

LAND USE COMMISSION
MINUTES OF MEETING

September 21, 2007

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

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

COMMISSIONERS ABSENT: None

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 9:25 a.m.

LEED WORKSHOP

Chair Judge noted that there were no public witnesses.

Appearances

1. Jennifer Stites

Ms. Stites began her presentation and stated that she is a board member of the U.S. Green Building Council (GBC). She provided a general description of a green building and a brief summary of the GBC chapters and its corporate members.

Commissioners Devens and Wong entered the meeting at this time.

Ms. Stites noted that LEED (Leadership in Energy and Environmental Design) Green Building Rating System was created by the USGBC. Ms. Stites discussed the LEED rating systems, design and construction in adopting green strategies and minimum standards, productivity, LEED for new construction, government incentives, the LEED checklist, and the LEED projects that the Dowling Company has built.

2. David Arakawa

Mr. Arakawa is the Executive Director of the Land Use Research Foundation (LURF). Mr. Arakawa began his presentation and discussed the core categories for LEED, the average savings of green building, and the collaborative efforts from private and government entities. Mr. Arakawa added that LURF supports LEED and green buildings as a voluntary program, which will result in market transformation. Mr. Arakawa also discussed the major energy-efficient elements, building green in Kapolei, the outstanding LEED issues, and incentive driven initiatives that the government should encourage.

Commissioner Wong commented that one of the objections that the developers have is the additional cost to build green and questioned what that additional amount would be.

Ms. Stites stated that she was unsure of the actual cost, but to certify their office building had been costly, as they needed to bring in experts from the mainland and most of the products were not available in Hawaii at that time. However, they are currently seeing a 3 to 5% project increase on the overall cost, which would include design and construction.

Mr. Arakawa added that prices came down recently as technology improves and there are ways to keep the prices lower. More private developers are getting involved and are learning how to do it cheaper.

Commissioner Wong questioned whether there was enough benefits from their sales to help a developer recover part of the 3 to 5% added costs.

Ms. Stites commented that through their experience, the developers are not recovering the added cost of 3 to 5% from their sale prices and that the consumers are not demanding it. In addition, the government is not offering any incentives at this time, such as tax credits, etc. Ms. Stites noted that energy efficient appliances, toilets, solar, and materials typically do not add to the costs but they do add to savings in energy and water reduction.

Chair Judge inquired about the Hawaii model energy code.

Ms. Stites stated that the building code in Hawaii is based on an older version, but LEED standards are higher and based on the 2004 standard. Each county adopts their own code and noted that the energy star appliances are the only way developers get credit for energy star certified homes.

Commissioner Wong asked whether the counties were doing anything in terms of ordinances and if there was any legislation for incentives or bonus.

Ms. Stites noted that there was none, although the City and County of Honolulu has a \$100 rebate for installation of ultra low flow toilets.

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

Chair Judge requested that a copy of the PowerPoint presentation be distributed to the LUC.

Ms. Stites noted that a copy of her presentation would be sent to the LUC for distribution.

A recess break was taken at 10:30 a.m. The meeting reconvened at 10:45 a.m.

REVIEW AND DISCUSSION OF STAFF PROPOSED ADMINISTRATIVE RULES

Public Witnesses

1. Tracy Stice

Mr. Stice stated that he was representing the Hawaii Association of Realtors and is a member of the Legislative Committee for the Hawaii Association of Realtors. Mr.

Stice noted his involvement regarding IAL and land use issues and commented on his concern regarding the proposed rule changes and nonconforming uses. Mr. Stice suggested that the LUC keep the power of the small parcels (1 to 5 acres) to the counties as part of the general plan on Maui is to improve the rural boundaries.

Commissioner Wong asked whether a landowner would be opposed to paying property tax of residential use in the agricultural districts.

Mr. Stice stated that Maui County has raised assessments on a lot of truly residential agricultural properties and noted that it is entirely fair to tax people on what they are doing with the land.

Vice Chair Kanuha commented that the Big Island is also taxing on use.

There were no further questions posed for Mr. Stice by the Commission.

2. David DeLeon

Mr. DeLeon stated that he was the Government Affairs Director for the Realtors Association of Maui. Mr. DeLeon noted his concern regarding IAL legislation and urged the LUC to focus on protecting the IAL.

There were no questions for Mr. DeLeon by the Commission.

3. Mary Lou Kobayashi

Ms. Kobayashi stated that she is the Acting Director of the State's Office of Planning and expressed her appreciation to the Executive Officer for the coordination of the proposed changes to the rules. Ms. Kobayashi stated that they support these changes and moving ahead with the rules as presented.

There were no questions for Ms. Kobayashi by the Commission.

Mr. Ching stated that the proposed administrative rules (version August 9, 2007) has been circulated widely and posted on the LUC's website. Comments were solicited and staff specifically sought to consult with the county planning departments and other agencies, as instructed by this Commission. The August 9, 2007 version has been substantially edited and has incorporated the comments received by the OP, County of

Kauai, and City and County of Honolulu. Mr. Ching added that this update seeks to implement, not to legislate. Should the Commission adopt the version as its own, staff would then take it to statewide public hearings to solicit comments and bring those comments back to the Commission.

Chair Judge clarified the procedure that after the Commission takes action on this today, the draft will go to the Governor and if approved, it goes out to public hearings, receives comments, then it comes back to the Commission for re-tool.

Mr. Ching replied in the affirmative.

Commissioner Wong commented and discussed matters of electronic filing, *kuleanas* and a clean policy of title and/or quitclaim deeds.

Vice Chair Kanuha noted that he had reviewed the first draft closely and comprehensively and had his handwritten comments to submit. Vice Chair Kanuha stated that at the last meeting when the Commission requested staff to solicit comments from other entities, he believed that those comments would be given consideration for incorporation or not included as a part of the public hearing process. Vice Chair Kanuha added that he was not expecting a second draft of the rules and had a serious concern as various organizations are working off of the first draft that was publicly circulated. Vice Chair Kanuha noted that he would not have any objections to supporting the first draft with the same understanding that comments will be coming in and at the end, there will be some assemblage to incorporate or not incorporate.

Mr. Ching stated that staff was willing to consider Vice Chair Kanuha's suggestion of taking the August 9 version of the rules out to public hearing. However, the protocol for reviewing rules is that you take a body of items out to hearing and the public has a fair shot at providing their comments to that document. If staff went out to hearings with the August 9 version, it currently does not include the recent comments of the OP and expressed a concern that absent its inclusion, a second round of hearings may be needed.

Vice Chair Kanuha stated that he believed that some of the issues raised in these rules will be extremely controversial. Vice Chair Kanuha added that because the August 9 draft is the one that has been circulating, he supports this first draft rather than having to go to hearing with the second draft.

Commissioner Devens commented that he also shared the same concerns as Vice Chair Kanuha. Commissioner Devens acknowledged that Mr. Ching has put a lot of

effort in the rules, but these rules have the force and effect of law the LUC needs to be careful on the changes made so that there is no ambiguity.

Commissioner Wong noted that whether it is this version or the first version, it would be going through public hearing and is not a final version. Commissioner Wong added that unless the LUC has special concerns, they should get it out to the Governor and to public hearings. Commissioner Wong stated that this is not final and after public comment, the LUC would have the chance to make additional comment.

Vice Chair Kanuha noted that he just received this draft and would like the time to go through it to see whether his concerns have been addressed. Vice Chair Kanuha added that he really did not know enough of the second draft, which is why he would rather support the first draft. The public is testifying on the first draft.

After a brief discussion, Vice Chair Kanuha moved to approve the first draft dated August 9, and incorporating the section of regional district boundary amendment, taking this version out to public hearing. The motion was seconded by Commissioner Devens.

Deputy Attorney General clarified that if the LUC votes to send out the first draft, the LUC is adopting this August 9 version as their official proposed draft.

Commissioner Wong wondered if the LUC adopts this rule, they are saying to the public or the Governor that these are the rules that the LUC desires to be adopted even if they know that there will be changes down the road.

Ms. Erickson stated that theoretically, the LUC can go to official public hearing and receive comments, accept or not, and adopt the rules finally in the same version.

A recess break was taken at 12:05 p.m. The meeting reconvened at 12:10 p.m.

Vice Chair Kanuha stated that given the previous discussion, he withdrew his motion.

Commissioner Devens withdrew his second to the motion.

Commissioner Devens commented that he personally would like some additional time to review efficiently the second draft that the Executive Officer had worked so hard on.

Chair Judge wondered if there was a specific timeline to provide comments and to process the rules.

Mr. Ching noted that October 4-5 would be sufficient for the LUC to provide their comments to him. Mr. Ching would incorporate the comments in a third draft by the first week of November.

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

Chair Judge noted that for time purposes, the LUC would take items out of order on the agenda and go directly to the continued hearing of Emmanuel Lutheran Church of Maui.

A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (Maui)

Chair Judge stated that this was a continued hearing on Docket No. A07-773 Emmanuel Lutheran Church of Maui.

APPEARANCES

Blaine Kobayashi, Esq., represented Petitioner

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

Jeffrey Dack, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

State's Witness

1. Abe Mitsuda

Mr. Mitsuda provided his education and employment background and stated that the OP is in favor of this petition. Mr. Mitsuda discussed the OP's major concerns and their recommended conditions. Mr. Mitsuda added that petitioner had discussed a transportation condition with the DOT and came up with language agreeable to the parties.

Admission of Additional Exhibit

Mr. Yee offered language for a proposed condition regarding transportation as OP's exhibit next inline. There were no objections by the parties. Said exhibit was admitted into the record as OP's next in order.

Mr. Mitsuda also discussed a revised TIAR, the *Kaiapaoka`ilio* non-perennial stream, the possibility of native plants in the petition area, LEED standards, and a performance timeframe for development.

Mr. Kobayashi posed questions regarding records kept by a state agency concerning the presence of protected biological resources in streams.

Ms. Lovell clarified that the stream in discussion was not in the petition area itself but 20 feet from the boundary. Ms. Lovell asked whether the OP was asking that a condition be imposed regarding recommending an inspection.

Mr. Mitsuda stated that the OP is recommending an inspection but is not recommending that this become an additional condition of approval.

Vice Chair Kanuha raised questions regarding the Order to Show Cause (OSC) for non-performance.

Mr. Mitsuda noted that this is a standard condition that the OP has been recommending. Should the petitioner not perform within a number of years, the OP would like the LUC to issue an OSC, otherwise the reclassified area just sits.

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

Chair Judge noted that the evidentiary portion is closed and read the post hearing instructions to the parties. The parties may draft individual orders, however the parties were encouraged to stipulate to any or all of the findings.

Mr. Kobayashi stated that it was his intention to pursue a stipulated order.

Ms. Lovell stated that the County was willing to work with the petitioner on a stipulated order.

Mr. Yee also noted that the OP is willing to pursue a partial or fully stipulated order.

Chair Judge stated that because of the willingness of the parties to pursue a partial or fully stipulated order, the order should be filed no later than the close of business on November 9, 2007. All comments or objections should be filed no later than the close of the business on November 16, 2007.

PUKALANI CORRESPONDENCE

Mr. Ching reported on correspondence received from Pukalani Associates, LLC on August 29, 2007.

On July 28, 2003, the Maui Land and Pineapple Company filed a petition for district boundary amendment involving approximately 40.6 acres at Pukalani, Maui for the proposed Upcountry Town Center in Docket No. A03-740. Although the Commission reviewed and accepted the Petitioner's FEIS, this determination was challenged in the Circuit Court of the Second Circuit and the petition was never deemed properly filed with the LUC. The correspondence indicates that the legal name of the petitioner is now Pukalani Associates LLC. The revised Final EIS was withdrawn and a new Draft EIS will be prepared.

Mr. Ching added that staff would keep the Commission appropriately apprised on this matter.

ADOPTION OF ORDER – DOCKET NO. A05-755 HALE MUA, LLC

Commissioner Teves moved to adopt the order for Docket No. A05-755 Hale Mua, LLC. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

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

The motion passed unanimously.

A05-755 HALE MUA PROPERTIES LLC

Chair Judge stated that this was an action meeting on Docket No. A05-755 Hale Mua Properties, LLC 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.

Petitioner Hale Mua Properties has asked for a non-hearing on this matter and the Commission would review their proposed amendment and issue an appropriate ruling. As no hearing has been requested, the parties need not be present. The charge for the Commission is to review the request by the petitioner for an extension of time within which a revised TIAR is prepared and submitted.

Mr. Ching stated that the current condition 5 of the decision and order indicates that the petitioner shall submit the revised TIAR to the DOT for its review and approval within 6 months of the issuance of the decision and order. Based on that, the deadline to submit the revised TIAR would be August 7, 2007. The reason for the 90-day extension is to allow the petitioner's traffic engineer to conduct field counts when school is in session. The field counts conducted in September would be analyzed and incorporated in the revised TIAR.

Commissioner Piltz moved to extend a ninety-day deadline to November 12, 2007. Commissioner Teves seconded the motion.

The Commission was polled as follows:

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

The motion passed unanimously.

The meeting adjourned at 1:05 p.m.

(Please refer to LUC Transcript of September 21, 2007 for more details on this matter.)