

LAND USE COMMISSION
MINUTES OF MEETING

September 16, 2004

Makena Salon Ballroom
Maui Prince Hotel Makena Resort
5400 Makena Alanui
Makena, Maui, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Pravin Desai
Michael Formby
Kyong-Su Im
Lisa Judge
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta, Jr.

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Catalani called the meeting to order at 10:20 a.m.

A04-750 SPENCER HOMES, INC. and COUNTY OF MAUI DEPARTMENT OF HOUSING
AND HUMAN CONCERNS (Maui)

Chair Catalani announced that this was a hearing on Docket No. A04-750 Spencer Homes, Inc. and County of Maui Department of Housing and Human Concerns to consider the reclassification of approximately 94.229 acres of land currently in the Agricultural District into the Urban District for residential uses at Waikapu, Maui, Hawaii.

APPEARANCES

Blaine Kobayashi, Esq., represented Spencer Homes, Inc.

Mark Spencer, Spencer Homes

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

Michael Foley, County of Maui Department of Planning

Joe Aleueta, 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 Catalani asked Mr. Kobayashi if staff had provided notice and if he had any comments with respect to the Commission's reimbursement policy relative to the publication of hearing notices and the court reporter's fees. Mr. Kobayashi answered in the affirmative and had no comments or objections to the Commission's policy.

Chair Catalani noted that there were no public witnesses.

Staff Report

Staff Planner Maxwell Rogers provided the Commission with a staff report, a supplement to the report, and a map orientation of the subject docket using LUC maps. There were no questions by the parties and the Commission.

Admission of Exhibits by the Parties

Mr. Kobayashi introduced and described a corrected Final List of Exhibits 1-28. There were no objections by the State and County. Said exhibits were admitted into the record.

Ms. Lovell indicated that the County had provided Exhibits 1-13 on August 9, 2004, but did not include the resolution approving the 201G project that was adopted on August 6, 2004. Ms. Lovell introduced the resolution as Exhibit 14. There were no objections by the State and Petitioner. Said exhibits were admitted into the record.

Mr. Chang introduced and described Office of Planning's Exhibits 1-3. There were no objections by the County or Petitioner. Said exhibits were admitted into the record.

Mr. Kobayashi made a presentation of its case. He indicated that he will present seven private witnesses for which he had previously submitted written testimonies. He indicated his intention to have each witness highlight their testimony subject to cross-examination by the State, County and Commissioners.

PETITIONER'S WITNESSES

1. Jessie Spencer

Mr. Spencer stated that he is the CEO of Spencer Homes, Inc. and explained the process of producing affordable housing and how Spencer Homes intends to keep the construction and development costs low for this project.

There were no questions by the County and the State.

Commissioner Desai commended Mr. Spencer for his efforts. Commissioner Desai had questions and concerns relative to keeping the homes affordable in light of the rising cost of construction materials, and the buy-back provisions.

Commissioner Judge had questions and concerns regarding a policy for the buy-back provisions, refinancing, shared equity programs, and the median income levels.

Commissioner Montgomery had questions on the fast track process, profit margins, and the difficulty in purchasing available land to keep this project affordable.

Commissioner Formby had questions related to the 10-year buy back provision requirements.

Commissioner Im commended Mr. Spencer for his efforts in developing an affordable housing project. Commission Im's questions and concerns were relative to the price range of the affordable and market homes, selling phases, size of the lots, cost and profit margins, financial data, and pro forma for this project.

A recess break was taken at 11:45 a.m. The meeting reconvened at 11:55 a.m.

2. Mark Spencer

Mr. Spencer stated that he is the Vice President of Spencer Homes and explained that Spencer Homes is a family company that specializes in the development and construction of affordable housing. Mr. Spencer discussed their previous Maui projects, their reputable track record on Maui, land acquisition, and the issues of buy-back provisions and deed restrictions.

Commissioner Montgomery returned to the meeting at this time 12:00 p.m.

Mr. Spencer noted that they plan to commit 212 homes priced in the \$225,000 to \$275,000 range with restrictions included in the deed. The project will be in 4 phases with approximately 100 homes per phase for a total of 410 homes. Mr. Spencer also discussed issues on water, traffic impacts, and fair share improvements.

The County had no questions.

Mr. Chang had questions and concerns relative to the market priced homes, the waived DOE assessment fees, and the DOT traffic improvement recommendations.

A lunch break was taken at 12:30 p.m. The meeting reconvened at 2:00 p.m.

Mr. Chang's questions and concerns were in reference to the Office of Planning's testimony and its recommended conditions for waste water treatment, civil defense, archeology, air quality, and noise nuisances.

Commissioner Desai had questions and concerns relative to landscaping and community planning of the proposed project and its costs.

Vice Chair Sakumoto's questions and concerns were in reference to the lottery and the possibility of offering the market homes at close to affordable prices to certain groups like firemen and teachers.

Commissioner Judge had questions regarding the proposed traffic improvements, new signalization, and no immediate access from the highway to the project.

Commissioner Im's questions and concerns were related to the minimum home sale prices, construction quality, lot size and location, economic impacts and pro forma for the project.

Chair Catalani had questions regarding the affordable housing agreement or a unilateral agreement. Mr. Kobayashi stated that he will be providing the unilateral agreement to submit as Exhibit 29.

Chair Catalani's questions and concerns were in reference to the commitment of the market priced homes, the petitioner's position regarding the waiver of the DOE fair share contribution, the land sales contract, and pro forma of the project.

Commissioner Yukimura left the meeting at this time at 3:00 p.m.

Chair Catalani commented that the Commission was in support of this affordable housing project but also need evidence on the record to isolate it from similar representations in the future.

A recess break was taken at 3:05 p.m. and the meeting reconvened at 3:25 p.m. Commissioner Desai left the meeting at this time at 3:25 p.m.

Mr. Mark Spencer proposed a condition that the market homes will be sold at \$383,400. For any house sold over the base sales price of \$383,400, Spencer Homes will pay \$3,134 per unit as a DOE impact fee.

Commissioner Im had questions and concerns regarding the lot sizes, interest rates, land sales contract, the fast track processing, impact costs, and the pertinent facts needed for decision making.

Mr. Kobayashi noted that in the interest of time, Kahu Maxwell, Hawaiian Cultural Assessor, and Mr. Frederickson, Archaeology Inventory Surveyor, could be excused from the proceeding. The County and the State had no objections. Chair Catalani commented that the Commission was satisfied with the submittal of their written testimonies and excused the two witnesses from the proceedings at this time.

3. Stacy Otomo

Mr. Otomo stated that he was retained as the engineering consultant for this project. His resume was submitted as exhibit 15 and written testimony as exhibit 20. Mr. Otomo was qualified as an expert in the field of drainage engineering. There were no objections by the parties.

Mr. Otomo described the issues relating to drainage, water resources, wastewater and solid waste, and the retention basin to be utilized for this project.

The County had no questions.

Mr. Chang had questions and concerns relative to the water flowing from the highway to the ditch, solid waste issues and the capacity of the landfill expansion.

Commissioner Judge's questions were in reference to the retention basin, water sources and the executed agreement between Petitioner and Hawaii Land and Farming.

Vice Chair Sakumoto had questions and concerns regarding information on the water sources capacity and yield, wastewater generation, and the solid waste landfill capacity.

Commissioner Im's questions and concerns were related to the timeline for commitment of water meters, and water reservations.

Mr. Kobayashi noted that on July 23, 2004, Ms. Ewa Blumenstein testified on the water sources.

Ms. Lovell indicated that the County will be submitting copies of the transcript of Ms. Blumenstein's testimony as County's Exhibit 15.

A recess break was taken at 4:10 p.m. The meeting reconvened at 4:25 p.m.

Mr. Kobayashi asked if Michael Munekiyo, Urban and Land Use Planner from Munekiyo & Hiraga, be excused from the proceedings as his written testimony was attached as Exhibit 3. There were no objections or questions from the County, State and the Commission. Mr. Munekiyo was excused from the proceedings at this time.

4. Phillip Rowell

Mr. Rowell stated that he produced a traffic impact analysis for this project. His resume was submitted as Exhibit 17 and written testimony as Exhibit 24. Mr. Rowell was previously qualified as an expert in the field of traffic engineering and traffic impact analysis. There were no objections by the parties.

Mr. Rowell described his findings and explained the methodology and design year for the project. He also discussed his recommendations for this project after completion of the traffic impact analysis.

There were no questions by the County.

Mr. Chang had questions and concerns regarding trip generation standards of the Institute of Traffic Engineers, traffic signalization, road improvements, and flooding.

Commissioner Judge had questions and concerns relating to Exhibit 4, letter from the Chief of Police regarding trip generation data and access to the state highway.

Commissioner Im's questions were regarding the current number of cars during peak hours per day and the anticipated number of additional cars upon project completion.

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

A recess break was taken at 5:10 p.m. The meeting reconvened at 5:25 p.m.

COUNTY'S WITNESSES

1. Michael Foley

Mr. Foley stated that he is the Director of the Maui County Department of Planning. Mr. Foley was qualified as an expert in the field of planning. There were no objections by the parties.

Mr. Foley discussed the primary issues, such as water source and supply, traffic impacts, signalization, impact on the schools, DOE fees, and the affordable housing subdivision process.

Mr. Chang's questions and concerns were related to the additional traffic anticipated, the Waiko Road extension, and the time frame for additional permit approvals.

Commissioner Im had questions and concerns regarding the aquifers controlled by the state, future water facilities, water sources and fees.

Commissioner Judge's questions were related to the status of the Old Government Road and the proposed extension of Waiko Road.

Commissioner Montgomery had questions relative to Exhibit 13, correspondence from Alice Lee, housing projects waiting for council action, an expedited approval process, community involvement, and addressing the demand for housing in Maui.

Vice Chair Sakumoto's questions and concerns were in reference to the extent of the population upon project completion and the impact of government services needed for the increase in police, fire, and emergency personnel.

Chair Catalani announced that tomorrow's hearings will be held at the Kula Ballroom, Wailea Renaissance Resort.

The meeting adjourned at 6:20 p.m.

(Please refer to LUC Transcript of September 16, 2004 for more details on this matter.)