

LAND USE COMMISSION
MEETING MINUTES

May 21, 2012 – 10:00 a.m.

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

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Normand Lezy
Napua Makua
Ronald Heller
Nicholas Teves, Jr.
Lisa Judge

COMMISSIONERS EXCUSED: Ernest Matsumura
Thomas Contrades

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Hotai Zerba

CALL TO ORDER

Chair Lezy called the meeting to order at 10:13 a.m.

APPROVAL OF MINUTES

Chair Lezy asked if there were any corrections or additions to the May 3, 2012 minutes. There were none. Commissioner Heller moved to approve the minutes. Commissioner McDonald seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

TENTATIVE MEETING SCHEDULE

Acting Executive Officer Saruwatari provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The June 7-8, 2012 meeting is tentatively set to be held on Maui for the 7th and in Honolulu for the 8th.
- Any questions or concerns- please contact LUC staff.

ORAL ARGUMENT AND DECISION MAKING

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

Chair Lezy announced that this was oral argument and decision-making 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)

Grant Chun and Dan Yasui, A&B Properties Inc. (A&B)

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)

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 taken.

PUBLIC WITNESSES

1. Leimomi Johnson

Ms. Johnson stated that she was a Field Representative for the Hawaii Laborer's Union and described why her organization supported the Petition.

There were no questions for Ms. Johnson.

2. Peter Yee

Mr. Yee stated that he was representing Clyde Hayashi and read the submitted testimony that described why Mr. Hayashi felt the Petition should be granted.

There were no questions for Mr. Yee.

3. Bill Kamai

Mr. Kamai stated that he was the service representative for the Hawaii Regional Council of Carpenters (formerly the Hawaii Carpenters Union) and shared the reasons why his organization supported the Petition.

There were no questions for Mr. Kamai.

4. Bruce U'u

Mr. U'u described why his organization, the Hawaii Regional Council of Carpenters (formerly the Hawaii Carpenters Union) supported the Petition.

There were no questions for Mr. U'u.

5. Hannah Barnard

Ms. Barnard stated that she represented the Hawaii Wildlife Fund and shared her organization's concerns about granting the Petition and described the types of conditions her organization wanted to have included if the Petition were granted.

There were no questions for Ms. Barnard.

6. Clare Apana

Ms. Apana stated that she had been designated by the Kuahelani family to assist them in caring for family remains and described other concerns that she had about the sand mining that had occurred in the Petition Area; how insufficient attention had been given by the Petitioner to cultural impact issues and what she would like to have done to preserve the burial sites.

There were no questions for Ms. Apana.

7. Bill Frampton

Mr. Frampton described his work background and why he thought the Petition should be granted.

There were no questions for Mr. Frampton.

8. Dr. Janet Six, Phd

Dr. Six provided her academic credentials and described why additional archeological site studies needed to be conducted.

There were no questions for Dr. Six.

9. Luciene de Naie

Ms. de Naie described her background and experience in planning issues and shared her concerns and proposed mitigations for burial issues in the proposed project.

There were no questions for Ms. de Naie.

10. Kaniloa Kaumanu

Mr. Kaumanu reiterated his past testimony regarding land commission awards, royal patents, title issues and vested rights concerns that he felt needed to be clarified before the Petition could be granted.

There were no questions for Mr. Kaumanu.

11. Keeaumoku Kapu

Mr. Kapu described his involvement with Hawaiian cultural matters and described what concerns the cultural organizations had and why further consideration should be given to them when considering this Petition.

Commissioner Makua requested clarification on who the cultural geographic representatives were in the area and on Mr. Kapu's perspective of how Burial Council concerns could be better addressed.

Commissioner McDonald requested clarification on whether the burial council had approved the preservation plan for the proposed project. Mr. Kapu described how the burial council agenda was structured and how the approval process addressed specific burial sites and not the entire project.

There were no further questions for Mr. Kapu.

12. Johanna Kaumanu

Ms. Kaumanu commented on Mr. Kapu's previous testimony about discovered "iwi" and the number of inadvertent finds; and shared her concerns about the surrounding communities and the future availability of water resources for them.

There were no questions for Ms. Kaumanu.

The Commission went into recess at 11:30 a.m. and reconvened at 11:50 a.m.

PRESENTATIONS

Petitioner

Mr. Matsubara described how the Petition evolved and had addressed the archaeological and cultural concerns that were brought up by the public; and argued why the Petition should be granted. Mr. Matsubara also shared how Petitioner had proactively sought to satisfy other earlier identified Petition deficiencies and worked with the State Office of Planning to resolve Condition 5; regarding Highway and Road Improvements, and the timing of the proposed project's Traffic Impact Assessment Report (TIAR) with zoning approval; and the noise policy of the Draft EIS.

(Please refer to LUC Transcript for more details on this matters)

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Maui County (County)

Mr. Hopper stated that the Maui County Planning Department supported the Petition as modified and argued why the Petition should be granted and how the County would continue to monitor its progress at the County level with its zoning and permitting approvals processes.

State Office of Planning (OP)

Mr. Yee stated that OP supported the Petition subject to Conditions and what major issues that were considered when drafting them; and argued why OP's conditions should be included and how they could be implemented. Mr. Yee provided suggested details to include in the condition regarding the noise policy and what alternate mitigation should be included and what informational disclosures should be made to potential area residents if OP's recommendations were not accepted.

Mr. Yee also described concerns about how water resource concerns needed to be resolved within the infrastructure deadlines for the Petition Area; how the County planning process needed to incorporate the development of the proposed project into its existing plans, how the archaeological and cultural concerns of the community needed to be continually monitored and various miscellaneous issues needed to be better addressed in the areas of endangered species, potable water, and wastewater reviews.

Rebuttal

Mr. Matsubara argued how the LUC transcripts reflected how Petitioner's expert witness Mr. Niiya had described the complexity of the permitting process and why the TIAR update methodology suggested by Petitioner was more desirable; and how the black sphinx moth concern had been addressed. Mr. Matsubara also argued how the Petitioner had provided information about water resources to the LUC for its consideration only and respected the authority of the Water Use Commission and County authorities.

QUESTIONS

Commissioner Judge requested clarification on whether disclosure of highway noise was acceptable to Petitioner. Mr. Matsubara replied that depending on the language of the disclosure, Petitioner would be amenable to committing to its use.

Commissioner McDonald requested clarification on OP's condition 5 and whether it conflicted with various noise decibels noted in the EIS.

Chair Lezy declared a recess at 12:40 p.m. and reconvened the meeting at 12:43 to allow Mr. Yee time to retrieve and review the EIS areas that Commissioner McDonald had inquired about.

Mr. Yee responded that OP's condition did not conflict with the EIS decibel limits and described what specific areas were included by the condition and what details would be included in any disclosures about noise.

Commissioner Teves requested clarification of how sand dunes would be protected in the Petition Area and what type of measures were going to be used. Mr. Matsubara described how preserved areas would be configured in the proposed development to protect and preserve various sand dunes and burial sites.

Commissioner Judge requested clarification on the reasoning for OP's condition for advancing the TIAR timeline up to the zone change phase; and whether the DOT had a mandated deadline to approve submitted TIARs. Mr. Yee described the rationale for attempting to synch the TIAR with final subdivision approval and then obtaining zone change approval and stated that he was not aware of any statutory timeline for the DOT to process TIARs. Commissioner Judge commented on why she perceived concurrent approvals to be more efficient than sequential approvals and discussion ensued on how the DOT and County requirements and processes differed. Mr. Matsubara stated that Petitioner would be agreeable to an updated TIAR being submitted along with the County zone change application.

There were no further Commissioner questions.

DELIBERATION

Chair Lezy asked if the Commissioners were prepared to deliberate on this docket. The Commissioners unanimously (7-0) responded that they were ready to deliberate.

Commissioner Judge moved to grant the Petition for discussion as amended by the Petitioner to comments made by OP and added her suggested changes to OP's proposed Condition 5; and also added a new condition for the Petitioner to make a disclosure and obtain a waiver from prospective buyers (disclosure to be agreed upon by Petitioner and OP). Commissioner Heller seconded the motion.

Commissioner Makua shared her perception of why she felt that the Petition would have an adverse impact on the cultural future of the area and the "iwi kupuna" located there; and her reasons for voting against the Petition.

(Please refer to LUC Transcript for more details on this matters)
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Commissioner Judge stated why she thought the proposed development plan was worthy of being granted and restated her support for it.

Commissioner Heller shared his perspective on how difficult it was to balance the needs of accommodating growth and preserving the landscape and culture of the area.

Chair Lezy thanked the Parties and LUC staff for their efforts in efficiently handling this docket and for members of the Public- especially Clare Apana and the Kaumanus, for their participation; and echoed Commissioner Heller's comments on how difficult it was to maintain a "balance" between growth and preservation.

The Commission voted as follows:

Ayes: Commissioners Judge, Heller, Teves, McDonald, Chock and Chair Lezy

Nays: Commissioner Makua

The motion passed 6-1 with 2 excused.

Chair Lezy moved to amend the agenda to add an action item regarding the Waimanalo Gulch Sanitary Landfill and shared his reasons for making his motion. Commissioner Judge seconded the motion.

The Commission voted as follows to amend the agenda:

Ayes: Chair Lezy, Commissioners Judge, Heller, Teves, McDonald, Chock and Commissioner Makua

Nays: None

The motion passed 7-0 with 2 excused

Chair Lezy moved to send a letter to the Honolulu Planning Commission urging them to consider consolidating the components of SP09-403 that are in different stages of processing for better efficiency. Commissioner Judge seconded the motion.

The Commission voted as follows to send a letter as described by Chair Lezy to the Honolulu Planning Commission

Ayes: Chair Lezy, Commissioners Judge, Heller, Teves, McDonald, Chock and Commissioner Makua

Nays: None

The motion passed 7-0 with 2 excused

Commissioner Chock suggested that Deputy Attorney General Hirakami prepare an Executive Summary of the Waimanalo Gulch Sanitary Landfill docket (SP-09-403) for the Commission to familiarize or acquaint them on the subject matter.

Ms. Hirakami responded that she would do so.

Commissioner Chock moved for an Executive Session to discuss personnel matters. Chair Lezy seconded the motion. By unanimous voice vote (7-0) the Commission elected to enter into Executive Session. Chair Lezy excused the LUC staff at 1:15p.m. to commence the Executive Session.

The Commission reconvened from Executive Session at 1:28 p.m.

There being no further business, Chair Lezy announced that the Commission would recess and resume proceedings in Honolulu on May 22, 2012 at 9 a.m.