

LAND USE COMMISSION
MEETING MINUTES
February 7, 2013, 9:00 a.m.
Marriott Courtyard Hotel, Haleakalā Room
Kahului, Maui, Hawai`i, 96732

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

COMMISSIONERS EXCUSED: None

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 9:32 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the January 24, 2013 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner McDonald seconded the motion. The minutes were unanimously approved by a voice vote (9-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The February 8th, 2013 portion of this LUC hearing will be on Kauai for DR12-48 Grove Farm Company, Incorporated.
- The A12-796 Waiko Industrial Investment hearings are planned to begin on February 21, 2013, and the A12-795 West Maui Land LLC's Motion for Reconsideration will be heard on February 22, 2013.
- The first LUC meeting in March will be on the 7th & 8th; with continued hearing on A12-796- Waiko Industrial Investment and adoption of order for A94-706 Ka`ono`ulu Ranch on the 7th, and DR12-49- Kunia Loa Farmlands- site visit and meeting on the 8th.
- The second meeting in March will be on the 21st and 22nd, possibly back to Maui for continued hearing on A12=796.
- Any questions or conflicts, please contact LUC staff.

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

ACTION

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

Chair Chock announced that this was Oral Argument on Phase 1 of the Order to Show Cause on Docket No. A94-706 - Petition of Ka`ono`ulu Ranch to Amend the Agricultural Land Use District Boundary into the Urban Land Use District (approximately 88 acres at Ka`ono`ulu, Makawao-Wailuku, Maui, Hawaii, TMK 2-2-02 port. 15 and 3-9-01:16)

APPEARANCES

Joel Kam, Esq., represented Honua`ula Partners ("HP")

Jonathan Steiner, Esq., represented Pi'ilani Promenade North LLC, and Pi'ilani Promenade South LLC, ("PP")

Jane Lovell, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Michael Hopper, Esq., Deputy Corporation Counsel, County

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

Jesse Souki, Director, OP

Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele ("Intervenors")

(Please refer to LUC Transcript for more details on this matter)

February 7, 2013 meeting minutes

Mark Hyde, South Maui Citizens for Responsible Growth
Irene Bowie, Maui Tomorrow Foundation

Chair Chock updated the record; and explained the procedures to be followed for the proceedings. There were no 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 then called for Public Witnesses.

Public Witnesses

1. Regina Duncan- Realtor
Ms. Duncan shared her personal perspective for supporting the proposed project. There were no questions for Ms. Duncan.
2. Joan Martin
Ms. Martin expressed her support for the proposed project. There were no questions for Ms. Martin.
3. Juno Comilang
Mr. Comilang voiced his support for the proposed project. There were no questions for Mr. Comilang.
4. Edgar Morton III
Mr. Morton shared his reasons for supporting the proposed project. There were no questions for Mr. Morton.
5. Thomas Cook
Mr. Cook described how he thought the proposed project conformed to County zoning; and would benefit the community. There were no questions for Mr. Cook.
6. Carol Eiserloh
Ms. Eiserloh expressed that she understood the need for jobs, but did not feel that the proposed project had enough community input, and had not done sufficient impact analysis regarding her concerns about water runoff, the poor economic climate for a large shopping area and other issues. There were no questions for Ms. Eiserloh.
7. Kekoa Duarte

- Mr. Duarte shared why he supported the proposed project. There were no questions for Mr. Duarte.
8. Sarah Raisbeck
Ms. Raisbeck described why she felt that the current project was not like the original project that was proposed for the Petition Area, and why a full review process was necessary because of all the changes to the original plans. There were no questions for Ms. Raisbeck.
 9. Leona Moore
Ms. Moore stated that she was a longtime Maui resident and expressed her displeasure with the changes being proposed to develop Maui. There were no questions for Ms. Moore.
 10. Mark Sheehan- Realtor
Mr. Sheehan described why he felt the proposed project needed further reviews. There were no questions for Mr. Sheehan.
 11. Kellie Pali Cruz
Ms. Cruz stated that she was a small business owner and nearby resident to the proposed project and described how she felt the proposed project would benefit the area. There were no questions for Ms. Cruz.
 12. Desiree Hill
Ms. Hill described why she supported the proposed project. There were no questions for Ms. Hill.
 13. Randy Piltz
Mr. Piltz shared his perspective of why he supported the proposed project and why the County's decision regarding the Petition should be upheld. There were no questions for Mr. Piltz.

There were no other Public Witnesses.

PRESENTATIONS-Oral Argument

PETITIONER PP

Mr. Steiner argued why Conditions 15 and 5 from the original 1994-1995 Commission D&O in this matter were not violated, why *res judicata* did not apply and how the permitted uses in the proposed development were consistent with the representations made for the plan originally proposed to the Commission; and why Petitioners Pi'ilani Promenade South LLC and Pi'ilani Promenade North LLC's final proposed draft of the Findings of Fact, Conclusions of Law and

Decision and Order should be adopted; and that the Commission should find there had been no violations and that the Order to Show Cause be vacated.

PETITIONER HP

Mr. Kam argued how Intervenors incorrectly interpreted the proposed use for housing within the Petition Area and why the Commission should consider Petitioner Honua`ula Partners joinder to Petitioners Pi`ilani Promenade South LLC and Pi`ilani Promenade North LLC's final proposed draft of the Findings of Fact, Conclusions of Law and Decision and Order and adopt it. Mr. Kam also expressed why the Petitioner should be found not to have violated the original Decision and Order, Condition 15, and any representations previously made and why the Order to Show Cause should be vacated.

The Commission went into recess at 10:35 a.m. and reconvened at 10:56 a.m.

COUNTY

Mr. Hopper argued how no violations of prior D&O conditions had been demonstrated and why County supported Petitioners position; why Condition 1 of the original D&O did not apply and what considerations and decisions were involved in arriving at its position; and why Maui County's Planning Department agreed that Petitioner's Findings of Fact, Conclusions of Law and Decision and Order should be adopted and that the Order to Show Cause be dissolved.

OP

Mr. Yee described how, after a review of facts and evidence in this case, OP concluded that Petitioner's representations were flawed and that conditions 15 and 5 of the original D&O had been violated; and argued why OP's proposed Findings of Fact, Conclusions of Law and Decision and Order should be adopted and how matters that were addressed in the D&O and the various findings and associated submitted exhibits had been analyzed and used for its drafting.

INTERVENOR

Mr. Pierce displayed prior exhibits (original and current proposed conceptual site plans) for the Petition Area and argued why the Petitioner's Findings of Fact, Conclusions of Law and Decision and Order should be denied and described various points that he had made during his case presentation before the Commission on the docket and restated why he felt they were relevant

and substantial enough for the Commission to accept Intervenor's Findings of Fact for Phase One and determine that violations of Conditions 5, 15 and 17 of the 1994-1995 D&O had occurred and that the Commission should proceed to Phase Two to determine if an Order to Show Cause should be issued.

REBUTTAL

Mr. Steiner deferred to Mr. Kam to provide rebuttal. Mr. Kam argued how Intervenor and OP had provided argument instead of facts during their presentations and restated the reasons why the Petitioners felt that the Commission should grant the Petition and why Intervenor and OP's proposed findings of fact were not acceptable. Mr. Kam restated that Petitioners hoped that the Commission would acknowledge their proposed Findings of Fact, Conclusions of Law and find that there were no violations of conditions and vacate the Order to Show Cause and rested Petitioners' case.

COMMISSIONER QUESTIONS

Commissioner Heller requested clarification from Petitioners regarding the street network included in the Petition Area and Findings of Fact 74 in the 1994 D&O. Mr. Steiner described the surrounding street infrastructure planned and deferred to Charles Jencks, representative for Petitioners, to describe plans for the street network in the Petition Area. Mr. Jencks described how Petitioners planned to install the internal streets on the Petition Area and what portion of the internal street network would be dedicated to the County.

Commissioner McDonald requested clarification on when the proposed project received preliminary and final subdivision approval. Mr. Jencks described the series of events since 2003 that concerned the development of the Petition Area and the obtaining of the necessary County approvals.

Commissioner Inouye requested clarification on the exhibits that were displayed for the Commission. Mr. Jencks described various details illustrated on the past and present conceptual plans for the Petition Area and what had been reported in recent annual reports to the Commission.

Chair Chock moved for an Executive Session. Commissioner Teves seconded the motion. By a unanimous voice vote (9-0), the Commission elected to enter into Executive Session.

The Commission exited for an Executive Session at 11:52 a.m. and reconvened at 12:01 p.m.

There were no further questions for the Parties from the Commissioners.

Chair Chock moved for an Executive Session at 11:52 a.m. Commissioner Teves seconded the motion. The Commission exited the meeting room to conduct the Executive Session and reconvened the meeting at 12:05 p.m.

DECISION MAKING

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

Commissioner McDonald stated that he believed violations had occurred to the original D&O and moved that the Commission find that the Petitioner violated Conditions 15 and 5 of the 1995 Decision and Order for A94-706 Ka`ono`ulu Ranch. Commissioner Teves seconded the motion to recognize that violations had occurred and offered a friendly amendment by adding that the Petitioner had also violated Condition 17 by not reporting anticipated changes to the proposed project in its annual report. Commissioner McDonald accepted the friendly amendment to his motion.

Discussion ensued. Commissioner Heller described how he perceived the Commission's need for accurate information to assess how a proposed project for a Petition Area would develop and impact the surrounding area; and how important its portrayal before the Commission was so that associated decisions could accurately support its decisions regarding the Petition. Commissioner Inouye described how difficult decision-making was and how he was aware of Petitioner's desire to move forward with the development of the Petition Area; and echoed Commissioner Heller's concerns regarding the Commission's need for more specific information on the proposed project and its possible impacts in order to make better decisions about it; and stated that he supported the motion.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners McDonald Teves, Inouye, Matsumura, Heller, and Makua.

Nays: Biga, Contrades, and Chair Chock

The Motion passed 6-3.

Chair Chock stated that agenda business for the day was concluded and adjourned the meeting at 12:15 p.m.