

LAND USE COMMISSION
MINUTES OF MEETING

August 24, 2006

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

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Kyong-su Im
Reuben Wong

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

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

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the minutes of August 3, 2006.
Commissioner Contrades seconded the motion. The minutes of August 3, 2006 was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Ching reported that the September 21 and 22 dates were open at this time. The October 5 and 6 meetings will be deferred, as the LUC will instead participate in the HCPO conference on October 3 to 5 on Oahu. On October 20, the LUC will hold a one-day meeting on Kauai.

There were no questions posed by the Commission.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that this was a hearing to consider the reclassification of approximately 232.135 acres of land currently in the Agricultural District into the Urban District, and 5.918 acres from the Rural District to the Urban District, at Waiehu, Maui, Hawaii for an approximately 466-lot single-family residential subdivision.

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner

Sterling Kim, Hale Mua Properties

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

Jessie Souki, Esq., represented the County of Maui Department of Planning

Michael Foley, Director, County of Maui Department of Planning

Colleen Suyama, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Judge asked Petitioner if staff had informed them of the Commission's policy regarding reimbursement of hearing expenses.

Mr. Kobayashi replied in the affirmative and added that his client has no objections to fulfill his obligation.

Public Witnesses

1. Nathan Kekahuna

Mr. Kekahuna stated that he is from Kahului and has lived on Maui all of his life. Mr. Kekahuna added that he is a *kanaka maoli*, an heir to the lands under the royal patent. He expounded on his opposition to the project.

Vice Chair Formby raised a few questions on the quiet title action.

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

2. Jo Ann Ridao

Ms. Ridao stated that she is the Executive Director of Lokahi Pacific and noted that they have over 35 years of service to the community. Ms. Ridao added that they have recently developed rental units for those with special needs and single-family homes to families 80% and below the median income levels. Ms. Ridao stated that they were in support of the petition and asked that the LUC do what they can to make Hale Mua a reality in providing these affordable homes.

Chair Judge asked if Lokahi Pacific helps people to qualify for homes.

Ms. Ridao replied that Lokahi Pacific does not offer this service, but that the Wailuku Credit Union assists people to qualify for homes and offers a program where applicants must attend a first time homeowners education workshop that helps them clean up their credit and maintain the homes that they purchase.

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

3. Leimomi Schmitt

Ms. Schmitt stated that she lives in Kahului and has legal title on the subject property. Ms. Schmitt added that she has the documentation and the royal patent for the land and does not remember ever giving Hale Mua the title to her *kupuna's* property.

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

4. Mahealani Oliver

Ms. Oliver stated that she lives in Waiehu and expressed her opposition to the project adding that the LUC lacks jurisdiction over the royal patent.

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

5. Noeau Kaholokula

Mr. Kaholokula stated that he resides in Waiehu and expressed his opposition to the project. Mr. Kaholokula noted that Waiehu is the most fertile land and was previously a *lo`i* for thousands of taro plants. Mr. Kaholokua added that he is also an heir to this property by royal patent.

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

6. Joycelyn Costa

Ms. Costa stated that she lives in Haiku and expressed her opposition to the project because of her concerns for the precious water resources.

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

7. John Oliver

Mr. Oliver stated that he resides in Wailuku. He expressed his opposition to the project because of court title actions and legal jurisdiction over these lands. Mr. Oliver also stated that today's proceedings would be recorded and sent to the International Court of Justice.

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

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:30 a.m.

8. Kimo Rivera

Mr. Rivera declined to be sworn in. Mr. Rivera stated that he is from *Paukukalo* homestead lands on Maui and was testifying because he believed that there was a lot of government *pilikia* going on.

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

9. Cherlyn Tachera

Ms. Tachera stated that she is from Kahului and expressed her opposition to the Hale Mua project because she is an heir to these lands and a *kanaka maoli*.

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

10. Gary Wood

Mr. Wood stated that he believed the water and lands belong to the people who hold royal patents.

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

11. Charlene Kana

Ms. Kana stated that she lives in Waihe`e and was born and raised on Maui. Ms. Kana expressed her opposition to the project because she is an heir to the lands and believes in the royal patent.

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

12. Piimauna Awohi

Ms. Awohi stated that she is an heir to *na aina* in Waiehu and also an heir to the *Konohiki* water sources. Ms. Awohi stated that she believed they have jurisdiction over these lands because they hold the royal patents.

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

13. James Sagawinit

Mr. Sagawinit stated that he is 70 years old and that the *aina* is *kapu*. Mr. Sagawinit expressed his opposition to the project and his concerns of contamination to the water resources.

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

14. Jamie Fernandez

Ms. Fernandez stated that she resides in Makawao and has lived on Maui all of her life. Ms. Fernandez noted her concerns of overpopulation, pollution, the royal patents, and the *ahapua`a* system.

15. Bernadine Maio

Ms. Maio stated that she lives in Waiehu, is a *kanaka maoli*, and stands on the royal patent. Ms. Maio noted that she has not contracted with Hale Mua or Mr. Kim for these lands and added that the Hale Mua case is currently on appeal in Oahu.

Vice Chair Formby asked if any of these owners of the royal patents also have land claims on appeal in the court system.

Ms. Maio replied in the affirmative and added but not in the Second Circuit Court.

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

Ms. Mahealani Oliver returned to the public witness box and stated that she believed the LUC does not have the jurisdiction over these lands and that the land courts have nothing to do with the royal patents.

There were no questions posed by the parties or the Commission for Ms. Oliver.

There were no other public witnesses.

Staff Report

1. Maxwell Rogers

Mr. Rogers began his presentation and referenced the LUC's Maps 1 and 2. Mr. Rogers noted a minor discrepancy related to a small notch identified by the petitioner as in the agricultural district. The correct disposition of the land needs to be classified by petitioner as rural lands. Mr. Rogers also noted that Petitioner is using the wrong TMK parcel numbers. Mr. Rogers then discussed the significant issues as identified in the staff's report: Quit claim deed; Loss of prime agricultural lands; Traffic; Education; Drinking Water; Archeological; Project Phasing; Financial Capability; Affordable Home

Prices; Visual Impacts; Biological Study; Drainage; Municipal Solid Waste; and Wastewater.

There were no questions posed by the Commission for Mr. Rogers.

Chair Judge commented that staff has noted two technical discrepancies and encouraged that petitioner address this during his presentation. Mr. Kobayashi replied in the affirmative.

Admission of Exhibits

Chair Judge noted that the prehearing order issued in this docket required that all exhibits be filed with the Commission no later than the close-of-business on August 14, 2006. The acceptance of untimely filings were subject to the pleasure of the Commission.

Chair Judge commented that petitioner's exhibit number 26 was received on August 16. Chair Judge asked petitioner to state his purpose and intention for the untimely filing of this item.

Mr. Kobayashi stated that a total of 35 exhibits were timely filed as exhibits, except for exhibit number 26. Mr. Kobayashi explained that the untimely filing of exhibit 26 was because of the inability to finalize the written testimony of Wayne Arakaki, the engineering and drainage expert. Mr. Kobayashi added that they believed an updated analysis report was critical to the LUC's decision and noted that petitioner has not received any objections from the parties for the untimely filing of exhibit 26.

Chair Judge asked the parties if they had any objections to the untimely filing of exhibit 26. Both the county and the state had no objections. Petitioner's exhibit number 26 was admitted into the record.

Mr. Kobayashi described and offered petitioner's exhibits 1 to 25 and 27 to 36.

Mr. Souki raised questions related to the dates of petitioner's exhibits 12 and 15, the draft environmental assessment.

Mr. Kobayashi explained that the May 2005 document was the DEA and that the FEA dated June 2005 was provided to the LUC and is the final document that has been prepared for the project.

Chair Judge suggested that petitioner prepare an explanation regarding the discrepancies between the two documents so that the county and the state can review it before admitting these exhibits into the record.

A lunch recess was taken at 12:15 p.m. The meeting reconvened at 1:35 p.m.

Mr. Kobayashi explained the discrepancies found in the FEA between the documents dated May 2005 and June 2005. Mr. Kobayashi then offered to submit the replacement pages as an additional exhibit. Both the county and the state had no objections.

Petitioner's exhibits 1 to 25 and 27 to 36 were admitted into the record.

Chair Judge noted that the county's exhibit numbers 1 and 2 were transmitted by email at 8:43 a.m. on August 15, and the hard copies were subsequently received on August 16.

Mr. Souki stated that the untimely filing was due to the passing of the county council's resolution 05-123. The resolution was passed by the council regarding the 201G application for the Hale Mua project and is material to these proceedings. Mr. Souki then described and offered county's exhibits 1 and 2. There were no objections by the petitioner and the state. Said exhibits were admitted into the record.

Mr. Souki described and offered a regional map as the county's exhibit 3. There were no objections by the parties. County's exhibit 3 was admitted into the record.

Mr. Souki noted that copies of exhibit 3 will be provided to the parties upon Mr. Foley's testimony.

Chair Judge stated that the LUC will keep the original copy of the regional map on file in the docket and that copies of smaller versions could be provided to the parties.

Mr. Yee described and offered the Office of Planning's' exhibits. Mr. Yee noted that exhibit 3 is a draft of the DHHL Waiehu Kou regional plan and that copies were not available at this time. Mr. Yee added that these plans do not exist as of today, but would be made available by August 31 and offered during the state's presentation on the September hearing dates. Mr. Yee then offered the state's exhibits 1, 2, 2a, 4, 5, and 6, into evidence. Mr. Yee also requested to keep the record open to receive written

testimony from the DOT regarding the TIAR. There were no objections by the parties. Said exhibits were admitted into the record.

Mr. Souki questioned a subdivision map that was provided by the petitioner and distributed to the LUC and the parties.

Mr. Kobayashi explained that it is a color version of petitioner's exhibit 4 and added that petitioner did not intend to submit this as an exhibit but rather as a reference for demonstrative purposes while their witness testifies.

Mr. Souki commented that the county would prefer that it is admitted as an exhibit as it appears that the map submitted as exhibit 4 is slightly different from the hand out version.

Mr. Yee concurred with Mr. Souki noting that it should be marked as an exhibit for purposes of the record, especially since it will be referenced.

Mr. Kobayashi then offered the map into the record as petitioner's exhibit 38. There were no objections by the parties. Said exhibit was admitted into the record.

Petitioner's Witnesses

1. Tom Leuteneker

Mr. Leuteneker stated that he is an attorney with Carlsmith Ball, LLC and has worked in this Maui office for 40 years. He noted that some of his work has been related to the bulk of quiet title actions. Mr. Leuteneker noted that he represented Hale Mua in their quiet title action in circuit court. Mr. Leuteneker discussed petitioner's exhibits 32 to 36, the various orders that were filed in the Second Circuit Court's quiet title action for Hale Mua Properties. Mr. Leuteneker also discussed royal patents, the circuit court's jurisdiction, recognition of fee simple titles, common law titles, and commission awards.

Mr. Souki noted that the county had no questions for Mr. Leuteneker.

Mr. Yee posed a few questions related to the twelve land commission awards that cover the entire petition area.

Commissioner Piltz posed a few questions regarding public testimony referencing an international court system.

Mr. Leuteneker explained that the International Court of Justice would not accept these types of documents. He added that the title in Hawaii has nothing to do with them and that this would not affect the case in our courts. Mr. Leuteneker also noted that in 2004 when Hale Mua purchased the property, no one was living on the property and believed that no one is living there now.

Vice Chair Formby asked if in Mr. Leuteneker's opinion, the LUC has jurisdiction over the petition lands.

Mr. Leuteneker replied in the affirmative. Mr. Leuteneker further explained the absence of the land court titles on the twelve parcels and the land ownership systems in Hawaii.

After a discussion related to a supersedeas bond, the Commission had no further questions for Mr. Leuteneker.

A recess break was taken at 2:30 p.m. The meeting reconvened at 2:45 p.m.

2. Sterling Kim

Mr. Kim briefly described his education and background in development. Mr. Kim noted that he wanted the opportunity to produce a product to reach out to the service sector providers (i.e. teachers, firefighters, nurses, etc.) and researched the 201G process by meeting with government officials and Wailuku Agribusiness. Mr. Kim stated that the project will consist of 466 lots with 238 affordable homes. He also discussed the 10-year buyback, lot sizes for the affordable and market homes, location, two mini parks, one main park/soccer field and baseball diamond, and the project's 19 large lots created primarily for open spaces. Mr. Kim noted that there is a unilateral agreement with the county for these large lots. Mr. Kim also discussed water resources, the Imi Kala bridge and extension improvements, project phasing, ohana units, the DOE fair share contribution, and the possibility for dedication of land for a school. Mr. Kim also discussed the financial capability of Hale Mua Properties and how they intend to meet the financial requirements with a Central Pacific Bank loan and through cash bonds.

Mr. Souki raised questions related to the county's exhibit 1, the 05-123 resolution for 201G application for Hale Mua, ohana dwellings, zoning for the project, private water sources for the 19 large lots, water usage, drainage, and wastewater. Mr. Souki also posed questions on the Imi Kala extension traffic improvements and bridge construction. Mr. Kim noted that the petitioner's engineer could better provide these answers to the county's questions.

Mr. Souki also posed questions related to petitioner's discussions with the DOE and the possible dedication of land for a school, building permits, and zoning for the 19 large lots.

A recess break was taken at 4:00 p.m. The meeting reconvened at 4:15 p.m.

Mr. Kobayashi requested to have a witness taken out of order since Clifford Fujiwara of Central Pacific Bank would need to return to Oahu. Both the county and the state had no objections.

Chair Judge noted that the LUC will take Mr. Fujiwara out of order and will commence with Mr. Kim after his testimony.

2. Clifford Fujiwara

Mr. Fujiwara stated that he is employed at Central Pacific Bank (CPB) for 13 years and prior to that, he has held various positions with the commercial banks in real estate lending. Mr. Fujiwara's written testimony was submitted as petitioner's exhibit 30. Mr. Fujiwara was qualified as an expert in financing. There were no objections by the parties.

Mr. Fujiwara stated that CPB previously provided Mr. Kim with a 4 million dollar development loan for the Honu Alahele project in Kihei. This project was successful and Mr. Kim and the development were well received by the community. Mr. Fujiwara discussed the appraisal for Hale Mua and its components, cash flow, budgets, cost involved, margins, viable subdivision, equity contribution, and project phasing. Mr. Fujiwara added that given the financial commitments and CPB's financial contribution, they believe that this subdivision will meet with tremendous success.

Mr. Souki stated that the county had no questions for Mr. Fujiwara.

Mr. Yee posed a few questions regarding the effect, if any, on the zoning of the 19 large lots as agricultural rather than urban or rural, ohana zoning, cash flow, and the Imi Kala extension and phasing.

Vice Chair Formby posed questions related to the financial viability, the type of building materials to be used for the affordable homes, necessary permits, and phasing.

Vice Chair Montgomery had a few questions relative to non-profit agencies (i.e. Habitat for Humanity), cash flow, and phasing of the units.

Chair Judge posed a few questions regarding the number of applicants, the sales prices of the market lots, phasing, and cash flow.

Mr. Fujiwara noted that there are over 1,100 applicants and that the market lots will range from \$400,000 for a 10,000 square foot lot.

Commissioner Piltz had a few questions and concerns on keeping the affordable home prices low with rising interest rates and the effect on the market.

After a brief discussion related to the conventional 30-year interest rates offered by Wells Fargo and CPB, there were no further questions for Mr. Fujiwara.

The meeting was at recess at 4:45 p.m.

(Please refer to LUC Transcript of August 24, 2006 for more details on this matter.)