

LAND USE COMMISSION
MEETING MINUTES

August 2, 2012

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

COMMISSIONERS PRESENT: Chad McDonald
Lance Inouye
Sheldon Biga
Ronald Heller
Nicholas Teves, Jr.
Ernest Matsumura

COMMISSIONERS EXCUSED: Napua Makua
Thomas Contrades
Kyle Chock

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Vice Chair Heller called the meeting to order at 9:50 a.m. (Commissioners' flights to Maui were delayed)

APPROVAL OF MINUTES

Vice Chair Heller asked if there were any corrections or additions to the July 19-20, 2012 minutes. Commissioner Teves moved to approve the minutes. Commissioner Inouye seconded the motion. The minutes were unanimously approved by a voice vote (6-0). Commissioner Inouye requested LUC Staff to verify his notes regarding

sections of the minutes on page 13 of July 19 and page 6 of July 20 and discussion ensued to determine what, if any, corrections were necessary. Vice Chair Heller determined that the minutes were approved as presented.

ACTION

A97-721 Makena Resort Corp. (Maui)

Appearances

Martin Luna, Esq. represented ATC Makena Resort Entities

Stanford Carr, ATC Makena Resort Entities

James Giroux, Esq., Deputy Corporate Counselor, Maui County (County)

Bryan Yee, Deputy Attorney General, State Office of Planning (OP)

Lorene Maki, OP

Vice Chair Heller updated the record and stated that this was an action meeting to consider Petitioner's Motion For Sixth Amendment To The Findings of Fact, Conclusions of Law and Decision and Order, filed on February 19, 1998.

There were no questions, comments or objections to the proposed procedures.

Vice Chair Heller asked if Petitioner had been made aware of the Commission's policy regarding hearing reimbursement of hearing expenses. Mr. Luna stated that he had been advised of the Commission's reimbursement policy and that Petitioner accepted.

Public Witnesses

None

Commissioner Inouye disclosed that Mr. Luna was a family friend but that he did not feel that this relationship would bias or impair his judgment in this matter. There were no objections from the Parties with regards to Commissioner Inouye's continued participation in the proceedings.

Presentations

Petitioner

Mr. Luna stated that Stanford Carr would be his only witness to provide background and updated information on the motion and circulated and submitted Petitioner's Exhibits "F"- "I" (in addition to his previously submitted exhibits "A"- "F") to the Parties and the Commission to refer to during Mr. Carr's testimony.

Mr. Luna offered Mr. Carr's resume and testimony and Exhibits "A-I" to the Commission. There were no objections or questions or comments by the Parties to the

exhibits. Vice Chair Heller admitted Mr. Carr and his resume and testimony and the exhibits to the record.

Mr. Carr described the ownership arrangements for the ATC Makena entities and his company's reasons for submitting the Motion to the Commission and shared why he felt Petitioner should be released from certain conditions since they had been satisfied and complied with; and why an extension for Condition 12 was necessary. Mr. Luna further argued why the Petition to extend time for Condition 12 and release Conditions 4, 15, 21 and 22 was worthy of being granted.

County and OP had no questions for Mr. Carr or Mr. Luna.

County

Mr. Giroux stated that County had no witnesses and exhibits to submit and that its hope was that negotiations with the DOT could be completed within the expected time frame and rested on its statement of position.

OP

Mr. Yee stated that OP rested on its pleadings.

Vice Chair Heller asked if there were any further arguments, comments or explanations that the Parties wished to make for the record.

Mr. Luna responded that he rested his case.

Mr. Giroux stated that he rested on his reply and described how County anticipated that the transportation issues that it had with this docket would be resolved within the requested 2 year time period extension.

Mr. Yee stated that he had nothing further to add.

Commissioner Inouye requested clarification on whether the County zoning changes had been approved and confirmed. Mr. Giroux referenced County Ordinance 3613 and confirmed how the Maui Planning Department had processed the required documentation for this Motion.

Commissioner Inouye requested clarification on whether OP had confirmed that a proper filing with the Bureau of Conveyances had been performed for the Petition Area. Mr. Yee referenced Petitioner's Exhibit "E" to confirm that task had been accomplished. Discussion ensued to clarify whether the documentation had been included in the submitted exhibit and Mr. Yee stated that OP was satisfied that the

proper documentation had been submitted. Commissioner Inouye replied that he concurred with OP's statement.

Commissioner Teves moved to grant Petitioner's Motion For Sixth Amendment To The Findings of Fact, Conclusions of Law and Decision and Order, filed on February 19, 1998 and for release of certain conditions. Commissioner Biga seconded the motion. Commissioner Inouye offered a friendly amendment to Condition 22 that future amendments, if any, must also be recorded. Commissioners Teves and Biga accepted the friendly amendment.

The Commission voted as follows:

Yeas: Commissioner Teves, Biga, Matsumura, Inouye, McDonald and Vice Chair Heller.

Nays: None

The Motion passed 6-0 with 3 excused.

Vice Chair Heller noted that the remainder of the agenda involved an Executive Session and requested that the room be vacated to allow the Commission to conduct the session; and entertained a Motion for Executive Session. Commissioner Biga moved and Commissioner McDonald seconded the motion for an Executive Session. By a unanimous voice vote (6-0) the Commission entered Executive Session at 10:10 a.m. and reconvened at 10:24

Vice Chair Heller stated that the Commission had been asked to designate a representative to attend a mediation in connection with the pending federal appeal in the DW/Bridge Aina Lea case. Commissioner Teves moved that Vice Chair Heller serve as the Commission's representative, without the authority to bind the Commission, only himself; and that past Commission Chair Lezy, if he agrees, be designated to be an alternate representative with the same restrictions. Commissioner Biga seconded the motion. There was no discussion

The Commission voted as follows:

Yeas: Commissioner Teves, Biga, Matsumura, Inouye, McDonald and Vice Chair Heller.

Nays: None

The motion passed 6-0 with 3 excused.

There being no further business, Vice Chair Heller stated that there were two site visits that the Commission would be attending and adjourned the meeting at 10:25 a.m.