

LAND USE COMMISSION
MEETING MINUTES

September 7, 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
Ernest Matsumura
Thomas Contrades
Napua Makua

COMMISSIONERS EXCUSED: Kyle Chock
Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodener, Executive Officer
Scott Derrickson, 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 9:00 a.m.

CONTINUED HEARING

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

Vice Chair Heller announced that this was a continued hearing on Docket No. A12-795 West Maui Land Company, Inc., Kahoma Residential LLC, to consider the reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lahaina,

Maui, Hawai'i for a residential subdivision to provide 68 single-family affordable housing units to families earning less than 160% of the median family income of families in Maui County, Hawaii, TMK Nos. (2) 4-5-10:005

APPEARANCES

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

Heidi Bigelow, West Maui Land Inc.

James Giroux, Esq., Deputy Corporation 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.

CONTINUATION OF HEARING

Vice Chair Heller stated that the proceedings would resume with the continued questioning of County's witness Jo Ann Ridao.

Before the proceedings began, Mr. Geiger noted that he had received documents referring to Intervenor Bolomet's Witness Michael Lee and questioned whether it was appropriate that the Commission be provided exhibit materials evidence past the agreed upon August 1st, 2012 deadline that had been established for the Parties earlier on. Vice Chair Heller determined that the evidence had not been offered yet and that the matter would be addressed at that time if they were.

Intervenor Lincoln stated that she would like to withdraw her Exhibit 9 (Elle Cochran testimony) and offer Exhibit 15 in its place. Ms. Lincoln stated that it was essentially the same exhibit but that it had been altered to remove references to Ms. Cochran's position on the County Council in response to County's objection. There were no objections to Ms. Lincoln's request, and Exhibit 15 was admitted to replace Exhibit 9. .

Intervenor Bolomet stated that the documents that Mr. Geiger received were copies of public testimony that had been distributed to share with the Commission and

Parties. Discussion ensued regarding the validity of Ms. Bolomet's characterization of what the documents were since an email to Ms. Bolomet was included that was not addressed to the Commission. Mr. Geiger and Mr. Giroux expressed their concerns about the repeated practice by Ms. Bolomet of submitting exhibits as public testimony and using them without the benefit of being able to challenge or confirm whether they were truthful and accurate. Vice Chair Heller noted the comments of Mr. Geiger and Mr. Giroux and described how the Commission perceived public testimony. Ms. Bolomet argued that Petitioner's Exhibit 40 had been accepted by the Commission and that her intention had been to use one of the papers she had circulated to dispute that exhibit and had been mistakenly been included in the distribution. Vice Chair Heller stated that if it was going to be an Intervenor Bolomet exhibit, it would be assessed if and when it was offered, and that the documents that were submitted as public testimony would be considered as such.

Questions for County Witness Ms. Ridao (continued from September 6, 2012)

Intervenor Bolomet

Ms. Bolomet requested clarification on Ms. Ridao's qualification to review environment assessments and accept them. Ms. Ridao described her background and experience in housing projects and dealing with and verifying EAs during the course of her work. Ms. Ridao also described how cultural aspects and sustainability criteria for the housing projects she was responsible for were addressed; and how the County monitored and enforced its project standards. Discussion ensued regarding Ms. Bolomet's method of questioning the witness and Ms. Bolomet was urged to use questioning instead of commentary.

Ms. Bolomet requested clarification on Ms. Ridao's responses to Ms. Lincoln's questions on traffic, and on how County departments communicated on housing matters. Discussion ensued to have Ms. Bolomet avoid argumentative, cumulative and repetitive testimony. Vice Chair Heller determined that Ms. Bolomet's questions were repetitive and cumulative and requested that she move on. Ms. Bolomet responded that she had no further questions.

Redirect

Mr. Giroux requested clarification on Ms. Ridao's responses to Ms. Lincoln's questions regarding the criteria the County used in selecting locations for its workforce housing projects. Ms. Ridao described the various factors that were considered and noted that locations with close proximity to work and services was an important feature.

Mr. Giroux also requested clarification on whether there had been any challenges lawsuits or appeals filed against the environmental assessment and its acceptance for the proposed project. Ms. Bolomet responded that there were none that she was aware of and acknowledged that a cultural assessment was a required component of the environmental assessment and that one had been provided for the proposed project.

Mr. Giroux asked whether an assessment had been done to consider the agricultural aspects of the Petition Area and its past use. Ms. Ridao shared her understanding of the agricultural sustainability for the Petition Area.

Mr. Giroux had no further questions.

Commissioner Questions

Commissioner McDonald requested clarification on what agencies were contacted during the EA. Ms. Ridao replied that a checklist of agencies was used to notify them of housing activity that was being considered and a comment period ensued to collect their input.

Commissioner Biga asked if it was possible for the proposed project to offer more homes at the 80 percent level for the Lahaina process. Ms. Ridao shared her opinion of how the development costs factored into putting pressure on price levels for the project developer and that the economic realities of the situation limited how many 80 percent units could be offered.

Commissioner Makua requested clarification on what cultural organizations were included in the list of entities that the EA used. Ms. Ridao replied that SHPD was the primary agency and that she was not sure of what entities at the County level were included and reviewed and identified entities that she thought would respond on cultural issues.

Commissioner Heller requested clarification on the public notice and its distribution. Ms. Ridao described the requirements and procedures involved for the EA.

There were no further questions for Ms. Ridao.

3. Rowena Dagdag- Andaya- Deputy Director of Public Works-Maui County

Ms. Andaya described her position with the County and Mr. Giroux offered her resume as Exhibit 9. Discussion ensued to determine if County's Exhibit 2 was being withdrawn. Mr. Giroux confirmed that he was withdrawing Exhibit 2 and that he was making the substitution in response to Ms. Andaya's appearance instead of Mr. Goode. There were no objections to Mr. Giroux's request and Ms. Andaya's appearance as an expert witness.

Discussion ensued to clarify that the written statement of Ms. Andaya was Exhibit 9, and her resume would be Exhibit 15. There were no objections to the updated exhibit numbers.

Ms. Andaya corrected her written submission and summarized her testimony for the Commission and described how the proposed project would be reviewed by her department.

Questions

Petitioner

Mr. Geiger asked if the Department of Public Works supported the proposed project. Ms. Andaya responded that it did and described how the proposed project had been reviewed by her agency and how the County was in the process of updating its rules, standards and guidelines to conform to nationwide standards. Ms. Andaya also described the roadway, sidewalks, wastewater, flood controls, and other infrastructure features that had been proposed and reviewed for the proposed project; and who would be responsible for their maintenance. Ms. Andaya stated that the County would monitor whether the necessary permits and approvals were obtained and shared how it responded to the Army Corp of Engineers directives to maintain the area.

OP

Mr. Yee requested clarification on how and when new proposed stormwater ordinances would be addressed by the Public Works Department. Ms. Andaya provided her understanding of the current status of the proposed rules and what her interpretation was of the terms rules and ordinances; and clarified that the County Council would be addressing rules.

Intervenor Lincoln

Ms. Lincoln requested clarification on whether or not an “after the fact” permit would be obtained for the fill that had been deposited in the Petition Area. Ms. Andaya expressed the procedure that would be used to inspect, test and remove the fill material from the Petition Area. Ms. Lincoln stated that she had several County questions and posed them for Ms. Andaya to answer since she was the final County witness. Ms. Andaya responded to questions that involved her department’s work on existing and proposed infrastructure and traffic improvements for the Petition Area and had no response to answers outside the scope of her organization.

Intervenor Bolomet

Ms. Bolomet requested clarification on what practices the County needed to observe while performing work on its projects. Ms. Andaya shared her understanding of what procedures were performed for different aspects of public work projects. Discussion occurred during the questioning to have Ms. Bolomet discontinue her argumentative questioning. Ms. Bolomet asked if cultural rights monitoring occurred during the review process of the proposed project plans. Ms. Andaya responded that her department did not have a cultural practitioner to consult with and shared her opinion of what purpose underground pipes in the Petition Area may have had.

Ms. Bolomet also asked questions regarding the impact of climate change, low impact development and LEED; EPA rules, a proposed internal road in the Petition Area, clean water standards, water retention infrastructure; and the type of emergency preparedness practices that would be used to protect the community. Ms. Andaya provided her understanding of how her department addressed the various items that Ms. Bolomet wanted information on.

Redirect

Mr. Giroux requested clarification on Ms. Andaya's answers to questions regarding the design and safety features of existing and proposed infrastructure components in the Petition Area. Ms. Andaya shared her understanding of how the infrastructure components were designed, built and maintained and described how her department cooperated with the Army Corp of Engineer on various matters.

Commissioner Biga requested clarification on the status of the Old Mill Road in the Petition Area. Ms. Andaya responded that matters were still in the draft EA and planning and design phase and that there was no firm timeline in place at the present.

Commissioner Biga also requested clarification on the proposed traffic controls for the proposed project. Ms. Andaya described the various considerations that were being studied that she was aware of and what selection criteria might apply to them.

Vice Chair Heller requested clarification on stormwater runoff and pollution considerations under urban and agricultural conditions. Ms. Andaya replied that different drainage control and stormwater quality standards may be applied depending on the land use or how development on a property was occurring.

There were no further questions for Ms. Andaya.

The Commission went into recess at 10:35 a.m. and reconvened at 10:58 a.m.

Vice Chair Heller recognized members of the audience that he thought were going to provide public testimony. Ms. Lincoln commented that the audience members were testifying for her portion of the proceedings and Vice Chair Heller called for OP to begin its presentation.

OP

Mr. Yee offered Rodney Funakoshi, Planning Program Administrator and his testimony as an expert in planning. There were no objections.

1. Rodney Funakoshi

Mr. Funakoshi summarized his testimony and described why OP recommended approval of the proposed project with conditions.

Questions for Mr. Funakoshi

Petitioner

Mr. Geiger requested clarification on the considerations and evaluations that OP had made for agricultural value of the Petition Area, sustainability features for the proposed project and the assessment and review processes that were performed in determining OP's position of recommending approval of the proposed project with conditions. Mr. Funakoshi provided his understanding of the different aspects of the proposed project and Petition Area and how his department had determined its position.

County

Mr. Giroux had no questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on how OP perceived the "infill" characterization of the proposed project that County had used during its portion of the presentation and how discretionary approvals were obtained. Mr. Funakoshi declined responding on the County's behalf and shared how OP characterized the project

Ms. Lincoln also requested clarification on how OP had determined its position on the Petition and what "checks and balances" were in place within the approval process. Mr. Funakoshi described the controls, standards, methodology and information that were considered to arrive at its conclusions and provided his understanding on various other questions that Ms. Lincoln had regarding educational/recreational facilities, offshore reef protection, flood retention walls, community benefits, loss of open space, boundary amendment criteria, conformance to the State Constitution provisions and citizen rights.

Intervenor Bolomet

Ms. Bolomet requested clarification on the State Constitution and its relationship to rules, ordinances and statutes, the role of the Attorney General in the OP review process, and the criteria used during the evaluation of the Petition. Mr. Funakoshi

described the methodology used by OP and the personnel and agencies involved during the process. Discussion ensued regarding the archaeological portion of the Petitioner's presentation and the argumentative nature of Ms. Bolomet's questioning. Vice Chair Heller determined that Ms. Bolomet's questions were inappropriate and Ms. Bolomet argued why she asked such questions. Vice Chair repeated that it was not helpful to continue asking questions after the witness had responded that they had no knowledge about the subject matter.

Ms. Bolomet requested clarification on how the soil ratings for the Petition Area were determined. Mr. Funakoshi described how soil ratings had been developed and used over the years and how recent Important Agricultural Lands legislation factored in OP's decision making. Ms. Bolomet asked how the Oahu Hoopili case was decided upon and discussion ensued on whether the use of other cases was appropriate. Vice Chair Heller determined that the focus of Ms. Bolomet's questions should be on the Petition Area under discussion.

Ms. Bolomet requested information on how her questions should be asked in order to be allowed and Vice Chair Heller clarified his expectations for the questioning of the witness. Mr. Yee identified the subject areas that Mr. Funakoshi had already testified about and argued that Ms. Bolomet's questions were cumulative. Mr. Geiger joined in Mr. Yee's comment. Vice Chair Heller determined that Mr. Yee and Mr. Geiger were correct in their assessment of Ms. Bolomet's questioning and suggested that Ms. Bolomet reexamine Important Agricultural Land and ALISH definitions to be clear on what they meant and how they applied to the proceedings. Ms. Bolomet argued why she should be allowed to participate in the proceedings in a manner that would serve as a "check and balance" system. Vice Chair Heller replied that he appreciated her efforts and described why it was not productive to repetitively question a witness who could not provide an answer. Ms. Bolomet replied that she would move on.

Ms. Bolomet requested clarification on how the Hawaii State Plan protected native gathering rights to coral and limu that would be affected by runoff from the proposed project. Discussion ensued on the portions of the question that were argumentative. Vice Chair Heller determined that Ms. Bolomet's question was argumentative and requested that she ask her questions without assumptions included. Ms. Bolomet reframed her question and Mr. Funakoshi described how approvals and

permits were required to ensure water quality downstream and how the environmental review processes were followed and state concerns were addressed. Discussion again ensued as Ms. Bolomet continued her questioning and Mr. Geiger commented that evidence was argumentative and cumulative. Vice Chair Heller agreed and had Ms. Bolomet move on.

Ms. Bolomet requested clarification on where and how stormwater would be channeled in the Petition Area. Mr. Funakoshi provided his understanding of where the stormwater would go and how/when this water quality was checked; and what resources might be available to obtain more detailed information.

Redirect

Mr. Yee requested clarification on impacts to coral and limu. Mr. Funakoshi shared his recollection of different agencies that were contacted to review the plans for the proposed project and what type of comments or responses had been obtained from them. Mr. Funakoshi stated that no concerns about coral or limu were raised during the review and that OP had recommended low-impact development practices and best management practices be followed.

There were no further questions for Mr. Funakoshi.

The Commission went into recess at 12:03 p.m. and reconvened at 1:03 p.m.

Intervenor Lincoln

Ms. Lincoln called her witnesses to testify.

1. Jane Amai

Ms. Amai submitted written testimony and described her familiarity with the Petition Area and why she opposed the proposed project.

Mr. Geiger requested clarification on where Ms. Amai lived; if she had previously testified before the Maui Council and why she opposed the proposed project. Ms. Amai described where she lived and stated that she was currently testifying for the first time and opposed the proposed project since she did not want it in her "backyard".

Mr. Giroux had no questions.

Mr. Yee requested clarification on what kind of areas Ms. Amai would consider to be safe for walking. Ms. Amai commented that she preferred having sidewalks or park areas to use.

Ms. Bolomet requested clarification on various features of the Petition Area and surrounding neighborhoods and on the presence of an owl in the vicinity. Ms. Amai recalled how the area appeared before the flood control measures for the region were implemented and shared that she had seen an owl in the area.

Redirect

Ms. Lincoln requested clarification on what types of sidewalk access issues Ms. Amai had in the neighborhood. Ms. Amai described the various situations that she encountered or would encounter if the proposed project were built.

Mr. Giroux requested clarification on what types of agricultural activities were performed in the Petition Area after the flood control project was completed. Ms. Amai stated that had seen mainly backyard gardening activity but no major activity.

Commissioner Biga requested clarification on why Ms. Amai loved the area so much. Ms. Amai replied that she enjoyed walking and having an area where she felt safe.

There were no further questions for Ms. Amai.

2. Herman Naiole

Mr. Naiole submitted testimony and described his concerns about traffic, congestion, safety, and lifestyle degradation

that the proposed project would bring to his neighborhood. Mr. Naiole stated that he had collected over 200 names on a petition objecting to the proposed project.

Mr. Geiger asked if Mr. Naiole had reviewed the conceptual plan for the proposed project. Mr. Naiole responded that he was aware of the proposed park and other roadway improvements that were included in the plan and restated his concerns about safety. Discussion ensued over Mr. Naiole's comments and Mr. Naiole stated that he had also shared his comments with the Maui County Council.

County and OP had no questions.

Intervenor Bolomet requested clarification on Mr. Naiole's traffic observations. Mr. Naiole commented how the area near his home lacked sidewalks and was already dangerous and shared his family's cultural heritage and guardian spirit legacy.

Redirect

Ms. Lincoln asked whether it was possible to restore the Petition Area to how it was. Mr. Naiole replied that he thought it was possible if water could be resupplied to the area.

3. Cynthia Cajugal

Ms. Cajugal shared her family history and described the Petition Area as it was before the flood control project diverted the water from the neighborhood and her recollection of the County's representations of how the Petition Area land would be used as open space. Ms. Cajugal shared why the West Maui residents opposed the proposed project and preferred keeping the area an open space.

Mr. Geiger requested clarification on the location of Ms. Cajugal's family home in relation to the Petition Area and the past usage of the area and confirmed if she had given similar testimony to the Maui County Council and seen the Maui Island Plan. Ms. Cajugal described where her house was located

and acknowledged that she had given similar testimony and had seen the Maui Island Plan but had limited participation with the plan's development.

County and OP had no questions

Intervenor Bolomet

Ms. Bolomet questioned Ms. Cajugal about Kahoma Land's ownership of the property. Discussion ensued to correctly identify the year of purchase and it was established that the correct date was in 1999 and that commercial farming on the property had ceased. Further questioning continued and discussion ensued regarding the speculative nature of the questioning. Vice Chair Heller determined that the questions were not appropriate and directed Ms. Bolomet to move on.

Ms. Bolomet requested clarification of pre-flood control land features that the Petition Area contained. Ms. Cajugal described her recollection of how the Petition Area used to look and the type of greenery that was on the site.

Redirect

Ms. Lincoln asked if Ms. Cajugal had anything else to share. Ms. Cajugal responded that she did not.

Vice Chair Heller noted that there had been several references to tamarind trees being on the property and requested clarification as to their specific location. Ms. Cajugal described where she believed the tamarind trees grew.

Vice Chair Heller asked if there were any more Intervenor Lincoln witnesses. Ms. Lincoln replied that her witness, Elle Cochran, was unable to appear and had submitted written testimony instead. Discussion ensued on whether the exhibit associated with Ms. Cochran had been admitted. Mr. Geiger recalled that earlier Commission action had admitted the exhibit. Vice Chair Heller concurred and Ms. Lincoln requested a recess. Vice Chair Heller granted her request.

The Commission went into recess at 1:45 p.m. and reconvened at 1:47 p.m.

Ms. Lincoln took the stand to testify and shared her reasons for intervening in the docket, how the representations of the Petition Area as “open space” over the years were made and why she opposed the Petition.

Vice Chair Heller inquired if Ms. Lincoln was near to completing her testimony and Ms. Lincoln replied that she needed more time. Vice Chair Heller stated that due to time constraints of the flight scheduling of the Commissioners, she could resume her testimony at the next meeting.

Commissioner Biga moved to adjourn the meeting and Commissioner McDonald seconded the motion. By unanimous voice vote (7-0), the Commission elected to adjourn at 2:15.