

LAND USE COMMISSION  
MEETING MINUTES

**February 22, 2013 – 8:00 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  
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 8:00 a.m. and stated that there were adjustments to the agenda that needed to be made and asked for a motion to delete the adoption of order portion of the agenda for Docket No. DR12-48. Commissioner Biga moved to amend the agenda schedule as stated. Commissioner McDonald seconded the motion. By a unanimous voice vote (6-0), the Commission elected to delete the Adoption of Order for DR12-48 from the agenda.

Chair Chock noted that the scheduled Executive Session on the agenda would be taken later in the agenda and that the A12-795 motions would be the next items addressed by the Commission.

## **HEARING AND ACTION**

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

Chair Chock announced that this was a hearing on Docket No. A12-795 to consider a Motion for Reconsideration regarding the denial of the reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lahaina, 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

Chair Chock also stated that after the Motion for Reconsideration was disposed of, the Commission would consider:

- Intervenor Bolomet's Motion that the LUC not take Petitions that Contain Allodial Titled Lands and
- Intervenor Bolomet's Motion seeking an Order Charging the Petitioner All Costs Associated with these Hearings.

Chair Chock announced that Intervenor Bolomet had notified the Commission that she had missed her flight and would be late; and that public testimony would be taken while the Commission awaited her arrival and the hearing the Motion for Reconsideration would commence when she appeared.

## **PUBLIC WITNESSES**

### 1. William Greenleaf

Mr. Greenleaf described why he supported keeping the Petition Area in the Agricultural Use designation.

Mr. Geiger requested clarification on Mr. Greenleaf's familiarity with the Petition. Mr. Greenleaf shared his awareness of the Petition and what material related to the Petition that he reviewed before giving his testimony.

There were no further questions for Mr. Greenleaf.

### 2. Vincent Mina

Mr. Mina described his role in representing farming community organizations and why retaining agriculture was important; and expressed why he appreciated the initial decision of the Commission to deny the Petition.

Intervenor Bolomet arrived at 8:15 a.m. and settled into her place at the Parties' table. Chair Chock acknowledged her arrival for the record; and resumed the Public Witness portion of the proceedings.

There were no questions for Mr. Mina.

3. Dick Mayer

Mr. Mayer shared his qualifications and experience in community planning work that he had been involved with over the years and stated that he was neither for or against the Motion for Reconsideration but wished to provide his perception of how the Maui Island Plan and the Maui community plans for West Maui were inter-related and what still required further review; and how certain representations made regarding the Petition Area were inaccurate.

Mr. Geiger requested clarification on Mr. Mayer's familiarity with the Maui County Council's decisions regarding the proposed development. Mr. Mayer provided his perception of how important urban growth boundaries, County Council approval of affordable housing projects and housing approvals within community public plans were and how carefully decisions regarding them needed to be made.

Mr. Yee requested clarification on Mr. Mayer's understanding of what the main urban growth boundary was intended to demarcate. Mr. Mayer described how growth boundaries directed how an area would develop.

There were no further questions for Mr. Mayer.

4. Marvin Tenada

Mr. Tenada shared his perception of what the purpose of affordable housing was; described the difficulties he had while attempting to acquire a home; and stated that he was in favor of proposed project.

Ms. Lincoln requested clarification on Mr. Tenada's awareness of the proposed project's price ranges and its housing opportunities. Mr. Tenada provided his perception of affordable housing and stated that he still supported affordable housing despite its price range since it would provide an opportunity that might not otherwise exist for those in his income range.

There were no further questions for Mr. Tenada.

5. Sherry Dodson- Habitat for Humanity Executive Director

Ms. Dodson requested the Commission to reconsider its decision and shared her experiences with assisting families with their housing needs through her organization's efforts; and described the benefits that the proposed project would provide to the marketplace and what the Petitioner was willing to do to participate in developing the Petition Area.

Ms. Bolomet requested clarification on the affordable housing needs and rental and ownership opportunities that Ms. Dodson described. Ms. Dodson described how families would benefit from the proposed project and what financial considerations families needed to make in attempting their home purchases.

There were no further questions for Ms. Dodson.

6. Lucienne De Naie

Ms. De Naie provided her historical perspective of the proposed project and other past LUC decisions on nearby Petition Areas and shared her experiences with dealing with various County planning projects and why she felt further reviews of them were necessary to ensure that the developers were accountable for their representations regarding their proposed developments.

Mr. Geiger requested clarification on what Ms. De Naie's understanding was of the Maui County Council's efforts to facilitate affordable housing. Ms. De Naie shared the reasons why she was skeptical of the proposed project due to the lack of development activity on previously approved Petitions.

Chair Chock exited the proceedings at 8:55 a.m. and Vice-Chair Heller presided in his absence.

Ms. Bolomet requested clarification on Ms. De Naie's written testimony. Discussion ensued to determine the validity of the testimony that had been offered and submitted to the Commission, and whether the subject matter being presented by Ms. De Naie was appropriate and within the scope of her testimony; and on what the contents of the record were. Acting Chair Heller determined that the contents of the record accurately reflected the proceedings and requested that Ms. Bolomet focus her questions on the information that Ms. De Naie had presented. Ms. Bolomet acknowledged the request and requested clarification on archaeological work that had previously been performed in the region. Ms. De Naie shared the information she had.

There were no further questions for Ms. De Naie.

7. Simon Russell

Mr. Russell described why he supported the denial decision for the Petition and requested that the Commission honor its initial decision.

Ms. Bolomet requested clarification on Mr. Russell's knowledge of farmers seeking available and affordable agricultural farmland to grow crops and build housing on. Mr. Russell described what his interest and ability to afford

farmland was and what he knew about his fellow farmers' efforts to attain cropland.

There were no further questions for Mr. Russell.

8. Johanna Kaumalu

Ms. Kaumalu shared her opinion on how Native Rights to land and its resources and claims to land title were addressed by Western law. Ms. Kaumalu also described her past experiences in processing mortgage loan applications and what it took to successfully qualify.

Ms. Bolomet asked if Ms. Kaumalu's family had interest in the lands. Ms. Kaumalu acknowledged that they recently learned that they did and described her desire to claim them.

9. Kaniloa Kaumalu

Mr. Kaumalu expressed his opposition to the Petition and his concerns about the impacts to the environment from the proposed Petition and his Native Hawaiian interests.

Ms. Bolomet asked if Mr. Kaumalu's family had interest in the lands. Mr. Kaumalu acknowledged that they did and stated that they were in a contested case hearing about them.

10. Bruce U`u

Mr. U`u described why he was a proponent of affordable housing and why he supported the proposed project.

Ms. Lincoln requested clarification on Mr. U`u's knowledge of what the affordable housing price range was. Mr. U`u described what he thought the affordable housing price range was.

Ms. Bolomet requested clarification on how Mr. U`u thought job creation would be a realized benefit from approving the proposed project. Mr. U`u described the benefits that he thought would occur as a result of building the proposed project.

There were no further questions for Mr. U`u.

(Chair Chock returned at 9:30 a.m. and resumed presiding over the meeting after Acting Chair made his disclosure before the Parties.)

11. Clare Apana

Ms. Apana shared what her personal interest in Petition Area was and described her continued concerns about the proposed project.

There were no questions for Ms. Apana.

Acting Chair Heller announced that the Public Witness Testimony portion of the proceedings were concluded and 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 resumed presiding over the meeting and declared a recess.

The Commission went into recess at 9:42 a.m. and reconvened at 9:57 a.m.

Discussion occurred over procedural matters and Chair Chock stated how the Commission would proceed; what the time limits were for arguments and that each Motion would be considered separately; starting with the Motion for Reconsideration.

#### APPEARANCES

James Geiger, Esq., represented West Maui Land Inc.

Heidi Bigelow, West Maui Land Inc.

James Giroux, Esq., Deputy Corporate Counsel, represented County of Maui Planning

Department (County)

William Spence, Director, County

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

Rodney Funakoshi, OP

Michele Lincoln, Intervenor

Routh Bolomet, Intervenor

#### Presentations

##### Petitioner

Mr. Geiger argued why the motion should be reconsidered and described fatal flaws that he thought had been made in the Commission's initial conclusions and decisions to deny the Petition; and why the Commission should grant the Petition after reviewing the findings, conclusions and new information that Petitioner had brought to its attention.

##### County

Mr. Giroux stated that County supported Petitioner and argued how new information to consider for the record, procedural issues, and other matters justified that the Commission grant the Motion for Reconsideration.

OP

Mr. Yee stated that OP supported the Motion for Reconsideration and argued why it should be granted and described the areas in the LUC's Proposed Findings of Fact, Conclusions of Law and Decision and Order that concerned him.

Intervenor Lincoln

Ms. Lincoln argued why the Petition Area should remain open space and in the agricultural district; and shared her perspective of what the defects in Petitioner's argument to grant the Motion for Reconsideration were and why it should be denied.

Intervenor Bolomet

Ms. Bolomet argued why the Petition and the subsequent testimonies for it were defective, how Petitioner's claims to ownership were false and why she disputed Petitioner's ownership and title to the Petition Area; and the LUC's jurisdiction to decide matters about the land.

Rebuttal

Mr. Geiger reiterated the reasons why the Commission should grant the Motion for Reconsideration and how statutes and rules established the criteria to make determinations about granting the changes in land use and how the attention to heeding the criteria was lacking in the LUC's proposed decision and order.

There were no questions from the Commissioners for the Parties.

DELIBERATION

Commissioner Biga stated his reasons for moving to reconsider the Petition and moved to grant the Motion for Reconsideration. Commissioner McDonald seconded the motion.

Discussion ensued and Commissioner Heller described his understanding of the issues at hand and commented on why he thought the Motion for Reconsideration due to new developments since the close of evidence in this docket was valid, and why he usually discouraged the use of Motions for Reconsiderations in general as a possible course of action after the LUC had made its decision. Commissioner Inouye expressed

his concern about affording Intervenor Bolomet an opportunity to respond to the flaws discussed regarding her exhibits.

There was no further discussion and the Commission voted as follows:

Ayes; Commissioners Biga, McDonald, Matsumura, Heller, Inouye and Chair Chock.

Nays: None

The Motion for Reconsideration passed 6-0 with 3 excused.

## INTERVENOR BOLOMET'S MOTION THAT THE LUC NOT TAKE PETITIONS THAT CONTAIN ALLODIAL TITLED LANDS

### PUBLIC WITNESSES

1. Kaniloa Kaumalu

Mr. Kaumalu provided his perspective of Ms. Bolomet's motion and why he felt it was justified.

There were no questions for Mr. Kaumalu.

There were no other Public Witnesses.

### PRESENTATIONS

#### Intervenor Bolomet

Ms. Bolomet argued why she felt that her motion should be granted and presented her evidence to support her allodial title claims to the lands within the Petition Area.

#### Petitioner

Mr. Geiger argued why the motion should be denied and cited the legal authorities that he thought supported his position.

#### County

Mr. Giroux stated that County concurred with Petitioner's argument and commented on how LUC decision-making could be impacted by it.

#### OP

Mr. Yee stated that OP opposed the motion and argued the reasons why it should not be granted.

#### Intervenor Lincoln

Ms. Lincoln commented on how she perceived Ms. Bolomet's motion and stated what she thought Ms. Bolomet's intention was for filing her motion.

## Rebuttal

Ms. Bolomet summarized her argument and described why the LUC should not consider allodial titled lands and how she thought cases involving allodial titled lands should be handled.

There were no further questions.

Chair Chock stated that the Chair had already rendered a decision on the LUC's jurisdiction and authority in matters regarding allodial title and ownership and denied the motion and moved on.

## INTERVENOR BOLOMET'S MOTION SEEKING AN ORDER CHARGING THE PETITIONER ALL COSTS ASSOCIATED WITH THESE HEARINGS PRESENTATIONS

### Intervenor Bolomet

Ms. Bolomet argued how she had been accused of overextending the hearing and why she felt that her motion was justified and should be granted.

### Petitioner

Mr. Geiger described how Petitioner had borne the costs for the proceedings and argued why the motion should be denied.

### County

Mr. Giroux stated that County had no comment.

### OP

Mr. Yee stated that OP opposed the motion and argued that there was no basis for it.

### Intervenor Lincoln

Ms. Lincoln commented on how she perceived Ms. Bolomet's motion and voiced her support and agreement with Ms. Bolomet's recollection of the events that caused her to file her motion.

## Rebuttal

Ms. Bolomet summarized her argument and described how fairness in the proceedings was lacking and why her motion should be granted.

There were no further questions.

Chair Chock stated that the Chair would dispense with the Motion and denied the Motion based on the lack of basis.

Discussion occurred to clarify the deadlines for the proceedings for the Motion for Reconsideration on Docket No. A12-795 based on its March 7, 2013 scheduled meeting date.

Discussion occurred regarding filing procedures for the March 7, 2013, and what type of presentations the Commission was looking for.

The Commission went into recess at 11:15 a.m. and reconvened at 11:17 a.m.

Chair Chock described his expectations of the Parties for the next A12-795 proceeding and stated that no new evidence would be taken except to clarify Intervenor Bolomet's witness Michael Lee's written testimony and the County's new evidence; and that closing arguments would be taken again.

Discussion occurred over details regarding what was expected of the Parties. Mr. Giroux requested clarification on how the proposed findings of fact, conclusions of law, and decision and order was planned to be handled.

### **EXECUTIVE SESSION**

Commissioner Inouye moved for an Executive Session. Chair Chock seconded the motion. By a unanimous vocal vote (6-0) the Commission elected to enter Executive Session at 11:20 a.m. and reconvened at 11:40 a.m.

Commissioner Matsumura exited the meeting at 11:38 a.m. and did not return.

Discussion occurred to further clarify the extent of the evidence that would be allowed at the March 7, 2013 hearing and what time elements would be involved for the presentations. Mr. Geiger commented on problems that he anticipated with having to cross-examine Mr. Lee and on the amount of time that would be required. Mr. Yee commented on how he thought the alleged defect in testimony could be resolved by restricting it solely to the new evidence that had been disclosed. Mr. Giroux stated that he did not need much time for his presentation. Ms. Lincoln requested clarification on the procedures and on how new evidence could be submitted. Ms. Lincoln requested clarification on what she needed to do to properly submit Mr. Lee's testimony. Mr. Geiger identified the portion of Mr. Lee's testimony that he needed to cross-examine regarding the cultural assessment that was mentioned. Ms. Bolomet argued why cultural practitioners did not need to be scrutinized. Mr. Giroux stated that he would like to offer Mr. Spence and Mr. Ginoza to answer any questions at the March 7, 2013 hearing.

Commissioner Inouye moved to allow limited evidence presentations in the morning portion of the proceedings. Commissioner Biga seconded the motion. Discussion ensued and Commission Heller suggested a friendly amendment to better define the time allotted for Petitioner's cross examination of Mr. Lee to 90 minutes and 15 minutes for each of the other Parties for their cross examination. Commissioners Inouye and Biga accepted the friendly amendment.

There was no further discussion and the Commission voted as follows:  
Ayes: Commissioners Inouye, Biga, McDonald, Heller, and Chair Chock.  
Nays: None  
The Motion passed 5-0 with 4 excused.

Discussion occurred on what the March 7 proceedings involved and on what legal authority allowed for the introduction of new evidence. March 21-22, 2013 was the tentative scheduled date for adoption.

Mr. Giroux inquired if there would be any restriction on the two County witnesses to introduce the new documents for evidence. Chair Chock stated his reluctance to opening up the evidence anything further. Discussion occurred regarding the lack of challenge to the authenticity of the documents that were going to be submitted and Mr. Giroux provided the reasoning for wanting to submit the new evidence to provide information not previously available. Mr. Geiger stated that document submittal without witness testimony was acceptable to him. Chair Chock inquired if County was agreeable to submitting the exhibits and making the argument on March 7. Mr. Giroux acknowledged that he was agreeable to that arrangement. Ms. Lincoln requested clarification on the Administrative Rule in regards to new evidence. Chair Chock responded that it was in HAR §15-15-63.

There being no other business, Chair Chock adjourned the meeting at 11:57 a.m.