

LAND USE COMMISSION
MINUTES OF MEETING

August 25, 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 8:35 a.m.

Chair Judge noted that the agenda posted an Executive Session for today, but will defer that agenda item until the next LUC meeting.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that the hearing will continue with the State's cross-examination of Mr. Kim.

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner

Sterling Kim, Hale Mua Properties

Jane Lovell, 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

Petitioner's Witness (continued)

Mr. Yee posed questions regarding scheduling, occupancy timeline, and phasing.

Mr. Kim discussed the anticipated completion date of approximately 10 years after LUC's approval. The affordable homes would be built and occupied in approximately 3 years with phase 1 completed within 2 years as a best estimate.

Mr. Yee asked if petitioner would agree to LUC conditions on the phase 1 and phase 2 timeline for completion of the project's phases.

Mr. Kobayashi requested a few minutes to discuss this matter with his client.

A recess break was taken at 8:45 a.m. The meeting reconvened at 8:55 a.m.

Mr. Kobayashi stated that he would object to his client agreeing to what Mr. Yee had proposed, but would not have any problems with a proposed condition on the entire project's timeline.

Mr. Yee noted that they will be exploring a reasonable time period of completion per phase.

Mr. Kim briefly summarized reasonable time periods for completed construction, the sewer system, possible partnering with DHHL's Waiehu Kou substation, and the possibility of a school and site improvements on the project.

Mr. Yee also posed questions regarding the unilateral agreement, zoning, ohana units, and the 201G application process.

A recess break was taken at 9:25 a.m. The meeting reconvened at 9:40 a.m.

Vice Chair Montgomery posed a few questions related to the 1,100 possible buyers/applicants, guidelines that apply to the affordable homes, and other subdivisions and affordable housing projects.

Commissioner Kanuha raised questions on the 201G approval secured from county council and asked if this was only for the affordable housing component.

Mr. Kim replied that the 201G approval was for the entire project area for both the affordable and market lots. Mr. Kim noted that one of the requirements was that the final plans and specs would be approved and if there is a substantial deviation he would need to return to council for additional approval. Mr. Kim also discussed the process needed for this application. Mr. Kim noted that the DOE matter is still unresolved and the potential school site was not initially addressed in the 201G application.

Commissioner Kanuha also raised questions relative to the zoning and intended uses of the large lots.

Commissioner Piltz raised questions and concerns related to water consumption, the size of the large park, traffic mitigation and intersection improvements.

Commissioner Kanuha commented that there was a discussion with Mr. Leuteneker regarding title claims and the appeal. Commissioner Kanuha asked Mr. Kim if he was still prepared to move forward.

Mr. Kim replied in the affirmative and added that the title search was thorough and he believes that the appeal process does not have any compelling evidence to support it. Mr. Kim added that he was confident and prepared to proceed forward.

Vice Chair Formby commented that he supports Mr. Kim's efforts in providing affordable homes under \$250,000 and for bringing the project up to this point, but his concern is on the lack of certainty that would make it difficult for the LUC to craft an order. Vice Chair Formby noted that there are questions on the DOE, the TIAR, and other issues that have been discussed but not defined. Vice Chair Formby posed questions related to the affordable housing 10-year buyback, the 2004 un-audited balance sheet, the permitting and/or building code issue, ohana units not permitted under the 201G approval, and the county's standard or definition of potable versus non-potable water as referenced in the Lanai case.

Ms. Lovell commented that the standard in the Lanai docket came from an ordinance relating to the kind of water used on golf courses. Ms. Lovell added that the county's standard for this project would be of water that meets federal or state safe drinking water standards.

Vice Chair Formby noted that he would like to hear the county's position on the water issue when they present their case-in-chief.

Mr. Kim discussed issues of wastewater and whether it is a stand-alone or a link to the DHHL project, drainage, and land made available for the school site.

Vice Chair Formby commented that the petitioner is requesting urban classification for the 19 large lots; the county recommends agricultural designation; and the state recommends rural. Vice Chair Formby asked Mr. Kim what his strongest arguments were on why the LUC should reclassify these lots as urban.

Mr. Kim stated that the 201G is homogeneous classification for urban with the least amount of problems created by permissible uses. Mr. Kim added that they have the unilateral agreement with the county that would prevent further subdivision on the large lots or to have these lots treated differently. Mr. Kim added that the business has suffered setbacks and strongly urged the LUC to keep these lands homogeneous and whatever needs to be addressed could be listed as conditions rather than something that may become problematic in the future.

Chair Judge posed a few questions relative to title insurance for these lots.

Mr. Kim stated that they have title insurance, but not from Title Guarantee, as they have not decided upon the insurance company. Upon delivering the lots, all lots will be sold with title insurance.

Chair Judge had a few questions regarding exhibit C, the financial statements, and water resource issues as noted in the 12/20/04 and 2/15/05 letters from the Department of Water Supply (DWS).

Vice Chair Formby had questions and concerns relative to title issues, title insurance, and the supersedeas bond.

Mr. Kim stated that title insurance will be made available for the entire project and added that he will provide some documentation to the LUC.

Commissioner Kanuha asked if there was anything in the proposed conditions recommended by the county and the state that may take the project to a point where it would be unfeasible to develop.

Mr. Kobayashi commented that he has not had the opportunity to discuss this scenario with his client and/or their consultants.

Chair Judge noted that the LUC could reserve the right to call Mr. Kim back at a later date to ask him these questions.

Commissioner Piltz asked if Mr. Kim had a chance to review the letter from the USDA-NRCS and if he had any comments on their recommendation in keeping the area in agricultural classification.

Mr. Kim replied in the affirmative and stated that he spoke with Ranae Ganske-Cerizo, who informed him at that time that she did not have a chance to review petitioner's mitigation measures with the Department of Public Works. Mr. Kim added that she had raised concerns over the Wailuku Country Estates' final drainage plan, as that construction started prior to their drainage plan's approval.

Chair Judge asked Mr. Kim if he had provided Ms. Ganske-Cerizo with Hale Mua's drainage plans.

Mr. Kim stated that Ms. Ganske-Cerizo informed him that this was a standard response on her part and had no further review at this time.

Admission of Additional Exhibits

Mr. Kobayashi described and offered petitioner's exhibit number 37, the project overview's corrected pages as referenced on the record from the June 2005 FEA and the May 2005 FEA. There were no objections by the parties. Said exhibit was admitted into the record.

A recess break was taken at 10:55 a.m. The meeting reconvened at 11:10 a.m.

Vice Chair Formby questioned if the maintenance of the swales were factored into the association fees.

Mr. Kim replied in the affirmative.

Chair Judge commented on the letter from the USDA-NRCS and requested that the Executive Officer contact the district conservationist for clarification on her position in this matter.

Mr. Ching replied in the affirmative.

3. Robert Hobdy

Mr. Hobdy briefly described his experience in biology and in conducting biological resource surveys. Mr. Hobdy added that he was employed at the DLNR Forestry and Wildlife Division for 38 years and has worked closely with native plants and environmental issues and possess extensive experience in working with biological resources in general. Mr. Hobdy was qualified as an expert in biological resources. There were no objections by the parties.

Mr. Hobdy stated that he conducted the biological survey on two consecutive days in July 2005. The survey was submitted as petitioner's exhibit number 16. Mr. Hobdy briefly summarized his survey and discussed issues of prevalent vegetation on site, plant species, native plants, and stated that none of the plants were listed as endangered species. Mr. Hobdy also testified that there are no wetlands on the property and summarized his survey on bird species, mammals, insects, and stated that he found no endangered wildlife on the property. Mr. Hobdy added that by conducting the biological survey, he believed that this project will not have any effects on the biological resources found on the property.

Ms. Lovell commented that various flocks of Nene Goose were found to be expanding in the areas outside of the Haleakala area and asked if any of them have found refuge in this area.

Mr. Hobdy stated that the property is in overgrown vegetated state and that there is no place suitable for them to seek refuge there.

Mr. Yee asked if there was any particular reason why Mr. Hobdy visited the site on those two specific days to conduct the survey.

Mr. Hobdy stated that there was no particular reason for those 2 dates, or in response to seasonal changes, with respect to surveying the migratory birds that are widespread, common, and non-endangered.

Vice Chair Montgomery asked why Mr. Hobdy did not list the pig with all the macadamia nut trees in the area. Vice Chair Montgomery also asked about the rice birds.

Mr. Hobdy stated that the pigs are in the mountains and are not in the macadamia nut tree areas. Mr. Hobdy added that of the nine birds he has listed, there were no rice birds at that time. However, it is possible that other birds would come onto the property since there are a lot of common birds in the area. If the survey would have gone longer and during the change in seasons, they may have picked up other common types of birds in the area.

After a brief discussion, there were no further questions for Mr. Hobdy.

4. Michael Munekiyo

Mr. Munekiyo's testimony and resume was submitted as petitioner's exhibit number 15. Mr. Munekiyo was previously qualified as an expert in the field of land use and planning. There were no objections by the parties.

Mr. Munekiyo stated that he performed an analysis of the petition area's conformance to the LUC rules. Mr. Munekiyo explained that at the time the petition was submitted, the property was identified as TMK 3-3-002: por 1, but a new TMK issued by the tax department for the subject property's designation is now parcel 31.

Mr. Munekiyo briefly summarized his analysis and discussed issues of past agricultural uses, impacts to public service workers and resources, potential sources of water, the 201G process and representations made, and affordable housing percentages. Mr. Munekiyo added that he believed this project meets the standards for urban district boundary classification as set forth in the LUC rules.

Ms. Lovell had questions and concerns related to the 201G process and petitioner's intent to reclassify the entire project as urban designation.

Ms. Lovell referenced petitioner's exhibit 38, the map depicting a baseball park that borders the highway and questioned if it was his understanding that this area will also serve as a detention basin.

Mr. Munekiyo stated that he is not familiar with the most current drainage plans but understood that the park lands did not include any retention areas.

Ms. Lovell referenced petitioner's exhibit 15, the letters from the DWS dated 12/20/04 and 2/15/05 and Mr. Munekiyo's response dated 4/29/05, which references the use of non-potable water for agricultural uses.

Mr. Munekiyo noted that the civil engineer could better respond to these questions.

A lunch break was taken at 12:15 p.m. The meeting reconvened at 1:30 p.m.

Mr. Yee noted that at the prehearing, the parties were asked if the state's witnesses would be allowed to be taken out of order, if needed. Mr. Yee added that Micah Kane of DHHL and Brennon Morioka of DOT were requested to appear at the next hearing on September 7th.

Chair Judge replied that it would be noted.

Mr. Yee then continued with the state's cross examination of Mr. Munekiyo and posed questions regarding the archeological concerns from OHA.

Mr. Munekiyo stated that the archeological assessment was done and approved by the State's Historic Preservation Division and that the issue of archeological monitoring was held open for further comment. Mr. Munekiyo added that they are working with the project's archeologist, Michael Daega.

Mr. Yee raised questions regarding the DWS letter dated 12/20/04 and prior discussions between petitioner and DWS, agricultural activities, the 201G approval, council meetings, and agricultural versus urban classification in terms of domestic water usage.

Commissioner Kanuha posed questions relative to the impact statement as a part of the 201G submittal.

After a brief discussion related to county zoning, there were no further questions for Mr. Munekiyo.

5. Julian Ng

Mr. Ng stated that he is the president of Julian Ng, Inc., a transportation firm. Mr. Ng's testimony and resume were submitted as petitioner's exhibits 20 and 27. Mr. Ng was qualified as an expert in traffic engineering. There were no objections by the parties.

Mr. Ng stated that he prepared a traffic impact analysis report, a supplemental traffic report, and analysis letter dated August 9, 2006. Mr. Ng briefly summarized his report and stated that in November 2004, he surveyed intersections at Access Road, Kahekili Highway, Maka'ala Drive, Market and Mill Streets, Mission and Imi Kala, and Waiehu Beach Road. All of the intersections that he believed would have the greatest impact of the subject project were surveyed. Mr. Ng also discussed trip generation numbers and levels of service grades A to F.

Ms. Lovell raised a few questions related to the traffic study during peak hours, traffic counts, and the traffic impacts during the school's pick up/drop off times.

Commissioners Contrades and Kanuha left the meeting at this time.

Mr. Ng continued to discuss the levels of service at the intersections surveyed and commented that the TIAR was based on the worst case scenario.

A recess break was taken at 2:45 p.m. The meeting reconvened at 2:55 p.m.

Mr. Yee referenced OP's exhibit 2A and asked Mr. Ng to mark all the intersections as discussed on the map. Mr. Yee posed questions related to the TIAR, DOT concerns, and the amount of additional land needed to set aside for possible left and right turn lanes.

Vice Chair Formby asked if it was Mr. Ng's assumption when conducting the survey that the large lots would be used for residential or agricultural purposes.

Mr. Ng stated that the lots were to be used for residential purposes generating traffic similar to a suburban household, during morning and afternoon peak hour times.

Mr. Ng added that the calculations were based on two dwellings per large lot, and was based on the fact that petitioner was requesting urban reclassification for these lots.

Commissioner Piltz raised questions and concerns regarding intersection 1 and intersection 2, as referenced on page 7 of the FEA.

Chair Judge posed a few questions relative to the traffic impacts of having a school within the project.

Mr. Ng stated that if the proposed lot is used for a school, they have still covered the potential impacts of the project noting that the net effect of having a school in the project reduces traffic. However, the school itself could have its own impacts if it takes the place of the Waihe`e School.

After a brief discussion, there were no further questions for Mr. Ng.

Chair Judge noted that the Office of Planning will be taking their witnesses out of order to commence with Brennon Morioka and Micah Kane at the next hearing.

Mr. Kobayashi stated that they will have one final witness, Duane Reddington, to address drainage and wastewater.

The meeting was adjourned at 3:25 p.m.

(Please refer to LUC Transcript of August 25, 2006 for more details on this matter.)