

LAND USE COMMISSION
MEETING MINUTES

December 5, 2019- 09:30 a.m.
Maui Arts & Cultural Center
One Cameron Way, Kahului, Maui, Hawai`i 96732-3157
Haynes Meeting Room

COMMISSIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Dawn Chang
Nancy Cabral
Edmund Aczon
Lee Ohigashi
Dan Giovanni

COMMISSIONERS EXCUSED: Arnold Wong
(8 Seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Linda Chow, Deputy Attorney General
Bert Saruwatari, Staff Planner
Rasmi Agrahari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

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

ACTION (Continued)

A04-751 Maui Land & Pineapple Company

Consider Petitioner Maui Oceanview LP's Motion to Amend Decision and Order dated June 30, 2006.

APPEARANCES

Gil Keith- Agaran, Esq., represented Maui Oceanview LP “MO”

Paul Cheng, “MO” representative

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)

Michele McClean, Director, County

Ann Cua, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Aaron Setogawa, Planner, OP

Chair Scheuer stated that Petitioner had not concluded its presentation and that the proposed settlement discussed towards the end of yesterday still needed to be discussed and that County and OP would be heard next.

Presentations

Petitioner

Mr. Keith-Agaran described how County and OP had a chance to review the settlement after the meeting recessed yesterday and could comment on their perception of the settlement. Chair Scheuer acknowledged Petitioner’s remarks and queried County and OP on their positions.

Mr. Hopper described how County was comfortable with the settlement and that it could be included in the stipulated proposed decision and order.

Ms. Apuna stated that there was an earlier meeting that OP had not attended that had occurred before the start of today’s hearing that may have generated additional points for OP to review, but the proposed stipulation that was to be finalized appeared acceptable.

County

Mr. Hopper stated that County agreed with Petitioner's filing about the Supplemental Environmental Impact Statement and the Good Cause issue, and the increase in additional affordable housing units, and remained in support of the proposed project.

Commissioner Questions for County

Commissioner Ohigashi requested clarification on how County would address the Supplemental EIS and Good Cause issue in the proposed stipulation. Discussion ensued regarding what the contents of the final proposed Decision and Order would include. Mr. Keith-Agaran noted that the copy of the Decision and Order being circulated addressed both issues. Mr. Hopper confirmed that he recalled seeing references to both issues.

OP

Ms. Apuna stated that OP was satisfied with the terms of the Settlement Agreement that Petitioner had agreed to incorporate into the Decision and Order Conditions as provided in Petitioner's draft or in the County's Affordable Housing Agreement; and that OP's position was to support the Motion to Amend with the conditions OP requested and asked that Condition 17 regarding hazards to aircraft operations be amended to include glint and glare analysis and mitigation by the Petitioner, if necessary, due to the terms and the Settlement Agreement that the Petitioner will provide solar, rooftop solar for the family units.

Commissioner Okuda asked if Ms. Apuna could suggest how the Commission might construct a Motion to better facilitate acting on the stipulated proposed decision and order before it was ultimately finalized. Ms. Apuna opined how the Commission might consider intaking the stipulated decision and order and exercising its authority on the final form of the decision and order.

Discussion on OP presentation

Mr. Hopper commented that comments from the Maui County Public Works had been included. Discussion ensued on whether the stipulated decision and order included all the late comments received by the Parties. Mr. Keith-Agaran confirmed that all the late comments had been included and addressed. Commissioner Ohigashi shared his concerns that all items be included and had no further comments.

Chair Scheuer verified that there were no objections to updating and including the County Public Works comments.

County was satisfied that its final concerns had been addressed.

Ms. Apuna had nothing further to add.

There were no further comments or questions.

Commissioner Ohigashi moved to grant the Motion to Amend subject to the approval by the Chairperson and authorizing the Chairperson to approve the conditions contained in the stipulated decision and order, and that staff will incorporate the conditions contained in the stipulated decision and order for the Commission's review and final approval.

Commissioner Aczon seconded the Motion.

Commissioners Ohigashi, Aczon, Cabral, Chang, Okuda Giovanni, and Chair Scheuer provided comments acknowledging the efforts of the Parties and for strenuously addressing the concerns that the Commission had voiced during the proceedings.

Chair Scheuer called for Mr. Orodener to poll the Commission.

The Commission unanimously voted in favor of the Motion. (7-0-1 excused- 8 seated Commissioners).

Mr. Keith-Agaran requested permission from the Chair to allow Mr. Paul Cheng to address the Commission. Chair Scheuer granted the request.

Mr. Cheng expressed his appreciation to the Commission.

Commissioner Giovanni requested and was granted permission to express his hopes that the project would succeed in providing the needed West Maui housing,

There were no other comments. Chair Scheuer declared a recess at 10:12 a.m. and reconvened the meeting at 10:24 a.m.

Status Report

A89-642 C. Brewer (Maui)

Chair Scheuer announced that the next agenda item was a status report meeting on Docket No. A89-642- C. Brewer (Maui) and had the Parties identify themselves.

APPEARANCES

Jason McFarlin, Esq. represented Wailuku Plantation LLC. ("WP")

Vernon Lindsey, WP representative

Randall Sakumoto, Esq. represented current owner RCFC ("RCFC")

Brian Ige, RCFC representative

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Michele McClean, Director, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Aaron Setogawa, Planner, OP

Chair Scheuer updated the record and described the procedures for the hearing. There were no questions.

There was no public testimony.

WP Presentation

Mr. McFarlin provided handouts of advisory notices sent to WP landowners and stated that the respective Docket No. A89-642 Petitioners would be presenting their status reports separately. Chair Scheuer confirmed that Mr. Sakumoto had agreed to make separate presentations and called for WP's presentation.

Mr. McFarlin described how WP intended to move forward with the plan that the original Petitioner, C. Brewer had presented to the Commission and responded to seven issues of concern that the Commission had voiced at the November 8, 2019 meeting.

Commissioners Okuda, Ohigashi, Chang, Aczon, Cabral, and Giovanni requested clarification on Mt. McFarlin's presentation regarding how the Decision and Order conditions were reflected in the deeds of WP property owners, how the bridge and project funding obligations were going to be addressed, what obligations the new purchasers had regarding the D&O conditions, what course of action WP would seek if bridge and project financing did not materialize, whether the new WP property owners were provided disclosures regarding the D&O conditions, what impact the future bifurcation plans would have on WP property owners, the affordable housing requirements for the proposed project,

Mr. Lindsey described the disclosure and sales transaction details involved with selling to new WP property owners and shared his perspective on how he would

proceed with his project if financing was or was not provided and what the proposed housing elements would include.

Mr. Sakumoto commented on the bifurcation efforts between the Petitioners and shared how the bifurcation would occur and address the D&O conditions.

There were no further questions for Mr. McFarlin.

Chair Scheuer called for Mr. Sakumoto's presentation.

RCFC

Mr. Sakumoto described how the RCFC portion was nearly built out as the Kehalani District and was working on the bifurcation details.

Commissioners Chang, Giovanni, Okuda, and Chair Scheuer requested clarification on what would happen if no bifurcation occurred, how the affordable housing requirement would be addressed, how infrastructure costs would be handled, how representations of condition fulfillment would be used, and how the RCFC group had initially acquired the property.

County Comments

Mr. Hopper expressed concerns about the individual WP lot owners and their ability to participate in fulfilling conditions.

Commissioners Giovanni, Ohigashi, Chang and Chair Scheuer requested clarification on how the Piihana lot sales would impact matters for the entire original Petition Area, whether building permits had been issued for the Piihana district, what enforcement measures the County could take, what action County might take if no bifurcation occurred and the Petitioners failed to fulfill conditions, what timelines might be involved and what rights the County might wish to preserve if a bifurcation occurred.

Mr. Hopper provided his perspective of how the County might react to a bifurcation proposal and shared how the current development had been overseen by the County. Mr. Hopper opined on various enforcement actions that were available to County and on how the bifurcation request would need to be reviewed to determine what needed to be addressed to protect County interests; and that a Declaratory Ruling

might be filed with the Commission to determine rights/responsibilities of the involved Parties.

There were no further questions for County.

OP Comments

Ms. Apuna had no comments

Chair Scheuer questioned whether Mr. McFarlin had filed a Motion for Bifurcation.

Mr. McFarlin described how he had faxed the Motion to the Commission late the day before the meeting and noted that he failed to provide copies of the bifurcation motion to the Commission.

Final Questions.

Commissioner Chang, Giovanni, and Okuda requested clarification on what Petitioners would do if the bifurcation effort failed, what the development timeline would be and when various elements could be completed, and what the future bifurcation motion might require of the Parties.

Chair Scheuer summarized how the presentation provided by WP failed to provide substantive information to the Commission and noted the considerations that WP should make when appearing before the Commission.

Commissioner Ohigashi commented that the Motion to Bifurcate should include a timeline as requested by the Commission. Chair Scheuer acknowledged this request and included it with the other requirements for WP's Motion to Bifurcate

Discussion ensued on what WP was being asked to do. Mr. Lindsey and Mr. McFarlin disagreed on being prepared to move forward with a Motion to Bifurcate being filed in January 2020. Mr. Lindsey stated that January was not realistic based on the information he received at today's hearing.

Commissioners Giovanni and Okuda suggested how inclusive discussions between the Petitioners and the associated supporting agencies involved could provide

better annual report information and substitute for future status reports to address concerns expressed to Petitioner at this meeting.

Chair Scheuer acknowledged the comments, concluded proceedings for the status report, and declared a recess at 11:45 a.m. and reconvened the meeting at 11:50 a.m.

Chair Scheuer called for Agenda Item IX- Election of a Second Vice Chair.

Commissioner Chang nominated Commissioner Aczon. Commissioner Ohigashi seconded the motion. There was no discussion. By unanimous voice vote (7-0-1 excused), the Commission voted in favor of the motion.

Chair Scheuer commented that the upcoming December 17-18, 2019 meetings would require the Commission to provide meals as an integral part of the meeting due to time constraints and remote locales of the meeting to complete business in the allotted time. Mr. Orodener acknowledged the comment and confirmed that preparations to provide for “working lunches” would be taken.

There being no further business, Chair Scheuer adjourned the meeting at 11:53 a.m.
