

LAND USE COMMISSION  
MEETING MINUTES

**June 6, 2012 – 10:00 a.m.**  
**Maui Arts & Cultural Center, Alexa Higashi Room,**  
**One Cameron Way, Kahului, Maui, Hawai`i, 96732**

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

COMMISSIONERS EXCUSED: Ernest Matsumura

STAFF PRESENT: Daniel Orodener, Executive Officer  
Sarah Hirakami, Deputy Attorney General  
Bert Saruwatari, Staff Planner/Presiding Meeting  
Officer  
Scott Derrickson, 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 10:23 a.m.

**APPROVAL OF MINUTES**

Chair Lezy asked if there were any corrections or additions to the May 21-22, 2012 minutes. There were none. Commissioner Judge moved to approve the minutes. Commissioner McDonald seconded the motion. The minutes were unanimously approved by a voice vote (8-0).

## TENTATIVE MEETING SCHEDULE

Presiding 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 next set of meetings will be on Oahu to address the possible adoption of orders for A06-771 and A11-793.
- Any questions or concerns- please contact LUC staff.

Chair Lezy introduced the new Land Use Commission Executive Officer, Dan Orodener, to the audience.

## ACTION

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

Chair Lezy announced that this was a hearing for the Adoption of Order 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.

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

## PUBLIC WITNESSES

### 1. Kaniloa Kaumanu

Mr. Kaumanu stated that he was protesting the actions of the LUC and asserted why he felt the legal system failed to properly recognize his tenancy to the land and how his past testimony regarding land commission awards, royal patents, title issues and vested rights concerns had not been addressed; and also described his concerns over the disturbance and handling of "iwi kupuna" in the Petition Area.

There were no questions for Mr. Kaumanu

### 2. Johanna Kaumanu

Ms. Kaumanu echoed Mr. Kaumanu's objection to the LUC's decision and reiterated her concerns about the need to consider, protect and preserve regional forest and water resources looking forward into the future; and to

include conditions in the order to ensure the types of preservation measures that she was suggesting.

There were no questions for Ms. Kaumanu.

3. Victoria Nohealani Kaluna- Palafox

Ms. Kaluna- Palafox stated her concerns about the jurisdictional source of the LUC's authority and requested that the Commission cease and desist in its actions; and opined how the natural resources and local sand dunes needed to be protected and preserved.

There were no questions for Ms. Kaluna- Palafox

4. Mikahala Roy

Ms. Roy requested that Chair Lezy restate his opening statements regarding the docket and then described her family's lineal connection to the Petition Area and her concerns about Petitioner's failure to address Hawaiian cultural issues; and provided her reasons why the Petition should be denied.

There were no questions for Ms. Roy.

5. Clare Apana

Ms. Apana expressed her disappointment with the Commission and the lack of conditions in the proposed decision and order to include provisions for future burial discoveries and sand dune protection; and how no protection was included for her concerns about what would happen in the event of future sales of property in the Petition Area.

There were no questions for Ms. Apana.

6. Routh Bolomet

Ms. Bolomet stated that she had recently discovered that she was a lineal descendant with property rights to the Petition Area and described why she felt the Commission and the Petitioner had no authority to supersede her land entitlements; and what various Constitutional and legal authorities supported her assertions.

Commissioner Makua asked Ms. Bolomet to explain the process Ms. Bolomet followed after the discovery of her allodial title or patent to the property. Ms. Bolomet described how considerations for imminent harm and international law were applied to assess her claims; and how Hawaii sovereignty and the protection of her rights also factored into her pursuit to reclaim her land. Discussion ensued regarding how real the rights that Ms. Bolomet was claiming were and how allodial title and legal claims needed to be resolved.

There were no further questions for Ms. Bolomet.

There were no other public witnesses.

### APPEARANCES

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

Grant Chun and Daniel Yasui, 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

Chair Lezy inquired if there was anything further that the Parties would like to discuss. The Parties had no comments.

Commissioner Judge requested confirmation from Petitioner and OP that they had reached agreement on all the Conditions that had been included in the decision and order. Mr. Matsubara and Mr. Yee acknowledged that they had.

Commissioner Judge moved to adopt the form of the order. Commissioner Heller seconded the motion. There was no discussion.

The Commission voted as follows:

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

Nays: Commissioner Makua

The Motion passed 7-1 with 1 excused.

Chair Lezy thanked the Parties and the public for their participation in the hearing.

The Commission went into recess at 11:06 a.m. and reconvened at 11:18 a.m.

### ACTION

#### A12-795 WEST MAUI LAND COMPANY, INC- KAHOMA RESIDENTIAL LLC (Maui)

Chair Lezy announced that this was an action meeting to consider Petitions to Intervene by Routh Bolomet and by Michelle Lincoln.

Chair Lezy entertained a motion to amend the agenda to consider Ms. Bolomet's Motion to Waive Filing Fees to Intervene. Commissioner Chock moved, and Commissioner Teves seconded the motion to amend the agenda. By a unanimous voice vote (8-0), the Commission voted to amend the agenda.

#### APPEARANCES

James Geiger, Esq., represented West Maui Land Inc.

Heidi Bigelow, West Maui Land Inc.

James Giroux, Esq., Deputy Corporate Counsel, represented County of Maui Planning Department (County)

Kurt Wollenhaupt, County

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

Rodney Funakoshi, OP

Michele Lincoln, Petitioner to Intervene

Routh Bolomet, Petitioner to Intervene

Johanna Kaumanu, assisting Routh Bolomet.

Chair Lezy updated the record and explained the procedures to be followed for the proceedings. There were no comments, questions or objections to the procedures.

Commissioner Judge moved, and Commissioner Chock seconded the motion for an Executive Session. By a unanimous voice vote (8-0), the Commission voted to enter Executive Session.

The Commission exited for Executive Session at 11:25 a.m. and reconvened at 11:38 a.m.

Chair Lezy announced that Public Testimony specific to granting or denying the Petitions to Intervene would be taken.

#### PUBLIC WITNESSES

1. Victoria Kaluna- Palafox

Ms. Kaluna- Palafox described her lineal connection to the Petition Area and provided her perception of information that she thought would be helpful to the Commission to understand her concerns about the rights of the nation of Hawaii and how it conflicted with the legal practices of the United States.

There were no questions for Ms. Kaluna-Palafox.

2. Mikahala Roy

Ms. Roy stated that she was related to Ms. Bolomet and provided her reasons why she supported the Petitions to Intervene.

There were no questions for Ms. Roy.

3. Kaniloa Kaumanu

Mr. Kaumanu stated that he supported Ms. Bolomet's Petition to Intervene and described why he thought she was legally entitled to do so.

There were no questions for Mr. Kaumanu.

There were no further public witnesses.

**ACTION**

**TO CONSIDER ROUTH BOLOMET'S MOTION TO WAIVE FILING FEES**

Chair Lezy stated that he was authorized as Chair to solely decide on the Motion as a procedural matter and requested clarification on the circumstances that prompted Ms. Bolomet's motion to waive filing fees. Ms. Bolomet described her financial circumstances and stated that she would incur financial hardship if she had to pay the fee. Chair Lezy granted the motion. There were no questions, comments or objections to Chair Lezy's actions.

**ACTION**

**TO CONSIDER ROUTH BOLOMET'S PETITION TO INTERVENE**

Chair Lezy verified that Petitioner still opposed Ms. Bolomet's Petition to Intervene and that County and OP had no opposition. Petitioner, County and OP acknowledged that their positions were unchanged.

Chair Lezy asked if Ms. Bolomet had anything further to add. Ms. Bolomet responded that she did and described why she felt compelled to intervene and what her perception of her ownership to the Petition Area lands was. Discussion ensued to clarify what would be involved with the Commission's proceedings in considering this Petition to Intervene and what protocol the Intervenors were expected to follow.

Ms. Bolomet described her genealogical links and relationship to the Petition Area and expressed why she felt she needed to be involved as an Intervenor to protect her allodial title and ownership/chain of title claims to the Petition Area; and how she felt the Land Use Commission would be liable for failing to uphold their oaths of office.

There were no Commissioner questions for Ms. Bolomet.

Chair Lezy restated his expectations for Ms. Bolomet's behavior during the proceedings and requested that she observe the protocol he had described if her Petition to Intervene was granted. Ms. Bolomet acknowledged his request.

Commissioner Judge voiced her concerns about whether or not the Commission had authority and jurisdiction to decide chain of title issues and matters regarding controlling title interests in property; and described why she thought Ms. Bolomet should consider alternate courses of action to defend her title claims.

Discussion ensued to determine what actions Ms. Bolomet felt needed to be taken to resolve the "controlling interest" issues of title for the Petition Area. Ms. Bolomet stated that her intent with intervening was to demonstrate that Petitioner did not have control of the Petition Area land titles as was represented to the Commission, and that she felt that her interests would experience imminent harm. Commissioner Judge expressed that she did not believe that the Commission was the proper avenue to determine title issues with the intervention process. Ms. Bolomet argued that what she wanted the Commission to notice was that the Petitioner did not have control of the lands and provided an example of her perspective of how the title issue was affecting her.

Commissioner Teves asked whether or not ownership of the Petition Area had been determined by LUC staff. Mr. Saruwatari replied that the Petition had met the criteria according to the Commission's Administrative Rules 15-15.

Mr. Geiger stated that Commissioner Judge's remarks supported the reason why Petitioner opposed the intervention. Ms. Bolomet argued that she felt that according to the Commission's rules, she did have a standing as a Party of interest with her allodial title.

There was no further discussion.

Commissioner Chock moved, and Commissioner Makua seconded to grant Ms. Bolomet's Petition to Intervene. Commissioner Chock stated that he supported the Intervention and echoed the concerns that the Commission's proceedings were not the proper forum for determining title and that there were other avenues to determine tenure of title, and that intervention would be for issues other than title.

There was no further discussion.

The Commission voted as follows:

Ayes: Commissioners Chock, Makua, McDonald, Heller, and Chair Lezy

Nays: Commissioner Judge, Teves and Contrades

The Motion passed 5-3 with 1 excused.

Chair Lezy reminded Ms. Bolomet of the Commission's expectation of her and advised her to contact LUC staff if she had further questions.

## **ACTION**

### **TO CONSIDER MICHELE LINCOLN'S PETITION TO INTERVENE**

Chair Lezy announced that the Commission would now address the Motion to Intervene from Michele Lincoln and verified that Petitioner still opposed Ms. Lincoln's Petition to Intervene. Mr. Geiger responded that Petitioner opposed the Petition and would like it limited to the three areas that Petitioner had indicated. County and OP had no opposition and acknowledged that their positions were unchanged.

Chair Lezy requested clarification on the scope of Ms. Lincoln's intended intervention and discussion ensued on why Ms. Lincoln did not want to limit the scope of her intervention. Chair Lezy described the Commission's expectations of Ms. Lincoln in presenting her case and what authority and role the LUC had in the decision-making process. Mr. Geiger stated the areas that he thought the intervention should be limited to. Ms. Lincoln responded that she needed additional clarification on the limits for her intervention and Chair Lezy declared a recess to allow time for Ms. Lincoln to review her position. Ms. Lincoln submitted her resume to the Commission and the Parties for consideration.

The Commission went into recess at 12:15 p.m. and reconvened at 12:20 p.m.



Ms. Lincoln stated that in addition to her original three (3) areas of intervention, she would also like to address traffic, as it applied to the commitment of State funds and resources. Mr. Geiger responded that he was amenable to the additional area.

There was no further discussion.

Commissioner Heller moved and Commissioner McDonald seconded to grant Michele Lincoln's Petition to Intervene subject to the limitations stated. There was no discussion.

The Commission voted as follows:

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

Nays: None

The Motion passed 8-0 with 1 excused

Chair Lezy advised Ms. Lincoln to contact LUC staff to ensure she had the information she needed to meet the Commission's deadlines.

Mr. Geiger requested clarification on what limits were imposed on Ms. Bolomet's intervention. Chair Lezy responded that Ms. Bolomet's intervention did not have any limits.

There was no further discussion.

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., June 7-8, 2012 in Honolulu.

The Commission went into recess at 12:27 p.m.