

LAND USE COMMISSION
MINUTES OF MEETING

January 18, 2007

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

COMMISSIONERS PRESENT: Thomas Contrades
Lisa Judge
Duane Kanuha
Ransom Piltz
Nicholas Teves, Jr.
Reuben Wong

COMMISSIONERS ABSENT: Michael Formby
Kyong-su Im
Steven Montgomery

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

Chair Judge called the meeting to order at 10:40 a.m.

ADOPTION OF MINUTES

Chair Judge noted a correction to the minutes of January 4, 2007, page 3, second paragraph to read "Mr. Bays noted that to his knowledge, there were no mortgages on the property only an open line of credit with the First Hawaiian Bank on which a nominal \$1,000 has been drawn."

Chair Judge also noted a correction on page 4, first paragraph to read "After a discussion, Chair Judge commented that since the approval of the amendment in early November of 2005, the petitioner has taken very few steps in bringing the development

forward. Chair Judge added that she is concerned about the affordable homes and if they would be built to the timetable established by the petitioner. Chair Judge commented that she would like to see another status report on the progress that the petitioner has taken in the next 6 months.”

Commissioner Piltz then moved to adopt the amended minutes of January 4 and 5, 2007. Commissioner Wong seconded the motion. The amended minutes of January 4 and 5, 2007 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Ching reported that the February 1-2 meetings will open with hearings on the Kapolei matter and DR06-32 Mark Bennett will be heard later in the afternoon. Friday’s meeting will involve the Obayashi action item and the West Beach Estates status report. Mr. Ching noted that the Commissioners flying in from the neighbor islands may need to take later return flights home on Friday.

Mr. Ching stated that although the Commission’s meeting dates will remain the same, the docket items and locations may shift.

There were no questions posed by the Commission.

A05-761 ERIC A. KNUDSEN TRUST (Kauai)

Chair Judge stated that this was an action meeting to consider the untimely Petitions for Intervention filed by:

- 1) Terrie Hayes, James Kimokeo, and Llewelyn Kaohelaulii, et al;
- 2) Rupert Rowe, et al;
- 3) Karmalee Christiansen Knudsen;
- 4) Office of Hawaiian Affairs.

APPEARANCES

Walton Hong, Esq., represented Petitioner

Rupert Rowe

James Kimokeo

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that as of today, the LUC had not received an untimely application for intervention from Karmalee Christiansen Knudsen. Chair Judge also noted that Mr. Tagupa, Deputy Corporation Counsel from the County of Kauai has

indicated that he would not be making an appearance today and that the County had no position on this matter.

Chair Judge stated that there were no public witnesses.

Intervenor

1. Rupert Rowe

Mr. Rowe stated that he was testifying on behalf of the Hui and the Kane I Olo Uma. Mr. Rowe respectfully requested that their untimely application for intervention be accepted by the LUC.

Mr. Hong stated that the application for intervention in this matter was untimely and he believed that the application did not show how the Hui members would be significantly affected. Mr. Hong commented that the LUC should deny the application for the untimely filing and for failing to show good cause.

Mr. Yee noted that the OP will defer to the LUC and will not take a position.

1. James Kimokeo

Mr. Kimokeo stated that he was living away for 40 years and returned to Kauai in 1996. Mr. Kimokeo added that no one is protecting the lands in Poipu and that he is here to protect his interests.

Mr. Rowe added that there is a serious problem with the Waita reservoir/dam and discussed their concerns regarding flooding and drainage.

EXECUTIVE SESSION

Commissioner Piltz 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 approved by a show of hands.

The Commission entered into executive session at 11:15 a.m.

A recess break was taken at 11:30 a.m. The open meeting reconvened at 11:40 a.m.

Commissioner Kanuha asked Mr. Rowe to point out the location of the heiau and the reservoir.

Mr. Rowe referenced LUC Maps 1 and 2 and pointed out the locations.

Commissioner Kanuha noted that the areas being referenced are not in the petition area and are located outside of the subject area.

2. Heidi Guth

Ms. Guth stated that Mr. Markel and herself were testifying on behalf of OHA. Ms. Guth noted that she is the lead advocate for OHA.

3. Kai Markel

Mr. Markel stated that he is OHA's current Director of Native Rights and Culture.

Ms. Guth and Mr. Markel both described their positions with OHA. They also described OHA's two main points of intervention.

Mr. Markel noted that the OHA has concerns on the decimation of the Hawaiian culture, especially in the Koloa/Poipu area, which is rich in history and culture.

Ms. Guth noted that the OHA would like the opportunity to provide their own witnesses such as archaeologist, beneficiaries, etc. Ms. Guth added that OHA has additional information that cannot be represented by the State OP. Ms. Guth respectfully requested that OHA's application for intervention be accepted.

Mr. Hong noted that as in the previous application, this application for intervention from OHA is untimely and that OHA had ample time to file for intervention. The EIS notification was mailed to OHA in July 2005 and the petition was found complete in November 2006. Mr. Hong added that the OP and the LUC will address the archaeological issues and believed that the added participation of OHA is unnecessary. Mr. Hong requested that the LUC deny OHA's application for intervention.

Mr. Yee noted that the state will take no position on this matter.

Commissioner Contrades commented that although OHA's duties are to represent the interests of the Hawaiian people, this filing is late. Commissioner Contrades added that while he personally has seen changes in Kauai, the OHA

leadership needs to be more attentive and proactive in responding to petitions such as this one.

Commissioner Kanuha added that he also has concerns with this untimely filing for intervention. Commissioner Kanuha noted that he had concerns with the differences between the positions of state agencies, such as OHA and SHPD, and the position and testimony provided by the OP.

Commissioner Piltz commented that although the filing was late, he believes that OHA has a position and would support them coming to the table.

Commissioner Wong questioned whether OP would be able to work with OHA regarding their witnesses and native rights on culture.

Mr. Yee stated that the OP does not take a position on petitions filed for intervention, however, if their application is denied, the OP is willing to provide more information to the Commission describing OHA's concern. Mr. Yee added that OP would not have any concerns with the additional witnesses that OHA might wish to call, but that the OP may have some concerns relative to allowing more than one attorney to cross examine these witnesses. Mr. Yee noted that he would need to discuss this matter further with Ms. Thielen.

After a brief discussion, Chair Judge called for a recess and a break in the proceedings to allow Mr. Yee to consult with Ms. Thielen.

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

DR06-33 BIG ISLAND COUNTRY CLUB HOMES, LLC (Hawaii)

Chair Judge stated that this was an action meeting to consider the Petition for a Declaratory Order clarifying the extent to which Chapter 343, Hawaii Revised Statutes, is applicable to the Petition for Land Use District Boundary Amendment in LUC Docket No. A05-762 / Big Island Country Club Homes, LLC.

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner

Chair Judge noted that there were no public witnesses and that there was no State representative. Chair Judge also noted that Mr. Hayashi from the Hawaii County Planning Department had contacted the LUC office indicating that he would not be

making an appearance and that the County had no objections to the petitioner's request for continuance.

Mr. Tsukazaki noted that in order to meet the Commission's requirements for a declaratory ruling and receive additional information that his client had requested from the DOT, the petitioner was now requesting a continuation on this matter. Mr. Tsukazaki added that the state has also requested some clarification and would like to see that petitioner file the formal documents at least two weeks ahead of any scheduled hearing on this matter. Mr. Tsukazaki then requested for a continuance of six weeks.

Commissioner Contrades moved to approve the continuance of six weeks with the filing no later than two weeks before the hearing date. Commissioner Kanuha seconded the motion.

The Commission was polled as follows:

Ayes: Contrades, Kanuha, Piltz, Teves, Wong, Judge.

The motion passed with 6 yes, 3 absent.

A06-769 1250 OCEANSIDE PARTNERS (Hawaii)

Chair Judge stated that this was an action meeting to determine whether the preparation of a Supplemental Environmental Impact Statement is warranted pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 1,418.739 acres of land from the State Land Use Agricultural District to the State Land Use Rural District and approximately 16.016 acres of land from the State Land Use Agricultural District to the State Land Use Conservation District at Honuaino 3 and 4, Hokukano 1 and 2, Kanaeue 1 and 2, Halekii, Keekee, Ilikahi, Kanakau, Kalukalu, and Onouli 1, North and South Kona, Hawaii for residential, golf course with related improvements, and park uses within the Hokulia development; and to determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, in the event a Supplemental Environmental Impact Statement is warranted.

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner

Chair Judge noted that there were no public witnesses and that there was no State representative present. Chair Judge also noted that Mr. Hayashi from the Hawaii County Planning Department had contacted the LUC office indicating that he would

not be making an appearance and that the County did not have any objections to the Petitioner's request for continuance.

Mr. Tsukazaki stated that his client has met with OHA and will continue to discuss with them items of mutual interest. Mr. Tsukazaki then requested that the Commission grant a two-week continuance on this matter.

Mr. Yee entered the meeting at this time. Mr. Yee commented that the State had no position on this matter.

Commissioner Piltz moved to approve the continuance for an additional two weeks so that petitioner can follow up on matters with OHA and the Office of Environmental Quality Control. Commissioner Kanuha seconded the motion.

The Commission was polled as follows:

Ayes: Piltz, Kanuha, Wong, Teves, Contrades, and Judge.

The motion passed with 6 ayes and 3 absent.

A05-761 ERIC A. KNUDSEN TRUST (Kauai) - continued

Mr. Yee stated that they had the opportunity to discuss with their Director and noted that the OP will make a good faith effort to resolve any differences between the OP position, OHA and SHPD. Mr. Yee added that they have concerns with two attorney's representing the OP. Mr. Yee also noted that assuming OHA's application for intervention is denied, the OP would try to make a complete record, but that they would not commit to presenting the six witnesses as requested by OHA.

After a brief discussion, Commissioner Piltz moved to allow OHA to intervene in this matter. Commissioner Piltz added that although their application is late, he believed that OHA's testimony and participation is necessary to protect the interest of their beneficiaries. Commissioner Piltz noted that the OHA intervention will be limited to matters relating to historical and cultural resources. The motion was seconded by Commissioner Contrades.

Commissioner Piltz stated that his motion approving OHA's intervention was conditioned on OHA also representing the beneficiary interests of Rupert Rowe and James Kimokeo and that of the "Hui."

Commissioner Wong stated that he supports the motion and wanted to make it clear to OHA and everyone else that future filings must be timely.

The Commission was polled as follows:

Ayes: Piltz, Contrades, Wong, Teves, Kanuha, and Judge.

The motion passed with 6 ayes and 3 absent.

Commissioner Contrades moved that the request for intervention filed by the Hui be denied. The motion was seconded by Commissioner Teves.

Commissioner Contrades commented that some of the issues brought before the LUC today by the Hui are problems that the LUC cannot resolve, such as land awards. Commissioner Contrades added that he believed OHA can sufficiently represent the Kanaka Maoli through their intervention in this matter.

Chair Judge commented that if this motion passes and the untimely application from the Hui is denied, this does not mean that the LUC will not take any further testimony from the Hui. Chair Judge added that the public always has a right to provide testimony and if the Hui should have further information or concerns, they will be welcomed to present those concerns as public testimony.

The Commission was polled as follows:

Ayes: Contrades, Teves, Wong, Piltz, Kanuha, and Judge.

The motion passed with 6 ayes and 3 absent.

Mr. Hong commended the LUC for their decision as he believed it was a fair and just resolution where the interest of the Hui members will be represented by OHA.

Chair Judge stated that all of the parties will be subject to the deadlines set in the prehearing order.

A recess break was taken at 1:30 p.m. The meeting reconvened at 2:55 p.m.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that this was an action meeting to consider the:

- 1) Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment;
- 2) The Office of Planning's (OP) Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment;
- 3) Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order;
- 4) Petitioner's Exceptions to the Office of Planning's and Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment; and
- 5) The Office of Planning's (OP) Amended Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment.

The Commission will also consider the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment as proposed by Commissioner Ransom Piltz, as the LUC's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, and take action on 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., represented Petitioner

Sterling Kim, Hale Mua Properties, LLC

Jane Lovell, Esq., represented the 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

Mr. Kobayashi provided an overview of the petitioner's proposed decision and order. Mr. Kobayashi noted that the petitioner has ownership of the petition area as stated in the summary judgment. Mr. Kobayashi discussed the features of the project as 51% affordable, the proposed Imi Kala Street extension, the need for the project, social and economic impacts, buyback provision, the need for affordable housing vs. agricultural needs, and their agreement to prepare an amended TIAR. Mr. Kobayashi also discussed condition 1 regarding automatic reversion; condition 2, affordable housing units; condition 5 regarding DOE fair share; and condition 7 regarding the Imi Kala Street extension.

Ms. Lovell discussed the partial stipulation and commented on the proposed decision and order and OP's comments to the order. Ms. Lovell, however, noted that the County supports Commissioner Piltz's order.

Mr. Yee discussed OP's amended exceptions and noted that the OP has partially stipulated to the petitioner's proposed order. Mr. Yee also discussed their exceptions filed earlier and their amended exceptions.

The meeting was recessed at 3:40 p.m.

(Please refer to LUC Transcript of January 18, 2007 for more details on this matter.)