

LAND USE COMMISSION
MINUTES OF MEETING

February 20, 2004
Kapalua/Napili Meeting Room
Sheraton Maui Kaanapali Beach Resort
2605 Kaanapali Parkway
Lahaina, Hawaii

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

COMMISSIONERS ABSENT: Isaac Fiesta
Kyong-Su Im
Randall Sakumoto

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 8:40 a.m.

A03-745 HANOHANO, LLC (Maui)

This is a hearing on Docket No. A03-745 Hanohano, 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 28.695 acres of land in the Agricultural District to the Urban District at Kehua, Kula, Maui, Hawaii.

APPEARANCES

David Nakamura, Esq., representing Petitioner
Don Fujimoto, representing Dowling Company
Gwen Hiraga, Munekiyo & Hiraga, Inc.
Glenn Tadaki, Munekiyo & Hiraga, Inc.

APPEARANCES (continued)

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

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

Mr. Nakamura stated that he believes the Commission is the appropriate approving agency for the environmental assessment and requested that the Commission pass a motion to this effect.

Ms. Lovell had no questions and agreed with Mr. Nakamura's legal analysis.

Mr. Chang asked if any group has come forth to claim an ownership or right to the heiau on the subject property? Mr. Nakamura replied in the negative.

Mr. Chang had no further questions.

Vice Chair Coppa requested that the Commission go into executive session to discuss with counsel legal issues. The motion was seconded by Commissioner Desai and the motion was carried by voice votes.

The Commission met in executive session at 8:55 a.m. The open meeting reconvened at 9:05 a.m.

Vice Chair Coppa asked Mr. Nakamura if this project is presently in front of any other governmental body other than the Commission? Mr. Nakamura replied in the negative.

Chair Ing commented on the 10,000 square foot lot size of the 49 lots with a price range of \$250,000 to \$350,000 and questioned if there was an affordable housing component in this project. Mr. Nakamura stated that they have met with Maui County and are prepared to satisfy affordable housing requirements established by the County.

He added that because there is no county sewer system in the area, they will need to go with septic tanks and larger sized lots.

Vice Chair Coppa 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, Coppa, Fiesta, Montgomery, Yukimura, and Ing.

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

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

A recess break was taken at 9:15 a.m. The proceedings reconvened at 9:25 a.m.

A89-650 WAIHEE OCEANFRONT HAWAII, INC. (Maui)

This hearing is to consider Petitioner's Motion for an order to Rescind Amended Findings of Fact, Conclusions of Law and Decision and Order. If this motion is granted, the following acreages would revert back to their original land use classification. Approximately 105.64 acres would revert from the Urban to Agriculture District and approximately 22.64 acres would revert from Conservation to the Urban District at Waihe'e, Maui, Hawaii.

On February 4, 2004, the Commission received Petitioner's motion. The Commission has not received any other correspondence on this matter.

APPEARANCES

Tom Leuteneker, Esq., represented Waihee Oceanfront Hawaii, Inc.
Maureen Bond, Vice President of Waihee Oceanfront Hawaii, Inc.
Dale Bonar, Maui Coastal Land Trust
Jane Lovell, Esq., represented Maui Planning Office
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State 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.

Chair Ing noted that some of the material indicated that Isaac Hall represents Intervenor Office of Hawaiian Affairs and that the record should reflect his absence today.

Vice Chair Catalani recalled attending a field trip in the petition area and asked if the Commission received annual reports regarding the conditions. Mr. Ching replied that there was a field trip taken and believed that the last annual report was in 2001.

Vice Chair Catalani asked if there had been any other filings to the county, state or other entity. Mr. Ching replied that there had not been any other filings.

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

Mr. Leuteneker stated that the petition area is of significance, both historically and archeologically to the people of Hawaii. He added that the 29 conditions, for most part, directly relates to the preservation of historical and cultural aspects of the land and the concerns of the community. In 1995, it was clear that proceeding with the construction of the golf course was not feasible. Waihee Oceanfront Hawaii sought buyers of this land. One such buyer is the Maui Coastal Land Trust whose mission is to forever preserve coastal lands on Maui. The other is Dowling Corporation for the construction of DHHL homes.

Vice Chair Coppa noted that it may be easier for the petitioner to request for relief from specific conditions rather than reverting the land use classification to its original status.

Vice Chair Catalani commented that the proper motion would be a request to release of conditions relating to the parcel, to remove any issues that the Maui Coastal Land Trust would have with these conditions. He asked if there was a contract with DHHL for the area that is proposed to be developed by Mr. Dowling.

Mr. Leuteneker stated that he understood there was a contract as Dowling Company has developed three other DHHL projects in the same area, one being directly adjacent to the subject property.

A recess break was taken at 10:25 a.m. Chair Ing reconvened the proceedings at 10:45 a.m.

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

1. Dale Bonar

Mr. Bonar stated that he is the Executive Director of Maui Coastal Land Trust. Mr. Bonar provided a brief synopsis on the goals of the Trust for the subject property and indicated that they have been working with the community and the current owners to assure that the property benefits the public's interest. He added that the Maui Coastal Land Trust has a sale agreement with Waihee Oceanfront for the subject area.

Vice Chair Catalani asked Mr. Bonar if the 20 conditions on this property are issues, although their conservation plans would probably meet certain conditions. Mr. Bonar replied in the affirmative and added that he is not the petitioner, but there may be other conditions that they wish to not be involved in.

Vice Chair Coppa suggested that the petitioner tell the Commission which conditions they would like relief from. He added that he would also like to see a contract or agreement of sale, if time is of an essence.

Ms. Lovell stated that due to late notice, the county did not have much time to review the file and wanted to review the LUC conditions and establish the County's position on the motion. The files, being so old, are being sent back from the Planning Department for her review. Ms. Lovell indicated that the County is very excited about Maui Coastal Land Trust plans, but would like a brief amount of time to review the old files, maps and diagrams.

Mr. Chang stated that there are two concerns. The first concern relates to the reversion of lands from conservation to the urban district. The state agrees that they can purchase the property as is and return to the Commission to remove the conditions. Mr. Chang noted that his second issue was that there is no record or evidence pertaining to the sale of lands to Mr. Dowling and the closing date. Mr. Chang agreed with the County and suggested that the matter be deferred until the next meeting of the Commission, in order for the petitioner to provide documentation on this transaction.

Mr. Sakata stated that this project went through a difficult process to get these conditions and now letting go of the 29 conditions was hard. However, he added that he has tremendous faith in the Maui Coastal Land Trust and the community has also been very supportive of them. Mr. Sakata noted that their primary goal now is to see that the transaction is completed with the Maui Coastal Land Trust.

Mr. Leuteneker stated that he would like the Commission to take action today and get these lands sold to meet the closing dates. He added that these two buyers are the right type of buyers for this land.

Vice Chair Coppa requested that the Commission go into executive session to discuss legal issues with its counsel. The motion was seconded by Commissioner Montgomery and the motion was carried by voice votes.

The Commission met in executive session at 11:25 a.m. The open meeting reconvened at 11:40 a.m.

Chair Ing indicated to the Petitioner that the Commission has been advised that to move any parcel classified conservation to any other category will require the preparation of either an EA or EIS. This is a requirement of Commission rules and Chapter 343 of the Hawaii Revised Statutes. Chair Ing added that at this time, the Commission suggested that Petitioner orally amend its Motion to delete that portion of the request. He added that Petitioner could do that in writing and allow the Commission to take up the matter at a later date.

Mr. Leuteneker agreed to put his motion in writing prior to the Commission's next meeting in March.

Vice Chair Catalani moved to defer this matter until the next March meeting. Commissioner Desai seconded the motion.

The commission was polled as follows:

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

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

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

A92-683 HALEKUA DEVELOPMENT CORPORATION (Oahu)

Chair Ing stated that the Commission now sought to adopt the Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd.'s Property from the Order to Show Cause Granted on February 26, 2003, pursuant to the Stipulation filed on December 30, 2003. He entertained a motion for the approval of the written decision and order.

Commissioner Yukimura moved to approve the written order for Docket No. A92-683 Halekua Development Corporation. Vice Chair Coppa seconded the motion. Said motion was approved by voice votes.

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

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

Chair Ing stated that the Commission now sought to adopt the Order 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.

Vice Chair Catalani stated that at a previous meeting, there were two conditions discussed at length and added that he still has concerns regarding the wording of the conditions in reference to the housing and retail/light industrial mix. Vice Chair Catalani suggested that they defer this matter to the next meeting so the Commission can review the record and the particular language.

Vice Chair Catalani moved to defer this matter to the next hearing. Commissioner Montgomery seconded the motion. Said motion was approved by voice votes.

The proceedings concluded at 12:15 p.m.

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