

LAND USE COMMISSION
MEETING MINUTES

March 7, 2013 – 9:30 a.m.
Maui Arts & Cultural Center, Haynes Meeting Room,
One Cameron Way
Kahului, Maui, Hawai'i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Ronald Heller
Ernest Matsumura
Sheldon Biga (arrived at 10:42 a.m.)
Thomas Contrades

COMMISSIONERS EXCUSED: Napua Makua
Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodener, Executive Officer
Scott Derrickson, 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 9:30 a.m. (Six Commissioners in attendance).

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the February 21-22, 2013 minutes. There were none. Commissioner Inouye moved to approve the minutes. Commissioner Heller 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 21, 2013 is planned for further disposition of A12-795 West Maui Land.
- Docket A10-787 Maui R&T Partners LLC- Acceptance of EIS is expected to begin on April 4, 2013 on Maui and a site visit/meeting on DR12-49 Kunia Loa Ridge Farmland on April 5, 2013.
- April 18-19, 2013 will include Adoption of Order for A12-796 Waikō Industrial Investment, the DR08-36 Ko `Olina Development Boat Launch Status Report and the Adoption of the Revised Administrative Rules.
- May 2-3, 2013, Adoption of Order A12-796 Waikō Industrial Investment and possible start of proceedings for A94-706 Ka`ono`ulu Ranch.
- Any questions or conflicts, please contact LUC staff.

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

ACTION

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

Chair Chock announced that this was an action meeting on Docket No. A12-795 West Maui Land Company Inc. to reconsider and deliberate on 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, Hawaii , 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)

William Spence, Director, County

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

Rodney Funakoshi, OP

Michele Lincoln, Intervenor

Routh Bolomet, Intervenor

Chair Chock stated the procedures of the proceedings and noted that after completion of the public testimony portion of the proceedings, the Chair would consider Intervenor Bolomet's Motions and render decisions on them. After the decisions on the motions, Chair Chock noted that he would entertain Commissioner Inouye's motion from the February 22, 2013 meeting to allow limited evidence presentations in the morning portion of the proceedings regarding Mr. Lee's amended testimony and the County of Maui's exhibits 14 and 15, and then the Petitioner would present its argument regarding its Petition.

Discussion occurred to clarify details of the procedures for the Parties. After the discussion, Chair Chock called for Public Witnesses and advised them that the Commission was observing a time limit on public testimony to allow for deliberation on the docket.

PUBLIC WITNESSES

1. Victoria Cheromcka

Ms. Cheromcka submitted written testimony and described her community service work and her experiences as a Realtor assisting home buyers in the local real estate marketplace; and why she supported the proposed project.

There were no questions for Ms. Cheromcka.

2. Robin Knox

Ms. Knox submitted written testimony (2012 State of Hawaii Department of Health Water Quality Monitoring and Assessment Report) and described her concerns about environmental threats to the Petition Area and its natural surroundings and disputed the Petitioner's assessments, findings and reports about the proposed project.

Ms. Bolomet requested clarification on the details of Ms. Knox's testimony. Ms. Knox interpreted the coding for the stream water test results contained in her submitted report and described how additional studies needed to be conducted to ensure that the ecosystem would not be impacted by the proposed development and other existing environmental threats that she was aware of.

There were no further questions for Ms. Knox.

3. Ciara Quam

Ms. Quam described her concerns about the lack of affordable housing on the island of Maui; and stated her support for the proposed project.

There were no questions for Ms. Quam.

4. Patricia Nishiyama

Ms. Nishiyama stated that she represented an organization called Na Kūpuna O Maui and expressed why her group supported the proposed project.

There were no questions for Ms. Nishiyama.

5. Bruce U`u

Mr. U`u stated that he supported the proposed project and described why its location appealed to him and how affordable housing would benefit the community.

There were no questions for Mr. U`u.

6. David Goode

Mr. Goode submitted written testimony and stated that he was the Director of the County of Maui's Department of Public Works; and described how the County had made efforts to comply with the water quality and management practice requirements imposed upon it; and what the current status of water quality and storm water retention controls in and around the Petition was.

Mr. Giroux requested clarification on how the County would ensure water quality and water resources were monitored and maintained. Mr. Goode provided his understanding of what type of standards were used by his department to administer and manage the quality of the area water resources.

Mr. Yee requested clarification of the requirements used to determine whether low impact development rules were being followed. Mr. Goode described how he perceived the County monitored projects to ensure that low impact development rules were adhered to.

Ms. Bolomet inquired if comments had been received on the regulations for the leeward side of the island of Maui regarding storm impacts. Discussion occurred regarding the specifics of what Ms. Bolomet's questions were about. Mr. Yee provided his understanding of what Ms. Bolomet was asking and Ms. Bolomet provided additional clarification that she was referring to the Kahoma Stream and retention basin in the Petition Area and possible associated pollutant discharge. Mr. Goode provided his understanding of what reports had been submitted for the area; and what current practices and facilities were in place to control and inspect for pollutant discharge.

7. Kyle Ginoza

Mr. Ginoza stated that he was the Director of Environmental Management for the County of Maui and described his department's resources for addressing and handling wastewater, sewage and stormwater concerns; and how Department of Health and Environmental Protection Agency operating permits were used for this work.

Mr. Giroux requested clarification of how building permits were handled if sufficient capacity was not available at the time when requested. Mr. Ginoza described how expansions in capacity were handled to accommodate the increased demand created by a proposed project.

Ms. Bolomet requested clarification on what the current reliable average dry weather capacity was; and where the "9 mgd" rating came from. Mr. Ginoza replied that he did not know what the dry weather capacity was and described how he obtained the "9 mgd" reference from the State Department of Health. Discussion occurred over where the "4.5" figure used in other references came from. Chair Chock determined that Ms. Bolomet's questions needed to focus on the contents of Mr. Ginoza's testimony.

There were no further questions for Mr. Ginoza.

8. Clare Apana

Ms. Apana shared her concerns about the Cultural Impact Assessments performed by the Petitioner and provided information and her knowledge of Mr. Lee's familial ties to the Petition Area.

Ms. Bolomet requested clarification on Ms. Apana's knowledge of Mr. Lee's family history and connection to the Petition Area lands. Discussion occurred regarding Ms. Bolomet's reference to allodial titles extending beyond the scope of Ms. Apana's testimony and past Commission rulings on title. Chair Chock directed Ms. Bolomet to focus on Ms. Apana's testimony.

There were no further questions for Ms. Apana.

9. Sherri Dodson- Executive Director- Maui Habitat for Humanity

Ms. Dodson stated her reason for testifying again and shared her perspective of why the proposed project was worth approving.

Ms. Bolomet requested clarification on how homeless people could afford to purchase an "affordable home". Ms. Dodson described the various factors involved that had affected the financial ability of people to purchase property that she was aware of.

There were no further questions for Ms. Dodson.

10. Janet Six

Ms. Six stated that she was an archaeologist/anthropologist and provided her perception of various archaeological and geographical features within the Petition Area that she felt needed closer attention, and how Mr. Lee's perspective of the Petition Area's "karst system" was substantiated by her findings and research.

There were no questions for Ms. Six.

11. Zeke Kalua

Mr. Kalua stated that he was the Executive Assistant to County Mayor Alan Arakawa and expressed support for the proposed project.

There were no questions for Mr. Kalua.

There were no other Public Witnesses and Chair Chock concluded the Public Witness portion of the proceedings.

Chair Chock restated how the Commission would proceed; what the time limits

were for arguments and that each Motion would be considered separately; starting with Intervenor Bolomet's Motion to Enter into the record all of Intervenor Bolomet's Exhibits, Filings and Testimonies as well as Public Testifiers Clare Apana Exhibits & Testimonies submitted during the evidentiary hearings for A12-795 and then Intervenor Bolomet's Motion to Enter into the record Missing Documents left out of Petition and to put LUC on notice. Discussion occurred and Chair Chock confirmed that no more material needed to be submitted. Ms. Bolomet commented that she wanted to be sure that all of her material could be considered for the record and had submitted her motion to remind herself to ensure that it would be addressed.

INTERVENOR BOLOMET'S MOTION TO ENTER INTO THE RECORD ALL OF INTERVENOR BOLOMET'S EXHIBITS, FILINGS AND TESTIMONIES AS WELL AS PUBLIC TESTIFIERS CLARE APANA EXHIBITS & TESTIMONIES SUBMITTED DURING THE EVIDENTIARY HEARINGS FOR A12-795

Chair Chock noted that he had received and reviewed Intervenor Bolomet's motion and would be ruling on it. Chair Chock asked if the Parties had any comments.

Intervenor Bolomet

Ms. Bolomet argued why her motion had merit.

Petitioner

Mr. Geiger requested clarification on what had been admitted and what the details of Ms. Bolomet's motion were since he had not been served with it.

County

Mr. Giroux stated that County had no objection.

OP

Mr. Yee stated that OP objected to the motion.

Intervenor Lincoln

Ms. Lincoln had no comment.

There were no questions from the Commissioners.

Chair Chock stated that the Chair would dispense with the Motion and denied the Motion based on it being untimely. Ms. Bolomet requested clarification on what

exhibits she would be able to offer. Chair Chock replied that the allowable exhibits had been already discussed at the February 22, 2013 LUC meeting and that Mr. Lee's testimony would be heard at this meeting and moved on.

INTERVENOR BOLOMET'S MOTION TO ENTER INTO THE RECORD MISSING DOCUMENTS LEFT OUT OF PETITION AND TO PUT LUC ON NOTICE.

Chair Chock noted that he had received and reviewed Intervenor Bolomet's motion and would be ruling on it. Chair Chock asked if the Parties had any comments.

Intervenor Bolomet

Ms. Bolomet argued why her motion had merit.

Petitioner

Mr. Geiger argued that this was the fourth time that title issues had been introduced by Ms. Bolomet despite repeated rulings by the Commission against hearing them and that Exhibit 4 (that was attached to the motion) was incomplete and was part of a previously submitted exhibit and would be cumulative.

County

Mr. Giroux stated that County objected on the same basis as Petitioner.

OP

Mr. Yee argued that the motion was untimely and stated that OP objected.

Intervenor Lincoln

Ms. Lincoln had no comment.

Chair Chock stated that the Chair would dispense with the motion and denied it as being untimely.

RECONSIDERATION AND DELIBERATION ON A12-795

Chair Chock described how the Commission had unanimously voted on Commissioner Inouye's motion to hear from Intervenor Bolomet's witness, Michael Lee, at the February 22, 2013 meeting; and commented that the Commission would hear Mr. Lee's amended testimony filed August 1, 2012.

PRESENTATIONS

Intervenor Bolomet

Ms. Bolomet offered Mr. Lee and his written testimony. Discussion occurred to confirmed that testimony would be based on the amended testimony filed on August 1, 2012 with the LUC. Mr. Yee shared his understanding of the order and how the amended written testimony had been admitted into evidence and that there was no further direct of the evidence but the right of the Parties to cross-examine based solely on the new information provided so that the record would not be re-opened for any discussion. Chair Chock acknowledged Mr. Yee's assessment and asked Mr. Yee to restate his understanding for the benefit of the Parties. Mr. Yee described how the amended written testimony had been submitted into evidence; and how the Parties would cross-examine Mr. Lee's amended written testimony and what kind of questioning would be allowed. Mr. Geiger acknowledged that his understanding of the situation was the same as Mr. Yee's. Ms. Bolomet concurred. Mr. Giroux and Ms. Lincoln had no comment.

Intervenor Witness Michael Lee

Mr. Lee acknowledged that he had submitted his amended written testimony for the Commission and described his concerns regarding the impacts that the proposed project would have on his native Hawaiian cultural practice.

(Commissioner Biga arrived at 10:42 a.m.- 7 Commissioners present)

Petitioner

Mr. Geiger questioned Mr. Lee on his relationship to the Petition Area, his past activities on the Petition Area grounds and what his specific concerns were about cultural practice impacts that the proposed project would have. Mr. Lee described the archaeological finds and proposed impermeable surfaces that he was concerned about and how the lack of archaeological screening use and other factors may be attributed to the lack of bone fragment and burial findings and accounted for the loss of hydrologic percolation in the Petition Area.

The Commission went into recess at 10:48 a.m. and reconvened at 10:58 a.m.

Mr. Geiger requested clarification on Mr. Lee's cultural assessment that was submitted. Mr. Lee described what his intent was for submitting his assessment and what it was intended to report on.

County

Mr. Giroux requested clarification on how the Army Corps of Engineer flood control work and past sugar cane cultivation may have affected cultural practices and materials in the Petition Area. Mr. Lee described the agricultural history in the area and the water resources that had previously existed there; and how his cultural practice could endure as time went on. Mr. Lee also described how a *heiau* near the Petition Area could affect the proposed project and what his past experiences had been with that type of cultural site.

OP

Mr. Yee requested clarification on the two surface area archaeological features in the Petition Area -the *heiau* and libation stone. Mr. Lee acknowledged the two features and stated that although he suspected sub-surface features, he had not been able to locate them; and how sub-surface monitoring during groundbreakings and surface area preservation measures would be acceptable if the project were to move forward.

Intervenor Lincoln

Ms. Lincoln requested clarification on a pre-existing waterfall near the Petition Area and on the existence of “night marchers”. Mr. Lee provided his understanding of what water resources existed earlier in the region, and how cultural practices could occur without physical evidence and what his awareness of “night marchers” was. Discussion occurred over the relevance of Ms. Lincoln’s questions. Chair Chock noted that he would allow some latitude but urged Ms. Lincoln to be more directed in her questioning.

Mr. Lee described the “*kapu*” that he thought existed and how it would affect potential area residents and how the nearby offshore water area was connected to the Petition Area. Mr. Lee also provided his opinion on what the cultural consultants for the proposed project had contributed and what he knew about State Historic Preservation Division (SHPD) practices and how his family’s oral history confirmed that the Petition Area had significant historical and cultural value.

Redirect

Ms. Bolomet requested clarification on whether Mr. Lee reviewed the boundary notes for the Petition Area and what information they contained. Mr. Lee described what his findings were. Discussion occurred over the direction of the questioning and Mr. Yee stated his concerns about the subject matter that Ms. Bolomet was referring to.

Mr. Lee clarified what he believed he had testified about and Ms. Bolomet refocused her questioning.

Ms. Bolomet requested clarification on various aspects of Hawaiian cultural practices. Mr. Lee described how non-living objects could contain spirits and how other natural objects or living things could be involved in cultural practices; and how other cultural practitioners practiced and protected their art. Mr. Lee shared his credentials and corrected Keith Ahui's title in his testimony to "Chairperson of State Historic Preservation Office", and described what he knew about local cultural practitioners and SHPD requirements and administrative practices. Discussion occurred on the direction of the questioning and Mr. Geiger commented that the subject matter did not relate to the testimony provided. Chair Chock directed Ms. Bolomet to focus her questions on Mr. Lee's testimony.

Ms. Bolomet requested clarification on what Mr. Lee's final assessment was for the Petition Area. Mr. Lee provided his opinion of what types of uses for the Petition Area that he would find acceptable. Discussion occurred on what action Ms. Bolomet needed to take regarding her Exhibits 11 & 17. Chair Chock acknowledged that both exhibits were part of the record.

There were no further questions for Mr. Lee.

County of Maui's Exhibits 14 and 15,

Chair Chock asked if Mr. Giroux had exhibits to offer the Commission. Mr. Giroux offered County of Maui's exhibits 14 and 15.

Mr. Giroux argued that both exhibits would satisfy County's concerns about the record being complete since new laws and plans enacted since the final proceedings of A12-795 would be included if the exhibits were admitted. Discussion occurred on what Petitioner had included as exhibits with its Motion for Reconsideration. Mr. Geiger stated that Petitioner's Exhibits "42 & 43" were the same as County's exhibits and that Petitioner had no objection to County's submittals.

OP and Ms. Lincoln had no objections.

Ms. Bolomet argued that Ms. Knox's exhibit also had been distributed in the same time period as County's exhibits and that she wished to offer and have Ms. Knox's report admitted for the record. Chair Chock noted Ms. Bolomet's objection and admitted County's exhibits 14 and 15. Discussion occurred over Ms. Knox's exhibit and whether or not it had been submitted. Ms. Bolomet stated that Ms. Knox had submitted the report before providing her public testimony. Chair Chock asked if it was an official state document. Mr. Geiger stated that he had not seen the document. Further discussion ensued and copies of Ms. Knox's submitted report were circulated to the Parties for review. Ms. Bolomet noted that she had not seen County's exhibits as well.

Mr. Geiger stated that he believed the document was incomplete and needed time to review it and objected to allowing the exhibit to be admitted. Mr. Giroux joined Petitioner's objection. Mr. Yee and Ms. Lincoln had no objection. Chair Chock commented that he would admit the exhibit but noted that it was incomplete when submitted to the Commission.

Chair Chock stated that due to time constraints, the Commission would be concluding proceedings on A12-795 for the day.

Discussion occurred on what future proceedings on this docket would be. Chair Chock stated that scheduling for the closing oral arguments would be at the upcoming March 21, 2013 meeting with the same 15 minute time limits for the Parties. Ms. Bolomet requested clarification on what the closing arguments would be on. Chair Chock replied that the arguments on the "case in chief" would be addressed.

Commissioner Heller requested clarification on how the libation stone in the Petition Area had been handled and located. Mr. Lee described how the libation stone was located during a field visit to the Petition Area with Mr. Frampton earlier and how it may have been moved by prior activity and how it may have been used for cultural practices in the past; and how movement of the stone since its discovery would violate Mr. Lee's understanding of appropriate cultural practices. Discussion occurred on how the search for past railroad features had factored in the libation stone's current location and what precautions needed to be taken going forward.

There were no further questions or comments. Chair Chock noted that the evidentiary portion of the hearings were formally concluded and that final oral arguments and voting would be conducted at the March 21, 2013 meeting. Chair Chock adjourned the meeting at 11:45 a.m.