

LAND USE COMMISSION
MEETING MINUTES

February 21, 2013 – 9:30 a.m.
Marriott Courtyard Hotel, Haleakala Room
Kahului, Maui, Hawai'i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Ronald Heller
Ernest Matsumura
Sheldon Biga

COMMISSIONERS EXCUSED: Napua Makua
Nicholas Teves, Jr.
Thomas Contrades

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 9:33 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the February 7-8, 2013 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- March 7, 2013 is reserved for A12-796 if necessary on Maui and a site visit and meeting for DR12-49 Kunia Loa Ridge Farmlands is planned for March 8, 2013.
- March 21-22, 2013 is reserved for A12-796 if necessary and any other Maui matters that may come before the Commission.
- Docket A10-787 Maui R&T Partners LLC- Acceptance of EIS is expected to begin on April 4-5, 2013 on Maui.
- April 18-19, 2013 will include DR08-36 Ko Olina Development Boat Launch Status Report.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

ACTION

A12-796 WAIKO INDUSTRIAL INVESTMENT (MAUI)

Chair Chock thanked the LUC staff for their efforts in preparing for the meeting and announced that this was a hearing and action meeting regarding Docket No. A12-796 Waikō Industrial Investment, LLC (Maui) to Amend the Land Use District Boundary of Certain Lands Situated at Waikapu, Wailuku, Island of Maui, State of Hawai'i, Consisting of approximately 31.222 Acres, from the Agricultural District to the Urban District, Tax Map Key No. (2) 3-8-007:102."

APPEARANCES

Gregory Garneau, Esq., represented Waiko Industrial Investment

Charles Jencks, Waiko Industrial Investment Landowners Representative

James Giroux, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)

Paul Fasi, County

Brian Yee, Esq. represented State Office of Planning (OP)

Rodney Funakoshi (OP)

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

Commissioner Heller disclosed that his law practice represented taxpayers involved in cases where the adverse party was the County of Maui and that he was offering this information to allow any of the Parties to express their concerns or objections with his continued participation in the proceedings. There were no objections or concerns raised against Commissioner Heller's disclosure.

Chair Chock called for public witnesses.

PUBLIC WITNESSES

1. Roderick Fong – Fong Construction Co.

Mr. Fong described his role in the proposed project's past and current activities and explained how the proposed plan evolved during his company's association with the Petitioner.

Mr. Yee requested clarification on Mr. Fong's role in the ownership and representation for the proposed project. Mr. Fong stated that he was a minority stakeholder and defined what type of assistance to the proceedings he was prepared to provide if needed.

There were no further questions for Mr. Fong

2. Perry Artates

Mr. Artates described why he was appearing before the Commission and stated his support for the proposed project

Commissioner Biga requested clarification on whether an agreement existed for using local contractors to move the project forward and expressed his concern that non-local workers would get the jobs instead. Mr. Artates replied that there was no agreement and shared his perspective of how the signatory contractors would work with the developers on the proposed project to ensure that local workers would be used.

There were no further questions for Mr. Artates.

3. Randy Piltz

Mr. Piltz described his personal knowledge of the proposed project and how he perceived the local community would benefit from it.

There were no questions for Mr. Piltz

There were no other public witnesses.

Chair Chock called LUC Staff Planner Bert Saruwatari to provide a map orientation of the Petition Area. Mr. Saruwatari described the features and location of the Petition Area using a large wall-mounted map; and identified previous dockets that were in close proximity. There were no questions for Mr. Saruwatari.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Garneau offered Petitioner's Exhibits 1-7, and 9-57; and stated that Exhibits 30, 50 and 51 would be excluded. There were no objections to Petitioner's Exhibits and Chair Chock announced that Petitioner's Exhibits would be admitted as stated.

County

Mr. Giroux offered County Exhibits 1-4. There were no objections to County's Exhibits and Chair Chock acknowledged their admittance.

OP

Mr. Yee offered OP Exhibits 1-10. There were no objections to OP's Exhibits and Chair Chock admitted the exhibits.

The Parties acknowledged that they were ready to proceed. Mr. Garneau requested permission for the parties to discuss stipulating to the qualifications of the expert witnesses in various subject areas and to allow for the release of witnesses whose oral testimony was not necessary for the proceedings. There were no objections to the proposed stipulations on the expert witness qualifications and to allowing for witnesses to be released. Further discussion ensued to identify which witnesses had to participate in the hearing and who would testify.

Petitioner's Witnesses

1. Charles Jencks- Owners Representative

Mr. Jencks used Petitioner's Exhibit 55 to describe the history and background of the proposed project and the various components planned for the Petition Area.

Mr. Garneau requested clarification on the water agreement made with the County (Exhibit 57). Mr. Jencks described how the terms of the agreement had been drafted and what the details of the agreement were.

Mr. Giroux requested clarification on the plans for easements in the Petition Area. Mr. Jencks referred to Petitioner's Exhibit 53 and described what

the current and future planned easement plans were and stated how the access to the Waikapu landfill would be maintained during the Petition Area development process.

Mr. Yee asked if OP's proposed conditions had been reviewed and were acceptable to the developer; and if the suggested mitigations would be implemented. Mr. Jencks acknowledged that the OP conditions were acceptable and that steps would be taken to mitigate the OP and consultant concerns that had been raised during discussions regarding the proposed project; and described what the B1, B2, and B3 zoning for the Petition Area allowed for; how it would be impacted by the subdivision process, and what the status was for the Noriega cattle feed lot.

There was no redirect.

Commissioner Heller requested clarification on how the 8.5 acre portion of the Petition of the Petition Area would be used. Mr. Jencks described the various features planned for that component; and clarified how the ownership of the Petition Area was structured and how zoning the Petition Area would assist County plans for the community.

Commissioner Inouye requested clarification on what the differences would be within the Petition Area if there were "nominally more" units. Mr. Jencks responded that the impact level was not expected to be significant.

Executive Officer Orodener excused himself at 10:18 a.m. and returned at 10:21 a.m.

Commissioner Biga requested clarification on the expected timetable for the proposed project. Mr. Jencks described the various considerations that needed to be made and what factors needed to occur to hypothetically complete the project within a year.

Commissioner McDonald requested clarification on the plans for water allocation and sustaining its supply. Mr. Jencks replied that sufficient water for the proposed project existed and described how it would be allocated and managed.

Chair Chock requested further details on the well water supply and its allocation; and whether there were any other equity owners in Waiko Industrial Investment other than Goodfellow Brothers; and what the market absorption rate for the lots would be. Mr. Jencks provided his understanding of what the Petition Area water resources were and described how it would be supplied; and stated that Goodfellow Brothers and Roderick Fong were the only equity owners. Mr. Jencks also shared his estimate for the number of units that would be

absorbed annually in the marketplace and who the fee simple purchasers might be.

Commissioner Matsumura requested clarification on the anticipated fees for the industrial property lots and what would be included in the purchase price. Mr. Jencks described the planned improvements that would be made to the Petition Area and what he estimated the market price range would be and stated that it was too early to determine the estimated CAP lease rates.

There were no further questions for Mr. Jencks.

Chair Chock inquired about the number of Petitioner witnesses that remained. Discussion ensued and Mr. Garneau requested a recess to decide which witnesses could be released. Chair Chock acknowledged his request and declared a recess.

The Commission went into recess at 10:23 a.m. and reconvened at 10:43 a.m.

Mr. Garneau stated that during the recess, the Parties agreed that Petitioner Witness Stacy Otomo's written testimony would be sufficient and that he could be excused. Chair Chock acknowledged Mr. Garneau's remark and allowed Petitioner to continue its expert witness presentations.

2. Vince Bagoyo

Mr. Bagoyo described his role in the proposed project and provided specific details regarding the various sizes of the lots in the Petition Area and their past and proposed future land uses; the environmental assessment work that had been done and what findings were discovered when it was conducted; and what agency accepted it.

County had no questions.

Mr. Yee requested clarification on the lot size minimums and what factors were used to determine their uses and lot sizes, and how the Petition Area leach field specifications had been determined; and how consistent it was with other neighboring projects. Mr. Bagoyo shared his understanding on these matters and the various considerations that been made during his assessment for setbacks in the Petition Area; and what the impact would be to the Noriega ranch.

Mr. Garneau requested further clarification on how the setbacks were determined and on the considerations made for the nearby highway and how more setback determinations would occur after the County subdivision process.

There were no further questions for Mr. Bagoyo.

3. Glenn Kuniyama

Mr. Kuniyama described how the market study for the proposed project was developed and what considerations and assumptions had been made in its formulation. Mr. Kuniyama also described the short and long term economic benefits of the proposed project and how its advantageous location contributed to its value.

County had no questions.

Mr. Yee requested clarification on the marketplace analysis for the proposed project and what competitive advantages the proposed project held over competing light industrial projects and other uses and zoning. Mr. Kuniyama described how he envisioned the marketplace would respond to the proposed project.

There was no redirect.

Commissioner Matsumura requested clarification on the rental market value for industrial buildings. Mr. Kuniyama described market rates and how he determined the demand for the proposed project's lots and the financial benefits that would make the proposed project lots an attractive purchase.

There were no further questions for Mr. Kuniyama.

4. Philip Rowell

Mr. Rowell stated that he had prepared the Traffic Impact Analysis Report (TIAR) for the Petition Area and described the considerations made to conduct it, what its findings were and what proposed mitigation measures had been made. Mr. Rowell also stated that DOT review/comments had been made in October, and that updated, revised report would be forthcoming to forecast future development.

County had no questions.

Mr. Yee requested clarification on what current mitigations had been recommended; and on how trip generation data was interpreted. Mr. Rowell described the mitigation efforts that he was aware of to attend to the suggested mitigations and how they would be implemented; and the various factors involved in making trip generation estimates; and the DOT timetable and other TIAR task deadlines that he was confronted with.

There was no redirect.

Commissioner McDonald requested clarification on how the nearby Waiale Project would affect the Petition Area. Mr. Rowell responded that this proposed project should be completed before the Waiale project and described the adjustments that he felt needed to be made to allow for the Waiale development.

Commissioner Inouye requested clarification on the methodology used to determine the traffic levels for the Petition Area. Mr. Rowell described how he had made his analysis and what factors he had considered in making his computations. Mr. Jencks provided details on the 8.5 acre component within the Petition Area and how it factored into the traffic analysis.

There were no further questions for Mr. Rowell.

5. Eric Frederickson

Mr. Frederickson explained the archaeological work that he performed for the proposed project and described how his studies were conducted, what findings were made and what proposed mitigation was involved.

County had no questions.

Mr. Yee requested clarification on what findings had been made in and around the Petition Area, what contingency plans were in place in the event of an archaeological finding, and what monitoring, reporting and mitigation efforts would be done in the Petition Area. Mr. Frederickson shared his understanding of what was required for these matters and provided the specifics of the monitoring plans that would be used during groundbreaking and in the event of any archaeological findings in the Petition Area. Discussion occurred on why reports were not submitted to the Maui County Cultural Resource Commission. Mr. Frederickson expressed that he did not feel it was necessary to submit a report that had no substantive findings.

There was no redirect.

There were no further questions for Mr. Frederickson.

The Commission went into recess at 11:45 a.m. and reconvened at 1:20 p.m.

Mr. Garneau stated that Petitioner had no further witnesses to question.

County

Mr. Giroux stated that County would stand on its position statement and would like to have Mr. Spence's and Mr. Ginoza's statements entered into the record. Mr. Giroux added that in the time since Mr. Spence had submitted his statement, the urban growth boundaries that were in draft stage at the time, had now been finalized and referred to Petitioner's Exhibit 56 to clarify the situation. There were no objections to Mr. Giroux's request.

OP

Mr. Yee stated that he needed to clarify the exhibits that he had offered for admittance to the record and described why only Exhibits 1-5 and 7-10 needed to be admitted and why Exhibit 6 needed to be excluded and that Rodney Funakoshi would be making OP's testimony. There were no objections to OP's correction to its exhibit submittals.

Mr. Funakoshi summarized OP's testimony and described why OP recommended granting the Petition subject to conditions. Mr. Funakoshi recapped the concerns that OP had and how the TIAR needed additional work and approvals; and what other concerns and conditions of approval needed to be considered by the Commission in weighing the decision to grant the Petition.

Mr. Garneau asked if Petitioner had agreed to OP's recommendations. Mr. Funakoshi responded that Petitioner had concurred with OP's recommendations.

Mr. Giroux had no questions.

There was no redirect.

Commissioner Heller requested clarification on the water conservation and water replacement measures that had been considered in drafting OP Condition 4. Mr. Funakoshi described the various factors that were studied and weighed in determining the specifics for addressing the water availability concerns for the Petition Area.

Commissioner Inouye requested clarification on the allowances for spacing between wells and the leach field. Mr. Funakoshi replied that there was adequate clearance.

Chair Chock requested clarification on the ability of the water resource wells to provide the necessary supply flow for the Petition Area. Mr. Funakoshi described the current pumping rate and sustainable yield for the local water well and why OP felt that these levels were acceptable.

Executive Officer Orodenker excused himself at 1:45 p.m. and returned at 1:48 p.m.

Mr. Yee stated that OP had no other witnesses. Chair Chock assessed the situation and determined that the Parties were ready for closing arguments.

CLOSING ARGUMENTS

Petitioner

Mr. Garneau thanked the LUC for its efforts and argued why the Petition should be granted since it was consistent with the Maui Island Plan, the Urban District Boundary and with County and State criteria regarding changing its land use designation and other reasons.

County

Mr. Giroux stated that County joined in Petitioner's comments and described how the proposed project would benefit the Maui community.

OP

Mr. Yee stated that OP supported the reclassification of the Petition Area and described how the proposed project was an "infill" development, consistent with the surrounding proposed projects and how the Waiale Petition factored into OP's decision-making and how many of the concerns that OP previously had about the region were alleviated during the investigation of the nearby Waiale matter.

There was no rebuttal or further discussion.

CLOSE OF EVIDENCE

Chair Chock directed that each party file its proposal with the Commission and serve copies on the other parties no later than the close of business on March 22, 2013; and that all responses or objections to the parties' respective proposals shall be filed with the Commission and served upon the other parties no later than the close of business on March 28, 2013. Any responses to the objections must be filed with the Commission and served on the other parties no later than the close of business on April 5, 2013 and the parties were urged to consult with staff early in the process to ensure that technical and non-substantive formatting protocols observed by the Commission were adhered to.

Chair Chock asked if there were any questions with respect to the post-hearing procedures. Mr. Yee requested that OP be waived of the requirement to submit its own D&O since there was a close agreement anticipated with the Petitioner; and that OP would file potential responses or objections on the stated schedule for them. Discussion ensued regarding the initial submittal date. The Parties agreed to move the date forward and to file by March 15, 2013. Mr. Giroux commented that County might join with Petitioner too and would follow the schedule for responses and objections if it did.

Chair Chock announced that deliberation and decision making for the docket would be on April 18, 2013.

There were no questions or comments regarding business on A12-796.

Chair Chock adjourned the meeting at 1:55 p.m.