

LAND USE COMMISSION  
MINUTES OF MEETING

November 5, 2009

ALEXA HIGASHI ROOM  
Maui Arts and Cultural Center  
One Cameron Way  
Wailuku, Maui, Hawaii

COMMISSIONERS PRESENT: Kyle Chock  
Normand Lezy  
Ransom Piltz  
Thomas Contrades  
Vladimir Paul Devens

COMMISSIONERS ABSENT: Nicholas Teves, Jr  
Reuben Wong  
Lisa Judge  
Duane Kanuha

STAFF PRESENT: Dan Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Robyn Loudermilk, Staff Planner  
Riley Hakoda, Acting Chief Clerk

COURT REPORTER Holly Hackett  
AUDIO TECHNICIAN Walt Mensching

**CALL TO ORDER**

Chair Piltz convened the meeting at 10:30 a.m. Chair Piltz noted for the record that the Land Use Commission had met earlier in the day at 09:30 a.m. at the Maui County Building and had conducted a site visit of the Spencer Homes Project in Waikapu.

**ADOPTION OF MINUTES**

Chair Piltz asked if there were any changes or corrections to the October 22, 2009 minutes of the Commission. There were no changes or corrections. The minutes were unanimously approved by voice votes.

**TENTATIVE MEETING SCHEDULE**

Executive Officer Davidson announced that the next Commission meeting would be on Friday, November 13, 2009 on Oahu. The anticipated video conference for the 13<sup>th</sup> would be postponed for another time. The final meeting of 2009 for the Commission would be on

December 3, 2009 and the January 2010 calendar is planned to include the upcoming Castle & Cooke Docket.

**A07-777 HAWAIIAN MEMORIAL LIFE PLAN, INC.**

Chair Piltz announced that this was an action hearing to consider the form of the order denying the Petition to Amend the Conservation Land Use District boundary into the Urban Land Use District boundary for approximately 56.459 acres of land at Kaneohe, Koolau Poko, Oahu, Hawaii, Docket No. A07-777..

**PUBLIC WITNESSES**

None

**APPEARANCES:**

Bryan Yee, Esq., represented the State Office of Planning  
Abe Mitsuda, State Office of Planning

**DECISION MAKING**

Chair Piltz announced that order denying the Petition for Docket No. A07-777 was before the Commission and sought the pleasure of the Commission. Commissioner Devens moved for an Executive Session to consult with the board's attorney regarding the powers, duties, privileges, immunities and liabilities of the Commission. Commissioner Lezy seconded the motion. The motion was unanimously adopted by a show of hands.

The Commission entered into Executive Session at 10:32 a.m. and exited and reconvened at 10:44 a.m.

Chair Piltz noted for the record that Petitioner, City and County of Honolulu, and Intervenor were not present at the hearing.

Commissioner Devens proposed several changes to the order proposed by Staff to reflect the vote of the Commission at the October 22, 2009 meeting.

The Commission went into recess at 11:00 a.m. and reconvened at 11:06 a.m.

Commissioner Devens resumed discussing his proposed changes and then moved to have them accepted. Commissioner Lezy seconded the motion.

The Commission was polled and the motion passed 5-0 with 4 absent.

The Commission went into recess at 11:22 a.m. and reconvened at 11:32 a.m.

**A04-750 SPENCER HOMES, INC.**

Chair Piltz announced that this was a hearing and action meeting on Docket No. A04-750 Spencer Homes, Inc. to consider a Motion to Amend Condition No. 6 of the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed October 1, 2004.

**APPEARANCES**

Blaine Kobayashi, Esq. represented Petitioner  
Mark Spencer- Spencer Homes, Inc.  
Jesse Spencer- Spencer Homes, Inc.  
Jane Lovell, Esq., represented County of Maui  
Clayton Yoshida – Planning Department-County of Maui  
Bryan Yee, Esq., represented State Office of Planning  
Abe Mitsuda - State Office of Planning

**PUBLIC WITNESSES**

There were no public witnesses.

**PETITIONER'S WITNESSES**

Mr. Kobayashi stated that he had two witnesses to testify in support of the motion that was filed- Jesse Spencer and Mark Matsuda.

Jesse Spencer

Mr. Spencer provided a history and background of the Spencer Homes Project and offered that his son, Mark Spencer would be available to provide specific details of the project since he was the project manager. Mr. Kobayashi stated that Mr. Spencer's comments were in response to the OP's response. There were no questions for Mr. Spencer.

Mark Matsuda

Mr. Matsuda provided his professional qualifications and stated that his company was involved with the civil engineering and preparation of the construction plans for the Spencer Homes Project and described the nature of the work that was done for this project.

Mr. Kobayashi submitted Exhibit 1 for identification, a copy of correspondence to the State Office of Planning from the Director of Transportation- Rodney Haraga dated June 3, 2004. Mr. Matsuda described the efforts of his company to address item 7 of this correspondence and his communication with Paul Chung, State DOT, regarding the handling of potential errant vehicles. Mr. Matsuda explained how the provisions contained in Exhibit 1 had to be met to

obtain the necessary approvals and permits to complete the project. Mr. Matsuda acknowledged that he had reviewed Petitioner's motion and OP's response to the motion and provided his perspective of OP's response to Petitioner's motion. Mr. Matsuda described the conditions that he felt did not warrant installation of a guardrail as described in Condition No. 6, and provided the reasoning and methodology used in constructing the CMU wall in its present location.

The County of Maui had no questions for the witness.

Mr. Yee requested clarification of the discussion that Mr. Matsuda had with the State DOT in regards to the location and installation of a CMU wall instead of a guardrail. Mr. Matsuda described where the dividing line was for the State right-of-way in relation to the Spencer Home Project property line and how the location for guardrails on Spencer Home property would not provide effective protection for the six homes mentioned in Condition No. 6[?]. Mr. Matsuda stated that he could not describe the sloping area fronting each of the six homes since the cross-section of the slopes varied at each location and explained the reasoning used to determine whether or not guardrails should be installed. Mr. Matsuda acknowledged that no guardrails were currently installed in the area fronting each of the six homes and that no safety analysis for the homes with or without guardrails had been done.

Commissioner Lezy asked if there were standards for errant vehicle protection walls. Mr. Matsuda replied that he was not aware of any and that his company was not responsible for the design of the wall. Mr. Matsuda stated that he did not have any information to share with the Commission that would indicate that the CMU wall would be an appropriate barrier for preventing an errant vehicle from traveling into one of the identified homes.

Commissioner Devens requested clarification on whether or not a guardrail as proposed by OP could be constructed in the sloped area fronting the homes.

Chair Piltz asked if a cross-section and analysis had been done for each of the locations and if this information was available for the Commission to review. Mr. Matsuda replied that he did not have the information available for the hearing but could make it available.

Commissioner Contrades requested clarification on how much guardrail had to be installed to satisfy this condition. Mr. Matsuda approximated that about 160 feet per lot would be required.

Commissioner Devens asked why the guardrail feasibility analysis had not been presented to the Commission and expressed his concern for the children and residents of the area. Mr. Matsuda responded that they had worked in agreement with the DOT about the warrants of the guardrail and had not been asked to provide the information.

Mr. Kobayashi stated that Mark Spencer had some comments to make before the Commission.

Commissioner Lezy suggested that if Mr. Mark Spencer had personal knowledge concerning the engineering of the CMU walls, that he might testify on that subject.

Mr. Mark Spencer stated his background and described the interactions that occurred between all the agencies to satisfy the LUC condition and the methodology used in determining the construction standards for the CMU wall.

Commissioner Lezy asked if a consultant had been used to determine if the CMU walls were designed, engineered and built to serve as protection barriers against errant vehicles. Mr. Spencer replied that they did not get specific engineering for the walls to serve as protection barriers and described the considerations and materials used to construct them. Commissioner Lezy asked if there was any information that could be provided that would reassure the Commission that the CMU walls would adequately protect against errant vehicles as intended by the LUC condition. .

Commissioner Devens requested clarification on what DOT was currently proposing to have done. Mr. Spencer described how the issue of the guardrail condition arose while attempting to submit a final report on the sub-division.

Mr. Kobayashi urged the Commissioners to carefully examine the requirements of the LUC condition imposed that required installation of a guardrail to mitigate the impact of errant vehicles upon the six houses and that OP's response to Petitioner's motion did not dispute the substance of what was contained in Petitioner's Exhibit A. Mr. Kobayashi argued that there had been discussions between the DOT and Petitioner where it had been agreed upon that a CMU wall would serve the purpose as described in the submitted Exhibit 1 and that OP had not submitted sufficient evidence to substantiate its position.

Chair Piltz called for the presentations of the County and the State.

Ms. Lovell stated that the County did not have a position on this matter since it was a State highway issue.

Commissioner Devens questioned if the County had any recommendation or position at all. Ms. Lovell replied that the County did not.

Mr. Yee stated that OP objected to the reliance upon the DOT signoff as being the final approval for satisfaction of the LUC condition. Mr. Yee argued that the primary concern of the DOT was the roadway and the safety of the cars that were on the roadway and described how the warrant analysis for guardrail placement was done and how the warrant study was conducted for the safety of the driver and allowing for the recovery of vehicle control and not for considering the safety of the houses.

Chair Piltz asked if OP intended to have the State DOT representative speak. Mr. Yee replied that the DOT representative, Ferdinand Cajigal, was available for questioning.

Commissioner Lezy asked if Mr. Cajigal was involved with the construction of the CMU walls and if he had inspected the walls. Mr. Cajigal described his participation in the construction process and expressed the concerns that he had about drainage as it related to the

area around the walls and how his focus was primarily on factors that might impact the roadway system. Mr. Cajigal could not comment on if the CMU wall was a sufficient barrier.

Commissioner Contrades asked if the DOT wanted guardrails installed. Mr. Cajigal responded that some sort of barrier was desired and that guardrails were an inexpensive alternative. Mr. Yee clarified that it was OP that recommended a guardrail and described the difficulties involved with determining the extent of DOT's authority in this matter.

Commissioner Lezy requested clarification on OP's position since it appeared to have changed since its October 7, 2009 response. Mr. Yee acknowledged that OP's position had changed since the submission.

Chair Piltz asked if the Commissioners felt enough information had been submitted to make a decision. Commissioner Lezy agreed that more information was necessary before the Commission could amend the condition.

Chair Piltz asked to have the cross-sections of the slopes or any traffic studies/technical information submitted for consideration by the Commission to justify the CMU walls instead of guardrails.

Commissioner Devens agreed with Commissioner Lezy and Chair Piltz and requested that the Petitioner submit additional information. Commissioner Devens cited his reluctance to alter the condition since it was a safety concern and should be carefully examined before making a decision.

Commissioner Chock echoed the comments of the other Commissioners and moved to defer this matter. Commissioner Devens seconded the motion.

The Commission was polled and unanimously agreed to defer the motion 5-0 with 4 absent.

There being no further business to discuss, the meeting was adjourned at 12:31 p.m.