

LAND USE COMMISSION
MINUTES OF MEETING

December 2, 2005

Maui Arts and Cultural Center
Gallery Meeting Room
One Cameron Way
Kahului, Maui, Hawaii 96732

COMMISSIONERS PRESENT: Michael Formby
Kyong-su Im
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Thomas Contrades

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

Chair Sakumoto called the meeting to order at 9:10 a.m.

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

Chair Sakumoto stated that this was a hearing on Docket No. A04-751 Maui Land & Pineapple Company, Inc. –Pulelehua for the reclassification of approximately 310.437 acres of land currently in the Agricultural District to the

Urban District at Mahinahina, West Maui, Hawaii for multi- and single-family residential homes and retail commercial spaces.

APPEARANCES

William Yuen, Esq., representing Petitioner
Robert McNatt, Executive Vice President, Maui Land & Pineapple Company
Jane Lovell, Esq., represented the County of Maui Department of Planning
Michael Foley, Director, County of Maui Department of Planning
Ann Kua, 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

Public Witnesses

1. Joe Bertram, III

Mr. Bertram stated that petitioner has done everything right in selecting the location of the project, enhancing existing facilities, utilizing the airport access as an amenity, and the charette process. Mr. Bertram noted his support for the Pulelehua project and urged the Commission to provide a speedy approval.

Commissioner Piltz asked if there was anything in this project for improvement. Mr. Bertram replied that he would like to see a proposal incorporating the train station into the project.

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

2. Mae Fujiwara

Ms. Fujiwara stated that she is a resident of West Maui and supports this project because of the critical need for affordable housing. Ms. Fujiwara added that Pulelehua will provide housing for those already working in West Maui and will also help to alleviate some of the area traffic problems by creating a community where people work and live in West Maui, and provides parks, a school, wellness center, churches, and long term care facility.

Vice Chair Judge entered the meeting at this time.

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

3. John Rizzo

Mr. Rizzo stated that he is an educator from the Maui Prep Academy and expressed his support for the project.

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

4. June Higa

Ms. Higa noted that she had previously sent in written testimony on November 14, 2005 and voiced her support for the project as she is employed by Maui Land & Pineapple (MLP) and drives to work daily from Wailuku. Ms. Higa stated that there is no other company in Hawaii offering affordable housing for their employees and added that MLP is also planning a holistic community.

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

5. Loren Shim

Mr. Shim stated that he is the General Manager of the Whaler on Kaanapali Beach with a total of 1800 units and was speaking on behalf of their parent company, Resort Quest. Mr. Shim noted that it has been a challenge hiring necessary employees at their hotels due to the high cost of housing. Mr. Shim added that he previously submitted written testimony in support of the project at the last hearing.

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

6. Greg Hansen

Mr. Hansen stated that he is a full time conservationist for MLP and expressed his support for Pulelehua, which featured affordable housing, landscaping plans utilizing native Hawaiian plants, and more open spaces.

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

7. Giovanni Rosati

Mr. Rosati stated that he is with the Maui Nui Housing Task Force and have previously submitted written testimony to the Commission. Mr. Rosati added that they strongly support this project because the project helps to address the widespread affordable housing crisis.

Vice Chair Judge asked if the Task Force had any ideas on how to keep affordable housing affordable and ways to assure that affordable housing goes to those that are in need. Mr. Rosati replied in the affirmative and added that they have established a plan and advocate that affordable housing remain in perpetuity.

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

Chair Sakumoto noted that written testimony dated November 29, 2005 was received by the Commission from Danny Chin, Lisa Carts, et al regarding their concerns with the project.

A recess break was taken at 10:05 a.m. The meeting reconvened at 10:15 a.m.

Mr. Yuen began his presentation and noted petitioner's revised exhibit list and indicated that Petitioner's exhibit 37 will be filed with the LUC in Honolulu today and will be introduced at the appropriate time. Mr. Yuen added that they have six witnesses and hopefully will be able to complete all of their testimony today.

Petitioner's Witnesses

1. Steven Dollar

Dr. Dollar described his professional and educational background as an oceanographer. Dr. Dollar's resume was cited as petitioner's exhibit 17 and he was qualified as an expert in oceanography. There were no objections by the parties and the Commission.

Dr. Dollar discussed issues related to the impacts from resort development to the marine environment, golf course effects in the ocean and

offshore, effects of large scale sugar cane and pineapple processing, and the study conducted specifically for Pulelehua. Dr. Dollar added that the development of Pulelehua will not have an adverse effect on the coastal area and that there should not be any effect to endangered species, such as sea turtles.

Ms. Lovell asked if the Pulelehua lands were comprised of pineapple fields or fallow when the study was conducted in April 2004. Dr. Dollar replied that the lands were fallow and overgrown with weeds at that time.

Mr. Chang asked what the bands were in the aerial view of the project site. Dr. Dollar noted that he believed those were terraces in the fields but that he should refer that question to someone else more qualified than he is to answer.

Mr. Chang also posed questions related to the algae blooms in Maui.

Commissioner Formby raised questions related to the two gulches, one that includes a flood basin, while the other indicates uses for drainage.

Vice Chair Montgomery asked how they keep runoff from the project within the project site. Mr. Yuen replied that another witness will be able to answer that question.

Vice Chair Judge posed questions regarding nutrients that reach the ocean from the runoff.

Commissioner Piltz posed questions relative to the periodic monitoring in the three areas, and commented that the Pohaku area appears red after rainfall and asked if it was from dirt runoff. Dr. Dollar replied that the red dirt has affected the growth of algae blooms, although this was not the prime algae area.

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

2. Stacy Otomo

Mr. Otomo summarized his educational and professional background stating that he is an engineer practicing for over 26 years. Mr. Otomo was qualified as an expert in civil engineering. There were no objections by the parties or the Commission.

Mr. Otomo referenced exhibit 31, figure 2, and discussed issues of the potable water source and demand, non-potable water source and demand, reclaimed water and reservoir capacity, drainage and runoff, solid waste, and green waste recycling program.

Ms. Lovell posed a few questions relative to the potable water supply, project negotiations with the Department of Water Supply, and the possibility of an on site sewage treatment plant being an alternative strategy.

Mr. Chang raised questions in reference to exhibit 4, figure 1, drainage along the Honoapiilani Highway, the 150 foot greenway buffer and retention area.

Vice Chair Judge posed questions relative to the potable water supply and the possibility of petitioner drilling their own wells on site.

Commissioner Im raised questions and concerns regarding the flood water retention for 50 and 100 year storms, existing drainage facilities, potable water and non potable water lines, and the depth of the retention areas.

Commissioner Formby posed a few questions related to the Mahinahina basin, the gulch, and the drainage makai of the airport.

Chair Sakumoto commented on the written testimony received by a group of homeowners near Kahana gulch, who had concerns of a proposed road going thru the gulch and causing erosion. Mr. Otomo replied that they had looked at that road as an option, but that it is no longer in the plan.

A recess break was taken at 11:20 a.m. The meeting reconvened at 11:30 a.m.

Chair Sakumoto referenced the written testimony dated November 29, 2005 submitted by Danny Ching, Lisa Carts, et al, and asked Mr. Otomo about the residents' concerns for unanticipated erosion. Mr. Otomo explained that the proposed alignment of the road is currently along an existing dirt road and that the terrain there is substantially higher and would improve the conditions once the road is paved. Mr. Otomo also explained that regarding the gulches in general, there is no planned construction in the gulches, although the existing drainage basin may be enhanced should additional storage capacity is needed.

Commissioner Formby commented that the way it is represented, there are two roads projected to be constructed along the culvert to the right side of the Petition area and that some construction activity will be conducted in the gulches. Commissioner Formby asked if there is a need to do any work in the gulches, will they use best management practices to minimize runoff into the ocean. Mr. Otomo replied in the affirmative.

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

3. Wes Nohara

Mr. Nohara stated that he is the Vice President of Production Management for Maui Land & Pineapple (MLP) and has been employed there for 36 years. Mr. Nohara briefly described the Honolua Plantation and summarized MLP's plans for pineapple cultivation and noted that removal of Pulelehua lands from pineapple cultivation will not impair the pineapple production. Mr. Nohara also discussed the location of MLP's core lands and farming of premier pineapple.

Ms. Lovell raised questions relative to the volume of water needed to raise fresh pineapple, water demands, stream diversion, and the comparison of residential uses to agricultural uses.

Mr. Chang posed a few questions regarding future plans to designate MLP's core lands as IAL lands, and other MLP lands situated in West Maui.

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

A recess break was taken at 12:00 p.m. The meeting reconvened at 1:10 p.m.

4. John Robert Brooks

Mr. Brooks stated that he has been employed at MLP since 1978 and currently is the Manager of Maui Agricultural Partners on the Honolua Plantation. Mr. Brooks commented that he has been assigned to evaluate diversified agriculture since 2003, and is currently working to develop a program including cattle.

Ms. Lovell posed a few questions regarding a compost green manure production, green waste diversion from the County's landfill, and a business plan.

Mr. Chang had a few questions related to the cattle program, gulches in the area, the regeneration process of manure compost, and cultivating native Hawaiian plants in their nurseries.

Vice Chair Judge posed a few questions on organic farming and community gardens for the residents who may be interested.

Commissioner Formby asked if MLP was presently cultivating pineapple on the property. Mr. Brooks replied that pineapple has not been on the property for over 5 years and that the property is currently fallow.

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

5. Robert McNatt

Mr. McNatt was previously sworn in on November 17, 2005 and reminded that he was still under oath. Mr. McNatt provided a brief introduction of MLP and discussed MLP's affordable housing plan, site selection process for Pulelehua, the concept of new urbanism, development timetable, traffic impact fees, efforts to coordinate public education facilities within the Department of Education, and their discussions with the County and the Administration.

Mr. McNatt also addressed the potable water and wastewater issues, petitioner's exhibit 35 letter from the County Water Supply to Ann Kua, the County's work in improving the West Maui potable water treatment and facilities, the availability of potable water for the Pulelehua project, the use of the Lahaina Wastewater Treatment Plant, and the capacity gains with relatively minor cost to the County for improvements to the plant that will increase capacity for an additional 2,700 units.

Mr. McNatt briefly discussed the proposed medical center on the project site and referenced petitioner's exhibit 4, figure 1.

Mr. McNatt noted that MLP accepts all four of the County's recommended conditions.

Mr. McNatt added that they have the following comments for the State's recommended conditions:

- 1 to 3 - no objections
- 4 - transportation - propose alternative conditions
- 4a - no objections
- 4b - highway improvements - object to the unilateral nature of the highway improvement - still working with DOT on TIAR process
- 4c, 4d, 5 & 6 - no objections
- 7 - object to cultural practices - the project is not on the shoreline or close to it
- 8, 9, 10a, 10b, 10c, 10d - no objections
- 11 - runway safety - not appropriate for any construction improvements - the State should purchase the land next to the airport as MLP does not intend to donate land
- 12 - hazards to aircraft - object to that - as implementation is thru DOT and not MLP
- 13 to 19 - no objections

Ms. Lovell raised questions regarding the percentage of affordable housing units and asked if some of these units are being used to satisfy a condition for another project. Mr. McNatt replied in the affirmative and noted that for Kapalua Mauka, MLP proposes 25% affordable units offsite, some of these would be within the Pulelehua project, some in another project in West Maui. Mr. McNatt added that approximately 80% of the Pulelehua project would be used to satisfy Kapalua Mauka. Mr. McNatt also noted that approximately 240 of these units will be set aside for MLP employees who would qualify and have shown interest for purchase.

Ms. Lovell posed questions in reference to wastewater issues and capacity, and asked if MLP plans to hook into the existing County sewer system and if they also had a backup plan in the event that the existing system did not have enough capacity at full build out. Mr. McNatt replied in the affirmative and noted that the County and the Mayor have assured MLP that the sewer system will have the capacity, and added that this project would be built before any project in West Maui. Also, the County is planning to increase their system capacity to 2,700 additional units before this project is completed.

Ms. Lovell commented that the community is in favor of a school, but have concerns that the homes would be built without the school in place. Mr.

McNatt explained that the DOE currently has a plan to build the school by 2011, but MLP is working with them to move up that date and has been able to legislate the funding for planning and design and will also explore ways to speed up that process. Mr. McNatt added that MLP could hire an architect to do the design and have also considered building the school themselves. The elementary school will serve 550 students grades K thru 5.

Mr. Chang raised questions regarding IAL lands and asked if MLP will be voluntarily designating IAL lands. Mr. McNatt replied in the affirmative and noted that they have not determined the specific sites.

Mr. Chang also posed questions relative to the affordable housing requirement for Kapalua Mauka and Pulelehua, and negotiations for an agreement with the DOE on education fees.

Commissioner Piltz commented that in the past they have seen agreements between developers to place within their project some affordable housing units to satisfy their affordable housing requirement to the County. Commissioner Piltz asked if MLP would allow another developer to build units within their project to satisfy someone else's requirement. Mr. McNatt replied in the affirmative and added that if someone else needs credits they could come to MLP for additional units to satisfy their affordable housing credits.

Commissioner Im asked what the Kapalua Mauka affordable housing requirement was. Mr. McNatt replied that they are proposing 25% or 173 units and also proposing to build 40 units in another location. Mr. McNatt added that MLP will have additional affordable housing credits from this project and intend to apply these excess credits to other projects or possibly sell to other developers. MLP currently has 15 existing credits and are unsure if they will use it for this project or for future development needs.

Commissioner Im had a few questions on ohana units. Mr. McNatt replied that there will be a maximum of 267 ohana units incorporated into the design.

Commissioner Im also raised questions and concerns relative to the infrastructure, the capacity of the existing schools, and DOE contribution and fees.

A recess break was taken at 2:20 p.m. The meeting reconvened at 2:40 p.m.

Commissioner Im referenced exhibit 22, the total number of project units and affordable housing numbers. After a brief discussion on the calculations, Commissioner Im commented that if this was a stand alone project, it would not meet the affordable housing requirement.

Vice Chair Montgomery raised a few questions regarding the list of those wanting to buy the affordable homes and discussed the charette process.

Commissioner Kanuha posed questions relative to the emphasis on total project costs and plans for financing. Mr. McNatt explained that MLP is planning a variety of ways to finance this project, conventional construction, utilizing some equity, financing from other projects such as Kapalua Mauka, and also exploring various ways to fund and finance affordable housing thru grants and partnerships with Habitat for Humanity, Lokahi Pacific, etc.

Vice Chair Judge raised questions regarding the water source evaluation in the EIS, the letter from the Department of Water Supply to Ann Kua, and diversion of water from the Honolua ditch. Vice Chair Judge also had a few questions on the DOT access points and intersections, affordable housing numbers, and the new urbanism concept.

Commissioner Piltz posed a few questions and concerns regarding the traffic impact fees and the education fee calculated by the number of potential students.

Commissioner Formby raised questions and concerns relative to the charette process and asked if the Pulelehua community was advised of the 51% affordable housing requirement that was achieved for Kapalua Mauka. Mr. McNatt replied that he could not recall if that was made public. Commissioner Formby also commented that testimony from Mr. Bertram indicted that they do not need more luxury ghettos and affordable housing ghettos. Mr. McNatt replied that Kapalua Mauka was approved by this LUC a few years ago and was created as an economic engine for MLP and that the policy for the county was to provide 15% affordable housing within the community plan area and MLP has exceeded that in their proposal. Mr. McNatt added that the 173 units that could be built in Pulelehua would accommodate Kapalua Mauka and is far in excess of that number.

Commissioner Formby also posed questions on the agreement between the DOE and MLP for the Kapalua Mauka project and Pulelehua. Mr. McNatt replied that the agreement with the DOE is for Kapalua Mauka and not for Pulelehua.

Commissioner Formby commented that Mr. Bertram testified earlier of a train station in the area and asked if MLP has implemented plans for a train station. Mr. McNatt replied that there is room to have a train station, but it is not a part of this new urbanism plan where you create a nucleus and plan for a walkable community.

Commissioner Formby also commented on Mr. Rizzo's earlier testimony regarding MLP's donation to Maui Prep Academy. Commissioner Formby referenced exhibit 21 and questioned the donation of a 15 acre site for Maui Prep Academy to create a private school for grades K thru 12. Mr. McNatt replied in the affirmative and noted that the land had old dorms, which were refurbished to classrooms and that MLP had also provided significant dollars for scholarships.

Commissioner Formby noted that Mr. Nohara testified earlier that the existence of the airport was incongruous with pineapple cultivation. Mr. McNatt replied that the concern was that at the ends of the runway the birds are nesting or eating bugs in the crops and would fly into the flight path. Mr. McNatt added that the DOT had similar concerns with the proposed community gardens in that area.

Chair Sakumoto raised questions on the site location noting that the LUC has received testimony regarding West Maui's roadway as being one way in and one way out, no medical facility in West Maui that can handle emergency medical situations, and plans for potential disasters.

Chair Sakumoto also asked if MLP had any documents to support their testimony of discussions with the DOE. Mr. McNatt replied that they do not have anything in writing but anticipate that an agreement will be reached. Mr. McNatt added that they would have no objections to a representative providing testimony from the DOE.

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

6. Tom Schnell

Mr. Schnell provided a brief summary of his education and professional background as a land use planner with PBR Hawaii. Mr. Schnell's resume was cited as exhibit 19 and he was qualified as an expert in land use planning. There were no objections by the parties or the Commission.

Mr. Schnell referenced petitioner's exhibit 34 and stated that Pulelehua complies with the goals for the West Maui Community Plan. Mr. Schnell described Pulelehua's goals, objectives, and policies of efficient land use, environmental protection, affordable housing plan, urban design, and transportation. Mr. Schnell also referenced petitioner's exhibit 37 and discussed the conditions and restrictions for the Kapalua Airport.

Admission of additional exhibit

Mr. Yuen introduced exhibit 37 into evidence. There were no objections by the parties or the Commission. Said exhibit was admitted into evidence.

Ms. Lovell raised questions and concerns relative to the number of County approvals necessary before the project can move forward.

Mr. Chang commented on the previous testimony of a public witness who alleged that air quality near the airport may cause instances of asthma for those living in the area. He questioned if any of their studies could confirm that allegation. Mr. Schnell stated that the air quality study done at the airport alone indicated that emissions are well below the State's DOT standards.

Vice Chair Judge referenced the letter from Dick Meyer suggesting that the final EIS should have had separate mitigative actions and suggested that they do that in the future.

Vice Chair Montgomery commented that termites are a huge problem for homeowners and asked if they would consider organic houses that utilize an alternative treatment rather than pesticides. Mr. Schnell replied that they have not included any discussion of termites or preventative measures in the EIS.

Commissioner Piltz noted that the County of Maui is having a staffing shortage for police officers and asked if MLP's security would assist the County's

police force at their projects. Mr. Schnell replied that a goal of MLP is to provide homes to the public workers such as fire, police, nurses, and the public workers who work there but cannot affordable to live in West Maui.

Commissioner Im raised a few questions on the land use entitlement process, the community plan, and the timetable for constructing homes in the project.

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

Chair Sakumoto noted that Deputy Attorney General John Chang will be retiring at the end of the year and that this was his last meeting with the LUC. Chair Sakumoto express his appreciation to Mr. Chang for his years of service and wished him the best in his retirement.

Mr. Chang commented that it was a pleasure for him and that he admires the members for their time that each of them have devoted. He added that of all the commissions that he has appeared before in the past, this one was the most enjoyable.

The meeting adjourned at 4:00 p.m.

(Please refer to LUC Transcript of December 2, 2005 for more details on this matter.)