

LAND USE COMMISSION
MEETING MINUTES

November 2, 2012 – 9:00 a.m.
Marriott Courtyard Hotel, Haleakala Room
Kahului, Maui, Hawai`i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Ronald Heller
Ernest Matsumura
Thomas Contrades
Nicholas Teves, Jr.

COMMISSIONERS EXCUSED: Napua Makua
Sheldon Biga

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

Chair Chock called the meeting to order at 9:00 a.m.

HEARING

A94-706 Ka`ono`ulu Ranch (Maui)

Chair Chock announced that this was a continued hearing on Docket No. A94-706 Order to Show Cause

APPEARANCES

Joel Kam, Esq., represented Honua`ula Partners
Jonathan Steiner, Esq., represented Pi`ilani Promenade North LLC, Pi`ilani Promenade South LLC, and Honua`ula Partners

Jane Lovell, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)
Michael Hopper, Esq., Deputy Corporation Counsel, represented County
William Spence, Director, County
Jesse Souki, Director, State Office of Planning (OP)
Rodney Funakoshi (OP)
Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele
Mark Hyde South Maui Citizens for Responsible Growth
Irene Bowie, Maui Tomorrow Foundation
Daniel Kanahele

Chair Chock stated that the Commission would begin by hearing OP's witnesses out of order as agreed to by the Parties. Mr. Souki acknowledged that both his witnesses Ken Tatsuguchi –DOT and Heidi Meeker- DOE were present and ready to testify.

Presentations

OP (Expert Witnesses taken out of order)

1. Ken Tatsuguchi- DOT Expert- Transportation Planning and Engineering

Mr. Tatsuguchi was offered and admitted as an expert witness for OP and described the various issues that he had to address when comparing the current proposed project to the 1995 proposed project. Mr. Tatsuguchi described how the Traffic Impact Assessment Reports (TIAR) differed due to the proposed facilities for the Petition Area and what measures needed to be taken to adjust and update DOT plans for the area as a result. Mr. Tatsuguchi also described how the proposed "frontage road" was no longer feasible due to the evolution and anticipated changes in regional development and transportation modes that had occurred in the years since the original decision and order; and how other transportation routes could be implemented to mitigate any future expected traffic volumes.

Questions for Mr. Tatsuguchi

Petitioner PP

Mr. Steiner requested clarification on the status of the current TIAR that was being reviewed by DOT. Mr. Tatsuguchi described how he had been working with Petitioner's Traffic Expert Phillip Rowell to resolve various transportation issues that confronted the proposed project. Discussion occurred over relevancy of the questions and whether Mr. Tatsuguchi could qualify Mr. Rowell as an expert. Mr. Steiner responded that he was asking if Mr. Tatsuguchi felt that Mr. Rowell was

competent in performing his work for Petitioner. Chair Chock requested that Mr. Steiner move on with his questioning.

Mr. Steiner requested clarification on the number of lanes that Pi'ilani Highway had during the span of years since the original Petition was before the Commission and the present; and whether the extra added lanes since had mitigated traffic conditions. Mr. Tatsuguchi stated that he was not a traffic engineer but was a transportation engineer and acknowledged that based on his experience in coordinating the reviews of the TIARs for the proposed project, the additional added lanes helped to mitigate any traffic generated by the proposed project.

Mr. Steiner had no further questions.

Petitioner HP

Mr. Kam stated that he had no questions.

County

Ms. Lovell requested clarification on whether the DOT required mitigation measures be adopted for the Petition Area before or after the LUC issued its decision and order. Mr. Tatsuguchi described how mitigation measures were implemented for more general considerations to area and regional issues when the Petition was at the LUC level and how the more detailed mitigation measures occurred at the County level after the decision and order had been issued. Discussion occurred over the phrasing of Condition 5 and how it was being represented. Further discussion occurred over Condition 5 on whether all Parties were reviewing the same document. Chair Chock advised Mr. Pierce that a copy of the original Condition 5 was available on the LUC website. Ms. Lovell requested clarification on whether Mr. Tatsuguchi considered Mr. Rowell's working with him on the proposed project's traffic matters - "coordination". Mr. Tatsuguchi responded that he did.

Ms. Lovell had no further questions.

Intervenors

Mr. Pierce introduced himself and described how he would be asking his questions. Discussion occurred to have Mr. Pierce focus on questioning the witness.

Mr. Pierce requested clarification on the difference between a traffic engineer and a transportation engineer; the ongoing coordination activities occurring with Mr. Rowell on the current project and on the methodology and terminology involved with the review of the Petition Area traffic. Mr. Tatsuguchi provided his understanding on the differences between the two job descriptions and discussion occurred over the relevance of Mr. Pierce's questions. Chair Chock requested that

Mr. Pierce move on with his remaining questions and directed that Mr. Tatsuguchi respond to questions regarding traffic impacts of the proposed project.

Mr. Tatsuguchi shared his perspective on transportation alternatives in the Petition Area and the traffic impacts between the original project and the current project. Discussion ensued regarding the representation of the transcript and Mr. Pierce rephrased his questions. Mr. Tatsuguchi continued to provide his understanding of the current proposed project and what information the TIAR included; what various calculations were missing; and why a frontage road was not feasible.

Mr. Pierce had no further questions.

Rebuttal

Mr. Souki requested clarification on whether the coordination for the proposed project was final and on how DOT reviewed information related to the Petition and made its recommendations. Mr. Tatsuguchi described how the proposed project was still being reviewed and what the DOT review process entailed.

Mr. Souki had no further questions.

Mr. Steiner requested clarification on LUC procedures. Chair Chock described the usual protocol involved with questioning witnesses.

Commissioner Questions

Commissioner McDonald requested clarification on what concerns the DOT had with the proposed project during coordination. Mr. Tatsuguchi stated that he did not recall exactly.

Commissioner McDonald referred his question to OP. Mr. Souki responded that OP's focus for the order to show cause hearing was whether there was a difference in what had been proposed in the 1995 decision and order and what the current proposal consisted of; and was not ready to respond to the question. Discussion ensued on how the frontage road requirement did not appear to make sense. Mr. Souki noted how changes of that magnitude usually required amending a Petition and how the determination of mitigation measures was an ongoing process. Mr. Tatsuguchi confirmed that he was involved in an ongoing process.

Commissioner McDonald had no further questions.

Commissioner Heller requested clarification on whether the widening of Pi'ilani Highway was part of the project mitigation plans; and whether an assessment had been made to determine mitigation options for the original proposed project versus the current proposed project. Mr. Tatsuguchi acknowledged that the long range plans for the area included the Pi'ilani highway widening project and was not

specific to the mitigation plans for the proposed project; and responded that he was not familiar with the past project and would need to continue the current assessment to determine measures for the current project.

Commissioner Heller requested clarification on the inception of the frontage road proposal. Mr. Tatsuguchi responded that he was not sure how it had become a recommendation.

Commissioner Heller had no further questions.

There were no further questions for Mr. Tatsuguchi.

2. Heidi Meeker- DOT Expert- Educational Facilities and Planning

Ms. Meeker was offered and admitted as an expert witness; and described how Project impact fees and her department were related; and how negotiations for the Honua`ula portion of the Petition Area had been conducted.

Questions for Ms. Meeker

Petitioners PP and HP

Mr. Steiner stated that Mr. Kam would handle this portion of the proceedings for the landowners.

Mr. Kam requested clarification on the DOE's authority to impose and collect impact fees or "fair share" contributions. Ms. Meeker described how the DOE had to obtained fees in the past and how more recent State Legislative action empowered the DOE to have the authority to negotiate fees on its own behalf with Petitioners and what components needed to be present in a Petition to cause DOE to have provisional conditions included in the decision and order to ensure fees were set aside for it.

Discussion occurred over provisions made for "fair share" contributions in the original proposed project and other projects of the time. Ms. Meeker shared her opinion of how the expected fees would be collected and described how the Honua`ula proposed project differed from other proposals; and what might have been involved in past and current situations to address DOE impact fee concerns. Further discussion ensued regarding relevancy of the direction of the questions. Chair Chock allowed Mr. Kam latitude to continue but noted that he should focus his questions.

Mr. Kam had no further questions.

County

Ms. Lovell stated that County had no questions.

Intervenors

Mr. Pierce had no questions.

Redirect

Mr. Souki requested clarification on whether there had been any reference to residential units in the original proposed project. Ms. Meeker provided her opinion of what DOE's likely assumption might have been and how it would have assessed the situation.

Mr. Souki had no further questions or comments.

The Commissioners had no questions.

The Commission went into recess at 10:20 a.m. and reconvened at 10:40 a.m.

Petitioner's Witness

1. Phillip Rowell- Expert Traffic Engineering and Transportation

Mr. Rowell was offered and admitted as an expert witness. There were no objections.

Mr. Rowell clarified his written testimony on the frontage road and on planned traffic improvements using displayed maps (previously submitted Petitioner exhibits 28 and 29 which had been enlarged) that would be installed for the current proposed project.

Discussion occurred over Mr. Rowell's commenting on Intervenor's 'witness, Victoria Huffman's testimony during his current appearance to expedite the proceedings and avoid additional expenses during the rebuttal portion of the proceedings. Chair Chock requested an "offer of proof" on why it was relevant to address Ms. Huffman's testimony at this meeting. Mr. Steiner argued that Ms. Huffman's testimony was already in evidence and how the Intervenor could be allowed the same opportunity to comment on Mr. Rowell's testimony during their portion of the proceedings. Chair Chock determined that Mr. Rowell would be allowed to comment on Ms. Huffman's testimony.

Mr. Rowell described the differences in technical resources, methodologies and criteria used by Ms. Huffman in her report when compared to his; and how the respective collected data was analyzed and interpreted; and why he disagreed with various points that she had made.

Questions for Mr. Rowell

Petitioner HP and County had no questions.

OP

Mr. Souki requested clarification on why the 1994 TIAR could not be used for the current proposed project. Mr. Rowell replied that it was a different project with industrial use with no specification of how much industrial use would be occurring and that there had been many changes in the years since; it did not include the updated information on the proposed upcountry highway and the analysis techniques used had been refined over time.

Mr. Souki requested clarification on the reference to “lots” in his testimony and on whether mitigation included provisions for housing. Mr. Rowell recollected the number of “lots” that had been referred to and described the 2012 mitigation housing provisions for housing.

Mr. Souki had no further questions.

Intervenors

Mr. Pierce requested clarification on Mr. Rowell’s previous involvement with the landowners. Mr. Rowell described his prior engagement with the Ka’ono’ula Partners and the Honua’ula Partnership and what his services consisted of. Mr. Rowell also described his relationship and services for Eclipse Development in the Petition area and how he was attempting to resolve DOT issues in the near and distant future for the region.

Mr. Pierce had no further questions.

Redirect

Mr. Steiner requested clarification on whether Mr. Rowell was working with the DOT regarding the TIAR to address condition 5 of the decision and order. Mr. Rowell responded that he was and that this was the seventh version of the traffic report.

Commissioner Questions

Commissioner McDonald requested clarification on PP Exhibit 28 and the permitted access to Pi’ilani Highway. Mr. Rowell responded that the exhibit depicted proposed permitted access points and that no current permitted access point existed in the area; and provided the background reasoning for illustrating the proposed access.

Commissioner McDonald also requested clarification on the termination points of the acceleration and deceleration lanes in the exhibit. Mr. Rowell stated that he did not know why the lanes were depicted and referred the question to the civil engineer.

Commissioner Heller requested clarification on the differences in traffic mitigation requirements for the past and present proposed projects. Mr. Rowell opined what types of mitigations would be involved by examining the background conditions and comparing them to the separate types of projects with a commercial/light industrial use and with a retail use.

There were no further questions for Mr. Rowell.

2. Tom Holliday- Expert Market Studies

Mr. Steiner stated that Mr. Kam would be handling this portion of the proceedings. Mr. Holliday was offered as expert witness by Mr. Kam.

County and OP had no objections.

Mr. Pierce stated that he objected to portions of Mr. Holliday's testimony that appeared to be legal conclusions and non-relevant. Chair Chock noted the objection, and allowed, in consideration for cost/expense, Mr. Holliday to comment on the rebuttal portions of submitted testimony, and commented that he would afford the similar opportunity to Intervenors. Chair Chock also commented that the Commission would determine the relevancy of the portions of Mr. Holliday's testimony that were being challenged.

Mr. Kam requested confirmation that Mr. Holliday's written testimony had been admitted and accepted into evidence. Chair Chock confirmed that it was.

Mr. Holliday described his perception of how market conditions had affected the evolution of the original proposed project into the current proposed project and how it was still consistent with the original representations made about it; and why it had to adjust and adapt to meet market demands to be financially viable.

Mr. Holliday was also asked to comment on Intervenors Witness, Richard "Dick" Mayer's testimony to the Commission. Discussion ensued as Mr. Pierce continued his objection to comments being allowed on rebuttal witnesses during this portion of the proceedings. Chair Chock noted the objection and advised that due to time and cost considerations he would allow the questioning to continue.

Mr. Holliday elaborated on how he disagreed with portions of Mr. Mayer's testimony. Discussion occurred on relevance and Mr. Kam refocused his questions on how Home Depot-type businesses had altered traditional business practices and nomenclature. Mr. Holliday provided his perspective on market condition changes and how they related to the proposed project and zoning conformance.

The Commission went into recess at 12:18 p.m. and reconvened at 12:32 p.m.

Continued Testimony-Tom Holliday

Questions for Mr. Holliday

County had no questions.

OP

Mr. Souki requested clarification on why flexibility was important for master plans. Mr. Holliday described why master plans had to be generalized to compensate for changes in market and economic conditions. Mr. Souki also requested clarification on the various changes that had affected past and present market conditions and the proposed land uses for the Petition Area. Discussion occurred over concerns about ensuring that responses of the witnesses were captured for the record and on what was actually planned for the Petition Area.

Mr. Souki requested clarification on what impact a Home Depot-like operation would have on the current proposed project. Mr. Holliday described how similar, yet different, that type of operation would be, and how the original proposed project differed in scope from the current one.

Mr. Souki had no further questions.

Intervenors

Mr. Pierce requested clarification on Mr. Holliday's opinion on the viability of the original proposed project plans. Mr. Holliday expressed his concerns about light industrial use and described why the current proposed project made more economic sense. Discussion ensued regarding the questioner allowing the witness to complete his response to the question. Chair Chock requested that more decorum be practiced during the questioning.

Mr. Holliday continued his response and described how other industrial developments on Maui differed from the proposed project and how "highest and best use" goals for the Petition Area matched up to "best market opportunities".

Mr. Pierce requested clarification on how Mr. Holliday determined that the proposed project was a conforming use on the entitlement structure that was sought and approved. Mr. Holliday shared how he made his conclusions.

Mr. Pierce had no further questions.

Redirect

Mr. Kam requested clarification on whether the term "conforming use" implied compliance with County zoning. Mr. Holliday shared his understanding on how the M1 zoning allowed for various uses that derived from the original entitlements; and

described what he intended the term “conforming use” to mean in the context of his testimony.

Mr. Kam had nothing further to add.

Discussion occurred over how to best utilize the remaining time for the meeting. Mr. Steiner expressed his concerns over being able to present a cohesive presentation in the remaining allotted time. Ms. Lovell expressed a similar concern. Chair Chock determined that Mr. Steiner should proceed with his presentation to continue the flow of the proceedings; and that Petitioner’s witness Charles Jencks appear.

3. Charles Jencks- Landowners Representative

Mr. Jencks was offered as Petitioner’s representative and shared his work experience and familiarity with the Petition Area; and his recollection of meetings and discussions in regards to the Petition Area and its allowed use and what limits would be imposed upon it. Discussion occurred regarding the representations being made during the questioning. Mr. Steiner refocused his questions and commented that he was about to proceed to a new segment of his questioning.

Chair Chock acknowledged that it was an appropriate time to conclude the proceedings for the day and asked if there were any questions or comments the Parties had.

Mr. Steiner requested clarification on the scheduling and timing for the next meeting. Executive Officer Orodener announced how the Parties could expect the meetings to be scheduled.

There were no further questions.

Chair Chock adjourned the meeting at 1:25 p.m.