

LAND USE COMMISSION  
MEETING MINUTES

**April 4, 2012 – 10:00 a.m.**

**Maui Arts & Cultural Center, Alexa Higashi Room  
One Cameron Way  
Kahului, Maui, Hawai`i, 96732**

COMMISSIONERS PRESENT: Ernest Matsumura  
Chad McDonald  
Thomas Contrades  
Kyle Chock  
Normand Lezy  
Napua Makua

COMMISSIONERS EXCUSED: Ronald Heller  
Nicholas Teves, Jr.  
Lisa Judge

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

**CALL TO ORDER**

Chair Lezy called the meeting to order at 10:16 a.m.

**APPROVAL OF MINUTES**

Chair Lezy asked if there were any corrections or additions to the March 15-16, 2012 minutes. There were none. Commissioner McDonald moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

## 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.
- Any questions or concerns- please contact LUC staff.

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

Chair Lezy announced that this was a continued hearing on Docket No. A10-789 A&B Properties, Inc. (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.

## APPEARANCES

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

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

Danny Dias, County Planner

William Spence, Director, County Planning Department

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

Rodney Funakoshi, OP

Robyn Loudermilk (OP)

Chair Lezy updated the record and described the procedures to be followed for the hearing. . There were no comments or objections to the procedures and Chair Lezy announced that public testimony would be taken.

## PUBLIC WITNESSES

### 1. Michael Kumukauoha Lee

Mr. Lee stated that the nature of his testimony was to share his concerns as a “kahu” or keeper of the “iwi kupuna alapa warriors of Hulauu” (in the lands of the Petition Area); to express why he felt that the Petitioner did not have clear title to the land for the proposed development; and how cultural

practices would be violated by granting the Petition. Mr. Lee also stated that the Commission could expect a court challenge if it granted the Petition.

Commissioner Makua requested clarification on the location of the areas within the proposed project that Mr. Lee was referring to. Mr. Lee requested permission for Clare Apana to assist him in the map orientation of the Petition Area. Chair Lezy allowed Ms. Apana to assist Mr. Lee. Ms. Apana and Mr. Lee provided their perception of where the burial sites were located in the Petition Area. Mr. Yee clarified that the map that was being referred to was OP Exhibit No. 16. Mr. Lee confirmed that he was asserting that the entire Petition Area was involved in his contention.

There were no further questions for Mr. Lee.

2. Nick Makaneole Harders

Mr. Harders shared his concerns about how his culture and family remains were being disrespected by the proposed development.

There were no questions for Mr. Harders.

3. Hanalei Fergestrom

Mr. Fergestrom stated that he was a Hawaiian cultural practitioner and described his affiliations with various community groups and what his reasons were for opposing the proposed project. Mr. Fergestrom expressed his disappointment with how burial discoveries were handled and why the Petition Area should remain open space.

Commissioner Makua requested clarification on what Mr. Fergestrom saw at the burial sites discovered in the Petition Area. Mr. Fergestrom described in further detail what he had observed at the burial area.

There were no further questions for Mr. Fergestrom.

4. Hanna Bernard- President, Hawaii Wildlife Fund

Ms. Bernard submitted written testimony and shared her organization's concerns regarding the Petition Area and suggested conditions for the Commission to consider.

There were no questions for Ms. Bernard.

5. Lucienne de Naie-

Ms. de Naie submitted written testimony and stated that she had appeared before the Commission before as an expert witness on water

resources. Ms. de Naie described her concerns about the proposed project and how it had changed from when it had been originally been proposed to the Maui County agencies, and what issues and conditions about water resources and wastewater management should be considered by the Commission.

There were no questions for Ms. de Naie.

6. Dick Mayer

Mr. Mayer described his concerns about how the proposed project did not align with the Maui Island Plan and other community concerns such as insufficient designated park areas, the total number of units to be ultimately constructed, the adequacy of school room resources, other entitled projects not built, mitigation measures, and traffic issues.

Mr. Mayer also submitted a copy of the Maui Island Plan.

There were no questions for Mr. Mayer.

7. His Highness Kukini

Mr. Kukini shared his concerns about the lack of respect for “iwi” and Hawaiian culture involved in the Petition.

There were no questions for His Highness Kukini.

8. Johanna Kamaunu

Ms. Kamaunu shared her concerns about community interests and the archaeologist’s report involved in the proposed project

There were no questions for Ms. Kamaunu.

9. Kaniloa Kamaunu

Mr. Kamaunu stated that he was reiterating his last testimony to clarify various points regarding his statements about the legality of awards of land entitlements and patents involved with the Petition Area.

There were no questions for Mr. Kamaunu.

Commissioner Matsumura excused himself at 11:25 a.m. and returned at 11:28 a.m.

10. Clare Apana

Ms. Apana submitted written testimony and stated that she was a cultural practitioner and described her reasons for opposing the proposed project and objecting to sand mining in the area; and questioned the expert testimony of Petitioner's archaeological witness. Ms. Apana stated that she would resort to legal action against the Commission to protect her perceived cultural interests in the Petition Area.

Commissioner Makua requested clarification on statements Ms. Apana made at the EIS hearing that the LUC had conducted regarding participating as an Intervenor in the docket. Ms. Apana described how she failed to properly file documents to intervene and why she filed a subsequent suit.

There were no further questions for Ms. Apana.

The Commission went into recess at 11:42 a.m. and reconvened at 11:55 a.m.

11. Pono Kealoha

Mr. Kealoha described why the Commission should think more about cultural issues and what the opponents of the Petition were saying.

There were no questions for Mr. Kealoha.

Admission of exhibits

Petitioner-

Mr. Matsubara stated that he had no more exhibits to offer.

County

Mr. Hopper stated that County had submitted an amended witness list and would submit an amended exhibit list after the hearing and offered Exhibit "8" for the record. Mr. Hopper also stated that witnesses Dave Taylor and Jo Ann Ridao would be appearing as witnesses and not as "expert" witnesses for the County.

There were no objections to County Exhibit "8".

OP

Mr. Yee offered OP Exhibits "12-16".

There were no objections to OP's exhibits. Mr. Yee stated that there would not be a DOE witness and only Ms. Urasaki, DOT and Rodney Funakoshi, OP would be testifying.

#### COUNTY WITNESSES

1. Dave Taylor – Maui County Director of Water Supply

Mr. Taylor stated that he agreed with the proposed water plan for the Petition; described the Maui County "show me the water bill" requirements and provided his understanding of how water would be provided to the proposed project; and what considerations and provisions still needed to be made to secure the water rights for it.

Mr. Matsubara had no questions.

Mr. Yee requested clarification on the sunset provision for the "show me the water bill" and whether there were economically feasible water resources currently available. Mr. Taylor provided his understanding of the sunset provision for the "show me the water bill" and described economical water resources that the county was aware of and willing to use.

Redirect-

Mr. Hopper stated that he had no redirect.

Commissioners-

There were no questions.

2. Jo Ann Ridao- Director of Housing and Human Concerns, County of Maui

Ms. Ridao described the Maui Business Park Phase II affordable housing approval requirements that the Petitioner had to abide by and read the conditions for lands proposed by Petitioner and agreed to by the county. Ms. Ridao stated that the County still had not accepted any site locations of the land for the affordable housing project and that further studies needed to be done before any recommendations were made to the

County for acceptance and described the total affordable housing requirements for the Petitioner in addition to the Maui Business Park Phase II if the proposed project were granted.

Mr. Matsubara had no questions

Mr. Yee requested clarification on the “AMI” income requirements for the affordable housing components of the proposed project. Ms. Ridao described what the income requirements for the proposed project were and how they were established.

Redirect-

Mr. Hopper had no redirect.

Commissioner Questions-

Commissioner Makua requested clarification on the process for how the affordable housing sites would be located. Ms. Ridao described how the County and Petitioner were cooperating to properly situate the planned affordable housing and provided her personal perspective of what community considerations might be included in making a site determination

There were no further questions for Ms. Ridao.

Mr. Hopper stated that he had no more witnesses and would be resting his case.

## OP WITNESSES

1. Jadine Urasaki- Deputy Director, DOT  
Ms. Urasaki referred to site maps (OP exhibits 16 and 15) and summarized her submitted testimony for the Commission. Ms. Urasaki stated that the DOT recognized the transportation needs of the community and described how it planned to address the Airport and highway access concerns, mitigation needs and provisions for them. Ms. Urasaki also described how the DOT would work with the Petitioner on

memorandums of understanding or agreement on the noise abatement guidelines and stormwater/drainage improvements involved with the Petition and provided the latest TIAR updates and phasing plan available to the Commission. Ms. Urasaki also stated that she felt that the concerns for the proposed project could be adequately resolved by the conditions imposed upon it.

#### Petitioner

Mr. Matsubara requested clarification on how airport concerns would be addressed. Ms. Urasaki replied that the DOT was still working with OP on conditions and provisions for the concerns that were still being addressed with Petitioner to establish a memorandum of understanding/agreement and that the ultimate conditions were still being refined and almost ready.

Mr. Matsubara requested clarification on when a new or revised TIAR needed to be submitted to DOT. Ms. Urasaki described how the DOT preserved its authorization rights during the TIAR approval process and why the timing of approvals during the project phasing was set in a certain sequence.

#### County

Mr. Hopper had no questions.

#### Redirect

Mr. Yee requested clarification on the zoning approval and the accompanying acceptance of the TIAR; and how the subdivision approval phase required MOU/MOA acceptance. Ms. Urasaki described what type of DOT documents were required for the different levels of zoning approvals.

#### Commissioner questions

Commissioner McDonald requested clarification on whether there would be additional concerns related to the proposed Kahului airport runway extension. Ms. Urasaki replied that it was still premature to comment on the proposed runway extension since there was still an EIS and other work that needed to be done.

There were no further questions for Ms. Urasaki.



2. Rodney Funakoshi, OP Planning Program Administrator-Land Use Division

Mr. Funakoshi stated that OP supported the Petition and recommended its approval with conditions; and described how his department had determined its position; and what conditions were being recommended in order to approve the proposed project.

There were no questions for Mr. Funakoshi.

Redirect

Mr. Yee stated that he had no redirect and that he rested his case.

Rebuttal

Mr. Matsubara stated that he had no rebuttal and rested his case.

Chair Lezy declared the evidentiary portion of this proceeding to have been completed, subject to the receipt of various follow-up reports and/or answers that may have been requested during the course of this hearing and directed that each party file its proposal with the Commission and serve copies on the other parties no later than the close of business on April 25, 2012; and all comments or objections to the parties' respective proposals should be filed with the Commission and served upon the other parties no later than the close of business on May 2, 2012. Any responses to the objections must be filed with the Commission and service on the other parties no later than the close of business on May 7, 2012; and prevailed upon the parties to consult with staff early in the process to ensure that technical and non-substantive formatting protocols observed by the Commission are adhered to.

Mr. Yee requested that OP be excused from filing a decision and order since it would work jointly with Petitioner on stipulations; and be allowed to file only objections and responses. Chair Lezy acknowledged Mr. Yee's request and asked if there were any objections from the Parties. Mr. Hopper stated that Maui County asked for the same filing considerations.

There were no objections to the filing requests of OP and Maui County. Chair Lezy asked Mr. Yee to state the reason for his filing request for the record. Mr. Yee articulated that the Parties were very close to an agreement on the decision and order and that he felt it was unnecessary to submit multiple documents that were essentially duplicative. Mr. Hopper stated that he joined in Mr. Yee's explanation. Chair Lezy asked if there were any concerns and there were none.

Chair Lezy determined that there was good cause to suspend the filing requirements for the Parties and acknowledged and granted OP's and Maui County's respective requests.

Chair Lezy thanked the Parties and the public for their participation in the hearing and announced that the LUC hearing would continue at 9 a.m., April 5, 2012 in Honolulu.

The Commission went into recess at 12:50 p.m.