

LAND USE COMMISSION
MEETING MINUTES

July 20, 2012 – 9:30 a.m.

**Marriott Courtyard Hotel,
Haleakala Room, 532 Keolani Place,
Kahului, Maui, Hawai`i, 96732**

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Sheldon Biga (arrived at 9:46 a.m.)
Ronald Heller
Nicholas Teves, Jr.
Ernest Matsumura
Thomas Contrades (departed meeting at 11:36 a.m.)

COMMISSIONERS EXCUSED: Napua Makua

STAFF PRESENT: Daniel Orodener, Executive Officer
Scott Derrickson Staff Planner
Sarah Hirakami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Cammie Gilett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Chock called the meeting to order at 9:32 a.m. (7 Commissioners Present-
Commissioner Biga not yet present.)

ACTION

SP 70-85 ERNEST DELUZ TRUCKING, (Hawai`i)

Chair Chock announced that this was an action meeting on SP70-85 DeLUZ TRUCKING & GRAVEL (Hawaii) to consider granting a Time extension until June 30, 2012 to comply with Condition No. 5 Tax Map Key: 6-8-002: portion of 050.

APPEARANCES

B.J. Leithead-Todd, Director, Hawaii County Planning Department (County)
Bryan Yee, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, OP

Chair Chock updated the record and described the procedures that would be followed for the docket proceedings. There were no questions, comments or objections by the Parties.

Chair Chock noted that Petitioner's representative was absent and announced that public testimony would taken.

PUBLIC WITNESSES

None

MAP ORIENTATION

LUC Staff Planner Scott Derrickson provided a map orientation for the Commission and described the Petition Area and its features. There were no questions.

ARGUMENTS ON MOTION

Petitioner

Not present

County

Ms. Leithead-Todd stated that the County supported the application and the granting of the Motion.

OP

Mr. Yee stated that OP had No Objection.

Rebuttal

None

Commissioner Questions

There were no comments or questions.

Commissioner Contrades moved to extend the life of the permit. Commissioner Teves seconded the motion.

Commissioner Heller commented that rather than a motion to extend the life of the permit, the motion could more accurately be stated “to grant a time extension to comply with Condition No. 5 until May, 2013.” Commissioner Contrades stated that he stood corrected and Commissioner Heller identified the time parameters of when the time extension would start and end. Commissioners Contrades and Teves acknowledged the friendly amendment to the motion.

There were no further questions or comments.

The Commission was polled as follows:

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

Nays: None

The motion passed 7-0 with 1 excused.

The Commission went into recess at 9:37 a.m. and reconvened at 9:42 a.m.

CONTINUED HEARING

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

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, Intervenor

Routh Bolomet, Intervenor

Michael Lee, assisting Routh Bolomet

Chair Chock announced that this was a continued hearing on Docket No. A12-795 and resumed the previous day's proceedings with Intervenor Lincoln's questioning of Petitioner's witness Mr. Frampton.

PETITIONER'S WITNESSES (CONTINUED)

1. Rory Frampton

Questions for Mr. Frampton

Intervenor Lincoln

Ms. Lincoln requested clarification on procedural matters regarding her testifying in lieu of an opening statement. Discussion ensued to clarify the nature of her situation and what the Parties would agree to allow Ms. Lincoln to do. Petitioner, County, OP and Intervenor Bolomet indicated that Ms. Lincoln could testify in lieu of providing an opening statement. Ms. Lincoln further clarified the amount of questions that she still had for Mr. Frampton and asked whether she could ask questions on evidence that she had recently provided to the Parties. Discussion ensued to determine what evidence she was referring to, and when she had submitted it to the Parties. Chair Chock determined that Ms. Lincoln's exhibits would be allowed. Mr. Geiger noted for the record that the evidence had not been produced in accordance with the pre-hearing order. Chair Chock acknowledged Mr. Geiger's objection.

(Commissioner Biga arrived at 9:46 a.m. 8 Commissioners present)

Petitioner, OP and County requested that copies of any exhibits be provided to the Parties before being introduced. Chair Chock noted the requested.

Ms. Lincoln requested clarification on vacant lot prices and on the criteria used for agricultural use determination by State and County standards. Mr. Frampton shared how vacant lot prices had been determined and deferred questions regarding County standards for agricultural use to Will Spence, Maui County Planning Department Director.

Ms. Lincoln requested clarification on affordable housing in the region and whether the Petitioner or other parties might have interest in pursuing additional affordable housing development in the area; State Historic Preservation Division

(SHPD) concerns; and community/neighborhood meetings that occurred regarding the proposed project. Mr. Frampton provided his perception of affordable housing efforts in the region and discussion ensued to determine the nature of Ms. Lincoln's SHPD questions and how she might otherwise obtain her desired information. Mr. Frampton described the community/neighborhood meetings that he had attended and stated that he had addressed concerns about the proposed project during the meetings and had advised concerned area residents that the County Council was the proper agency to approach in regards to having a park in the Petition Area. Mr. Frampton also described the various suggestions that had been made and what the reaction of the Council was to them; and how the decision for designating the Petition Area for affordable housing had been determined.

Ms. Lincoln requested clarification on whether a letter that she had circulated to the Parties could be addressed. Discussion ensued to clarify what exhibit she was referring to. Chair Chock determined that the letter had not been submitted in a timely manner.

Ms. Lincoln requested clarification on property tax valuation of the Petition Area and what the Petitioner would do with the land if its Petition were no granted. Mr. Frampton responded that he was not aware of how the tax valuation could be determined and that alternate uses for the Petition Area had not been explored.

There were no further question from Ms. Lincoln.

Intervenor Bolomet

Ms. Bolomet described what she was intending to accomplish with her questions and discussion ensued to clarify what Mr. Frampton was testifying about and how any questions for him should be relevant to his area of expertise. Chair Chock reminded Ms. Bolomet that other expert witnesses with more specific information about the Petition Area would be appearing and to consider what their testimony would include. Ms. Bolomet acknowledged Chair Chock's comment.

Ms. Bolomet requested clarification on the Petitioners and entities involved in the proposed project and on the environmental assessment that was performed on the Petition Area. Mr. Frampton shared his understanding of who the Petitioners and entities were, what the history of the Petition Area was, what his qualifications in cultural and environmental assessment were, and how the various aspects of the environmental assessment were performed to meet various agency requirements. Mr. Frampton also clarified how Petitioner was allowing landfill activities in the Petition Area and described how issues with the Lahaina wastewater treatment

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

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facility were being or going to be addressed. Discussion ensued on the matters that Ms. Bolomet had questions on. Mr. Giroux noted that no evidence had been provided on the subject matter that Ms. Bolomet was asking about. Chair Chock requested that Ms. Bolomet be more specific in her questioning. Ms. Bolomet described the information that she had received from Robin Knox regarding the sewage capacity levels and further discussion ensued to determine what Ms. Bolomet was attempting to ask. Mr. Giroux suggested a recess to allow Ms. Bolomet to organize her thoughts and Chair Chock concurred.

The Commission went into recess at 10:20 a.m. and reconvened at 10:25 a.m. (Commissioners Contrades and Teves returned at 10:26 a.m.)

Ms. Bolomet requested clarification on Mr. Frampton's response to Mr. Geiger's question on July 19, 2012 regarding whether or not any new evidence had been introduced that would change his environmental assessment. Mr. Frampton disagreed with Ms. Bolomet's representation of what had been asked of him and provided his perspective on the matter. Ms. Bolomet referred to testimony she had submitted from Robin Knox. Discussion ensued as to how Ms. Bolomet was characterizing her question and Mr. Giroux also voiced his opposition to how questions were being formatted. Chair Chock restated his expectations regarding Ms. Bolomet's questions and Mr. Frampton restated his recollection of his testimony on the previous day and suggested witnesses who could more capably address Ms. Bolomet's concerns; and that he would not change his testimony.

Ms. Bolomet requested clarification on Mr. Frampton's credentials to perform cultural assessments and past experiences with archaeological findings. Mr. Frampton described his academic training and work experience and stated that there were no criteria in Hawaii for degrees or certifications for providing cultural assessments. Discussion ensued over the nature of the questions that were being asked and who should respond to them. Mr. Frampton described his familiarity with the Petition Area and his experience with archaeological findings and the Burial Council.

Ms. Bolomet requested clarification on how attendance at neighborhood, community and Council meetings was recorded and how individuals were made aware of the meetings. Mr. Frampton provided his understanding of how attendance was kept at formal community and Council meetings and estimated attendance for informal meetings that he had conducted, and how people were notified of meetings.

Ms. Bolomet requested clarification on why the entire proposed project was not designed to be low-cost affordable housing and what deadlines had been applied to it. Mr. Frampton described the considerations that were made to design a financially viable project and how workforce affordable housing credits could be applied by the project developer and what timelines needed to be followed according to the resolution regarding the proposed project's development and what type of provisions had been made for flooding considerations in the Petition Area design.

There were no further questions.

Redirect

Mr. Geiger asked what the triggering feature was for the environmental assessment. Mr. Frampton stated that the trigger was the roadway connection to the property.

There were no further questions.

Commissioner Questions

Commissioner Heller requested clarification on the flood channel boundaries and on the use of the areas alongside the greenway designated lands and their design features. Mr. Frampton described the measurements and spacing consideration used for the flood channel and greenways.

(Commissioner Contrades departed the meeting at 11:06 a.m.)

Mr. Geiger stated that due to timing issues, his witnesses would not be appearing in the order he expected and that Dylan Payne would be his next witness. There were no objections or comments regarding the appearance of witnesses out of order.

2. Dillon Payne

Mr. Payne shared his personal background and reasons for wanting to live in the Lahaina area and being able to purchase a unit in the proposed project.

Questions for Mr. Payne County

Mr. Giroux requested clarification on Mr. Payne's ability to qualify for the affordable units being offered. Mr. Payne provided his opinion of what he could qualify for.

OP

Mr. Yee had no questions.

Chair Chock reminded Intervenors of his expectations for their questions of the witness.

Intervenor Lincoln

Ms. Lincoln requested clarification on Mr. Payne's ability to participate in purchasing homes in different price ranges and circumstances. Mr. Payne shared his house hunting experiences and the factors that entered into his assessment of the different properties he had evaluated for purchase and the community features that appealed to him.

Intervenor Bolomet

Ms. Bolomet requested clarification on how Mr. Payne learned of the proposed project and whether or not he would be compensated for testifying. Mr. Payne replied that he was an employee of West Maui Land Company and was not receiving any compensation or special treatment for appearing.

Redirect

None

Commissioner Questions

There were no Commissioner questions and no further comments.

3. Sherri Dodson- Executive Director, Habitat for Humanity

Ms. Dodson summarized her written testimony and described the mission of her organization and its accomplishments in the area.

Questions for Ms. Dodson

OP and County had not questions.

Intervenor Lincoln

Ms. Lincoln asked how many qualified homeowners the proposed project had, and how Ms. Dodson felt about the loss of open space in the interest of providing affordable homes. Ms. Dodson replied that no waiting lists were kept and described the time frames that her organization had agreed to in the resolution passed by Maui County Council; and that she favored providing much-needed housing to people that needed it.

Ms. Lincoln requested clarification on the financial considerations that were involved when Habitat decides to do a project. Ms. Dodson described how Habitat selected properties and evaluated the financial situation for each benefiting family before deciding the scale of the work involved.

Ms. Bolomet requested clarification on the income qualifications to be considered by her organization. Ms. Dodson provided her recollection of what the income qualifications were.

Redirect

Mr. Geiger asked what the time frames for completing projects were and referred to Exhibit 11 Maui County Resolution. Ms. Dodson identified the section of the resolution that stated that her organization's houses did not have a completion time limit.

Commissioner Questions

Chair Chock requested clarification on Habitat's obtaining a contractor's license. Ms. Dodson described how Habitat had obtained its license and how it intended to make use of it.

There were no further questions for Ms. Dodson.

Discussion ensued to plan the order of witnesses for the remainder of the day. Mr. Giroux suggested that Mr. Spence could testify in the time void that was anticipated. Chair Chock accepted Mr. Giroux suggestion and asked if the Parties had any objections to the proposed adjustments for the appearance of witnesses. There were no objections.

The Commission went into recess at 11:30 a.m. and reconvened at 12:33 p.m.

Chair Chock thanked the Parties for their cooperation, patience and efforts during the proceedings and encouraged them to continue their decorum during the proceedings.

Mr. Geiger stated that his witness Leonard Kimokeo Kapahulehua was ready to testify. Mr. Giroux stated that Mr. Kapahulehua's appearance had been discussed and agreed to by the Parties. Chair Chock asked if all the Parties concurred on Mr. Kapahulehua's appearance and all Parties acknowledged that there were no objections to the witness testifying.

Ms. Bolomet requested permission for Mr. Lee to do the questioning for this portion of the proceedings instead of her. Chair Chock granted Ms. Bolomet's request with the understanding that Mr. Lee would be the only person doing the questioning. There were no questions, comments or objection to Chair Chock's decision.

4. Leonard Kimokeo Kapahulehua- Cultural Expert

Mr. Kapahulehua stated that he had prepared written testimony and was qualified and offered as a Cultural Expert. There were no objections to Mr. Kapahulehua's admittance and corresponding exhibits. Mr. Kapahulehua made two corrections to his testimony regarding the spelling of "Ahapua`a" and the date the flood control project occurred (should be 1990 vs. 1980); and summarized his testimony for the Commission. Mr. Kapahulehua described the methodology and criteria that he had used to gather the information for his report from pre-contact to modern times; and provided a recap of his findings.

Questions for Mr. Kapahulehua

County, OP, and Ms. Lincoln had no questions.

Intervenor Bolomet

Mr. Lee requested clarification on whether Mr. Kapahulehua would be surprised by various culturally related items, significant geological features and past occurrences on the Petition Area. Mr. Kapahulehua described his perspective on the various questions that Mr. Lee asked and shared why he would not be surprised by various findings on the property and what his clan lineage was.

Mr. Lee had no further questions.

Redirect

Mr. Geiger confirmed that Mr. Kapahulehua had no further information on the Petition Area and that there were no present day cultural practices occurring in the Petition Area and restated the time periods covered by his report. Mr. Geiger also confirmed if Mr. Kapahulehua had recently walked the grounds of the proposed project and asked whether there were any findings that he would like to report. Mr. Kapahulehua affirmed that he had recently walked on the Petition Area and did not see anything to alter his report.

There were no further questions for Mr. Kapahulehua.

5. Joshua Guth

(Please refer to LUC Transcript for more details on these matters)
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Mr. Guth was offered and admitted as a witness after correcting a portion of his written testimony regarding a description of real estate property that he had mentioned; and shared how he had sought and attempted to purchase a residence.

OP and County had no questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on portions of Mr. Guth's testimony at the County Council meeting in November, 2011 and where his house hunting experiences had taken him. Mr. Guth provided his recollection of what he was attempting to communicate at the Council meeting and voiced the desirable locations and qualities in housing that he preferred.

Intervenor Bolomet had no questions.

Mr. Geiger had no redirect.

There were no further questions for the witness.

Mr. Geiger stated that his next witness was enroute to the meeting and suggested taking County Witness Will Spence out of order. Chair Chock concurred and stated that his preference was to complete all the questioning of Mr. Spence without interruptions. There were no objections, comments or questions regarding Chair Chock's determination.

County Witnesses

1. Will Spence

Mr. Spence and County's associated exhibits 1, 5 and 6 were offered and admitted to the record. Mr. Spence was qualified as an Expert in Planning and described the considerations and county processes that the proposed project had undergone and provided his perspective of why the County was in favor of the Petition.

Questions for Mr. Spence

Petitioner

Mr. Geiger requested clarification of the County review process for the proposed project. Mr. Spence described how the proposed project had been vetted by the County Planning Department and the County Council and how conditions had been established in the County resolution to specifically assure that mitigation measures and requirements for all the

identified concerns and issues had been addressed. Mr. Spence deferred water related questions to Dave Taylor, County Water Resources Director.

OP

Mr. Yee requested clarifications on street and roadway improvements that Petitioner would be making to the Petition Area. Mr. Spence described how County assessed that infrastructure component and what types of criteria would be applied.

Intervenor Lincoln

Ms. Lincoln requested clarification on County Exhibit 5-Zoning, Title 19-Maui County Code. Mr. Spence shared his interpretation of how the zoning criteria would be applied to the proposed project by County agencies, what the LUC's role was and how zoning exemptions and other considerations were included during the County planning process to facilitate the 201H aspect of the proposed project.

Ms. Lincoln requested clarification on how challenges to the Petition could be mounted. Mr. Spence shared his understanding of what government agencies were involved and what courses of action Ms. Lincoln could consider, but noted that the challenge period for this specific Petition had passed.

Ms. Lincoln requested clarification on County Exhibit 6-(Comments made during a Council meeting regarding open space). Mr. Spence shared his recollection of what had occurred during the Council meeting and why certain comments were made and what performance details were documented; and how the decision-making for the Petition was done.

Discussion occurred to determine the specific information that Ms. Lincoln's questions were attempting to obtain. Ms. Lincoln restated her question and Mr. Spence shared the challenges that the County and the Petitioner had regarding determining home prices, development costs, and other factors involved with the urbanization of agricultural land; and clarified the terms of "eminent domain" and "condemnation" as they applied to the proposed project.

Ms. Lincoln requested clarification on County-Exhibit 8 County Water Availability Policy. Discussion ensued to determine whether Mr.

Spence could provide the clarification on the information that Ms. Lincoln desired. Mr. Spence stated that he could address the planning aspects of the policy but deferred more detailed questions to the Water Director- Dave Taylor.

Ms. Lincoln requested clarification on whether the County Council could issue a variance to eliminate the cul-de-sac in the proposed project and on what criteria it could grant exemptions. Mr. Spence described the County Council's ability to grant variances and exemptions and deferred more specific questions on housing to Jo Ann Ridao, Director of Housing and Human Concerns.

Ms. Lincoln requested clarification on County Exhibit 5-Urban Design Goals, the Greenway Master Plan and how a gravel road in the Petition Area factored into the greenway design. Mr. Spence described how the social infrastructure goal was expected to be met and how open space concerns factored into the prioritization of the goals and the master plan and opined on how the gravel road factored into the Petitioner's future plans.

Ms. Lincoln asked if time extensions could be obtained for the proposed project and what the consequences were for non-compliance with State and County mandates. Mr. Spence responded that extensions could be obtained and shared his understanding of what actions the State or County might take for non-compliance. Ms. Lincoln also requested clarification on stormwater runoff and Mr. Spence deferred the question to the Petitioner's engineer and the Department of Public Works.

Intervenor Bolomet

Mr. Lee requested clarification on a water runoff feature on the Petition Area. Mr. Spencer was unfamiliar with what Mr. Lee was referring to. Mr. Lee had no further questions.

Redirect

Mr. Giroux asked if Mr. Spence felt that a thorough explanation of the 201H process had been provided to the Commission. Mr. Spence replied that he felt he had thoroughly explained the process and described how the Maui County Council was the ultimate authority on planning matters, property purchases and county land use change reviews; and how affordable housing goals were included in these considerations.

Mr. Giroux requested clarification on what the role of the State Office of Environmental Quality Control (OEQC) had in the planning process and what Mr. Spence's experience was with "takings". Mr. Spence shared his understanding of what OEQC was responsible for and what his experiences with "takings" had been; and stated that he was not aware of whether any actions to turn the Petition Area into a park had occurred over the last 15 years.

Commissioner Questions

Commissioner McDonald requested clarification on where the County was on the mapping of Important Agricultural Lands (IAL). Mr. Spence responded that County was waiting for Legislative funding and that County would be trying to attempt to do some of the work if possible within a year or two.

Commissioner Heller requested clarification on whether or not the Petition Area could be considered IAL; and if the County agreed with exempting the Petition Area from the "show me the water" policy. Mr. Spence replied that the Petition Area probably would not be an IAL candidate and cited the qualities that it lacked, and that the County was agreeable with the water policy exemption and deferred further details on water issues to David Taylor, County Water Department Director.

Commissioner Biga requested clarification on whether a small farm operation might be able to use the Petition Area and whether the roadway on the Petition Area would be dedicated. Mr. Spence speculated how a small "sustainability" farming operation might be able to use the Petition Area and described the challenges that would confront it and deferred the question on the dedication of the roadway to the Petitioner and the Department of Public Works.

There were no further questions.

Chair Chock stated that the Commission would adjourn for the day and encouraged the Parties to be cognizant of the deadlines confronting them. Chair Chock asked if the Parties had any further questions.

Mr. Geiger asked whether future meeting dates for A12-795 had been scheduled. LUC staff advised him that August 23-24, 2012 would be the next time the Commission would address the docket.

Ms. Lincoln asked where the meeting would be held. LUC staff advised that efforts were being made to schedule the meeting in the West Maui area and that she should be prepared with her presentation by then.

Ms. Bolomet asked if a site visit was being planned and whether she could make a cultural testimony presentation to indicate features and findings that she wanted to make the Commission aware of. LUC staff advised that a site visit was being planned for A12-795 on August 2, 2012. Chair Chock stated what the protocol was for site visits and that no testimony would be taken.

Ms. Lincoln requested clarification on what notices would be circulated and how a site visit was conducted. Discussion ensued to clarify how the LUC provided public notice and what to expect on a site visit.

There were no further questions.

Commissioner Teves moved to adjourn the meeting, Commissioner Biga seconded the motion. By a unanimous voice vote (7-0) the Commission voted to adjourn the meeting at 2:04 p.m.