

LAND USE COMMISSION
MINUTES OF MEETING

September 22, 2006

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

COMMISSIONERS PRESENT: Michael Formby
Kyong-su Im
Lisa Judge
Duane Kanuha
Ransom Piltz
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Thomas Contrades
Steven Montgomery
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.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner
Sterling Kim, Hale Mua Properties
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
Laura Thielen, State Office of Planning
Abe Mitsuda, State Office of Planning

Petitioner's Witness

1. Duane Reddington

Mr. Reddington was still under oath from the last hearing. Mr. Reddington discussed the DOE requirements for a school site and petitioner's ability to provide all these requirements. Mr. Reddington also discussed infrastructure, design, electric, data cable and telephone, wastewater redesign for storage capacity, and access points for the school site.

Commissioner Kanuha asked if they knew what the total amount for this project would be and if they would need to re-engineer their plans to accommodate the school site. Commissioner Kanuha also asked if the wastewater system had enough storage capacity to accommodate the proposed school.

Mr. Reddington commented that they could only speculate as to the total amount, but that the infrastructure (water, sewage, electric, etc.) is included in the design and will be there at the site. Mr. Reddington added that the wastewater system was not designed for the school, but that there is a sanitary system that could accommodate storage from the school. Also, the drainage was not taken into account and a reassessment would need to be done.

Commissioner Piltz posed questions regarding the DHHL off-site pump station, the cost of the transmission line, the 18 acres set aside for the school site, and the cost of infrastructure for the 19 large lots.

Commissioner Teves had a few questions and concerns related to discussions with the DOE and the county council. Commissioner Teves asked if petitioner had approached the DOE to inquire as to their requirements before submitting the application to the council.

Mr. Reddington replied that he could not comment on that matter and added that the application was processed before he was involved in this project.

Commissioner Im noted that the DOE will accept a property that is ready to be developed including all the infrastructure improvements being brought to its property line at a minimum. Commissioner Im asked what Mr. Reddington meant by the school being completely independent of the project.

Mr. Reddington noted that they do not have any clear direction from the DOE as to their preference to the donation of lands or money and reiterated that the infrastructure has been designed to be included.

Chair Judge posed questions regarding the drainage mitigation of the Wailuku Country Estates, the cost of the drainage facilities, and the design costs of the intersection improvements as testified by the DOT.

Commissioner Im raised a few questions related to the calculation of potable and non-potable water, and the economical standpoint for re-design that would include the ohana units.

Commissioner Piltz asked Mr. Reddington if he was comfortable with the security of entitlements, the project's design and mass grading. Mr. Reddington replied in the affirmative.

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

2. Sterling Kim

Mr. Kim was still under oath from the last hearing.

Commissioner Kanuha commented that at the last hearing he had asked petitioner if they had conducted an analysis of all the additional requirements imposed on the project by various agencies. Commissioner Kanuha questioned if there was a point where petitioner believed that this project would not be feasible.

Mr. Kim replied that upon going through the 201G process they had discussed the overcrowding of the school at Waihe`e and the direction given by the county was to have any school proposed for the project as a separate function of the 201G application. Mr. Kim added that the affordable housing component was the purpose of the 201G and the possibility of a school site would be addressed at a later time. Mr. Kim noted that to include the school site, whether it is through a special use permit or a change in

zoning, the infrastructure is designed to include the school and the amount of acreage is sufficient to include the drain basin.

Commissioner Kanuha also had a few questions on the cost sharing with DHHL for the pump station.

Mr. Kim noted that they plan to have their own separate force main, 3 million dollars of improvements, and have agreed to contribute 1 million dollars to participate in the DHHL's pump station. Mr. Kim added that they have accepted these costs as a part of the project and believes that the project is still feasible.

Commissioner Teves commented that the DOE is asking for both a land donation and a monetary contribution. Commissioner Teves asked what the petitioner would do if the county's special use permit is turned down for the land contribution.

Mr. Kim noted that if the land contribution is not possible, then it would be acceptable to the petitioner to make up that difference with a monetary contribution according to the DOE's fair share formula.

Commissioner Piltz asked if there were any updated cost breakdowns since several items have been added to the project.

Mr. Kim stated that his numbers for the project budget are still accurate. A final estimate is still forthcoming from the contractor. Mr. Kim added that the contractor is currently negotiating with the vendors to lowering their margins on the affordable housing element.

Commissioner Kanuha referenced petitioner's exhibit 42, and posed a few questions regarding the land commission award parcels.

Chair Judge raised questions regarding the wastewater system and the 466 total units at full build out which includes ohana units, as referenced in the FEA, page 63.

Chair Judge commented that in response to Commissioner Piltz's questions regarding the cost breakdowns, Mr. Kim referenced some numbers and wondered if these materials were going to be made available to the LUC.

Mr. Kim stated that he had a cost estimate sheet with some details that he could provide to the LUC.

A recess break was taken at 9:30 a.m. The meeting reconvened at 9:40 a.m.

Admission of Additional Exhibits

Mr. Kobayashi offered the Engineer's Estimate sheet as petitioner's exhibit 43.

Mr. Souki stated that the county would hold off on accepting this exhibit for now since they did not know what the foundation is for this exhibit.

Mr. Yee noted that the state had no objections to the submittal of petitioner's exhibit 43.

Chair Judge posed questions on the differences in wastewater in the EA versus petitioner's exhibit 26, Mr. Arakaki's testimony. Chair Judge then referenced petitioner's exhibit 43 and questioned the amount of \$43 million for subdivision site infrastructure.

Commissioner Piltz raised questions regarding the existing pump station.

Chair Judge had questions related to the drainage matter and the Wailuku Country Estates impacts to the Hale Mua property.

Mr. Souki referenced petitioner's exhibit 43 and questioned where these numbers came from.

Mr. Kim stated that these numbers came from the Goodfellow Brothers' proposal.

Commissioner Teves posed a few questions on the requirement of performance bonds.

Commissioner Kanuha raised questions regarding the affordable housing sales coordinated by the county, questioned who would be coordinating sales of the market lots, and phasing of the dwelling units.

Commissioner Im posed questions on the sale of the affordable housing lots, financing, and occupancy timelines. Commissioner Im also asked if Mr. Kim could provide some type of pro forma as his concern was that there may be a miscalculation or forces beyond their control to prevent this project from moving forward.

Mr. Kim stated that they are committed to moving this project forward. Mr. Kim added that if for some reason the project does not go through, then he would agree to a condition similar to OP's recommendation where the petition would revert back to the State Land Use Agricultural District and that he would need to return to the LUC.

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

Chair Judge then noted that petitioner's exhibit 43 was admitted into the record after no objections were lodged by the parties and the Commission.

Chair Judge also noted that the LUC has received a letter from the Maui County Farm Bureau expressing their comments and concerns regarding this petition.

County's Witness

1. Michael Foley

Mr. Foley was reminded that he was still under oath from the last hearing. Mr. Foley briefly summarized the county's position recommending that the 19 large lots remain in the agricultural district and noted that the county's Community Plan designates this land as agricultural and the county zoning as agricultural. Mr. Foley added that if these 19 large lots remain in agricultural designation, future owners could apply for construction of a farm dwelling by filing a farm plan, which is the county's current procedure. Mr. Foley continued to discuss the access to the large lots, the potential conflict of urban and farm uses, the Wailuku Country Estates drainage issue, storage capacity, and the loss of agricultural lands.

Commissioner Piltz posed a few questions regarding public testimony recommending that all these lands be kept in agricultural designation.

Chair Judge had a few questions about the 18-acre school site and its appropriate zoning.

Mr. Foley replied that if the lands were kept in agricultural designation, then the school site would be zoned quasi-public.

Mr. Souki posed questions on how urban reclassification would affect the 19 large lots.

Mr. Foley noted that he did not know of anywhere in the state where the LUC has reclassified 15-, 20- to 25-acre lots to urban designation. Mr. Foley commented that he believed that it was contrary to the description of what agricultural and urban designations are supposed to be and would also set a poor precedence.

Commissioner Kanuha commented that the council resolution notes that what they approved was the preliminary plans and specs for this project. Commissioner Kanuha questioned how the petitioner will get to the final plans and specs and in the event there is a deviation from the application, which body will make that determination.

Mr. Foley replied that it would be made by the Director of Public Works when the subdivision map is applied for and it could be in a series of phases. Mr. Foley added that if there is a major deviation, then he would need to take it back to the county council.

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

EXECUTIVE SESSION

Vice Chair 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. Commissioner Teves seconded the motion. The motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:45 a.m.

The open meeting reconvened at 11:00 a.m.

A recess break was taken at 11:00 a.m. The meeting reconvened at 11:20 a.m.

Chair Judge stated that after receiving and reviewing Petitioner's Exhibit 41 members of the commission still have concerns about Petitioner's satisfaction of the requirements of HAR § 15-15-50 (c)(5). The commission has received advice that a judgment in a different forum is not admissible until it becomes final by affirmance upon appeal or by the lapse of time within which an appeal may be taken. A general

reference to this principle can be found at 5A Am.Jur.2d, Appellate Review, § 433 and 29A Am.Jur.2d, Evidence, § 1331. Petitioner's Exhibit 41 states that Petitioner disagrees with this principle. The Commission requests that Petitioner provide the legal basis with citations for its disagreement. The Chair requested that Petitioner's response be submitted to the Commission on or before October 13, 2006.

Chair Judge also reminded the OP that the Commission has requested the submittal of the DOE's fair share formula for the record in this docket.

The meeting was adjourned at 11:25 a.m.

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