

LAND USE COMMISSION
MINUTES OF MEETING

August 26, 2005
Maui Electric Company, Ltd.
210 W. Kamehameha Avenue
Kahului, Maui, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Kyong-su Im
Duane Kanuha
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Lisa Judge
Steven Montgomery

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

Chair Sakumoto called the meeting to order at 9:45 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of August 11, 2005 and August 12, 2005. Commissioner Contrades seconded the motion. The minutes of August 11, 2005 and August 12, 2005 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- September 8 will be a one-day meeting with the HCDCH and OP presentations. HCDCH to begin at 1:30 p.m. with the OP presentation to follow.
- September 9 is a field trip to the Charitable Foundation docket in Pupukea and the Pacific Aina Development project in Waimalu. For transportation purposes, Mr. Ching polled the Commissioners for their attendance in the field trip.
- September 29-30 hearings will be held in Kona at the Hapuna Prince.
- October 6-7 and 20-21 hearings will be held on Oahu, and will feature the Kapolei West Aina Nui docket.
- November 3-4 hearings will be at the Sheraton Lahaina for the Pulelehua hearings.
- HCPO will be held sometime in November. We are holding the second November meeting dates for this conference.
- December 8-9 meetings will be held on Oahu for the LUC workshop and to commence hearings for A Charitable Foundation docket and, if needed, continue the Aina Nui hearings.

EXECUTIVE SESSION

Commissioner Im moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Contrades seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 9:50 a.m.

The open meeting reconvened at 10:10 a.m.

DOCKET NO. A04-754 MAUI LANI 100, LLC (MAUI)

Chair Sakumoto stated that this was an action meeting to consider the reclassification of approximately 59.6 acres of land currently in the Agricultural District to the Urban District for a village mixed-use/open space district and residential subdivision at Wailuku, Maui, Hawaii.

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner

Cory Kimura, Maui Lani 100

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

Colleen Suyama, Planner, County of Maui Department of Planning

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Chair Sakumoto noted that the Commission has received the filings from the parties and have read them, but at the last meeting, the Commission had already moved into deliberations. The stipulated decision and order was distributed to all parties and the parties have had the opportunity to respond. Chair Sakumoto added that the Commission will now directly proceed and continue with its deliberations.

Mr. Chang asked if the Office of Planning would have the opportunity to discuss their filings. Chair Sakumoto noted that it was only possible for individuals or organizations to provide public testimony on the agenda item as provided for under the sunshine law. As the evidentiary portion of the hearing was closed, and the Commission was conducting its deliberations, there would be no more input from the parties unless directed by the Chair. Chair Sakumoto added that because the Office of Planning is a party, Ms. Thielen could only testify as a member of the public.

Public Witness

1. Laura Thielen

Ms. Thielen stated that she is from Kailua, Oahu, Hawaii and testifying as an individual. Ms. Thielen commented that if the LUC enters into deliberations and continues its discussions to another hearing and another day, any changes to the order compiled by the Commission in the interim should trigger another opportunity for the parties to comment on these proposed changes.

There were no questions posed by the parties or the Commission.

Chair Sakumoto entertained a motion to go into executive session since this was a procedural matter.

EXECUTIVE SESSION

Commissioner Kanuha moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Piltz seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:20 a.m.

The open meeting reconvened at 10:35 a.m.

Chair Sakumoto stated that as a general practice, the Commission procedures are specified in the LUC's rules. The LUC is currently operating under HAR §15-15-56 (4) Stipulated findings of fact, which states that "The commission may approve the proposed decision and order by amending or adopting the proposed decision and order." The Chair indicated that as provided by the LUC's rules, the Commission has been and is currently deliberating on the amendments to the stipulated order offered by the parties as provided under HAR §15-15-56 (4). This process is different from that described under HAR §15-15-82 (b)(c) where copies of an order imposed by an individual commissioner must be served upon the parties and each party may provide its position on the commission member's proposed findings of fact and conclusions of law within 3 days from the date of the services. It is also important to note that as the Commission has already given the public an opportunity to testify on the agenda item (as provided for under the sunshine law) parties to the docket cannot use the sunshine law as a basis for commenting or providing input during the Commission's deliberations.

Chair Sakumoto added that the Commission had provided a courtesy copy of the decision and order to the parties and, at this time, was continuing in its deliberations. The Commission will not entertain any input during deliberations unless there are specific questions addressed to the party by the Chair. The Commission subsequently moved forward in its deliberations.

Ms. Thielen placed an objection noting that the OP would like an opportunity to discuss the changes to the order and asked for reconsideration.

Chair Sakumoto commented that her objection was noted. Chair Sakumoto proceeded by asking the Executive Officer to review the document for the Commission.

Mr. Ching stated that staff was instructed to make the changes as discussed and to present a redline version to the Commission. Mr. Ching then summarized and discussed the proposed changes to the findings of fact, conditions of approval, and matters related to the petition VMX area, and the affordable housing percentage and numbers, which had been discussed earlier by the Commission.

A recess break was taken at 11:35 a.m. The meeting reconvened at 11:45 a.m.

The Commission continued with their deliberations on matters related to the proposed language of the 51% of affordable housing, the County of Maui's Affordable Housing Guidelines, and the periodic inspections of monitoring wells being established by the Petitioner.

Chair Sakumoto posed a question to Petitioner related to the homeowner's association or other stakeholders of the project that could be held responsible for the inspection of the monitoring wells at the landfill.

Mr. Kimura replied that there may possibly be more than one homeowner's association, and suggested that the proposed language of successor or assigns be used in the order. Mr. Kimura added that there could be a master association established, which only covers the residential projects, and noted that there is also likely to be a commercial parcel that would not be covered in the master association. Mr. Kimura stated his concern is that the proposed language could introduce a conflict between the residential homeowners and the commercial owners in the future.

After a discussion, Mr. Ching read the proposed language for 11a, as dictated by the Commission.

After the Commission had completed its deliberations, Commissioner Piltz moved to accept the petition of Maui Lani 100, LLC to amend the Agricultural Land Use District into the Urban District for approximately 59.6 acres in Wailuku, Maui, Hawaii. Commissioner Formby seconded the motion.

Chair Sakumoto offered a friendly amendment to Commissioner Piltz's motion and added that the document would be revised to note the changes that were described by the Executive Officer during his overview of the document and also the changes dictated by the Commission. Commissioners Piltz and Formby accepted the friendly amendment to their motion.

Chair Sakumoto also noted that the order for adoption dictated by this Commission today would be carefully reviewed to ensure that all references to the "County" refer to county of Maui Planning Department. All other references will either name the specified agency or refer to the appropriate agency. Commissioners Piltz and Formby agreed and replied in the affirmative.

Chair Sakumoto then noted a procedural matter. He asked for confirmation from each of the commissioners that they had reviewed the record and/or copies of the transcripts for this docket's proceedings and was prepared to take action on this docket item today.

The Commission was polled as follows:

Ayes: Commissioners Im, Formby, Piltz, Kanuha, Contrades, and Sakumoto.

Chair Sakumoto then noted that the Commission was prepared to take action on this particular item. A motion, which was amended, is ready for a roll call vote.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Formby, Contrades, Im, Kanuha, and Sakumoto.

The motion passed with 6 ayes and 2 absent.

A recess break was taken at 12:25 p.m. The meeting reconvened at 12:30 p.m.

DOCKET NO. A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui)
PULELEHUA

Chair Sakumoto stated that this was an action meeting to consider the Motion for Intervention filed by Majesty Akahi Nui, Trustee of the Kingdom of Hawaii Nation Ministry Trust.

On July 12, 2004, Majesty Akahi Nui, Trustee, Kingdom of Hawaii Nation Ministry Trust, filed a Motion for Intervention.

On July 27, 2004, Maui Land & Pineapple Company, Inc. filed a Notice of Opposition to Motion for Intervention.

On August 22, 2005, Petitioner filed a Memorandum in Opposition to Motion for Intervention.

APPEARANCES

William Yuen, Esq., representing Petitioner

Carl Bossert, Project Manager, Pulelehua

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

Ann Kua, Planner, County of Maui Department of Planning

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Chair Sakumoto asked if Movant Majesty Akahi Nui was present at the meeting. Chair Sakumoto then asked staff if the Movant was notified of today's proceedings.

Mr. Ching stated that a Certificate of Service was executed on August 18, 2005, which served the notice and agenda to all the parties, including the Movant, at their contact address for the Kingdom of Hawaii Nation, P. O. Box 2845, Wailuku, Hawaii 96793.

Mr. Yuen briefly described the provisions of Commission rules under HAR §15-15-52 Intervention in proceeding for district boundary amendments. Mr. Yuen added that Petitioner believes the Movant has no property interest rights.

Ms. Lovell stated that the County had no comments and noted that they were not served with the original motion to intervene. However, Ms. Lovell noted her concurrence with Mr. Yuen's presentation on the matter.

Mr. Chang noted that the State also was not served with the motion, but did concur with the Petitioner's argument on the subject.

Commissioner Formby commented that upon reviewing Movant's document, there is insufficient evidence that the Movant had a stake or property interest in this matter. Commissioner Formby also disputed Movant's representation that it has no other means by which its alleged interests may be protected.

Commissioner Formby moved that Movant's motion for intervention in Docket No. A04-751 Maui Land and Pineapple Company, Inc., be denied. The motion was seconded by Commissioner Contrades.

The Commission was polled as follows:

Ayes: Commissioners Formby, Contrades, Im, Kanuha, Piltz, and Sakumoto.

The motion passed with 6 ayes and 2 absent.

DOCKET NO. A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Sakumoto announced the next docket item is a field trip and asked the Executive Officer to describe the arrangements for the field trip.

Mr. Ching commented that Petitioner Hale Mua scheduled a field trip to a warehouse in the vicinity to view the housing technology that will be utilized by this particular developer. The field trip is provided for under LUC rules and does not allow substantive exchanges by the parties with the Commissioners.

Mr. Shay Smith of Hale Mua announced that he would be escorting the attendees down to the warehouse. The attendees met at a warehouse on the corner of Waiakea and Alamaha Streets in Kahului, Maui, at approximately 1:00 p.m., where they viewed a scale model of the housing type proposed for the Hale Mua project.

The meeting adjourned 12:45pm

(Please refer to LUC Transcript of August 26, 2005 for more details on this matter.)