

LAND USE COMMISSION
MEETING MINUTES

December 6, 2012 – 9:30 a.m.
Marriott Courtyard Hotel, Haleakalā Room
Kahului, Maui, Hawai'i, 96732

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

COMMISSIONERS EXCUSED: Ronald Heller
Napua Makua

STAFF PRESENT: Daniel Orodener, Executive Officer
Scott Derrickson Staff Planner
Sarah Hiramami, 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 9:42 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the November 15-16, 2012 minutes. There were none. Commissioner McDonald moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

TENTATIVE MEETING SCHEDULE

(Please refer to LUC Transcript for more details on these matters)
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Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule for the calendar year 2013 was distributed in the handout material for the Commissioners.
- The next LUC meeting is scheduled in Honolulu on January 10, 2013 to address A99-728 DHHL Adoption of Order and the Adoption of Order for A12-795 West Maui Land.
- The January 24-25, 2013 meeting will involve the start of hearings for docket A12-796 Waiko Industrial Investment LLC and the oral argument and decision making for A94-706 Ka'onoulu Ranch.
- The February 7-8, 2013 meeting will address the DR14-48 Grove Farms IAL Petition and a status report for DR08-36 Ko Olina Boat Ramp.
- Any questions or concerns- please contact LUC staff.

ACTION

DR12-47 KIHEI HIGH SCHOOL (Maui)

Chair Chock announced that this was an action meeting to consider Petition for a Declaratory Order to waive the requirement contained in HAR §15-15-5 (c) (19) that Petitioner submit a schedule and a map for development of the project in increments in order that Petitioner may request the Commission to redistrict the entire property as set forth in HAR §15-15-78(a)(1)

APPEARANCES

William Yuen, Esq., represented State of Hawaii Department of Education (Kihei High School)

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

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

Chair Chock updated the record and described the procedures for the day. There were no questions or comments. Mr. Yuen acknowledged that Petitioner was agreeable to the Commission's policy on reimbursements.

PUBLIC WITNESSES

NONE

PRESENTATIONS

There was no map orientation by LUC staff.

DISCLOSURE

Commissioner McDonald disclosed that his employer had contracts with the Department of Education, but none relating to this specific project, and stated that he felt that he could remain impartial in his decision-making in the proceedings despite his employer's business relationship with the State. The Parties had no objections to Commissioner McDonald's continued participation in the hearing.

EXHIBITS:

The Parties had no exhibits to present.

PETITIONER

Mr. Yuen argued the reasons why the Commission should grant the petition to waive the requirement contained in HAR §15-15-5 (c) (19) that Petitioner submit a schedule and a map for development of the project in increments in order that Petitioner may request the Commission to redistrict the entire property as set forth in HAR §15-15-78(a)(1).

There were no questions for Mr. Yuen.

COUNTY

Mr. Giroux stated that the County supported the petition and rested on its submittal.

OP

Mr. Yee stated that OP had no objection to the petition and described how alternate measures could be used by OP to monitor the progress of the development of the proposed high school when the docket A11-794 for the DOE and Kihei High School came before the Commission during the district boundary amendment process.

REBUTTAL

Mr. Yuen restated the reasons why he felt the Petition should be granted.

COMMISSIONER QUESTIONS

There were no Commissioner questions.

Commissioner Teves moved to grant the Petition to waive the requirement contained in HAR §15-15-5 (c) (19) that Petitioner submit a schedule and a map for development of the project in increments in order that Petitioner may request the Commission to redistrict the entire property as set forth in HAR §15-15-78(a)(1)

(Please refer to LUC Transcript for more details on these matters)

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Commissioner Contrades seconded the motion. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Teves, Contrades, Matsumura, Biga, McDonald, Inouye, and Chair Chock.

Nays: None

The motion passed 7-0 with 2 excused.

Chair Chock declared a recess in place at 9:53 a.m. and reconvened the meeting at 9:54 a.m. to address the next agenda item.

ACTION

A81-525 Y-O Limited Partnership (Hawai`i)

Chair Chock announced that this was an action meeting on **A81-525 Y-O Limited Partnership (Hawai`i)** to consider the Adoption of the Order for Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II.

APPEARANCES

Jennifer Benck, Esq., represented Kaloko Heights Associates, LLC

Stanford Carr, Kaloko Heights Associates, LLC

William Brillhante, Esq., represented Hawaii County Department of Planning ("County")

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

Chair Chock updated the record and described the procedures for the day. There were no questions or comments.

PUBLIC WITNESSES

None

COMMISSIONER ACTIONS

Chair Chock stated that the form of the order for this docket was being addressed and entertained a motion for its adoption.

Commissioner Teves moved to adopt the order for Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II. Commissioner Matsumura seconded the motion. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Teves, Matsumura, McDonald, Contrades, Biga, Inouye and Chair Chock.

Nays: None

The motion passed 7-0 with 2 excused.

Chair Chock declared a recess in place at 9:57 a.m. and reconvened the meeting at 9:59 a.m. to address the next agenda item.

ORAL ARGUMENT AND DECISION-MAKING

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

Chair Chock announced that this was oral argument and decision making on Docket No. A12-795 to consider the reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lāhainā, 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, Hawai'i, 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)

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

Michele Lincoln, Intervenor

Routh Bolomet, Intervenor

Chair Chock updated the record and explained the procedures to be followed for the proceedings. Ms. Lincoln stated that she did have an issue that she wanted to have addressed later. Chair Chock acknowledged her request and responded that he would address it later in the proceedings. There were no questions on the proposed procedures for the day and Chair Chock called for public witnesses.

PUBLIC WITNESSES:

None

Chair Chock recognized Ms. Lincoln and had her present the issue that she had mentioned earlier. Ms. Lincoln commented that during her review of the transcripts in preparing her findings of fact, she notice that a portion of her testimony was not included. Discussion ensued to clarify what part of the testimony was missing and how the issue of the missing portion of the transcript could be addressed and possibly corrected. Mr. Geiger suggested that Ms. Lincoln could present her recollection of the missing part of the transcript in the form of a motion to allow the Parties to review and consider the matter. Mr. Yee shared his understanding of what Ms. Lincoln wanted to accomplished and how he proposed to deal with the matter. Chair Chock stated that he would initially deny the motion as untimely and revisit considering the matter again after Ms. Lincoln had time to better prepare and submit her written motion for correction of the transcripts.

PRESENTATIONS

PETITIONER

Mr. Geiger requested 10 minutes for rebuttal and argued why the Petition should be granted and why Petitioner's final proposed draft of the Findings of Fact, Conclusions of Law and Decision and Order should be adopted.

COUNTY

Mr. Giroux stated the reasons why County supported Petitioners position and described the considerations and decisions involved in arriving at its position; and argued why Maui County Planning Department agreed that Petitioner's revised form of the Findings of Fact, Conclusions of Law and Decision and Order should be adopted.

OP

Mr. Yee stated that after a review of facts and evidence in this case, OP decided to support the Petition with conditions; and described OP's conditions for Petitioner's revised form of the Findings of Fact, Conclusions of Law and Decision and Order and why OP had suggested the changes that it had and how it had perceived various findings of fact that were contained or should have been included in the submitted documents; and how the Intervenors' positions had been analyzed.

INTERVENOR LINCOLN

Ms. Lincoln argued why the Petition should be denied and described various points that she had made during her case presentation before the Commission on the docket and restated why she felt they were relevant and substantial enough for the Commission to deny the Petition.

Chair Chock declared a recess at 11:00 a.m. and reconvened the meeting at 11:18 a.m.

INTERVENOR BOLOMET

Ms. Bolomet summarized various points that she had made during her case presentation before the Commission and argued why the Petition should be denied.

REBUTTAL

Mr. Geiger argued how Intervenors Bolomet and Lincoln had provided argument instead of facts during their presentations and restated the reasons why he felt that the Commission should grant the Petition. Mr. Geiger stated that OP's proposed findings of fact were acceptable and that Petitioner was willing to revise its Petition. Mr. Geiger also described how Petitioner's Conditions 10 and 11 were structured to address County's two concerns about the Petition and rested his case.

COMMISSIONER QUESTIONS

There were no questions for the Parties from the Commissioners.

DECISION MAKING

The Commissioners present and Chair Chock acknowledged that they were prepared to deliberate on the docket at hand.

Commissioner Biga requested a brief recess. Chair Chock granted the request and declared a recess at 11:50 a.m. and reconvened the meeting at 11:59 a.m.

Commissioner McDonald requested clarification on how the Commission could be assured that the representations made during the proceedings would be upheld by the County and OP. Mr. Yee and Mr. Giroux shared their understanding of the various measures that were in place within the proposed conditions of the decision and order, and the county's approval of the project as an affordable housing project, that would ensure that the representations for infrastructure and other imposed requirements would be met. Mr. Geiger described how the proposed project fit into the Maui Island Plan and how that additional overlay on Petitioner's plans would be an additional mechanism of enforcement.

There were no further questions.

Commissioner McDonald moved to grant the Petition. Commissioner Contrades seconded the motion.

Discussion

Commissioner Inouye offered a friendly editorial amendment to Condition 13 of Petitioner's revised document that would reflect the addition of "as reflected in these Findings of Fact, Conclusions of Law, and Decision and Order" to the first sentence.

Commissioners McDonald and Contrades accepted the friendly amendment to the motion.

Commissioner Inouye also thanked the Parties and commented on how difficult it was to make a decision in this matter and on why he supported the motion.

There was no further discussion.

The Commission voted as follows:

Ayes: Commissioners McDonald, Contrades, Inouye and Chair Chock.

Nays: Commissioners Matsumura, Biga and Teves.

The motion failed 4-3 with 2 excused.

There being no further business, Chair Chock thanked the Parties, and LUC staff and announced that January 24-25, 2013 meeting would be the next time that this docket would be tentatively addressed; and that a site visit for A12-796 was scheduled for 1:30 p.m. later in the day; and adjourned the meeting at 11:13 a.m.