

LAND USE COMMISSION
MEETING MINUTES
November 29, 2018 - 9:30 a.m.
Malcolm Center
1305 North Holopono Street, Suite 5, Kihei, HI 96753
Located in the Maui Research & Technology Park

COMMISSIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Edmund Aczon
Nancy Cabral
Aaron Mahi
Arnold Wong
*Lee Ohigashi
*(till 12:15 p.m.)

COMMISSIONERS EXCUSED: Dawn Chang
(8 Seated Commissioners)

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

COURT REPORTER: Jean McManus

CALL TO RECONVENE

Chair Scheuer reconvened and called the meeting to order at 9:30 a.m.

Chair Scheuer stated that this was the November 29, 2018 portion of the scheduled LUC meeting and commented that the Commission would first be addressing the Adoption of the A05-755 Hale Mua Properties, LLC order.

ADOPTION OF ORDER

A05-755 HALE MUA PROPERTIES, LLC (Maui)

APPEARANCES

Randall Sakumoto, Esq., represented new owner Southwest 7 successor to Petitioner Hale Mua Properties (SW7)

Joseph Alueta, Deputy Director, County of Maui Planning Department (County)

Michael Hopper Esq., Deputy Corporation Counsel, represented County

Tara Furukawa, Planner, County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Lorene Maki, Planner, OP

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

PUBLIC TESTIMONY

None

Chair Scheuer declared a recess at 9:33 a.m. and reconvened the meeting at 9:34 a.m.

Commissioner Ohigashi moved to approve the form of the order. Commissioner Cabral seconded the motion. Mr. Sakumoto clarified for the record that Petitioner had not submitted a form of the order for review by the Commission. Chair Scheuer acknowledged Mr. Sakumoto's comment.

The Commission voted unanimously to adopt the form of the order (7-0-1 excused).

Chair Scheuer called for the next agenda item.

CONTINUED ACTION

A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (Maui)

- Consider Motion for Extension of Time to Complete Project
- Consider Motion for Modification of Original Decision and Order dated March 7, 2008

APPEARANCES

Jennifer Lim, Esq. represented Emmanuel Lutheran Church of Maui (ELC)

Michael Reiley, ELC

Peter Horovitz, Esq., represented Intervenor Waikapu Development Venture LLC (WDV)

Tara Furukawa, Planner, County of Maui Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Lorene Maki, OP

PUBLIC WITNESSES:

None

Chair Scheuer called for Petitioner ELC to make its presentation on Petitioner's Motion for Extension of Time to Complete Project

Ms. Lim offered Mr. Reiley as a witness.

Petitioner Witness

1. Dr. Michael Rieley

Dr. Rieley shared his personal background and work history with the Commission and described how ELC had gone through a series of changes and made organizational choices to adjust its long term goals to adapt to different circumstances since the initial decision and order was granted; and how the extension of time would be useful to his organization.

Ms. Lim stated that she had other witnesses for this motion and concluded her presentation.

Mr. Hopper stated that he had no questions for the witness and that the County did support the Motion.

Ms. Apuna stated that she had no questions for the witness, but that OP had concerns over the Kapa`akai analysis for the Petition Area.

Commissioner Okuda disclosed that his children had attended a Lutheran School in Kaneohe but felt that he could remain fair and impartial in the proceedings. There were no objections to Commissioner Okuda's continued participation in the proceedings.

Commissioner Aczon requested clarification on how ELC had used the Petition Area in the last 10 years. Mr. Reiley stated that ELC had used the Petition Area for services up till a couple of years ago for services, but due to the aging congregation and the difficulties encountered in using the area, that ELC had ceased holding services there.

Commissioner Ohigashi inquired why the ELC motions could not be consolidated and addressed. Chair Scheuer deferred to Mr. Orodener to respond to the question. Mr. Orodener described how LUC staff had attempted to format the multiple motions filed in the docket for the November 29, 2018 meeting in an efficient and

easily addressed format. Discussion ensued to determine how the motion to extend time meshed with the next ELC motion for modification. Commissioner Aczon opined on whether the first motion should be withdrawn. Ms. Lim described why she felt the first motion for extension was necessary and how she had framed and timed her filing sequence of motions.

Chair Scheuer suggested that the Commission move on and requested clarification on ELC fundraising plans from Dr. Reiley. Dr. Reiley responded that ELC could provide a memo of understanding on the matter.

There were no further questions for the witness.

Chair Scheuer entertained a motion on the Motion to Extend Time.

Commissioner Ohigashi moved to grant a time extension and qualified that it was for a 10 year extension. Commissioner Wong seconded the motion. Chair Scheuer called for discussion on the motion.

Commissioner Ohigashi shared his concern of how the 10 year span of time extension might need to be adjusted based on the considerations involved with the second ELC motion for modification. Commissioner Okuda stated that he was in favor of the motion and provided his reasons for supporting it. Commissioner Aczon expressed his reluctance to grant a 10 year extension without the benefit of understanding what the second ELC motion for modification involved.

Chair Scheuer sought Petitioner's perspective of the time element under discussion.

Ms. Lim responded that Petitioner was flexible on the time frame.

Commissioner Cabral added her concerns about allowing too open a time frame and shared her desire for a tighter time frame. Commissioners Ohigashi described how the motion for modification was weighing on his immediate decision.

Chair Scheuer sought Intervenor's perspective of the possible need to adjust the 10 year time element. Mr. Horovitz responded that Intervenor was open to adjustments if necessary. Commissioner Mahi stated that he was open to granting an immediate 5-year extension with the possibility of extending it another 5 years later. There were no further comments.

Chair Scheuer sought the pleasure of the Commission to grant the motion for an extension for a period of 10 years. The Commission voted as follows:

Yes- Commissioners Ohigashi, Wong, Aczon, Okuda, Mahi and Chair Scheuer.

Nay- Commissioner Cabral

The motion passed 6-1-1.

Chair Scheuer declared a recess at 1025 a.m. and reconvened the meeting at 10:37 a.m.

Chair Scheuer stated that he had been approached by a member of the public who wished to provide late public testimony, and asked if there was any objection by the Parties to the Commission hearing it after the window for public testimony had passed. There were no objections to the late public testimony.

LATE PUBLIC TESTIMONY

1. Tom Blackburn Rodriguez, Representative of Go Maui

Mr. Rodriguez provided his organization's non-profit mission and expressed his support for the WDV project.

The Parties had no questions. Commissioner Okuda requested additional information on the organizational and membership structure of Go Maui.

There were no further questions for Mr. Rodriguez.

Chair Scheuer formally closed public testimony and resumed proceedings and called for the ELC presentation on its Motion for Modification. Ms. Lim described how she intended to present her case and commented that due to the concerns about the cultural assessment and kapa`akai o ka aina issue, she would include Intervenor's witnesses to provide additional information to the Commission. Chair Scheuer acknowledged Ms. Lim's statements and asked if Intervenor concurred with the proposed presentation sequence. Mr. Horovitz agreed that the proposed arrangement was acceptable to him.

Chair Scheuer asked if the Parties and Commission were agreeable to the proposed presentation. County and OP had no objection. Commissioner Okuda requested clarification on whether reconsideration of a ka pa`akai analysis would be included in the decision-making process. Ms. Lim described how a previous unchallenged Conclusion of Law in the original Decision and Order relieved the Commission from considering an analysis. Discussion ensued on whether it was appropriate to consider the ka pa`akai analysis before hearing the motion. Commissioner Okuda opted to move on to hearing the ELC Motion for Modification.

Chair Scheuer called for Petitioner to make its presentation on the ELC Motion. Ms. Lim provided an overview of the ELC Motion and described how the initial proposed project had been reduced in scope; and why the Motion for Modification was being proposed to the Commission. Ms. Lim recalled her witness Dr. Reiley.

Petitioner Witness

1. Dr. Michael Reiley

Chair Scheuer reminded Dr. Reiley that he was still under oath. Dr. Reiley described the differences between the original proposed project and what was being currently being considered, what studies would be involved, what timetable and development phases would be followed and what type of funding would be relied upon.

Commissioners Wong, Aczon, Cabral, Ohigashi and Chair Scheuer requested clarification on various details of Dr. Reiley's testimony. Dr. Reiley stated that he was amenable to a 6 year time frame for the proposed project.

Under redirect, Dr. Reiley provided additional details of the timeline that ELC would follow to complete its proposed project and expressed his comfort level with the initial 10 year time span approved in the first motion for extension of time.

There were no further questions for Dr. Reiley.

2. Lee Shostrand

Mr. Shostrand provided his professional background as a construction estimator and described his role within the proposed ELC project and shared what he estimated construction costs would be,

There were no questions for Mr. Shostrand from Intervenor, County and OP. Commissioners Wong, Okuda, Aczon and Chair Scheuer requested clarification on various details on existing affordable housing agreements related to the proposed project, funding requirements, permitting requirements and approvals needed, the funding entity that was being relied upon, the considerations that were included in the estimating analysis, and the time span that the project might take.

Under redirect, Mr. Shostrand described his familiarity with the Petition Area in further detail and stated that there had been no requests for access to the Petition Area to his knowledge.

Chair Scheuer assessed the progress of the proceedings and declared a recess at 11:31 a.m. and reconvened the meeting at 11:40 a.m.

Chair Scheuer called on Intervenor to make its presentation.

Mr. Horovitz provided an Exhibit "A"-Errata handout to the Commission and called for his first witness.

Intervenor Witnesses

1. Lisa Rotunno-Hazuka, Archaeological Service Hawaii

Ms. Hazuka provided her professional background and described her awareness of the archaeological history of the Petition Area and summarized the historical archaeological/cultural practices findings in the area that she was aware of.

Petitioner and County had no questions for Ms. Hazuka. OP asked whether a Cultural Impact Analysis of the Petition Area had been done. Ms. Hazuka responded that no analysis had been specifically done on the Petition Area, and described findings that were discovered and reviewed on nearby neighboring properties.

Commissioners Okuda requested clarification on Ms. Hazuka's testimony. Ms. Hazuka confirmed that she had not seen a specific Cultural Impact Assessment (CIA) report on the Petition Area. Commissioner Mahi asked if Petitioner was considering having a CIA performed. Ms. Lim described how the original decision and order's conclusion of law seemed to address that concern. Discussion ensued on how a CIA might now be necessary since what was supposed to remain open space would now become a housing area. Mr. Horovitz described on how Intervenor's archaeological

monitoring would be ongoing and had seemed adequate; and why no new study might be necessary.

Commissioners Cabral and Okuda requested clarification from Ms. Lim on Petitioner's legal position and obligations on cultural practices/CIA matters. Ms. Lim reviewed the information offered in her presentation in further detail and described how newfound information or evidence might be handled by Petitioner.

Chair Scheuer requested clarification on the relationship between an Archeological Inventory Survey (AIS) and a CIA. Ms. Hazuka described how information was gathered while performing a survey that contributed to gaining further data related to cultural practices; and how important it was to preserve archaeological findings; and stated that she did not prepare CIAs but described her familiarity with them; and provided her awareness of burials in the area and possible reasons why they were in certain locations.

There were no further questions for Ms. Hazuka.

Mr. Horovitz called his next witness.

2. Leonard Kapulehua

Mr. Kapulehua described his background and shared his knowledge about Cultural Practices in the Petition Area and about CIAs he had performed in the surrounding area. Mr. Kapulehua shared why he felt the use of the Petition Area was appropriate for affordable housing and would not interfere with local cultural practices.

Commissioner Ohigashi stated that it appeared that this modification to the original motion might require a new CIA and excused himself from the proceedings with the approval of the Chair at 12:15 p.m. There were 6 remaining Commissioners in attendance.

Chair Scheuer declared a recess at 12:15 p.m. and reconvened the meeting at 1:13 p.m.

Chair Scheuer asked if there were any questions for the witness. Mr. Hopper stated that County had no questions. OP requested clarification on what Mr. Kapulehua's cultural practice focus was. Mr. Kapulehua responded that it was primarily in navigation and sailing related practices and described other associated traditional activities that he had participated in and testified about.

Commissioner Mahi and Chair Scheuer requested clarification on various facets of Mr. Kapulehua's testimony on his methodology for conducting his studies and on project work that he had performed. Mr. Kapulehua provided examples of how

findings were dealt with for different types of circumstances during the course of his work.

Mr. Horovitz had no redirect. There were no further questions for Mr. Kapulehua.

Chair Scheuer asked if Petitioner and Intervenor had any further comments. Ms. Lim stated that though Petitioner thought that the previous cultural work was sufficient, if a refreshed cultural assessment was required, Petitioner would comply. Mr. Horovitz stated that he echoed Ms. Lim's comments, and stated that Intervenor would do a refreshed CIA for the full 25 acres as well.

Chair Scheuer requested clarification on the extent of Petitioner and Intervenor's commitment to performing the CIA and honoring any findings. Commissioners Wong and Cabral expressed their appreciation that Petitioner and Intervenor agreed to conduct a CIA.

Mr. Hopper stated that County supported the Motion for Modification and described the considerations that County had made in deciding to support the motion; and deferred to the Commission in deciding on whether to grant a 6-year time frame.

Commissioner Okuda requested clarification on County's position on the 2007 Decision and Order, Findings of Fact #'s 75-80. Mr. Hopper described how County relied on State resources to make CIA related decisions, and how County would consider any new CIA information.

There were no further questions for County.

Chair Scheuer called OP's presentation.

OP

Ms. Apuna described OP's expectations that Petitioner comply with Condition 2 within a 6-year period and stated that OP would not object in Condition 20- LUC's approval for sale of the property; and would expect timely annual reports in the future. Ms. Apuna expressed OP's concern over a lack of a CIA for the specific Petition Area but stated that the offer of Intervenor and Petitioner to address that issue and protect any discovered resources properly addressed the problem; and that OP had no objection to the motion for modification.

Commissioner Okuda questioned the timeliness of the CIA oversight and efforts to correct it. Ms. Apuna described how a new CIA would correct and complete the prior record and set things straight.

CLOSING REMARKS

Ms. Lim acknowledged the Commission's earlier decision to extend the time allowed to Petitioner by 10years (subject to change) in the first motion and expressed her concern with OP's mention of a 6-year extension and described how it would

contradict the proposed development timetable for the project. Ms. Apuna clarified that the 6-year time frame was expected to apply to only Phase I & II of the proposed project. Ms. Lim acknowledged the clarification and had nothing further to add. Chair Scheuer sought the pleasure of the Commission.

Commissioner Wong moved to grant the motion and to amend Condition 2 to allow for 10 years to complete the project provided that the initial 2 phases will be completed within 6 years as represented, to delete Condition 20 and that Intervenor and Petitioner provide regular, timely annual reports including status of development and compliance with conditions of approval; and provided that, and conditioned upon, the Intervenor and Petitioner's completing a cultural impact assessment report prior to completing phase I and adhering to the recommendations of the CIA. Commissioner Mahi seconded the motion. Commissioner Wong shared his appreciation of the Petitioner and Intervenor for cooperating on doing a CIA, and for moving to complete Phase I within 6 years. Commissioner Okuda spoke in favor of the motion and shared his position of requiring a CIA.

Chair Scheuer had Mr. Orodener poll the Commission.

The remaining 6 Commissioners voted unanimously to grant the ELC Motion for Modification (6-0-2 excused).

Chair Scheuer stated that consideration of the ELC motions had concluded and moved on to the next agenda item.

ACTION

A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (WAIKAPU DEVELOPMENT VENTURE, LLC (WDV)) (Maui)

- Consider WDV Motion to Approve Sale of a Portion of the Petition Area
- Consider WDV Motion to Allow for Subdivision of Petition Area
- Consider WDV Motion for Modification to allow for use of portion of the Petition Area acquired for a work force housing project recently approved by the County of Maui
- Consider WDV Motion to Bifurcate

Chair Scheuer stated that the Commission would next address WDV's Motion to Approve Sale of a Portion of the Petition Area and called for Mr. Horovitz to make his presentation.

INTERVENOR

Mr. Horovitz described why the Motion to Approve the Sale of a Portion of the Petition Area was important to Intervenor. Ms. Lim commented that the Motion for Modification had eliminated Condition 20- the requirement for LUC approval to sell the property. Chair Scheuer declared a recess at 1:59 a.m. and reconvened the meeting at 2

p.m. Chair Scheuer stated that although the previous motion relieved the LUC's concerns, the County still required the LUC's approval for the Sale of a Portion of the Petition Area; and moved on with the proceedings.

COUNTY

Mr. Hopper stated that County supported the sale of the property and confirmed the County's need for approval of sale in this matter.

There were no questions for Mr. Hopper.

OP

Ms. Apuna stated that OP had no objections.

PETITIONER

Ms. Lim stated that Petitioner had no comments.

Chair Scheuer sought the pleasure of the Commission.

Commissioner Cabral moved to approve the sale of a portion of the Petition Area. Commissioner Aczon seconded the motion. There was no discussion.

Chair Scheuer had Mr. Orodenker poll the Commission.

The remaining 6 Commissioners voted unanimously to grant the sale of a portion of the Petition Area (6-0-2 excused).

Chair Scheuer stated that the Commission would next address WDV's Motion to Allow for Subdivision of Petition Area.

INTERVENOR

Mr. Horovitz described the reason why he had submitted the Motion for Subdivision of the Petition Area as a precautionary measure to address any County concerns.

OTHER PARTIES

Ms. Lim stated that ELC was in full support of the Motion.

County stated that it supported the motion.

OP had no objection to the motion.

COMMISSIONERS

Commissioner Mahi moved for approval of the Motion. Commissioner Wong seconded the Motion. There was no discussion. Chair Scheuer expressed why he felt hearing this motion was important for considering the final motion for bifurcation.

Chair Scheuer had Mr. Orodenker poll the Commission.

The remaining 6 Commissioners voted unanimously to allow subdivision of the Petition Area (6-0-2 excused).

Chair Scheuer stated that the Commission would next address the WDV Motion for Modification to allow for use of portion of the Petition Area acquired for a work force housing project recently approved by the County of Maui.

Mr. Horovitz stated that he had one witness, William Frampton.

INTERVENOR WITNESS

3. William Frampton

Mr. Frampton described his work background and provided details and features of the proposed workforce housing project that he recently had approved by the County of Maui using a handout of Exhibit B of the 201h application (Exhibit "E" from the Motion for Modification).

OTHER PARTIES

Ms. Lim requested clarification on the sales arrangement between Petition and Intervenor and how the respective projects would move forward.

Mr. Hopper requested clarification on the income ranges that the proposed project would target; and stated County's support for the Motion. Mr. Hopper had Mr. Hampton provide a summary of the exemptions that County would be granting and the development timeline that the proposed project was to follow.

Ms. Apuna had no questions.

COMMISSIONERS

Commissioner Cabral requested clarification on the housing unit capacities and design allowances.

There were no further questions.

Commissioner Mahi moved for approval of the WDV Motion for Modification to allow for use of portion of the Petition Area acquired for a work force housing project and that the 201h project would be developed within 4 years. Commissioner Aczon seconded the Motion. There was no discussion.

Chair Scheuer had Mr. Orodener poll the Commission.

The remaining 6 Commissioners voted unanimously in favor of the Motion (6-0-2 excused).

Chair Scheuer stated that the Commission would next address the WDV Motion to Bifurcate.

INTERVENOR

Mr. Horovitz described why the WDV Motion to Bifurcate was necessary and requested that WDV be provided its own docket and provided his reasoning for the separate docket request.

OTHER PARTIES

Ms. Lim stated that ELC supported the Motion.

County stated that it supported the motion to bifurcate.

OP stated that it supported the Motion and noted a typographical error on page 14 in reference to Intervenor's Amended Condition 10

COMMISSIONERS

Commissioner Aczon requested clarification on how the conditions would carry over after the bifurcation. Mr. Horovitz described how the general conditions would continue for both dockets and how the specific conditions for Petitioner and Intervenor would apply; and that no deletion of conditions were involved.

Commissioner Cabral moved to grant the WDV motion to bifurcate into two portions, an approximately 12.5 acres of which will be used for workforce development housing in compliance with the conditions of the 201h approval with the understanding that both bifurcated properties will be subject to the conditions imposed today with regards to the completion of the cultural impact assessment and be completed and adhered to prior to the commencement of construction on either property.

Commissioner Wong seconded the Motion.

Commissioner Okuda stated his reasons for voting in favor of the Motion. There was no further discussion.

Chair Scheuer had Mr. Orodener poll the Commission.

The remaining 6 Commissioners voted unanimously to allow bifurcation of the Petition Area with conditions (6-0-2 excused).

With no further business, Chair Scheuer adjourned the meeting at 2:43 p.m.