

LAND USE COMMISSION  
MEETING MINUTES

Maui Beach Hotel  
Elleair Ballroom

January 14, 2005

COMMISSIONERS PRESENT: P. Roy Catalani  
Michael Formby  
Lisa Judge  
Steven Montgomery  
Randall Sakumoto  
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta, Jr.  
Kyong Su Im

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Caroline Lorenzo, Secretary  
Holly Hackett, Court Reporter  
Kanani Wong, Audio/Visual Technician

Presiding Officer Sakumoto called the meeting to order at 8:35 a.m. Chair Catalani was not present at the proceedings at this time.

A04-748 CONSOLIDATED BASEYARDS LLC

Presiding Officer Sakumoto announced that this was a continued hearing on Docket No. A04-748 Consolidated Baseyards LLC to consider the reclassification of approximately 23.164 acres of land currently in the Agricultural District to the Urban District at Waikapu, Maui, Hawaii, for a light industrial subdivision.

## APPEARANCES

B. Martin Luna, Esq., represented Petitioner  
Roderick Fong, Principal, Consolidated Baseyards LLC  
Madeleine D'enbeau, Corporation Counsel, County of Maui Department of Planning  
John Chang, Deputy Attorney General, represented State Office of Planning  
Abe Mitsuda, State Office of Planning  
Mary Alice Evans, State Office of Planning

## PUBLIC WITNESS

### 1. Sally Raisbeck

Ms. Raisbeck stated that there was a desperate need for lands for light industrial. There were no questions by the parties.

Vice Chair Montgomery expressed concern regarding the ratio of light industrial versus commercial uses.

Presiding Officer Sakumoto indicated that the Maui County planning commission had recommended a resolution with the council and suggested that the witness review the council's resolution.

Mr. Luna presented Exhibits 25-29 of Petitioner's exhibits. There were no objections by the parties, and said exhibits were admitted into the record.

Ms. D'enbeau presented Exhibit 2 of the County's exhibits. There were no objections by the parties, and said exhibit was admitted into the record.

## PETITIONER'S WITNESS

### 1. Dean Frampton, Frampton & Ward, Consultants to Consolidated Baseyards LLC

Mr. Frampton summarized his written testimony, which was submitted as Petitioner's Exhibit 29. Mr. Frampton indicated that he has met with the Department of Health and discussed the issue of the individual wastewater system. He pointed out that the County had prohibited commercial use on the site. Mr. Frampton further indicated that he manages the land entitlements, subdivision and construction of the property. He also provided additional information on traffic and permitted uses on the property, and indicated that the Petitioner would not be permitted to proceed with change in zoning until changes in district boundary has been resolved with the Commission.

Mr. Luna examined the witness. His questions were related to the concerns of the Commission on the utilization of water and assurances by the Petitioner that the amount of water used by lot owners would be within the limits. If the LUC approved Petitioner's application, uses would primarily be for light industrial and would limit the need for potable water. Mr. Frampton confirmed that these limitations were acceptable to the Petitioner.

The State raised questions for Mr. Frampton regarding limited and restricted uses on the property.

Commissioner Judge expressed concerns regarding the usage of water and going beyond the limits. Mr. Frampton responded that the homeowners' association would be responsible to maintain the water and have the ability to assess penalties.

Vice Chair Montgomery had further questions regarding light industrial uses versus commercial uses.

Presiding Officer Sakumoto raised questions on the same subject as Vice Chair Montgomery, and expressed concerns regarding DOH monitoring the individual wastewater system (IWS) on a yearly basis. Mr. Frampton indicated that prior to installation of the IWS, the individual owner would need to apply with DOH and wastewater staff would review its proposal.

There was no redirect by the Petitioner.

#### COUNTY'S WITNESS

1. Joseph Alueta

Mr. Alueta stated that he was the staff planner for the County of Maui Department of Planning for this docket.

Ms. D'enbeau asked if there was a list of permitted uses for this docket or would there be a recommendation from the County of Maui Planning Commission to the County Council. Mr. Alueta responded in the positive and indicated that the council could reject or accept or make changes to the list of permitted uses.

Chair Catalani entered the proceedings at this time.

## STATE'S WITNESSES

### 1. Abe Mitsuda, State Office of Planning (OP)

Mr. Mitsuda provided a summary of OP's testimony and indicated that he supported the project and restriction to light industrial uses. He then introduced two photographs, which were taken on October 22, 2004 using his personal camera, which were of Waikapu Stream closest to Waikapu Road heading south, and stated that he would provide copies to the parties and the Commission. Mr. Mitsuda also provided the State's concerns regarding water issues and traffic impacts. He stated that the proposed conditions have been discussed with Petitioner and the County and a draft stipulation has been made.

Mr. Chang indicated that since the last hearing on this docket, the State has had concerns regarding wastewater and potable water being close to the leach field. He further indicated that the Petitioner has a plan to move the well, which was acceptable by the DOH.

Mr. Chang mentioned about a flooding that had occurred and a manmade blockage which was brought to DLNR's attention. Mr. Mitsuda indicated that Wailuku Ag will remove the crossing which will alleviate the State's concern on flooding issues.

Ms. D'enbeau indicated that the County does not have available water. Mr. Mitsuda responded that the Petitioner is producing its own water source, and that the project would not proceed if there were no available water.

At this time, Mr. Mitsuda presented his two photographs as OP's Exhibits 3 and 4, and was admitted into the record by the Commission.

### 2. Charlene Shibuya, Department of Transportation (DOT), Maui District Office

Ms. Shibuya stated that she was a construction engineer/district engineer for DOT's Maui District Office. She stated that the DOT has been meeting with developers to discuss DOT's concerns regarding fair share contributions. She indicated that an agreement was reached regarding improvements that will satisfy both local and regional fair share contribution requirements.

Ms. D'enbeau raised a question regarding the timeframe for traffic signalization. Ms. Shibuya responded that it was tied in with the affordable housing timeline and estimated completion in 2006.

Commissioner Judge expressed a concern about traffic associated with light industrial uses and traveling north up Waiko Road toward Honoapiilani Highway into the small residential neighborhood and how traffic can be limited.

Presiding Officer Sakumoto raised a question whether the owners of the homes in the residential subdivision would be notified regarding the rezoning process, and truck restrictions that would go through the area.

The State had no further witnesses.

Presiding Officer Sakumoto declared the evidentiary portion of this docket completed, and directed the parties to draft a proposed Findings of Fact, Conclusions of Law, and Decision and Order, to be tied in with page and line numbers with transcripts, which are to be served upon the Commission and the parties by February 10, 2005. The parties were to file their responses with the Commission by close of business February 17, 2005. Chair Catalani encouraged the parties to stipulate.

Mr. Luna indicated that a proposed Findings of Fact, Conclusions of Law, and Decision and Order, was circulated to the parties and comments were received.

A recess break was taken at 10:02 a.m. The meeting reconvened at 10:15 a.m.

There was discussion with Mr. Luna and the Commission regarding fair share contributions, drainage system, the use of Best Management Practices, and a pollution prevention plan.

A recess break was taken at 10:25 a.m. The meeting reconvened at 10:33 a.m.

Chair Catalani presided over the proceedings at this time.

### **A05-755 HALE MUA PROPERTIES, LLC (MAUI)**

Chair Catalani announced that this was an action meeting on Docket No. A05-755 Hale Mua Properties, LLC, to determine whether the Land Use Commission was the Appropriate Accepting Authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 240.087 acres of land currently in the Agricultural and Rural Districts to the Urban District at Waiehu, Maui, Hawaii; and to determine whether an Anticipated Finding of No Significant Impact (FONSI) was warranted pursuant to Chapter 343, Hawaii Revised Statutes.

## APPEARANCES

Blaine Kobayashi, Esq., represented Petitioner

Sterling Kim, Hale Mua Properties, LLC

Jane Lovell, Deputy Corporation Counsel, represented County of Maui,  
Department of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Mr. Kobayashi made his presentation for the Petitioner and provided the Commission with a background summary of the petition filed.

Vice Chair Montgomery praised Mr. Kobayashi for his well-prepared presentation and for staff's good summary of its staff report. He also expressed his wish that every docket be so well prepared.

Chair Catalani inquired about mapping issues between exhibits. Mr. Kobayashi indicated that he had discussions with Mr. Ching and indicated that a portion of the draft environmental assessment (DEA) would need to be corrected before the final EA would be submitted to the OEQC. Chair Catalani also inquired about the impacts on Waiehu Stream. Mr. Kobayashi indicated that based on discussions with Mr. Sterling Kim, all concerns for Waiehu would be addressed, and that there were no significant impacts on the stream.

Ms. Lovell indicated that the County agreed with the Petitioner that the LUC was the appropriate accepting authority, and further indicated that the County had no position at this time on whether a FONSI was warranted. Ms. Lovell also indicated that the County had issues regarding water availability, infrastructure, traffic, public facilities, schools, and archaeological and cultural resources, and will present the issues during the hearing portion on this docket.

Mr. Chang raised concerns regarding a macadamia nut farm currently located on the property and whether it will be uprooted when development begins. Mr. Chang also raised concerns regarding stream resources, buffer zone, protection of Waiehu Stream, and burial sites. Mr. Kobayashi indicated that all items will be discussed and developed further and will have options and alternatives available. As far as ancient burial sites and burials found around the stream, Mr. Kobayashi indicated that an inventory survey was done that covered the area and because of the possible presence of burials being encountered, Petitioner will be monitoring this issue.

Mr. Chang then indicated that the State agreed with the County and Petitioner that the LUC would be the appropriate accepting authority and that the project should

be allowed to go forward. He also indicated that the State has not had proper time to evaluate whether an anticipated FONSI should be given at this time.

There were no questions by the Commissioners.

Mr. Ching provided a summary of the staff report dated January 11, 2005. Mr. Ching indicated that the project does not appear to display significant cultural and natural resources, and that the merits of the draft EA would be reviewed in the public hearing process.

Ms. Lovell indicated that she has not had enough time to review the draft EA and would appreciate more time to review and seek other agencies' comments.

Commissioner Judge moved that the LUC was the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 240.087 acres of land currently in the Agricultural and Rural Districts to the Urban District at Waiehu, Maui, Hawaii, and that an anticipated FONSI was warranted. Vice Chair Montgomery seconded the motion. There was no discussion. The Commission was polled as follows:

Ayes: Commissioners Judge, Montgomery, Sakumoto, Yukimura, Formby, and Catalani

The motion passed with 6 ayes and 2 absent.

A recess break was taken at 11:13 a.m. The meeting reconvened at 11:28 a.m.

### **A03-745 HANOHANO LLC (MAUI)**

Chair Catalani announced that this was an action meeting to consider the reclassification of approximately 28.695 acres of land currently in the Agricultural District into the Urban District at Keahua, Kula, Maui, Hawaii.

### **APPEARANCES**

David Nakamura, Esq., represented Petitioner

Don Fujimoto, Dowling Company

Jane Lovell, Deputy Corporation Counsel, represented County of Maui,  
Department of Planning

Ann Cua, County of Maui, Department of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning  
Mary Alice Evans, State Office of Planning

There were no public witnesses.

Mr. Nakamura made his presentation before the Commission.  
Mr. Nakamura also presented three documents relative to the proposed Findings of Fact, Conclusions of Law, and Decision and Order.

Mr. Lovell indicated that the County agreed with Petitioner that the County had provided the declaration of Ms. Alice Lee dated September 15, 2004, which was incorporated into the proposed findings of fact, conclusions of law, and decision and order that the Petitioner has presented to the Commission. It is found in findings of fact 64 through 66.

Mr. Chang indicated that the State agreed with Petitioner, and that an agreement has been reached and contained within the proposed findings of fact, conclusions of law, and decision and order.

Vice Chair Montgomery inquired about the three bodies selecting the curator, that one would be the Kupuna Council of Maui, and how that person would be appointed. Mr. Nakamura responded that the members of the council are appointed by the Mayor.

Commissioner Yukimura asked if the Petitioner would work out an agreement with the new ownership to get the 100-foot buffer set up. Mr. Nakamura responded in the affirmative and indicated that they have incorporated it as a condition to the decision & order which obligates the developer to make contact with the adjoining 100-foot buffer zone be extended into the adjoining land.

Ms. Lovell identified Ms. Alice Lee's declaration as the County's next order exhibit. The parties and Commission had no objections. The County's exhibit was admitted into the record.

Mr. Nakamura identified his letter to the Commission dated September 13, 2004 regarding the matter on the curator and the extension of the 100-foot buffer zone as Exhibit 44. Mr. Nakamura then identified a letter from himself to the Commission dated September 14, 2004 regarding the various roadway improvements that have been since agreed to between the DOT and the Petitioner as Exhibit 45. Mr. Nakamura also described three documents which were submitted to the Commission. They were a clean copy of the findings, a copy of the blackline which showed specific changes made to the findings dated January 7, 2005, and the stipulation signed by counsel for the

Office of Planning and the Maui Department of Planning to the approval of the findings. Mr. Nakamura then went over the changes that were made. Please refer to the LUC transcript of January 14, 2005 for details on the changes.

Mr. Nakamura indicated that all changes were agreeable to the County and the State and reflected in Exhibit A of the stipulation.

Ms. Lovell indicated that the County provided input and suggested changes to the proposed findings of fact, conclusions of law, and decision and order, and was satisfied with the draft, which accurately reflected the record.

Mr. Chang indicated that the State had reviewed the proposed draft Findings of Fact, Conclusions of Law, and Decision and Order which was set forth as what was stated at the hearing and have stipulated along with the County.

There was discussion regarding the heiau issue and it's consistency with the Ka Pa'akai case. There was also discussion regarding the committee reporting requirements to the LUC.

Vice Chair Sakumoto indicated that when the ownership changes, the developer should ensure that the obligation to seek the adjacent landowner's consent to extend the 100-foot wide buffer into their lot would carry forward even after the project has been sold out.

A recess break was taken at 12:14 p.m. The meeting reconvened at 12:45 p.m.

Vice Chair Sakumoto moved to defer taking action on this docket and to take a vote on it at the next meeting on Maui and decide upon the final form of the decision & order. Vice Chair Montgomery seconded the motion. The motion was unanimously approved by voice votes.

The meeting was adjourned at 1:08 p.m.

*(Please see LUC Transcript of January 14, 2005 for additional details on all above matters.)*