

LAND USE COMMISSION
MEETING MINUTES

February 17, 2012 – 8:30 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
Kyle Chock
Normand Lezy
Lisa Judge

COMMISSIONERS EXCUSED: Napua Makua
Thomas Contrades
Nicholas Teves, Jr.

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 8:50 a.m. and announced that an Executive Session was the first item on the agenda for the day. Commissioner Judge moved and Commissioner Teves seconded the motion for an Executive Session. By voice vote (6-0) the Commission elected to enter into Executive Session at 8:50 a.m. and reconvened at 9:16 a.m.

A10-789 A&B PROPERTIES, INC (WAI'ALE) (Maui)

Chair Lezy announced that this was a continued 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

APPEARANCES

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)

William Spence, Director, County

Danny Dias, County

Bryan Yee, Esq., represented State Office of Planning (OP)

Jesse Souki, Director, OP

Robyn Loudermilk, OP

PETITIONER'S WITNESSES (continued)

6. Kumu Maxwell Keli'i Tau`a

Kumu Tau`a was offered and admitted as a Cultural Assessment Expert Witness and described the historical significance of the ancient battle that occurred in the Petition Area and his role in gathering and reporting information from local cultural practitioners and lineal descendants in the community.

Kumu Tau`a described his interviews with Clare Apana, Hōkūao Pellegrino and Lucienne DeNaie; and noted that he had attempted to have Ms. Apana "sign-off" on her interview several times without success; and that Mr. Pellegrino declined to be recorded for his interview. Kumu Tau`a stated that Mr. Pellegrino was the only interviewee that lived in the area and described how the interviewee selection process attempted to gather information from a variety of community resources.

Questions for Kumu Tau`a

County-

Mr. Hopper had no questions

OP-

Mr. Yee requested clarification on the efforts that were made to contact the lineal descendants of the Petition Area and what information had been obtained from them; whether “untouched dunes” still existed outside the cultural preservation areas; and how Petitioner had ensured that proper cultural guidelines were followed in planning to develop the Petition Area. Kumu Tau`a described the objectives of his study and how he had attempted to trace the lineal descendants in the area and how he had worked with the archaeologist, Ms. Hazuka, to make a determination that no “untouched dunes” remained outside the cultural preserve; and how cultural practices continued to be observed and needed to be respected to better co-exist in society.

Redirect

Mr. Matsubara requested further clarification on who was included in the Cultural Impact Assessment (CIA) conducted for the Petition Area and what the “Cultural Advice” recommendations included in the CIA were. Kumu Tau`a identified Ron Jacinto and Leslie Higa as other interviewees and described his recommendations to preserve the cultural integrity and activities for the Petition Area; and acknowledged that Petitioner had agreed to follow his suggestions regarding cultural preservation.

Commissioner Questions

There were no Commissioner questions.

7. Thomas Nance

Mr. Nance was offered and admitted as an expert on ground water and surface water, hydraulics, and water systems design. Mr. Nance described the potential water sources for the proposed project and the dual water system that he had proposed be used to obtain and deliver them.

Questions for Mr. Nance

County-

Mr. Hopper requested clarification on why the Wai`ale water treatment plant might not be timely for the proposed project. Mr. Nance responded that this project was being done in conjunction with the Board of Water Supply (BWS) and that he was not directly involved in it; and described the possible delays in obtaining approvals and other factors

that he thought could affect the delivery of the treatment plant on schedule. Mr. Nance confirmed that well sources would need to be relied upon for water and that ongoing discussions between Petitioner and the well owners (Waikapu Country Town) to obtain water were being conducted; and that his plans and recommendations observed the local county and State requirements for demonstrating that the proposed project had water resources available to it. Mr. Nance stated that he was not aware of the current status of County negotiations for water resources and was not involved in them.

OP=

Mr. Yee asked what Mr. Nance's involvement was regarding the Wai`ale water surface treatment plant and for clarification on the water well yields and the capacities of its delivery system. Mr. Nance responded that he was not involved in discussions about the treatment plant and shared the details of the water system design and stated that there was no intention to place waste water disposal injection wells within the Petition Area. Mr. Nance also described the aquifers and well resources in the area and why he preferred to utilize the Waikapu aquifer for the proposed project.

Mr. Yee requested clarification on how the Wai`ale Treatment Plant might be affected by the Maui Na Wai `Eha decision regarding stream water flow management. Mr. Nance stated that the Water Commission standards were the latest that he was aware of that needed to be complied with and discussion ensued to determine if there was still an available water allotment for the proposed project. Mr. Nance did not specifically know if existing available uses would need to be converted to new uses and described the role of the Water Commission in making these determinations.

Mr. Yee requested clarification on what yields the available wells supplied for different areas and whether it was sufficient. Mr. Nance described how the wells and their distribution systems operated and would need to adapt to handle the additional needs of the proposed project.

Redirect-

There was no redirect.

Commissioner Questions

Commissioner Judge requested clarification on whether water from the Kahului aquifer would still be available if other water sources were not available or accessible. Mr. Nance described how the recharge for the regional aquifers occurred and how the sources might be impacted under different circumstances.

There were no further questions for Mr. Nance.

The Commission went into recess at 10:22 a.m. and reconvened at 10:33 a.m.

8. Keith Niiya

Mr. Niiya was offered and admitted as an expert witness on Traffic Assessments. Mr. Niiya described the criteria and standards used to study and analyze traffic and roadway systems in and near the Petition Area and stated that it was not feasible for Petitioner to have the accepted TIAR be accepted for County review prior to final zoning approval and update the TIAR every 5 years.

Questions for Mr. Niiya

County-

Mr. Hopper requested clarification on why TIAR updates were necessary and how County subdivision ordinances and the Department of Public Works could impact the planned transportation conditions in the Petition. Mr. Niiya described why TIAR updates were necessary and acknowledged that the Petition conditions should address the Department of Public Works and County subdivision issues.

OP-

Mr. Yee requested clarification on how the DOT requirements for the proposed project's design requirements could eliminate the need for Road "E" and how the TIAR acceptance might be affected by it. Mr. Niiya stated that at a meeting with the DOT in January, 2012, it was agreed that Road "E" could be eliminated and a replacement connection road further south could be used instead to better space and improve the intersections for the Petition Area. Mr. Niiya also described why the County zoning and project district zoning processes were difficult and how the traffic plans could change as the engineering and planning for the Petition Area got started and underway. Mr. Niiya described why he felt it was unfair for Petitioner to do all the engineering and sizing of the roadways upfront;

and how right of ways had been set aside for future improvements in the Petition Area.

Mr. Yee requested clarification on when the TIAR could be accepted by the DOT. Mr. Niiya responded that the TIAR was not typically accepted at the LUC level, but could be accepted at the project district zoning approval stage; and that TIAR revisions could be done if significant changes in a proposed project occurred which might affect traffic flow in and around it instead of following a schedule.

Redirect

Mr. Tabata requested clarification on whether Mr. Niiya was clear on when the TIAR would be accepted and described how project district zoning and zoning approval were the same in this case. Mr. Niiya replied that with that explanation of the process, his response to the state's questioning regarding TIAR acceptance needed to be changed and restated his understanding of how project zoning during the County approval process occurred first and then engineering and final design work would commence after zoning and then an update to the TIAR would be appropriate.

Commissioner Questions

Commissioner Heller requested clarification the term "minor movement" used in Mr. Niiya's written testimony. Mr. Niiya described how the 2022 traffic projections were factored into his findings; how the levels of service might be impacted and how different mitigation measures could adopted if needed, and added that he anticipated the local residents to develop alternate routes to adjust to the traffic changes resulting in little traffic impacts at that future date.

Commissioner Judge requested clarification on the situation with the Road E connection. Mr. Niiya referred to the Petition Map and described how it would not connect to the main roadway; and how Kamehameha Avenue would become the main access point.

9. Grant Chun

Mr. Chun stated that he was Vice-President of A&B Properties, Inc. and described how the proposed project evolved from conception to its current state.

Questions for Mr. Chun

County-

Mr. Hopper requested clarification on what further entitlements the proposed project required if the Petition were granted. Mr. Chun described how Petitioner would seek additional approvals subject to the County adopting its new General Plan and then obtain a community plan amendment and the necessary zoning change to begin construction.

Mr. Hopper asked if the 50 acres of lands that were to be dedicated to the County by Petitioner had been identified. Mr. Chun replied that the dedicated lands issue was still under discussion and that the Maui County Council would have to approve and accept the lands. Mr. Chun stated that the proposed project was consistent with the draft urban growth boundaries, and the Maui Island Plan as a whole; and that Petitioner would have to comply with whatever boundaries are adopted by both plans.

Mr. Hopper requested clarification on whether Mr. Chun was aware of the Maui workforce housing policy and the “show me the water bill”. Mr. Chun stated that he was and acknowledged that Petitioner had planned to provide sufficient affordable housing units and obtain water resources to comply with the policy.

Mr. Hopper requested clarification on the “open space” plans for the Petition Area. Mr. Chun described how Petitioner developed its plan to commit 65 acres for community recreational and open space use and what needed to occur with the County Department of Parks in the subdivision approval/zoning process.

Mr. Chun also stated that he did not anticipate any problems with complying with the County Planning Department’s proposed conditions and shared his understanding of the current discussions between the Waikapu Town Center development and Mr. Atherton with respect to the water resources for the region. Mr. Chun further stated that dedicating the water wells to the public system would be Petitioner and well owner’s preference; and that Petitioner could satisfy County’s water availability requirement though no agreement on water supply for the proposed project had been reached.

OP-

Mr. Yee requested clarification on the mitigation measures that Petitioner planned to adopt for the proposed project. Mr. Chun replied that Petitioner would follow the recommendations cited in the EIS or use better ones if available.

Mr. Yee requested clarification on Petitioner's efforts to protect endangered species in the Petition Area and DOE contributions. Mr. Chun stated that discussions were still being conducted on the endangered species issue and that additional contributions were expected in addition to the land being donated for schools.

Mr. Yee requested clarification on the status of the waste water treatment plant that the County desired for the Petition Area. Mr. Chun stated that he was reluctant to commit to the plant at this point of planning but that having the facility was the logical, feasible alternative at this time; and that if built, the plant would re-use wastewater as described by Mr. Nance's testimony.

Mr. Yee asked how Petitioner would react if the Petition was no longer consistent with the Maui Island Plan and the urban growth boundary. Mr. Chun described how Petitioner would seek compliance with the Maui Island Plan and stated that the described hypothetical situation regarding the urban designation was too abstract to address.

Mr. Yee requested clarification on the conditions that were agreeable to Petitioner. Mr. Matubara commented that there were four conditions that were still being discussed. Discussion ensued that resulted in conditions 2, 3, 7 and 11 being identified as still needing agreement, and that condition 6 was still awaiting feedback from Civil Defense regarding when sirens would be erected.

Redirect-

There was no redirect.

Commissioner Questions-

Commissioner McDonald requested information regarding the status of Petitioner's proposed projects. Mr. Chun described the current status of the various proposed projects that Petitioner had.

There were no further questions for Mr. Chun.

Mr. Matsubara stated that the Petitioner had no more witnesses and rests except for rebuttal.

COUNTY WITNESS

1. William Spence- Director, Maui County Planning Department
Mr. Spence described why the County was in support of the Petition with conditions; and how the Maui Island Plan and the urban

growth boundaries and district boundary amendments for the island had evolved to manage growth and land use.

Mr. Spence also described the current status of the Maui Island Plan and what approvals it needed to obtain from different County entities. Mr. Spence stated why the proposed project could proceed under current conditions and used the Petition Area map to identify its location within the urban growth boundary; and read a portion of the draft Maui Island Plan to the Commission that provided for green space separation of urban areas. (Mr. Hopper had noted that the entire plan was not an exhibit and requested that he be allowed to provide copies of the excerpts at a later date. There were no objections to his request.)

Questions for Mr. Spence

Petitioner

Mr. Matsubara had no questions.

OP-

Mr. Yee requested clarification on what might happen at the County level if the district boundary amendment was granted but was inconsistent with current plans before the Maui Council; and the community plan; or if it failed to obtain County approvals. Mr. Spence described how he envisioned the Planning Department and the Petitioner would react to the situation.

There was no redirect and the Commissioners had no questions.

Mr. Hopper stated that the County had no other witnesses available.

Chair Lezy commented to the Parties that this was the second LUC meeting that had to terminate early due to lack of witnesses and urged the Parties to have their witnesses available for the next hearing to conclude the evidentiary portion of the proceedings. There were no questions /comments and no further business to attend to.

Chair Lezy stated that the Legislative update portion of the agenda would be deferred to a later date and adjourned the meeting at 11:55 a.m.