

LAND USE COMMISSION
MINUTES OF MEETING

June 8, 2006

Four Seasons Resort Lana`i
Manele Bay
Kaunolu Mauka Conference Room
Lana`i, Hawaii

COMMISSIONERS PRESENT: Michael Formby
Kyong-su Im
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Thomas Contrades
Duane Kanuha
Lisa Judge
Nicholas Teves, Jr.

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

Chair Sakumoto called the meeting to order at 8:40 a.m.

A89-649 LANAI RESORT PARTNERS

APPEARANCES

Bruce Lamon, Esq., represented Petitioner

Alan Murakami, Esq., represented Intervenor

Anthony T.J. Quan, Esq., represented Intervenor

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

Jeffrey Hunt, Staff Planner, County of Maui Department of Planning

Bryan Yee, Esq., represented the State Office of Planning

Laura Thielen, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto announced a slight change to the schedule. After completing the cross examination of Mr. Nance, there are witnesses who have an afternoon flight. Chair Sakumoto asked Mr. Lamon if Stuart Yamada from the Department of Health's Safe Drinking Water Branch and Roy Hardy of the Water Commission could be taken out of order.

Mr. Lamon replied in the affirmative and added that the petitioner may also lose some of its witnesses today.

Ms. Lovell noted that Mr. Foley from the county Planning Department and Ms. Kraftsow from the county's Water Department were available to fill in the gaps.

Chair Sakumoto noted that they could possibly finish with Mr. Nance, then Mr. Yamada, and Mr. Hardy, but after that the schedule is unpredictable. Chair Sakumoto added that at this point, additional hearings beyond today would be necessary.

Chair Sakumoto noted that there were no public witnesses.

Petitioner's Witness (continued)

1. Tom Nance

Cross examination

Mr. Murakami posed questions regarding petitioner's exhibits 128BR and 128CR, the Blackhawk depiction of the additional recharge area on Lanai, the cross section of

the island's high level wells and Palawai Basin, issues related to the estimated recharge area, and the current supply of high level ground water.

Mr. Murakami referenced the transcripts of December 16, 1994, page 153, the drop in head levels and salinity; and page 144 to 148, the change in pumpage.

Commissioner Im had a few questions relative to the difference between 315 versus 330 ppm, and the accuracy of chlorides color testing titration versus industry testing.

A recess break was taken at 10:00 a.m. The meeting reconvened at 10:20 a.m.

Commissioner Formby had a few questions and concerns related to the Palawai Basin, chloride measurement testing in wells 1 and 9, and the accuracy of the titration test.

Commissioner Im raised questions related to petitioner's exhibit 128CR, Mr. Nance's description of potable and non potable water, salinity profiles, and gathering data samples to test for chlorides.

Commissioner Formby had a few questions regarding pump failures and the corrosive water in well 9.

Chair Sakumoto raised a few questions regarding the leakage in to wells 1 and 9 and asked Mr. Nance if he considered wells 1 and 9 a part of the high level aquifer.

Mr. Nance replied in the affirmative. Mr. Nance added that wells 1 and 9 were considered to be a part of the high level aquifer in 1991 by those knowledgeable or experts who knew that wells 1 and 9 should have been a part of the high level aquifer area at that time. Mr. Nance added that it was his recollection that both Tom Leppert and James Kumagai testified that wells 1 and 9 were not a part of the high level aquifer. Mr. Nance commented that he believed Mr. Leppert made that assumption since brackish water was basil and drinking water was high level and he just assumed that this was the case since the water was brackish.

Commissioner Im had a few questions regarding brackish water, desalinization, and irrigation water.

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

A recess break was taken at 11:30 a.m. The meeting reconvened at 11:35 a.m.

State Witness

1. Roy Hardy

Mr. Hardy stated that he was employed by the Commission on Water Resource Management. Mr. Yee offered Mr. Hardy as an expert in water resources. There were no objections by the parties and Mr. Hardy was so qualified.

Mr. Hardy briefly explained the legal requirements relating to water resources under Article 11, Section 7. Mr. Hardy noted that the state has an obligation to protect, control, and regulate the waters for the people of Hawaii. Mr. Hardy discussed the water code, CWRM organization chart, state's exhibit 2R, and state's exhibit 3R water plan. Mr. Hardy also discussed sustainable yields and anticipated water demand topics

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

A lunch break was taken at 1:00 p.m. The meeting reconvened at 2:00 p.m.

2. Stuart Yamada

Mr. Yamada stated that he was employed by the Department of Health (DOH), Safe Drinking Water Branch. Mr. Yamada was qualified as an expert in safe drinking water. Mr. Yamada explained DOH programs as they mimic the EPA's parallel programs. Mr. Yamada discussed primary contaminants, chlorides, and noted that the state does not define brackish water. Mr. Yamada added that he did not know whether wells 1 and 9 have ever been tested as meeting the state of Hawaii's safe drinking water standards.

Cross Examination

Mr. Lamson raised a few questions regarding the definition of potability, the standards of Chapter 20 Administrative Rules, and chloride level testing.

Ms Lovell asked if a county adopted a chloride standard whether the DOH safe drinking water branch would or would not object to this action.

Mr. Yamada replied in the affirmative.

Mr. Quan raised a few questions on what would trigger the DOH to investigate water quality issues, supervision of wells 1 and 9, and the DOH monitoring of wells on Lanai.

Commissioner Piltz posed a few questions regarding the definition of safe drinking water versus potable water, brackish water, the state of Hawaii regulations, and EPA standards.

Commissioner Im raised questions related to the testing of potable water, chloride levels, BWS and private standards of potable water, the state's authority to uphold the safe drinking water act, and the county's jurisdiction over water quality.

Ms. Lovell clarified that the county of Maui has a standard and uses the word "potability" but the county ordinance is for water that can be used to irrigate a golf course and not for regulating drinking water.

Vice Chair Montgomery had questions and concerns in reference to water contaminants, and asked if wells 1 and 9 have been tested for chemicals that were used in the pineapple fields.

Mr. Yamada replied that for drinking water purposes, the DOH has not tested the water in wells 1 and 9 since the owner (Castle and Cooke) has not asked for these tests. Mr. Yamada added that the Lanai sources have never shown any of the post agricultural pesticides in the water and noted that the Lanai aquifer is a sole source on the island.

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

County's Witness

1. Ellen Kraftsow

Ms. Kraftsow stated that she is the Program Manager for the county's Water Resources Planning Division, Department of Water Supply. Ms. Kraftsow provided a brief summary of her educational and professional background. Ms. Kraftsow discussed the Water Use and Development Plan's framework and how it relates to the state's Water Plan under the state's Water Code. Ms. Kraftsow also discussed her participation with the Water Working Group, monitoring and maintenance, drinking water wells on Maui with high chloride levels, and chloride levels suitable for golf courses. Ms. Kraftsow also noted that the county does not use a definition of potable water for any purpose other than determining what kind of water can be used to irrigate a golf course.

Cross Examination

Mr. Lamon posed questions related to the drinking water wells on Maui with high chloride levels, the primary and secondary standards of potability, and chloride standards for irrigation.

Mr. Yee had a few questions regarding the county's limited role on water use on Lanai, the Water Advisory Committee, chloride levels, health standards, and water quality.

Mr. Murakami raised questions related to the Kanaha, Waehu Heights, and Kawelo sources that generate chloride levels above the 250 mpl, blended sources, and the minimum maximum levels for potential potable water sources.

A recess break was taken at 3:40 p.m. The meeting reconvened at 3:55 p.m.

Mr. Murakami posed questions in reference to the state's DOH and EPA standards and specific parameters, and the secondary standards.

Commissioner Formby had a few questions regarding the state and EPA standards and the CFRs relating to potable water, secondary standards, and monitoring requirements.

Commissioner Im had questions and concerns as to wells 1 and 9 not having been tested for potability since 1991, EPA requirements for drinkable water, and whether drinkable water exists in these wells.

Chair Sakumoto noted that according to Mr. Nance's testimony yesterday, the estimated cost to conduct this test is three thousand dollars. Chair Sakumoto raised questions related to the definition of potable or non potable water, Ms. Kraftsow's testimony regarding the drinking water wells on Maui where the sources exceed chloride levels but are allowed with improved treatment techniques, and the water quality tests.

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

Commissioner Im encouraged the parties to possibly work together to settle this matter. Commissioner Im asked if it was possible to do a primary test on wells 1 and 9. The tests do not appear to be too costly and it would greatly help the LUC if the tests could be done before the next hearing.

Vice Chair Montgomery commented that at some point in time, it would be useful if the company could explain why there was no response provided by the company to the Water Advisory Group.

Ms. Kraftsow noted a number of items that were lacking in the analysis and data requested by the Water Advisory Group.

Commissioner Formby commented that he respects Commissioner Im's position, but that he was not interested in the data that might be obtained and believed that personally getting the measurements will not have any part of his decision in this case.

Commissioner Im noted that he respected Commissioner Formby's position, but that he would like to know whether this water is drinkable or not. The LUC made a decision in 1991 and if they meant that the word potable meant drinkable, the Supreme Court said suitable for drinking and the standard is whether the water is drinkable.

Commissioner Piltz commented that when the company used what they considered brackish water, that is how they considered the water non potable. However, the LUC needs to find out today that there is a definition of potable. According to the Federal standards, the Fresh Water Act defines safe drinking water. The LUC has no evidence of that and he believes this is what the LUC is charged with clarifying.

After completing this discussion, Chair Sakumoto noted that the next hearing on this matter may or may not be on June 23. After conducting a poll of the other commissioners who were not in attendance and given the pace of the proceedings, the staff will schedule a hearing at a later date and time that is workable with the commissioners. The parties should utilize the time to prepare for the next hearing and discuss the possibility of a settlement and a mutual agreement.

The meeting adjourned at 4:55 p.m.

(Please refer to LUC Transcript of June 8, 2006 for more details on this matter.)