing. He offered a friendly amendment to the maker of the motion that the condition be amended to include the former language calling for a housing study. Commissioner Fiesta accepted this amendment.

Chair Ing then asked the maker of the motion to specify that 8 years from the date of approval of zoning to the County of Maui be noted for condition 19. Commissioner Fiesta accepted this amendment.

Mr. Ching clarified if the motion was to adopt the proposed stipulation with amendments, including the technical, non-substantive amendments proposed by staff.

Commissioner Fiesta replied in the affirmative.

Mr. Ching then repeated the motion made to adopt the proposed stipulation with amendments made by Commissioner Catalani to Condition No. 4, and Commissioner Sakumoto to the same condition; also with the amendment of condition 19, as offered by Chair Ing, and discussed with Commissioner Catalani; also the amendment of Finding of Fact 37 taking the Office of Planning's language with deletion as proposed by Petitioner, and an amendment of Finding of Fact 56 consistent with statements made by Petitioner's representative.

Commissioner Fiesta replied that was correct. Commissioner Yukimura agreed and seconded the motion.

The commission was polled as follows:

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

The motion passed with a vote of 7 yes, and 2 absent.

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

A recess break was taken at 3:20 p.m. The meeting reconvened at 3:35 p.m.

Commissioner Desai left the meeting at this time.

#### A04-746 WAIKAPU 28 INVESTMENT, LLC

This is a hearing on Docket No. A04-746 Waikapu 28 Investment, LLC to determine whether the Land Use Commission is the Appropriate Accepting Authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassifying of Approximately 28.7 acres of land in the Agricultural District to the Urban District at Waikapu, Maui, Hawaii, Tax Map Key: (2) 3-5-004: 025.

On December 4, 2003, the Commission received Petitioner's Petition for Land Use District Boundary Amendment Verification and Exhibits 1-13.

On January 5, 2004, the Commission received Petitioner's Petition for District Boundary Amendment from Agricultural to Urban, and Draft Environmental Assessment.

On January 28, 2004, the Commission received the Affidavit of Service of Petition for District Boundary Amendment.

### APPEARANCES

Blaine Kobayashi, Esq., represented Petitioner  
Scott Nunokawa, Waikapu 28 Investment  
Karlyn Kawahara, Planner, Munekiyo & Haraga, Inc.  
Jane Lovell, Esq., represented Maui Planning Office  
Michael Foley, Maui Planning Office  
John Chang, Esq. represented the Office of Planning  
Abe Mitsuda, Office of Planning  
Mary Alice Evans, Office of Planning

### Staff Report

1. Anthony Ching

Mr. Ching, Executive officer, provided a GIS map orientation of the area and briefly summarized the staff report before the Commissioners.

There were no questions by the Commission and the parties.

Mr. Kobayashi stated that he believes the Commission is the appropriate approving agency in terms of the EIS. He added that all they have at this point is a draft EA and essentially the statutes require that the approving agency issue the anticipated FONSI.

Ms. Lovell had no questions and agreed with the petitioners that the Commission should be the accepting authority for the EA.

Mr. Chang had no questions and also agreed that the Commission is the proper accepting authority.

Vice Chair Catalani moved to accept the determination that the Land Use Commission is the appropriate approving agency and that an anticipated FONSI is warranted pursuant to Chapter 343. Commissioner Montgomery seconded the motion.

The commission was polled as follows:

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

The motion passed with a vote of 6 yes and 3 absent.

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

#### DOCKET NO. DR02-26 KULEANA KU`IKAHI, LLC

This is a meeting of the Land Use Commission on Docket No. DR02-26 Kuleana Ku`ikahi, LLC to receive the status report of the Commission's Executive Officer.

On October 2, 2002, the Commission received a Petition for Declaratory Order from Kuleana Ku`ikahi, LLC.

On June 4, 2003, Kuleana Ku`ikahi LLC, Makila, Kaua`ula Land Co., Launiupoko Associates, (collectively the Developers) and the County of Maui signed a letter directed to the Commission stating the Kuleana Ku`ikahi, LLC, was withdrawing its Petition for Declaratory Order without prejudice to re-filing.

On June 5, 2003, Kuleana Ku`ikahi, LLC, and the Developers signed an Interim Settlement Agreement.

On July 2, 2003, the Commission issued its Order Regarding Withdrawal of Petition for a Declaratory Order.

It is important to note that the Commission has issued an order allowing the withdrawal of the petition brought by Kuleana Ku`ikahi LLC. That order ended the Commission's deliberations on the subject except for the limited purpose of receiving a status report on the subject.

Therefore, it is the sole purpose of the Commission to receive a status report from its Executive Officer on the matter and to give direction as to any future action on a matter that was considered closed.

Mr. Ching provided his report to the Commission and added that he did not intend to make any representations or argue points made by the parties. He indicated that he will basically summarize the actions and proceeded with information from recent correspondences received.

Commissioner Sakumoto requested that the Commission go into executive session to discuss with counsel legal issues. The motion was seconded by Vice Chair Catalani.

The Commission met in executive session at 4:15 p.m. The open meeting reconvened at 4:25 p.m.

Chair Ing indicated that the Commission has received legal advice from counsel and if there were any further questions of Mr. Ching. Chair Ing then entertained for a motion.

Commissioner Sakumoto moved that the parties be requested to prepare the status report, which is overdue, by a date and time selected by the Chairman. The motion was seconded by Commissioner Fiesta.

The commission was polled as follows:

Ayes: Commissioners Sakumoto, Fiesta, Catalani, Montgomery, Yukimura, and Ing,

The motion passed with 6 yes and 3 absent.

Chair Ing stated that the Commission was expected to return to Maui in two weeks. The Commission's schedule will be revised to reflect meetings on March 18 and 19. The Parties are to file their report with Executive Officer Ching no later than March 4, 2004 to give the parties opportunity to file rebuttal statements. The Commission would then deliberate on the matters at the March 18-19 meetings.

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

#### CIVIL NO. 04-1-0022(2) MALAMA MAUI

Chair Ing noted the last item on the agenda is in regards to Malama Maui's Complaint For Declaratory Injunction And Other Relief Summons pursuant to Section 92-5 HRS. Chair Ing then entertained for a motion to move into executive session.

Commissioner Fiesta moved to go into executive session to receive legal advice from counsel. The motion was seconded by Commissioner Sakumoto. The motion was approved by voice votes.

Chair Ing stated that the Commission will now go to executive session and because this is the last item on the agenda, the attendees may be excused for the day.

The Commission went into executive session at 4:30 p.m. The proceedings concluded at 4:45 p.m.

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