

LAND USE COMMISSION
MINUTES OF MEETING

June 22, 2006

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

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Kyong-su Im
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Lisa Judge

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

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

ADOPTION OF MINUTES

Commissioner Formby noted a correction to the minutes of May 18, 2006, page 3, third paragraph to add at the end of the sentence “..... by conducting further hearings if clarification cannot be made by the record alone.”

Chair Sakumoto also noted a correction to the minutes of May 18, 2006, page 6, last paragraph to add “Chairman Sakumoto polled the Commissioners as to whether

this fact would cause them to change their votes and no commissioners changed their vote.”

Vice Chair Montgomery then moved to adopt the amended minutes of May 18, 2006 and the minutes of June 6, 2006. Commissioner Contrades seconded the motion. The amended minutes of May 18, 2006 and the minutes of June 6, 2006 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Chair Sakumoto stated that in the consideration of time, the LUC would skip the discussion of the tentative meeting schedule.

A06-765 MAALAEA PROPERTIES, LLC and LODI DEVELOPMENT, INC. (Maui)

Chair Sakumoto stated that this was an action meeting to 1) determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawai`i Revised Statutes, for the reclassification of approximately 260 acres of land currently in the Agricultural District to the Urban District for residential, community center, and park uses at Maalaea, Maui, Hawaii; and 2) 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

James Geiger, Esq., representing Petitioner

Mike Atherton, Maalaea Properties, LLC

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

Michael Foley, Director, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Geiger began his presentation and stated that petitioner wishes to develop approximately 260 acres of land that is currently in the agricultural district in to the urban reclassification. Mr. Geiger noted that petitioner is requesting that the LUC be the accepting authority for the EISPN.

Commissioner Piltz entered the meeting at this time.

Mr. Foley summarized the comments of the county of Maui related to the EIS and stated that the county requests that petitioner's consultant solicit EIS comments from the various county agencies and that all hearings regarding this matter, especially the EIS, be held on Maui.

Mr. Yee commented that the state supports the LUC as being the accepting authority and that the EIS is appropriate in this matter.

Commissioner Formby moved that the LUC be the accepting authority. Commissioner Piltz seconded the motion.

The Commission was polled as follows:

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

The motion passed with 8 ayes, 1 absent.

Commissioner Formby moved that the proposed action may have a significant effect to warrant the preparation of an EIS. Commissioner Piltz seconded the motion.

The Commission was polled as follows:

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

The motion passed with 8 ayes, 1 absent.

A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui)

Chair Sakumoto stated that this was an action meeting to consider the reclassification of approximately 310.440 acres of land currently in the Agricultural District to the Urban District at Mahinahina and Kahana, Lahaina, Maui, Hawaii, for residential, commercial, elementary school site, and park uses.

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

Bryan Yee, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Public Witnesses

1. James Peats

Mr. Peats stated that he supports Pulelehua because of the homeownership possibilities for himself. He noted that he has a long heritage on Maui but never had the opportunity to own land on the island.

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

2. Terry Eoff

Mr. Eoff is employed with the Lahaina Kaanapali Railroad and lives in Kihei. Mr. Eoff is in support of Pulelehua because the project will provide much needed affordable housing and is a well thought-out planned community. Mr. Eoff added that he currently pays high rent and live with 10 family members.

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

Mr. Yuen began his presentation and summarized the issues of the stipulation. Mr. Yuen discussed comments of the Department of Transportation (DOT), access points, Akahahele Street and North Road. Mr. Yuen also summarized the project's features including commercial units, the public school, medical facility, recreational facility, and the affordable rental and for sale units. Mr. Yuen summarized the LUC's decision-making criteria, how the project comports to LUC rules, and referenced a matrix of petitioner's proposed conditions against the Office of Planning's (OP) conditions.

A recess break was taken at 11:10 a.m. The meeting reconvened at 11:30 a.m.

Commissioner Im commented on the rationale of the proposed affordable housing preference to MLP's employees. Commissioner Im added that he believed that everyone in Maui should benefit from the affordable housing. It appears that MLP is providing affordable housing to all, but that it was more beneficial to MLP. Commissioner Im was concerned of a "chilling effect" that would encourage other large landowners to offer affordable housing to their employees, whereas smaller companies do not have that advantage.

Mr. McNatt stated that if all employers took care of their employees then Maui would not have the affordable housing problem. MLP will provide 500 homes to their employees and will continue to offer homes in the future. Mr. McNatt added that there is a problem of finding employees who can afford to live in West Maui and that this project is large enough to accommodate MLP's employees and other employees who work in West Maui.

Commissioner Formby was interested in the county's policy to see if they could come up with something for MLP's employees and something for the community.

Commissioner Piltz referenced the need for additional affordable housing, especially in West Maui, and commended MLP for trying to provide housing opportunities for its employees.

Ms. Lovell noted that the county encourages employers to build housing for their employees and also encourages developers to build schools, medical facilities, and other public facilities. Ms. Lovell added that the county commends this employer for providing these services.

Ms. Lovell also noted that the stipulation may need a possible amendment related to *ohana* units. Ms. Lovell stated that the Maui Planning Commission has met and the construction of *ohana* units will be permitted on the 267 lots but the size of the lot will determine whether or not there will be *ohana* units. Ms. Lovell suggested removing the number of *ohana* units.

Commissioner Formby asked if developers routinely do not pay the \$1500 per unit fees to the county in lieu of providing employee housing.

Mr. Foley stated that the county will do anything to encourage employers to exceed the affordable housing requirement, which includes waiving or reducing fees for traffic or educational impacts or by having fees lessened for affordable housing.

Mr. Yee commented that the OP supports this position and added that the OP believes that the project will have a positive (not negative) impact on the coastal waters. Mr. Yee also discussed that federal approved mitigation measures, swale runoff plan, TIAR and estimated costs for transportation highway improvements.

Chair Sakumoto commented about the TIAR and asked how many such reports will need to be done to satisfy the DOT. Chair Sakumoto also asked about the concept of revising or conducting a supplemental TIAR.

Mr. Yuen noted that petitioner has prepared a TIAR, which they believe is adequate, although the DOT disagrees with this report. Petitioner does not wish to leave this open-ended and will need to continue to work with the DOT.

Ms. Thielen commented on the highway improvements, Lahaina Bypass road improvement costs, design schematics, and the TIAR.

Commissioner Formby discussed condition number 4 on the first page related to the Akahahele Street language and if deleting the word “solely” would be acceptable to the OP.

A lunch recess was taken at 1:00 p.m. The meeting reconvened at 1:55 p.m.

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

Chair Sakumoto stated that the LUC will be entering into formal deliberations on the proposed order and noted that during its deliberations, the Chair will not entertain any additional comments by the parties unless specifically directed to. Chair Sakumoto then polled the Commissioners if they were prepared to deliberate on this matter.

The Commission was polled as follows:

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

Mr. Ching noted that the LUC has reviewed the order as stipulated by the petitioner and the county with exceptions filed by the OP. The redline version was sent by the staff to the LUC and the parties. Mr. Ching noted that it is routine for staff to review the document for form, accuracy, and protocol to ensure that the procedural items and the findings as stated are from the record and included appropriately. Mr.

Ching added that staff has not reviewed the conditions in the assumption that there would be a discussion by the LUC.

Mr. Ching then summarized the findings of fact as related to the procedures of the Commission.

The Commissioners had a brief discussion about the county's suggestion to delete the specific number of *ohana* units and reword the condition so that it reflects that the construction of *ohana* units may be permitted.

Chair Sakumoto asked why the affordable housing numbers were changed from 450 to 325 in finding number 39.

Mr. Ching noted that the changes were made to findings 39 and 40, as in the Kapalua Mauka docket there was a condition that provided for 125 residential affordable units, which was a separate provision. The Commission discussions of the 125 units did not accrue to the affordable housing provision of the Pulelehua project. To ensure clarity for Pulelehua's 325 units, the number was changed from 450.

Mr. Ching also noted that findings number 43 has amended language that petitioner will establish a trust or other entity to administer the affordable housing program in Pulelehua to keep the housing affordable in perpetuity and to ensure owner occupancy and availability to low moderate income buyers.

The Commission briefly discussed the two existing access points, the previous testimony of the DOT (Brennon Morioka), a third access point approved by the DOT, and the revised TIAR after the final development plan and internal circulation is set.

After a discussion, Chair Sakumoto noted that Commissioners Im and Contrades will need to leave shortly due to flight arrangements and allowed each Commissioner to comment and share their thoughts.

Commissioner Im suggested that whatever the county requirement is for affordable housing but not less than 15% should be required of the petitioner in addition to the 125 rental units that the petitioner needs to provide to satisfy their commitment for the Kapalua Mauka project. Whatever is left is fine, and can be used for MLP's employees.

Commissioner Contrades noted that this is a great project, which he would have supported if he could stay.

A recess was taken at 2:50 p.m. The meeting reconvened at 2:55 p.m. Commissioners Im and Contrades left the meeting at this time.

Mr. Ching discussed the conditions with the Commission.

After a discussion on roadway improvements, TIAR, and impact fees, Chair Sakumoto entertained a motion for an executive session to consult with their counsel regarding the educational requirement issue.

EXECUTIVE SESSION

Commissioner Formby 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. Vice Chair Montgomery seconded the motion. Said motion was approved by voice votes.

The Commission entered into executive session at 3:45 p.m.

The open meeting reconvened at 3:55 p.m.

Commissioner Formby proposed an amendment to condition number 2 and also an amendment to condition 7, to keep as discussed except to change the language to "traffic fair share contribution" in lieu of traffic impact fees.

The Commission continued to discuss conditions 8, 10, 11, 12, 13, 14, 15 to 22.

After a discussion, Commissioner Piltz moved to approve the petition to amend the agricultural land use district boundaries into the state land use urban district, in accordance to the findings of fact that was modified and deliberated upon by the Commission this afternoon. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Montgomery, Teves, Formby, Kanuha, and Sakumoto.

The motion passed with 6 ayes, 3 absent.

Commissioner Formby expressed his appreciation to Commissioners Sakumoto and Montgomery for their contribution to this Commission and commented that he has learned a lot from them and was please to have had the opportunity to work with both of them on this Commission.

The meeting adjourned at 4:15 p.m.

(Please refer to LUC Transcript of June 22, 2006 for more details on this matter.)