

LAND USE COMMISSION
MEETING MINUTES

February 16, 2012 – 10:00 a.m.

Molokini Room, Mākena Beach and Golf Resort
5400 Mākena Alanui
Mākena, Maui, Hawai`i, 96753

COMMISSIONERS PRESENT: Ronald Heller
Ernest Matsumura
Chad McDonald
Thomas Contrades
Nicholas Teves, Jr.
Kyle Chock
Normand Lezy

COMMISSIONERS EXCUSED: Napua Makua
Lisa Judge

STAFF PRESENT: Orlando Davidson, Executive Officer
Sarah Hirakami, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 10:18 a.m.

APPROVAL OF MINUTES

Chair Lezy asked if there were any corrections or additions to the February 2-3, 2012 minutes. There were none. Commissioner Contrades moved

to approve the minutes. Commissioner Teves seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The March 1, 2012 meeting on Docket No. A06-771 D. R. Horton-Schuler Homes will run to 6:30 p.m. and may require having lunch for the Commission available on site to facilitate keeping the meeting on schedule.
- Any questions or concerns- please contact LUC staff.

A10-789 A&B Properties, Inc. (Wai`ale)

Chair Lezy announced that this was a hearing on Docket No. A10-789 A&B Properties, Inc.'s (Wai`ale) Petition To Amend the Agricultural Land Use District Boundary into the Urban District for approximately 545.229 acres at Wailuku and Waikapu, County of Maui, State of Hawai`i, TMK: 3-8-05: portion of 23 and 37, 3-8-07: 71, portion of 101 and 104.

Chair Lezy stated that the public notice for the meeting had indicated that the location of the meeting was at the Wailea Salon Room at the Makena Beach and Golf Resort and that signs had been posted to notify the public that the meeting has been relocated to the Molokini Room.

Chair Lezy updated the record and described the procedures to be followed for the hearing. There were no comments or objections to the procedures.

APPEARANCES

Benjamin Matsubara, Esq. and Curtis Tabata, Esq., represented Petitioner A&B Properties Inc. (A&B)

Dan Yasui, A&B

Grant Chun, A&B

Michael Hopper, Esq., Deputy Corporate Counsel, represented County of Maui Planning Department (County)

(Please refer to LUC Transcript for more details on this matter)
February 16, 2012 meeting minutes

Danny Dias, County
Bryan Yee, Esq., represented State Office of Planning (OP)
Jesse Souki, Director, OP
Robyn Loudermilk (OP)

Chair Lezy stated that the Commission had received additional written testimony from members of the public after the start of the hearing and added their names to the record.

PUBLIC WITNESSES

1. Eric Miyajima

Mr. Miyajima shared his reasons for supporting the proposed project. There were no questions for Mr. Miyajima.

2. Scott Sakakihara

Mr. Sakakihara submitted written testimony and shared why he supported approving the Petition. There were no questions for Mr. Sakakihara.

3. Jacob Verkerke, President of the Waikapu Community Association

Mr. Verkerke stated the concerns that his organization had with the proposed project and suggested conditions that his association would like to have the Commission include if the Petition were granted.

Mr. Yee requested clarification on how many members were in the Association and whether the membership was voluntary. Mr. Verkerke responded that his organization had voluntary membership with 40-50 active members and about 75-100 attendees participating in community meetings.

There were no further questions for Mr. Verkerke.

4. Lyn McNeff – CEO- Maui Economic Opportunity

Ms. McNeff described the community role that she felt A&B had in the community and stated why her organization supported the Petition.

There were no questions for Ms. McNeff.

5. Hōkūao Pellegrino

Mr. Pellegrino submitted written testimony and shared his concerns about how he would be negatively impacted by the proposed project and suggested amendments and conditions that the Commission should include if the Petition were granted.

Commissioner McDonald requested clarification on what perpetual water rights within kuleana lands Mr. Pellegrino had. Mr. Pellegrino described his understanding of the history of his family's rights and entitlements.

There were no further questions for Mr. Pellegrino.

6. Kay Fukumoto

Ms. Fukumoto shared her community activities and provided her reasons for wanting to have the Petition granted.

There were no questions for Ms. Fukumoto.

7. Laks Abraham- President and Chief Professional Officer, Maui United Way

Ms. Abraham stated that her organization supported the Petition and provided her reasons why.

There were no questions for Ms. Abraham.

8. Eric Yoshizawa

Mr. Yoshizawa stated that he supported the proposed project and described how his family and others in the community could benefit from it.

There were no questions for Mr. Yoshizawa.

Chair Lezy stated that public testimony would be temporarily suspended to allow the Commission to address agenda item V- Docket No. A11-790. The Commission went into recess at 11:15 a.m. and reconvened at 11:23 a.m.

A11-790 KULA RIDGE, LLC (Maui)

Chair Lezy announced that this was an action meeting on Docket No.A11-790 Kula Ridge LLC to approve the form of the order in this matter.

APPEARANCES

Steven Lim, Esq. and Martin Luna, Esq., represented Petitioner Kula Ridge LLC
Clayton Nishikawa, Managing Director, Kula Ridge LLC
Michael Hopper, Esq., Deputy Corporate Counsel, represented County of Maui
Planning Department (County)
Danny Dias, County
Bryan Yee, Esq., represented State Office of Planning (OP)
Jesse Souki, Director, OP
Robyn Loudermilk, OP

Chair Lezy updated the record and described the procedures to be followed for the hearing. There were no comments and/or objections to this course of action.

Chair Lezy asked Commissioner Contrades if he had the opportunity to review the record and transcripts in the docket and whether he was prepared to vote in the matter. Commissioner Contrades acknowledged that he was ready to deliberate and vote.

Chair Lezy asked for public testimony.

PUBLIC WITNESSES

None

DISCUSSION AND VOTE

Commissioner Heller moved to approve and adopt the Findings of Fact, Conclusions of Law and Decision and Order as drafted by LUC staff.
Commissioner Teves seconded the motion.

There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Heller, Teves, Matsumura, McDonald, Contrades, Chock and Chair Lezy.

Nays: None

The motion was approved 7-0 with 2 excused.

Chair Lezy asked if there was any further business on docket A11-790.
Mr. Lim thanked the Commission for its efforts.

There was no further business.

Chair Lezy announced that public testimony for docket A10-789 would resume.

A10-789 A&B Properties, Inc. (Wai`ale) (continued)

9. Michael Lee

Mr. Lee attempted to submit documents regarding his credentials for docket A06-771 and discussion ensued to determine the purpose of his submissions. Chair Lezy determined that Mr. Lee's credentials were not being challenged and that the submissions were not necessary for his public testimony. Mr. Lee stated that he was a cultural practitioner and shared his reasons for opposing the Petition and described why he felt that A&B did not have legal title to the Petition Area and should not be allowed to develop it.

There were no questions for Mr. Lee.

10. Clare Apana

Ms. Apana submitted written material, described her efforts to preserve the cultural significance of the Petition Area and provided her reasons for opposing the proposed project.

There were no questions for Ms. Apana.

11. Richard "Dick" Mayer- Vice -Chair Maui General Plan Advisory Group

Mr. Mayer submitted written testimony, shared his concerns about the proposed project and suggested conditions that the Commission consider during its deliberations on this Petition.

There were no questions for Mr. Mayer.

12. Robin Knox

Ms. Knox stated that she was an environmental scientist and described her concerns about the Petition Area and shared her recommendations for conditions for the proposed project.

There were no questions for Ms. Knox.

13. Lucienne DeNaie- The Sierra Club-Maui Chapter

Ms. DeNaie submitted written testimony and shared what her organization's involvement, concerns with and recommendations for the proposed project were.

Chair Lezy asked if The Sierra Club had conversations with Petitioner. Ms. DeNaie responded that there had been correspondence with the Petitioner but more dialog was needed to address community concerns.

There were no further questions for Ms. DeNaie.

14. Roderick Fong

Mr. Fong stated that his company, Fong Construction, supported the proposed project and provided his reasons why.

There were no questions for Mr. Fong.

15. David Kanahele

Mr. Kanahele submitted written testimony and stated that he echoed the sentiments of other cultural practitioners and opposed the Petition. Mr. Kanahele described conditions that he wished to have included if the Petition were granted and other concerns that he would like the Commission to consider.

There were no questions for Mr. Kanahele.

16. Kaniloa Kamaunu

Mr. Kamaunu described the vested Native Hawaiian ancestral rights that he felt entitled to and expressed his concerns about having them violated if the Petition were granted.

There were no questions for Mr. Kamaunu.

17. Johanna Kamaunu

Ms. Kamaunu shared her perspective of the native rights she felt she was entitled to and how water, kuleana settlement and ancestral matters needed to be better addressed.

There were no questions for Ms. Kamaunu.

18. Janet Six

Ms. Six stated that she was a plantation archaeologist and described the concerns she had with the Petition Area and what she would like the Commission to consider during deliberations on this docket.

There were no questions for Ms. Six.

19. Wilmont Kamaunu Kahaialii

Mr. Kahaialii shared his concerns about the proposed project and what spiritual and cultural rights and impacts had been overlooked by the Petitioner.

There were no questions for Mr. Kahaialii.

There were no further public witnesses

The Commission went into recess at 12:30 p.m. and reconvened at 1:57 p.m.

MAP ORIENTATION

LUC Staff Planner Bert Saruwatari provided a map orientation of the proposed project. There were no questions for Mr. Saruwatari.

Chair Lezy asked if Petitioner had been informed about the LUC's policy on hearing reimbursements. Mr. Tabata acknowledged that Petitioner had been informed and that Petitioner agreed to comply with the LUC's policy.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Benjamin Matsubara offered Petitioner Exhibits "1"- "35" for the record. There were no objections to Petitioner's exhibits.

County

Mr. Hopper offered DPP's Exhibits "1"- "7" for the record. There were no objections to County's exhibits.

OP

Mr. Yee offered OP's Exhibits "1"- "11". There were no objections to OP's exhibits.

PETITIONER'S WITNESSES

1. Thomas Witten-

Mr. Witten was offered as an expert in community and environmental planning and land use. There were no objections to Mr. Witten's testimony.

Mr. Witten summarized the written testimony he had previously submitted and described the considerations and methodology used to plan and design the proposed project.

Questions for Mr. Witten

Maui County-

Mr. Hopper requested clarification on what “next steps” needed to be taken before construction could begin. Mr. Witten described additional entitlements that the proposed project needed to obtain to better conform to community and zoning plans for the region and how the origin and construction of roadways was being done.

There were no further questions by Mr. Hopper.

OP-

Mr. Yee requested clarification on Department of Health (DOH) concerns regarding the proposed buffer zones located in the Petition Area. Mr. Witten described the methodology used in designing the proposed buffer zones and the sizes of the various buffer zone features.

Mr. Yee requested clarification on how discrepancies with the Maui Island Plan were handled. Mr. Witten described the problem solving techniques and actions used to obtain an agreement in concept with County and stated that once the County gave its approval, construction was ready to begin.

Mr. Yee requested clarification on how “protected areas” would be sheltered and how other mitigation measures would be performed. Mr. Witten described how the Petition Area conformed to State, County and community plans and provided details of sustainability and low impact design measures that were part of the proposed project and how Petition Area sand dunes had been assessed for preservation.

There were no further questions for Mr. Witten and no redirect by Mr. Matsubara.

Commissioner Questions

Commissioner Heller requested clarification on plans for the elementary school planned for the Petition Area. Mr. Witten described the considerations that were made in locating the site for the school to best fit the needs of the anticipated community and the region.

Commissioner Teves asked if sand mining was currently being done in the Petition Area. Mr. Witten responded that he was not aware of any sand mining activity and described how the sand dunes in the preservation area of the proposed project would be protected.

Chair Lezy requested clarification on the green buffer areas that were planned for the Petition Area. Mr. Witten described the factors that

had been considered in locating and designing the buffer zones within the proposed project to conform to the community plans for the region.

There were no further questions.

The Commission went into recess at 2:57 p.m. and reconvened at 3:15 p.m.

2. Adrienne Wong

Ms. Wong was offered and admitted as an expert in engineering and read her submitted testimony describing the engineering and drainage plans for the Petition Area.

Questions for Ms. Wong

County-

Mr. Hopper requested clarification on the internal roadway, waste/storm water drainage and water treatment plant systems planned for the Petition Area. Ms. Wong described the standards and design features for the various infrastructure systems and the engineering considerations that were made during the planning process that determined the need for a waste water treatment plant, and the government agency approvals that had to be obtained.

OP-

Mr. Yee requested clarification on best management practices (BMP) for drainage and water resources for the Petition Area. Ms. Wong described how the engineering plans had prescribed onsite BMP procedures and how the existing County water system would be used to supply the proposed project.

Mr. Yee requested further clarification on what facilities needed to be built to support the project, whether endangered species were threatened, and how Petition Area aquifer issues would be handled. Ms. Wong stated that it was the intention of the Petitioner to build a new waste water treatment facility and that issues dealing with endangered species and aquifers still needed to be addressed. Discussion ensued to determine which witness would address OP's questions related to water. Mr. Tabata noted that Petitioner had another expert witness for questions related to Petition Area water resources. Mr. Yee had no further questions for Ms. Wong.

There was no redirect.

Commissioner Questions

Commissioner Heller requested clarification on the planned waste water treatment plant capacity. Ms. Wong responded that the stated capacity levels were not final and subject to change.

Commissioner McDonald requested clarification on the specifications used to determine the drainage requirements for the proposed project. Ms. Wong described how the standards used in the infrastructure designs exceeded county requirements.

There were no further questions.

3. Lisa Rotunna-Hazuka

Ms. Rotunna-Hazuka was offered and admitted as an expert on archaeology and described her role in studying the Petition Area and making recommendations to establish and maintain cultural preservation areas within it.

Questions for Ms. Rotunna-Hazuka

County-

Mr. Hopper had no questions.

OP-

Mr. Yee requested clarification on the total acreage set aside for preservation areas and how the areas were identified and planned to be maintained. Ms. Hazuka replied that there were 5 separate areas totaling about 30 acres and described how the Petition Area had been surveyed for surface and underground burial sites and remains and how the data retention and detention plans had been drafted to best monitor and maintain them. Ms. Hazuka also described the protocols that would be followed when new discoveries were made onsite or during monitoring and how SHPD and other agencies would be advised; and stated that she was aware of the cultural sensitivities involved with her work.

Mr. Yee requested further clarification on the procedures that were to be followed when discoveries were made in different situations and whether any “untouched” sand dunes remained in the Petition Area. Ms. Hazuka provided her understanding of how burial discoveries were handled, and stated that most of the sand dunes in the area had been altered and that there were no “untouched” sand dunes outside of the preservation areas.

Redirect

Mr. Matsubara asked if Ms. Hazuka had prepared the SHPD data recovery plan and preservation plan for the Petition Area burial sites. Ms. Hazuka responded that she had and stated that SHPD had acknowledged her report; and described how SHPD based its decisions regarding burial matters.

Mr. Matsubara requested further clarification on whether burial findings in the Petition Area could include remains from a famous historical Hawaiian battle. Ms. Hazuka described her understanding of where the battle may have occurred and stated that she had been unable to locate historical evidence of the battle in the Petition Area.

Mr. Yee requested and was granted permission to re-cross Ms. Hazuka and asked what confirmation measures needed to be received from SHPD about preservation efforts. Ms. Hazuka described how SHPD usually communicated when discoveries were made.

Commissioner Questions

Commissioner Chock requested clarification on outreach efforts to determine lineal or cultural descendants. Ms. Hazuka stated that there had been no lineal or cultural descendant claims and described the current practices used for discovering claims. Ms. Hazuka stated that it was possible to be more pro-active and described the mitigation efforts used for the ongoing preservation efforts.

Commissioner Chock requested further clarification on the location of the burial sites in the Petition Area, what the significance of the burial findings were; and how it had been determined that burial remains related to the battle of Kakanilua were not onsite. Ms. Hazuka identified the various burial sites and described her findings and how she handled new discoveries of onsite burials. Ms. Hazuka expressed how she had performed her research on the battle and had determined the types of human remains she was seeking which would indicate that they were related to the Kakanilua battle.

Mr. Matsubara noted that Petitioner had another cultural expert witness to address lineal and cultural descendants of the Petition Area.

Commissioner McDonald requested further clarification on how locations and discoveries were preserved. Ms. Hazuka described how she handled and reported her discoveries and how she established a monitoring and preservation plan for them.

Chair Lezy asked whether Ms. Hazuka had interaction with any cultural expert and whether any of her discoveries failed to be included in the preservation plan. Ms. Hazuka shared how she had worked with the cultural expert and stated that all her discoveries had been included in the preservation plan.

There were no further questions for Ms. Hazuka.

4. Glenn Kunihisa- President CRE/ACM Consultants, Inc.

Mr. Kunihisa was offered and admitted as an expert witness in real estate market analysis and economic impacts.

Questions for Mr. Kunihisa

County-

Mr. Hopper had no questions.

OP-

Mr. Yee requested clarification on the methodology and criteria used to determine the market strength for the units in the proposed project. Mr. Kunihisa described how he conducted his study to determine and quantify demand for the housing units offered in the Petition Area and what market forces were anticipated to be in effect when the proposed project was completed. Mr. Kunihisa also expressed why he was confident that both residential and commercial components would be successfully absorbed in the marketplace and during what corresponding time frames of development.

Commissioner Questions

Commissioner Heller requested clarification on the data contained in Petitioner Exhibit #31-the Project's anticipated economic impact summary. As Mr. Kunihisa examined the exhibit, Mr. Tabata described why he had submitted the exhibit and what it was intended to depict. Mr. Tabata asked how the number of housing units shown in the exhibit were economically benefited by the project compared to those directly affected by the actual building of the units. Mr. Kunihisa described how he had

arrived at his findings and how he represented his findings in the exhibit to illustrate direct and indirect economic benefits and multiplier numbers.

There were no further questions for Mr. Kunihisa.

The Commission went into recess at 4:22 p.m. and reconvened at 4:32 p.m.

5. Robert Hobdy

Mr. Hobdy was offered and admitted as an expert witness in biology. County-

Mr. Hopper had no questions.

OP-

Mr. Yee requested clarification on whether the wastewater treatment plants posed a threat to endangered bird species in any way and if mitigation was needed. Mr. Hobdy provided his understanding of how birds and nene geese might be attracted to the treatment plant area and stated that he had not analyzed how to mitigate the “attractive nuisance” aspect of the treatment plants. Mr. Yee also asked how the blackburn sphinx moth might be impacted by development of the Petition Area. Discussion ensued to determine what Federal and State laws needed to be observed and what preservation measures needed to be practiced to conform to existing “taking” laws and enforcement standards. Mr. Hobdy provided his suggestions on how nene geese might be protected and described his findings and recommendations for protecting the blackburn sphinx moth and its supporting host plants.

There were no Commissioner questions and no redirect.

Chair Lezy introduced Sarah Hiramami, the new LUC Deputy Attorney General to the Parties and announced that the hearing would recess and reconvene at 8:30 a.m. on February 17, 2012.

The Commission went into recess at 4:46 p.m.