

LAND USE COMMISSION
MINUTES OF MEETING

February 8, 2008

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

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Vladimir Devens
Lisa Judge
Duane Kanuha
Normand Lezy
Ransom Piltz

COMMISSIONERS ABSENT: Nicholas Teves, Jr.
Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Rodney A. Maile, Interim Executive Officer
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 8:40 a.m.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that this was a meeting on Docket No. A05-755 Hale Mua Properties, LLC to receive a status report from the petitioner.

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

Chair Judge noted that there were no public witnesses.

Mr. Kim began his presentation and stated that they are in the process of submitting their annual report to the LUC and are prepared to be compliant to the requirements and conditions imposed by the LUC.

Chair Judge questioned the status of a revised TIAR report to be completed and submitted in November.

Mr. Kim noted that it was prepared and submitted to the state's Department of Transportation (DOT) on November 13, 2007. The report is presently being reviewed by the DOT and the Department of Public Works (DPW).

Chair Judge posed questions regarding the affordable housing agreement with the county or the Department of Housing and Human Concerns (DHHC).

Mr. Kim noted that they submitted a draft to the county on March 14, 2007 and it was still being reviewed by the DHHC. There has been no negotiations to date.

Ms. Lovell noted that the county had no questions for Mr. Kim.

Mr. Yee confirmed that the DOT had received the TIAR and that the OP had no further comments.

Chair Judge asked Mr. Kim whether he had any further discussions with the Department of Education (DOE) regarding the school site.

Mr. Kim stated that they were waiting for a written response from the County Administration since there needs to be a 12-inch water main requirement for the school. Upon receipt of the response, the petitioner would then meet with the DOE.

Commissioner Piltz posed questions regarding the joint venture with Department of Hawaiian Home Lands (DHHL) on the sewer line.

Mr. Kim noted that the requirement of the DPW is to go with a force main up Kahekili Highway and across the bridge that petitioner would be constructing. Mr. Kim added that the design work on the bridge is close to completion.

Commissioner Piltz commented that petitioner was to manufacture the panels on island and questioned the progress.

Mr. Kim stated that they have not made that decision yet and have not reached the final construction plans. However, they still intend to manufacture the panels on island.

There were no further questions for Mr. Kim.

EXECUTIVE SESSION

Commissioner Piltz moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. Commissioner Chock seconded the motion. The motion was approved by a show of hands.

The Commission entered into executive session at 8:50 a.m.

Vice Chair Kanuha entered the meeting at this time.

The open meeting reconvened at 10:10 a.m.

A recess break was taken at 10:10 am. The meeting reconvened at 10:20 a.m.

REVIEW OF STAFF PROPOSED ADMINISTRATIVE RULES

Chair Judge stated that this was a meeting to consider the adoption of staff proposed rules as the Commission's proposed rules for purposes of Executive Branch review and scheduling public hearings pursuant to Chapter 91, Hawaii Revised Statutes.

Public Witnesses

1. Bryan Yee

Mr. Yee stated that the OP supports the recommendations of the Department of Agriculture (DOA) in its written testimony dated January 24, 2008. Mr. Yee commented that the LUC should consider these recommendations and include them in their draft document. After public hearing, the LUC would have another chance to make changes or deletions. However, if the recommendations were not included, then it would be difficult to add them in the end. The more conservative route would be to include the DOA recommendations prior to circulation and public hearings.

Mr. Dack noted the County's recommendations. Mr. Dack commented on §15-15-25(c) related to permissible uses; §15-15-25(b) land classification; §15-15-47 and §15-15-50 (d) (7) more information posted electronically on the LUC's website; §15-15-____ (b) (7) related to property interest; and §15-15-____ (b) (8) description of the subject property.

Vice Chair Kanuha discussed his proposed recommendations.

Page 15-29 § 15-15-49 (d) related to fees; clarification of terminology;

Page 15-40 §15-15-50 (c)(3) form and contents of petition; clarification of terminology;

Page 15-43 §15-15-50 (15) form and contents of petition; addressing housing needs of low income, low-moderate income, and gap groups.

After a discussion, Chair Judge noted that this would allow for some latitude for the LUC to address a housing study but it does not have to be something that the LUC would require and the matter could be deferred to the counties. It does not preclude the LUC from having a discussion on other petitions that are not residential (i.e. light industrial, commercial, etc.).

Page 15-46 to 15-52 §15-15 ___ relating to the petitions by the State Office of Planning (OP) pursuant to a boundary review or by a county planning agency to conform to county general, development, or community plans.

Chair Judge noted that it was her understanding that this new provision was an attempt to streamline the process for a county who has already gone through a process with the general plans to bring some uniformity to avoid any mismatches.

Mr. Yee stated that the OP strongly supported this and wanted a practical means in which to classify a regional area in conformity with the county's zoning or state land use boundary. Mr. Yee added that they would not be re-describing an area where the owners were not identified and that the LUC's decision would be clear enough to what the boundaries are.

After a discussion, Vice Chair Kanuha commented that this process to move properties in a higher district (i.e. agricultural to urban) the government would be allowing the property of higher use. However, the people are used to paying a certain tax level.

Page 15-78 and 79 §15-15-79(a) and (b) performance time;
Page 15-82 thru 86 §15-15-85 Hearings officer.

After a brief discussion regarding the appointment of a hearings officer, Ms. Erickson stated that the LUC had also appointed a hearings officer in the Kuleana Ku`ikahi matter and that this proposal was to clarify how the hearings officer would operate.

Ms. Erickson also discussed the prima facie language that would assist the developer from not having to re-appear before the LUC. In addition, it would allow the LUC the ability to revisit certain developments to see whether there needs to be an amendment (i.e. population growth, traffic impacts, etc.) after a long period of no development.

Page 15-95 §15-15-94 related to modification or deletion of conditions or orders.

Mr. Yee commented that this was for clarification in cases where the conditions have changed. The OP or the county would ask the LUC to make a change in the condition, but the petitioner can always ask for changes. The parties should have the opportunity to ask for reconsideration of a condition.

Page 15-96 §15-15-95 Petition before County Planning Commission;
Page 15-97 item (c)(2); the word “desired” replaced by “proposed”;
Page 15-98 §15-15-96(f); new language allowing the LUC to change the time period of the Special Permit.

Ms. Erickson stated that the LUC could specify a time period when there was none, or the LUC was not comfortable with an open-ended permit, or when the permit owner requested for more time. This would allow the LUC more flexibility in those instances.

Page 15-111 §15-15 ___ related to Commission action.

Commissioner Devens commented on page 15-27 §15-15-25 referring to permissible uses and proposed to insert reference to 205-5. Also, page 15-85 §15-15-86 to change “fourteen days after receipt” to “fourteen days after mailing.”

Page 15-27 §15-15-27 permissible uses;

Page 15-63 §15-15-59 conduct of hearing related to examination of witnesses and the procedure on closing arguments.

After a brief discussion, Ms. Erickson and Mr. Maile will incorporate the new changes to the draft document as discussed.

A recess break was taken at 11:45 a.m. The meeting reconvened at 11:55 a.m.

LEGISLATIVE UPDATE

Mr. Maile stated that he had been following the bills and has not taken an official position or submitted anything on behalf of the LUC. Mr. Maile noted that in the past, the former EO had submitted testimony in form of comments and observations in his capacity as EO, and that the former EO had disclosed that such testimony did not represent the position of the LUC or any individual Commissioner. Mr. Maile then highlighted some of the bills and offered to submit the position of the Commissioners if they desired to offer any comments.

Mr. Maile then discussed the general categories of the bills that were before the legislature. Mr. Maile discussed H.B. 2357, 2359, 2361, 2362, 2523, 2946.

Chair Judge posed a few questions related to H.B. 2946, which allow counties a one-time opportunity to reclassify an area of land into rural land use districts.

Commissioner Devens commented whether there was staff or someone who could provide recommendations on the bills with short time frames to provide a comprehensive response.

Mr. Maile stated that the Commission could submit their overall concerns and he could prepare testimony consistent to that. Mr. Maile also noted that he could still submit testimony as an EO identifying concerns, but making it clear that it was not an official position of the LUC.

Mr. Maile noted that a sub-committee would still need to follow the sunshine law when it met.

Chair Judge commented that the LUC could give general directions to Mr. Maile and if Mr. Maile sees a particular bill that may be of interest to the LUC, he could bring that to the LUC's attention.

Mr. Maile then continued to discuss H. B. 3075, 3370, 3374, S.B. 2555 and 3210.

Chair Judge had concerns regarding H.B. 3370 and S.B. 2555.

Ms. Erickson stated that the Commissioners could individually contact Mr. Maile with their concerns about a specific bill and Mr. Maile could individually respond.

Mr. Maile noted that if the LUC desired to take an official position on a specific bill, they would need to meet on an agenda item meeting.

Chair Judge stated that any commissioner individually could submit testimony on a bill that they had strong feelings on. Chair Judge noted her concerns regarding S.B. 3210 commenting that she did not believe that the LUC had the expertise, capacity, resources, or the willingness to be an enforcement agency.

Commissioner Contrades then moved to direct the EO to draft testimony on S.B. 3210, which establishes the State's sole jurisdiction over land in agricultural districts. The LUC was not in favor of the bill and that the LUC not having the resources, personnel or the desire to be an enforcement agency. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

Ayes: Contrades, Piltz, Chock, Devens, Judge, Lezy, and Kanuha.

The motion passed with 7 yes, 2 absent.

Vice Chair Kanuha recommended that the LUC take a more global position rather than a bill-by-bill basis since the bills are so fluid.

Ms. Erickson suggested that a discussion on more global positions be placed on the agenda for the next meeting.

Commissioner Chock referenced H.B. 2522 and noted that he had a concern regarding the analysis of the long-term impacts. Since some bills move quicker than others do, it may be problematic to comment on one bill when there may be a range of bills. Because of the short timetable, it may be better to look at it on a more global range.

After a brief discussion, Chair Judge noted that the LUC should work with the EO to bring certain bills that are of their concern to the EO and he could bring it to the attention of the LUC.

The meeting adjourned at 12:50 p.m.

(Please refer to LUC Transcript of February 8, 2008 for more details on this matter.)