

LAND USE COMMISSION
MINUTES OF MEETING

March 3, 2005

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

Commissioners Present: P. Roy Catalani
Michael D. Formby
Isaac Fiesta
Kyong-su Im
Lisa Judge
Steven Montgomery
Randall Sakumoto

Commissioners Absent: Peter Yukimura

Staff Present: Anthony J.H. Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Max Rogers, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Catalani called the meeting to order at 9:58 a.m.

ADOPTION OF MINUTES

Vice Chair Sakumoto noted a correction on the minutes of February 11, page 8, second paragraph. Replace the words "her" to "his" when referring to comments made by Vice Chair Sakumoto in relationship to the previous testimony provided by public witness, Jerry Schneyer. Vice Chair Sakumoto then moved to adopt the minutes with the noted correction. Commissioner Fiesta seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the County of Hawaii's Planning Commission meetings are held on Friday's that coincide with the LUC's meeting schedule. Therefore, the LUC has scheduled the Hilo meetings for Wednesday and Thursday, March 16 and 17. Mr. Ching also reported amendments to the upcoming Big Island schedule:

- April 19 and 20 (Tuesday-Wednesday) meetings in Kona - may be cancelled;
- May 18 and 19 (Wednesday-Thursday) in Kona will be the start of the HELCO hearings;
- June 1 and 2 (Wednesday-Thursday) continued HELCO hearings in Kona.

Commissioner Fiesta indicated that he will not be able to attend the meetings on March 16 and 17.

Commissioner Im stated that he may have conflicts with the shifting of the hearing dates due to previous commitments.

Mr. Ching stated that the next Big Island meetings could possibly be compressed into a single day in March. He also reported that the next Maui meetings will be on May 5 and 6, 2005.

A04-748 CONSOLIDATED BASEYARDS LLC

Chair Catalani stated that this was an action meeting 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

Blaine Kobayashi, Esq., represented Petitioner
David Ward, Frampton and Ward Consultants
Dean Frampton, Frampton and Ward Consultants
Roderick Fong, Principal, Consolidated Baseyards LLC
Madeleine D'enbeau, Deputy 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

Chair Catalani noted that there were no public witnesses.

Mr. Kobayashi provided a background of the petition and submitted copies of a Second Stipulated decision and order. He then highlighted aspects of this new document.

Commissioner Judge entered the proceeding at this time.

Mr. Kobayashi indicated that the proposed use of the property is reasonable and added that the petitioner has met all decision making criteria. Mr. Kobayashi requested that the Commission approve the stipulated decision and order and added that petitioner will comply with the conditions and honor the representations made.

The Commission discussed and clarified the conditions and representations made to the stipulated decision and order.

A recess break was taken 11:00 a.m. The meeting reconvened at 11:19 a.m.

Ms. D'enbeau stated that during the break, she spoke with Alice Lee and indicated that the County has a policy in place to require a housing study. The housing study will provide the County with information for the County to determine appropriate requirements. Ms. D'enbeau noted that she retracts her earlier comment that the County did not have a policy.

The Commission continued to discuss and clarify the conditions and representations of the stipulated decision and order.

EXECUTIVE SESSION

Commissioner Im moved that the Commission enter into executive session under §92-5(a)(4), Hawaii Revised Statutes, to discuss the affordable housing policy matters with its Deputy Attorney General. The motion was seconded by Vice Chair Sakumoto. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 12:38 p.m. The meeting adjourned at 12:50 p.m.

A lunch recess was taken at 12:50 p.m. The open meeting reconvened at 2:13 p.m.

A04-748 CONSOLIDATED BASEYARDS LLC (continued)

Chair Catalani reconvened the open meeting at 2:13 p.m.

Commissioner Judge proposed a new recommendation that the Commission use the same condition as found in Alexander and Baldwin's docket, that prior to rezoning the petitioner must submit a housing study to the Commission for review.

After a discussion, Commissioner Judge moved to approve the petition, subject to technical amendments made by the Commission. Commissioner Im seconded the motion. The Commission was polled as follows:

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

The motion passed with 7 ayes and 1 absent.

A recess break was taken at 2:20 p.m. The meeting reconvened at 2:27 p.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, 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.

Commissioner Judge described her proposed decision and order and indicated that her objective was to address the constitutional obligations of Ka'apakai.

Commissioner Fiesta moved to waive the LUC's 7-day rule to accommodate the review and consideration of Commissioner Judge's proposed order. Vice Chair Sakumoto seconded the motion. The Commission was polled as follows:

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

The motion passed with 7 ayes and 1 absent.

Mr. Nakamura noted that the petitioner has no objections to Commissioner Judge's proposed decision and order.

Ms. Lovell commented that the language of condition 4g could be slimmed down.

Mr. Chang indicated that the State had no objections with the amendments mentioned and supports the adoption of the decision and order.

After a discussion, Commissioner Judge moved to adopt the proposed decision and order with amendments and technical and non-substantive changes and approve the reclassification of land in this docket. Vice Chair Sakumoto seconded the motion. The Commission was polled as follows:

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

The motion passed with 7 ayes and 1 absent.

A recess break was taken at 2:57 p.m. The meeting reconvened at 3:09 p.m.

A05-756 KAA NAPALI DEVELOPMENT CORP.

Presiding Officer Montgomery stated that this was an action meeting to determine whether the LUC is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 849.77 acres of land currently in the Agricultural District to the Urban District at Honokowai, Hanakoo, Kuhua and Kapunakea, KaaNapali, Maui, Hawaii; and to determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

David Nakamura, Esq., represented Petitioner

Steven A. Lovelet, Kaanapali Development

Gwen Hiraga, Munekiyo and Hiraga

Mitch Hirano, Munekiyo and Hiraga

Jane Lovell, Deputy 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

Presiding Officer Montgomery noted that the Commission has received written testimony from Roselle Bailey.

Public Witnesses

1. John Cote

Mr. Cote stated that he is an associate of Kaanapali 2020 and spoke in support of the Petition. He added that he is a stakeholder in community meetings and a resident in the area.

2. Ed Lindsey

Mr. Lindsey spoke in support of the Petition and added that this project uses smart growth principles and strong community planning.

3. Gene Moore

Mr. Moore stated that he is a resident in the area and stakeholder in the planning process. He also indicated his support of the project and added that the design of this project is well thought-out.

4. John Kuia

Mr. Kuia stated that he is a resident of West Maui and also spoke in support of the project.

5. Walter Delos Reyes

Mr. Delos Reyes stated that he is an original member of the steering committee and is in support of the project. He added that in the last 6 years, he has attended over 100 meetings.

Petitioner's Presentation

Mr. Nakamura made his presentation and described the entitlement process. Mr. Nakamura discussed the EIS and added that the Petitioner believes there may be a significant impact on the environment. He then requested that the LUC be the accepting authority and recommends that an EIS be prepared.

Ms. Lovell commented that the County agrees with Petitioner's legal analysis and believes that the LUC is the appropriate accepting authority.

Mr. Chang indicated that the State believes the LUC is the appropriate accepting authority and had no objections to the preparation of an EIS.

While noting that litigation continues with respect to the necessary timing of the preparation of an EIS for projects such as Kaanapali 2020, Commissioner Judge moved that the LUC become the accepting authority and that the project will have a significant impact such that preparation of an EIS is warranted. Commissioner Formby seconded the motion. The Commission was polled as follows:

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

The motion passed with 7 ayes and 1 absent.

A recess break was taken at 3:43 p.m. The meeting reconvened at 3:59 p.m.

A88-634 ALEXANDER & BALDWIN, INC. (Maui)

Chair Catalani stated that this was a continued hearing to consider Petitioner's Application to Approve Phase II for Incremental Redistricting from Agricultural to Urban classification consisting of approximately 33.530 acres of land currently in the Agricultural District to the Urban District at Kahului, Maui, Hawaii.

APPEARANCES

Ben Matsubara, Esq, represented Petitioner

Dan Yasui, Alexander and Baldwin, Inc.

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

Clayton Yoshida, 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

Admission of Supplemental Exhibits

Mr. Matsubara stated that Petitioner has an Amended Witness and Exhibit List and Exhibits 9-14 for submittal. There were no objections from the County and the State. Said exhibits were admitted into the record.

Ms. Lovell indicated that the County had no additional submittals.

Mr. Chang noted that the State would like to offer Exhibit 3 and to also include testimony by Dennis Lau of the Department of Health to their witness list. There were no objections from the County and the Petitioner. Said exhibit was admitted into the record.

Mr. Matsubara presented a brief chronology of the Petitioner's case.

PETITIONER'S WITNESS

1. Bert Topa

Mr. Topa stated that he presently is an officer of RM Towill, but has worked on this project when he was employed by another firm. Mr. Topa provided a brief history of the project and discussed issues of the existing and proposed drainage system, permits, grading, and also indicated that all aspects of the permits are in compliance. Mr. Topa was qualified as an expert in civil engineering. There were no objections.

2. Lance Nakamura

Mr. Nakamura stated that he is with the County DPWEM and discussed the functions of the building permit application process and routings, certificate of occupancy, and requirements of the other agencies as they sign-off on the application and certificate of occupancy.

A recess break was taken at 4:59 p.m. The meeting reconvened at 5:16 p.m.

PUBLIC WITNESS (out of order)

1. Richard Michaels

Mr. Michaels stated that he is with the Board of Directors for Maui Tomorrow and spoke of improving affordable housing. He indicated that he will seek to reform the existing affordable housing system and has recommendations that he will bring to the county council on Monday. Mr. Michaels provided a summary of his group's draft affordable housing plan for Maui.

PETITIONER'S WITNESS (continued)

3. Dan Yasui

Mr. Yasui summarized the maintenance components of the drainage program, and discussed periodic monitoring, vegetation maintenance, debris removal, and contamination.

After a brief discussion, Mr. Matsubara indicated that this concluded his case.

COUNTY OF MAUI

Ms. Lovell stated that the Maui Fire Department has had a trying week and unfortunately the Fire Department's Captain was not available to provide live testimony. Ms. Lovell noted that the Fire Captain would have provided information regarding the Certificate of Occupancy application and compliance of Uniform Fire Codes as an "offer of proof." Ms. Lovell added that the County has concluded its case.

Chair Catalani called for the State's witness, Dennis Lau, Branch Chief of the Department of Health's Clean Water Branch.

STATE'S WITNESS

1. Dennis Lau

Mr. Lau discussed the reasons why an NPDES permit was not required at that time and discussed the issuing of the Certificate of Occupancy and compliance requirements.

After a brief discussion, Chair Catalani closed the evidentiary portion of the proceeding.

Mr. Matsubara made closing arguments seeking the same conditions as the first increment to include a stop work on archaeological sites. He indicated that the Petitioner is ready for action to be made, given that the proposed decision and order could be amended to reflect changes.

Chair Catalani noted that the Commission was not be able to take action on this item today due to the noticing of the agenda.

Ms. Erickson added that the Commission was unable to amend the agenda today allowing for an action item to be heard.

Ms. Lovell stated that the County had no closing argument and believes that the applicant has met its burden.

Mr. Chang commented that the State had no objections.

LEGISLATIVE UPDATE:

Mr. Ching provided the Commission with an update on proposals of interest still pending before the State Legislature.

EXECUTIVE SESSION

Vice Chair Sakumoto moved that the Commission enter into executive session under §92-5(a)(4) to discuss the board's powers, duties, privileges, immunities, and liabilities with its Deputy Attorney General. The motion was seconded by Vice Chair Montgomery. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 6:35 p.m. The open meeting was adjourned at this time.

The Commission exited executive session and the meeting adjourned at 6:52 p.m.

(Please refer to LUC Transcript of March 3, 2005 for more details on this matter.)