

LAND USE COMMISSION
MINUTES OF MEETING

July 26, 2007

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

COMMISSIONERS PRESENT: Thomas Contrades
Vladimir Devens
Michael Formby
Howard Hamamoto
Lisa Judge
Duane Kanuha
Ransom Piltz
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Cameron Lowry, 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.

Chair Judge entertained a motion to amend the agenda to include the election of officers for the LUC.

Commissioner Piltz moved to amend the agenda to include the election of officers. Commissioner Teves seconded the motion. The motion was approved by a show of hands.

ADOPTION OF MINUTES

Commissioner Formby moved to adopt the minutes of July 12 and 13, 2007. Commissioner Teves seconded the motion. The minutes of July 12 and 13, 2007 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Ching reported the following schedule:

- August 6 -the Commission will conduct a site visit to the Kauai ATV project site.
- August 9 & 10 - the Commission will meet on Oahu to receive a status report on the Bridge Aina Le`a project and staff's presentation of its proposal to amend the LUC's administrative rules.
- August 23 & 24 - the Commission will travel to Lanai to hear the motions filed by the parties.
- September 26 to 28 - the HCPO conference will be held at the Hapuna Prince Hotel. Mr. Ching noted that the LUC may hold public hearings on the proposed administrative rules in Hawaii County on or about these dates.

There were no question posed for Mr. Ching by the Commission.

ELECTION OF OFFICERS

Commissioner Teves moved to nominate Commissioners Formby and Kanuha as Vice Chairs, and Commissioner Judge as the Chair. Commissioner Contrades seconded the motion.

Commissioners Formby, Kanuha, and Judge accepted their nominations respectively.

The motion was approved by voice votes. Their terms of office would commence immediately.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that this was an action meeting to consider a non-hearing motion regarding Hale Mua Properties, LLC's Motion To Amend Findings of Fact, Conclusion of Law, and Decision and Order for a State Land Use District Boundary Amendment filed February 12, 2007 and Caption.

Chair Judge noted that the petitioner had requested that the LUC not conduct a hearing on this matter, rather they have asked that the LUC recognize certain facts regarding this docket and the order that had already been issued. These facts are not in dispute and the parties need not be present. The charge for the LUC is to simply accept the filing and cause the relevant amendments to be made by the LUC's order.

Chair Judge noted that there were no public witnesses.

Mr. Ching noted that the LUC filed its Decision and Order on February 12, 2007. In compliance with Condition No. 18 of the order, the metes and bonds description indicated that the reclassified area more accurately consists of 116.117 acres, instead of 117.293 acres. In addition, the description shows that the denied area more accurately consists of 122.004 acres, instead of 120.888 acres. Petitioner requests that the order and caption reflect these amendments to the acreages and to the TMKs.

Vice Chair Formby moved to accept the amendments to the order and caption. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Formby, Piltz, Teves, Kanuha, Hamamoto, Devens, Contrades, and Judge.

The motion passed with 8 yes, 1 absent.

A recess break was taken at 10:30 a.m. The meeting reconvened at 10:40 a.m.

A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (Maui)

Chair Judge stated that this was a hearing to consider the reclassification of approximately 25.263 acres of land currently in the Agricultural District to the Urban District at Wailuku, Maui, Hawaii for a new school campus.

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner

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

Jeffrey Dack, Director, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Koren Ishibashi, State Office of Planning

Chair Judge noted that there were no public witnesses.

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 had no objections to providing reimbursement for the LUC's hearing expenses.

Staff's Report

1. Cameron Lowry

Mr. Lowry provided a map orientation of the project site and stated that the significant issues involved in the docket were: i) the removal of agricultural land; ii) the indeterminate stance of the Maui County Council and the Maui Planning Commission; iii) transportation; iv) monitoring for archaeological resources; and v) water service and energy conservation measures. The issues of greatest significance were that the Maui County Council and Planning Commission have not acted on the land use applications; and the need for project reconfiguration to provide adequate emergency access.

There were no questions posed for Mr. Lowry by the parties or the Commission.

Admission of Exhibits

Mr. Kobayashi described petitioner's exhibits 1 to 20. Mr. Kobayashi commented that exhibit 20 is the written testimony of Mr. Vuich, however, they have been unable to secure his signature at this time. Mr. Kobayashi added that he would hold off admitting that particular exhibit until securing the signature and would submit it in the future. Mr. Kobayashi then offered petitioner's exhibits 1 through 19. The parties had no objections to the admittance of petitioner's exhibits 1 through 19. Said exhibits were admitted into evidence.

Chair Judge noted that petitioner's exhibit 20 would be admitted once petitioner had attained the signature.

A recess break was taken at 10:45 a.m. The meeting reconvened at 10:50 a.m.

Ms. Lovell described the county's exhibits 1 through 4. There were no objections by the parties. County's exhibits 1 through 4 were admitted into evidence.

Mr. Yee described the state's exhibits 1, 2, 3, 3a, 4, 5, 5a, 6, 7, 8, 9, 10, and 11 through 19.

Mr. Kobayashi had no objections to the admittance of state's exhibits.

Ms. Lovell had some concerns on exhibits 4, 5, 6, 7, noting that they are a very small part of a voluminous and complex record relating to the Iao aquifer. Ms. Lovell added that they also had hearsay objections to state's exhibits 8, and 11 through 18.

After a brief discussion regarding the state's exhibits, Chair Judge stated that the county's objections would be noted and admitted all of the state's exhibits, as offered, to the record.

Mr. Kobayashi noted that they would be deviating slightly from their actual list of live witnesses as submitted.

Petitioner's Witnesses

1. Richard Sudheimer

Mr. Sudheimer stated that he is the designated representative for Emmanuel Lutheran Church of Maui and has been a member of the congregation since 1990. Mr. Sudheimer described his affiliation with the church and his past experience as an engineer. Mr. Sudheimer described the membership, enrollment, and project expansion plans. Mr. Sudheimer also discussed the church's financial capability, project costs, and the intent to secure funds to meet the financial needs and aspects of the project. Mr. Sudheimer believed that the church has the necessary funding to build this project and that the new campus will benefit the island of Maui by providing additional educational facilities and community service projects.

Ms. Lovell raised questions regarding the maximum capacity of the school and its student enrollment, the capacity of the proposed sanctuary, the sanctuary service day and times, the geographic areas served by the church, and any transportation services to shuttle the students to and from school.

Mr. Yee posed questions in reference to the large open area with no current plans, the possibility of developing elderly or faculty housing in the future, or the possibility of selling that vacant parcel. Mr. Yee also had a few questions related to energy efficiency and efforts to reduce the need to provide drinking water to the site.

A recess break was taken at 11:40 a.m. The meeting reconvened at 11:55 a.m.

Commissioner Hamamoto questioned how the petitioner arrived at its estimate of \$20 million for the project cost.

Commissioner Devens had a few questions and concerns regarding OHA's comments on the archaeological burial sites, and the consultant's recommendation of monitoring during construction.

Vice Chair Formby posed questions related to the estimated development cost, business plan, the capital campaign fundraiser, the insurance annuity company, and whether the church planned to reflect the cost of construction in the students' tuition.

Chair Judge raised questions as to the total project cost estimate of \$20 million and the breakdown per phase. Chair Judge also asked about the county's permitting process and whether the church had applied for a change in zoning.

A lunch recess was taken at 12:05 p.m. The meeting reconvened at 2:00 p.m.

Vice Chair Formby asked Mr. Sudheimer if petitioner was aware that a standard condition in the decision and order is that the petitioner comply with the representations made at the hearing. In this matter, petitioner intends to use the property for church and quasi-public school facilities. Assuming that this property is reclassified, the petitioner would need to substantially comply with the use of the property as represented. Vice Chair Formby asked if the petitioner would agree to the imposition of a condition of approval requiring the church to seek prior approval from the LUC in the event that any part of the project area was offered for sale to another party.

Mr. Sudheimer replied that he understood that the church would have to conform to the representations and added that they would have no objections to a condition requiring the LUC's prior approval in the event of the sale of any portion of the project.

There were no further questions of Mr. Sudheimer posed by the parties or the Commission.

Commissioner Piltz disclosed that years ago he was a board member for St. Anthony's Church and School and had negotiated with C. Brewer to purchase this piece of property. However, the Emmanuel Lutheran Church was ultimately successful in negotiating the purchase of the project area. Commissioner Piltz added that he had no financial interest with this property other than his involvement as a board member with St. Anthony's Church. There were no objections by the parties to Commissioner Piltz's continued participation in this matter.

2. Matthew Slepín

Mr. Slepín described his education and employment experience as a land use planner. After a brief discussion, there were no objections by the parties or the Commission and Mr. Slepín was qualified as an expert in the field of land use and planning for the purposes of this hearing.

Mr. Slepín described the project assessment report prepared for this project and discussed issues of zoning, economic feasibility, the Wailuku-Kahului community plan, water and sewage lines, energy and water conservation measures, traffic mitigation and improvements. Mr. Slepín noted that he believed that the property conformed to the LUC's urban district standards.

Ms. Lovell posed a few questions regarding the commitment of DWS service meters, the non-potable water for irrigation purposes provided for by the Wailuku Water Company, and the anticipated use of 32,000 gallons per day of potable water based at full build out.

Mr. Yee had questions and concerns related to issues of flora and fauna, cultural practices and access, biological resources for the non-perennial stream, energy efficiency, water conservation, and LEED silver certification.

Vice Chair Formby commented on petitioner's assumption that drinkable water would be made available upon build out, although the county is not committing to any meters at this time. Vice Chair Formby had a few questions regarding the petitioner's consideration of energy conservation and LEED certification.

Chair Judge commented on the DOT's letter rejecting the petitioner's proposed emergency evacuation plan connecting to the Honoapiilani Highway.

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

A recess break was taken at 2:50 p.m. The meeting reconvened at 3:00 p.m.

3. Philip Rowell

Mr. Rowell briefly discussed his education and employment background. Mr. Rowell stated that his firm was retained by the petitioner to provide the traffic engineering consulting services and analysis. Mr. Rowell was previously qualified before the LUC as an expert in traffic impact analysis. There were no objections by the parties to his qualification as an expert in traffic engineering for this docket.

Mr. Rowell discussed traffic mitigation and the traffic analysis that his firm conducted for this project. Mr. Rowell also addressed the methodology and standards of service levels.

Ms. Lovell posed questions related to the extension of Waiale Road, the mitigation at the intersection of Waiale Road and Kuikahi Drive, and the levels of service at the intersection. Ms. Lovell also asked about pedestrian crosswalks and bike paths in the area.

Mr. Yee raised questions in reference to petitioner's exhibit 6, the TIAR, pedestrian crosswalks, and the emergency access to the petition area.

Commissioner Piltz had a few questions regarding the intersection at Waiale Road extension and the project driveway, a barricade at the intersection, the proposed turn lanes, and the projected timeline for full build out.

Commissioner Kanuha commented on Mr. Rowell's opinion that the DOT Highways and the private traffic consultants appeared to be using different standards to determine levels of service (i.e., ITE standards versus LOS level of service).

A recess break was taken at 3:50 p.m. The meeting reconvened 4:00 p.m.

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

4. Stacy Otomo

Mr. Otomo previously testified before the LUC and was qualified as an expert in engineering and drainage. There were no objections by the parties to his qualification as an expert in this docket.

Mr. Otomo reference figure 4, the drainage plan proposed for this project and discussed the existing runoff flow and off site drainage system at the Kehalani project. Mr. Otomo also discussed the detention basins, drainage improvements, and the wastewater which is anticipated to be generated by this project. Mr. Otomo added that the Kahului Wastewater facility has the capacity to accommodate the wastewater from this project and noted that the property is suitable for the proposed development.

Ms. Lovell posed a few questions related to issues of drinking water demands, the existing sewage system capacity, and the proposed connection to the sewer line.

Mr. Yee raised questions related to the availability of drinking water, utilizing the Best Management Practices on construction plans for storm water drains, and the location of the non-perennial stream within or adjacent to the petition area.

After a brief discussion, there were no further questions posed for Mr. Otomo by the parties and the Commission.

Mr. Kobayashi stated that after a discussion with the state and the county, the parties were in agreement to the OP's recommended conditions regarding the archaeological monitoring and the soil analysis. Mr. Kobayashi added that the petitioner would not be calling any further witnesses. However, Ms. Rotunna-Hazuka and/or Mr. Vuich would be made available should the Commissioners have questions with respect to their previously filed written testimony.

Ms. Lovell concurred that the county had agreed that in lieu of the agreement to comply, the presentation of these witnesses were not necessary.

Mr. Yee noted that the state also had no objections to petitioner's request to not present their witnesses in lieu of the agreement on those two conditions. However, Mr. Yee added that they would prefer that the petitioner admit its exhibit number 20 into the record upon receipt of Mr. Vuich's signature.

Chair Judge noted that they would leave the record open for the submission of petitioner's exhibit number 20. The LUC would commence with the county's witness on Friday's hearing.

Ms. Lovell stated that the county originally named a number of witnesses, however, they would be calling only two live witnesses.

After a discussion, Chair Judge noted that the LUC would reconvene at 8:30 a.m. tomorrow and begin with the county's presentation.

The meeting was recessed at 4:25 p.m.

(Please refer to LUC Transcript of July 26, 2007 for more details on this matter.)