

LAND USE COMMISSION
MEETING MINUTES
March 21, 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
Ernest Matsumura
Sheldon Biga (arrived at 9:55 a.m.)
Thomas Contrades
Napua Makua
Ronald Heller

COMMISSIONERS EXCUSED: Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodenker, Executive Officer
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 9:36 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the March 7, 2013 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

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- 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 oral argument on Docket No. A012-795 West Maui Land Company Inc. for 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 updated the record, stated the procedures of the proceedings and called for Public Witnesses.

PUBLIC WITNESSES

None

There were no questions on the meeting procedures; and no Public Witnesses. Chair Chock concluded the Public Witness portion of the proceedings and heard oral arguments from the Parties.

PRESENTATIONS

Petitioner

Mr. Geiger summarized why he felt the A12-795 West Maui Land LLC Petition should be granted by the Commission and argued how all State and County criteria and standards for approving the district boundary amendment had been met; and described how community and cultural concerns had been addressed and/or mitigated. Mr. Geiger requested that the Commission accept his proposed Findings of Fact, Conclusions of Law and Decision and Order filed on November 23, 2012 with an added Condition that would impose an archaeological monitoring program on any mass grading, excavation or installation of underground utilities to mitigate any concerns that the Commission might have in regards to cultural issues.

Mr. Geiger summarized that the Commission should grant the Petition since it was surrounded by urban uses; had been reviewed by the Maui County Council and determined to be appropriate for affordable housing; and could be supported using existing infrastructure. Mr. Geiger also expressed how concerns about open space and traffic had been assessed by the Maui Council for the Maui Island Plan; and how the urban growth boundary included the Petition Area and how the Council had specifically approved this proposed project to address affordable housing needs.

Mr. Geiger also described how traffic and nearby offshore water quality concerns had been mitigated and what measures would be taken if the proposed project was approved; and reserved his remaining presentation time for rebuttal.

County

Mr. Giroux argued why the Petition should be granted and reminded the Commission of the various points he had made to respond to previously unanswered or unaddressed issues of affordable housing needs. Mr. Giroux summarized the reasons why Maui County wanted to have the proposed project approved and restated the

mitigation provisions for identified environmental concerns during and after construction, and the benefits that the proposed project would offer to the surrounding community and the people of Maui; and how the criteria for urban designation had been met.

Mr. Giroux also described how stormwater quality rules had been passed by the County since the Commission made its original decision on the Petition and argued how the additional information recently provided by the County bolstered the decision to grant the Petition.

OP

Mr. Yee stated the reasons why the State supported the Motion for Reconsideration in this docket and argued how the new additional information had bolstered the reasons for granting the Petition and why OP felt the Findings of Fact, Conclusions of Law and Decision and Order denying the Petition did not have sufficient substance to withstand any possible future legal challenges since the proposed project was surrounded by urban uses; was designated for affordable housing, and had met the major criteria for urban designation. Mr. Yee reviewed various Findings of Fact and Conclusions of Law that he felt were questionable and shared specifics of why the original Decision and Order denying the petition should be reversed and why the currently proposed Decision and Order should be granted.

Intervenor Lincoln

Ms. Lincoln stated that she had misspoke in her last appearance before the Commission on March 7, 2013 and had cited the incorrect date of February 22, 2012 instead of February 22, 2013; and argued why the original decision to deny the Petition should be upheld, and recounted the deficiencies that she thought still existed with the Petition.

The Commission went into recess at 10:28 a.m. and reconvened at 10:46 a.m.

Intervenor Bolomet

Ms. Bolomet argued how the original decision to deny the Petition was correct and described why she assumed the role of an Intervenor in this matter and restated her reasons for opposing the Petition; and various other problems that she felt had not been adequately addressed; and how the Petitioner had not sufficiently responded to her concerns about title to the lands and other issues about agriculture and protecting the environment.

Ms. Bolomet read Herman Naeole's testimony and described how "night walkers" factored into the history of the Petition Area and summarized her concerns about County Public Works and the lack of mitigation for existing and future infrastructure problems in the Petition Area and nearby offshore waters.

Rebuttal

Mr. Geiger restated the reasons why the Commission should vote to grant the A12-795 Petition and argued how the findings in the record supported amending the district boundary to urban use.

Commissioner Questions

Commissioner Makua requested clarification on whether Jenny Pickett and Hinano Rodriguez performed the site visit for SHPD. Mr. Geiger acknowledged that both individuals had performed the supplemental site visit in September 2012.

Commissioner Heller requested clarification on whether the new standards for stormwater runoff had been considered and included in the Conditions drafted for the proposed Decision and Order. Mr. Geiger responded that Condition 8 addressed the updated standards and was in compliance with the new rules.

Commissioner Inouye requested clarification on whether provisions had been made in the proposed Findings of Fact to account for any delays. Mr. Geiger replied that one of the 201H County Conditions required that if there was not sufficient capacity; the Petitioner would have to pay its pro-rata share of costs to have the additional needed facility capacity constructed and referred to Condition 10 which required compliance with the County resolution.

There were no further questions by the Commissioners.

DELIBERATION

Chair Chock polled the Commission to verify that all members present were ready to deliberate on A12-795. The Commission unanimously responded that they were ready to deliberate (8-0)

Commissioner McDonald moved to grant the Petition and described how he thought the proposed project and its evidence had met the various statutes and rules governing land use reclassification to urban designation; and as a 201H affordable housing project as well.

Commissioner Heller stated that he seconded the motion and clarified how he would like to have the Petitioner's additional Condition for archaeological monitoring

during any mass grading, excavation or installation of underground utilities included with the Conditions as suggested with the revisions proposed by the Office of Planning; and offered his suggestion as a friendly amendment to Commissioner McDonald's motion.

Commissioner McDonald accepted the friendly amendment and a brief discussion occurred to clarify the requirement for archaeological monitoring to occur during "any ground disturbance activities". Commissioner Heller recognized and thanked the Intervenors for their efforts and participation and stated his appreciation for their contributions.

Commissioner Inouye echoed Commissioner Heller's comments to the Intervenors and offered another friendly amendment to add "as reflected in these Findings of Fact, Conclusions of Law and Decision and Order" to the standard condition that "the Petitioner shall develop the area in substantial compliance with representations made to the Commission". Commissioners McDonald and Heller accepted Commissioner Inouye's friendly amendment.

Discussion occurred to clarify whether Petitioner's Condition 7 had taken into account OP's comments and was the condition that Commissioner Heller would like to have included in the Conditions before the Commission. Commissioner Heller responded that he did not have the Conditions in front of him, but in general, the OP comments were what he was suggesting. Further discussion occurred and Commissioner Heller reviewed Condition 7 and stated that in addition to Condition 7, he had moved to include Petitioner's new Condition that for any mass grading, excavation or installation of underground utilities, that archaeological monitoring be required.

Commissioner Makua recognized the shortcomings in the County's attention to cultural matters and acknowledged the need for improvement and described why she thought the Petitioner had made a genuine attempt to investigate the Petition Area for evidence of archaeological remains, why she disagreed with portions of Michael Lee's testimony and why she was voting in support of the Petition.

Commissioner Biga commented that he appreciated the participation of the Parties and especially the Intervenors; and that he also recognized the decision guidelines that the Commission had to follow and stated that he would also be supporting the proposed project.

There were no further questions or comments.

The Commission was polled and voted unanimously to grant the Petition 8-0 with 1 excused.

There being no further business, Chair Chock adjourned the meeting at 11:26 a.m.