

LAND USE COMMISSION
MINUTES OF MEETING

September 17, 2004

Kula Ballroom
Renaissance Wailea Beach Resort
3550 Wailea Alanui Drive
Wailea, Maui, Hawaii

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

COMMISSIONERS ABSENT: Pravin Desai
Isaac Fiesta, Jr.
Peter Yukimura

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 9:10 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 continued hearing on Docket No. A04-750
Spencer Homes, Inc. and County of Maui Department of Housing and Human Concerns.

PUBLIC WITNESS

1. Joan Martin

Ms. Martin stated that she is a member of the Maui Nui Housing Task Force and expounded on the need for affordable housing in Maui. Ms. Martin stated that she fully supports the efforts by the Spencers and urged the Commission to approve their petition.

Commissioner Montgomery had questions in reference to the Maui Nui Housing Task Force, affordable housing requirements, and the Spencer's track record and reputation.

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

Admission of Exhibits by the Parties

Mr. Kobayashi noted that a revised Final List of Exhibits has been provided with the addition of Exhibit 29, the unilateral agreement, and Exhibit 30, the purchase sales agreement. There were no objections by the County and the State. Said exhibits were admitted into the record.

Ms. Lovell stated that the County has provided copies of the testimony of Ewa Blumenstein as Exhibit 15, taken from the transcript of the July 23, 2004 hearing. There were no objections by the County and the State. Said exhibits were admitted into the record.

Mr. Chang indicated that the State had no new exhibits.

COUNTY'S WITNESSES

1. Alice Lee

Ms. Lee stated that she is the Director of Housing and Human Concerns, County of Maui, and a former member of the County Council and Chairperson on a number of affordable housing committees. Ms. Lee was qualified as an expert in the field of housing. There were no objections by the parties.

Ms. Lee indicated that the County strongly supports the petitioner and explained that the Spencers have put forth a comprehensive affordable housing project. Ms. Lee discussed details of qualifications, community involvement, and group and community support for the project.

Mr. Chang's questions and concerns were regarding the buy-back provisions, occupancy requirements, first right of refusal, anti-flipping clause, and improvement reimbursements.

Commissioner Montgomery had questions relative to precedent cases, if any, and the difficulty of available land to develop affordable housing in Maui.

Commissioner Im's questions and concerns were in reference to financial capability, the affordable housing agreement, County approvals, landscaping requirements, maintenance costs to the owners, other fast-track 201G applicants, affordable and market mixed units, legal ownership of the water detention basin, and the quality construction of the homes.

Chair Catalani had questions and concerns relative to the affordable housing process, the financial review, and the buy-back provision.

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

STATE'S WITNESSES

1. Abe Mitsuda

Mr. Mitsuda stated that he is the Administrator of the Land Use Division, Office of Planning for the past 20 years. Mr. Mitsuda indicated that the State recommends approval of the petition with conditions. Mr. Mitsuda also discussed the recommended traffic improvements and regional improvements of the petition area.

Commissioner Montgomery's questions and concerns were related to the state's position on issues relative to the waiver of DOE's fair share requirement and affordable housing developments.

Commissioner Im had questions and concerns regarding the previous use of fertilizers and chemical, hazardous waste and soil contamination, an environmental study or impact statement of the area, and drinking water issues.

Vice Chair Sakumoto's questions were relative to the state supported waiver of the DOE fair share contribution and petitioner's proposal of \$3134 per unit if the market priced units sold for more than \$383,400.

A recess break was taken at 10:20 a.m. The meeting reconvened at 10:35 a.m.

2. Charlene Shibuya

Ms. Shibuya stated that she is a Design Engineer at the DOT Highways Division, Maui District Office. Ms. Shibuya reported on DOT's position and discussed issues of signalization,

traffic impacts, road weight restrictions, and a recommended buffer to minimize noise mitigation and protection from errant vehicles.

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

Vice Chair Sakumoto had questions and concerns regarding the petitioner's new Exhibit 20, the real estate purchase and sale agreement and matters relating to the configuration of the property's metes and bounds, subdivision approvals, the affidavit from Wailuku Agribusiness, and reservations related to water resources, easement, and access.

Mr. Mark Spencer noted that in reference to a sales contract, he could provide a authorization letter from Mr. Chumbly of Wailuku Agribusiness indicating the sale of the property to the Spencers.

Commissioner Im's questions were in reference to the hazardous and toxic waste disclosure and the environmental impact statement.

Chair Catalani noted that the Commission will break for lunch and reconvene at approximately 12:30 p.m. During this time, the parties would have the opportunity to gather more information for submittal.

ADOPTION OF MINUTES

Commissioner Judge moved to adopt the Land Use Commission meeting minutes of September 2, 2003 and September 3, 2004. Commissioner Montgomery seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- October 7-8 will be held in Hilo for the Hiluhilu FEIS.
- We anticipate a full upcoming schedule with 2 additional dockets from Kauai and Oahu.

Commissioner Judge requested that December's 1-day workshop on Oahu be held on Thursday instead of Friday. The Commission had no objections and Mr. Ching replied in the affirmative.

A recess break was taken at 11:30 a.m. The meeting reconvened at 1:10 p.m.

Admission of Additional Exhibits by the Parties

Mr. Kobayashi stated that 2 additional exhibits have been provided. Exhibit 31 is a letter dated September 17, 2004 from the Homestreet Bank. Exhibit 32 is a report from Vuich Environmental Consultants. There were no objections by the County and the State. Said exhibits were admitted into the record.

Mr. Kobayashi noted that due to concerns regarding the land sale agreement, Mr. Chumbly of Wailuku Agribusiness was present to answer any questions.

PETITIONER'S WITNESS (continued)

5. Avery Chumbly

Mr. Chumbly discussed the draft real estate sales agreement and process, the subdivision plan, lot size and description.

Vice Chair Sakumoto's questions and concerns were in reference to the metes and bounds description, land sales contract, subdivision application approval, and the numerous reservations related to water, access and easements.

Commissioner Im had questions and concerns related to the environmental issues and previous use of pesticides or chemical applications.

Commissioner Montgomery had a few questions regarding traces of heptachlor found in the fields, as indicated in the environmental report.

Ms. Lovell had questions and concerns regarding the ditch running through the property.

Commissioner Montgomery's questions were related to the purchasing of additional lands from C. Brewer for future affordable housing projects.

Commissioner Im had questions and concerns regarding the 2 new exhibits. For the environmental report, his questions were related to test samples in specific areas, such as within the reservoir area. In reference to the letter from Homestreet Bank, his questions were pertaining to the Spencer's financial capability and inquiries on the share holders.

Commissioner Im moved that the Commission enter into executive session to discuss with its Deputy Attorney General, petitioner's burden to show financial capability under HAR 15-15-50 c8 and 15-15-77-b5. The motion was seconded by Commissioner Judge. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 1:55 p.m.

The open meeting reconvened at 2:15 p.m.

A recess break was called at 2:15 p.m. The meeting reconvened at 2:40 p.m.

Mr. Jessie Spencer made a few comments in reference to Spencer Homes' financial and economic capabilities for this project.

Mr. Kobayashi stated that during the break, they had the opportunity to draft a decision and order and discuss the proposed findings with the County and State. Mr. Kobayashi then described the findings and changes to the order.

The County had no objections to the changes made and was satisfied.

Mr. Chang indicated that the State also had no objections to the proposed changes and that they are satisfied with the transportation issue.

The Commission deliberated and discussed the proposed conditions relating to matters such as the sales agreement, property description, environmental issues, subdivision application, affordable prices, park uses, community plan, economic impacts, water resources, landfill and waste, government personnel (fire, police, etc.), noise and traffic mitigation, energy conservation, affordable housing qualifications, and DOE fair share requirements.

Chair Catalani proposed to delegate to the Land Use Commission's Executive Officer to make technical and non-substantive changes in drafting the final Decision and Order if the petition was approved. There being no objections, the Land Use Commission's Executive Officer was approved to make these changes.

A recess break was taken at 4:15 p.m. The meeting reconvened at 4:25 p.m.

Vice Chair Sakumoto had a few questions and concerns pertaining to the land sales contract, deed and title interest.

A recess was taken at 4:50 p.m. The meeting reconvened at 5:00 p.m.

Commissioner Judge moved that the Commission enter into executive session to discuss with its Deputy Attorney General the petitioner's economic ability, as found under HAR 15-15-50 c8 and 15-15-77-b5. The motion was seconded by Commissioner Im. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 5:00 p.m.

The open meeting reconvened at 5:10 p.m.

The Commission discussed the standard conditions relative to the project's order and other technical non-substantial changes.

Commissioner Judge moved that the Commission approve the petition for a State Land Use District Boundary Amendment as reviewed and deliberated by the Commission. The motion was seconded by Commissioner Montgomery.

The Commission was polled as follows:

Ayes: Judge, Montgomery, Formby, Im, Sakumoto, and Catalani.

Nays: None

The motion passed with 6 yes and 3 absent.

The meeting adjourned 5:30 p.m.

(Please refer to LUC Transcript of September 17, 2004 for more details on this matter.)