

LAND USE COMMISSION  
MEETING MINUTES

June 27, 2013

9:30 a.m.

**Maui Arts & Cultural Center, Haynes Meeting Room**

(Between Castle Theater & MACC Administrative Offices)

**One Cameron Way, Kahului, Maui, Hawai`i 96732**

COMMISSIONERS PRESENT: Kyle Chock  
Ronald Heller  
Ernest Matsumura  
Lance Inouye  
Sheldon Biga  
Thomas Contrades  
Chad McDonald

COMMISSIONERS EXCUSED: Jaye Napua Nakasone  
Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodener, Executive Officer  
Bert Saruwatari, Staff Planner  
Scott Derrickson, Staff Planner  
Sarah Hirakami, Deputy Attorney General  
Riley Hakoda, Staff Planner/Chief Clerk

**CALL TO ORDER**

Chair Chock called the meeting to order at 9:35 a.m. and asked if there were any corrections or additions to the June 13-14, 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 (7-0).

**TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- July 11-12, 2013 remains open with no agenda items.
- The A10-787 Maui R&T hearings are planned to begin on July 25-26, 2013, beginning with a site visit and the preliminary hearing at the Malcolm

Center in Kīhei; with subsequent hearings planned for August 8-9, 2013 in Kahului.

- August 22-23, 2013 is scheduled to hear a motion from A92-683 Halekua Development to Bifurcate and Amend on Oahu.
- The A13-797 docket will begin on September 5-6, 2013, with its initial hearing, and a continuation of A10-787 Maui R&T proceedings if necessary
- HCPO is scheduled for September 18-20, 2013 with a public hearing on proposed amendments to LUC Administrative Rules and LUC meeting planned on the 18th.
- Any questions or conflicts, please contact LUC staff.

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

### **ORAL ARGUMENT AND DELIBERATION**

#### **A11-794 State of Hawaii-Dept. of Education- Kīhei High School (Maui)**

Chair Chock announced that this was oral argument and deliberation on Docket No. A11-794 State of Hawaii, Dept. of Education- Kīhei High School (Maui) to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 77.2 acres of land at Kīhei, Maui, Hawaii, Maui Tax Map key No. 2-2-02:81 and 83.

### **APPEARANCES**

William Yuen, Esq., represented Petitioner, State of Hawaii, Dept. of Education  
Robert Purdie, DOE representative

James Giroux, Deputy Corporation Counsel, represented County of Maui  
Planning Department (“County”)

William Spence, Director, County

Jesse Souki, Director, State Office of Planning (“OP”)

Rodney Funakoshi, OP

Chair Chock updated the record and described the procedures for the hearing. There were no questions, objections or comments on the procedures.

### **PUBLIC WITNESSES**

1. Lucienne de Naie

Ms. de Naie stated that she was testifying as an individual and shared her concerns regarding the connectivity of the Petition Area with other areas of the community and about a possible cultural discovery that

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she thought might have been made that would require further cultural assessment and study. Ms. de Naie submitted a photograph of the suspected cultural site to the Commission.

There were no questions for Ms. de Naie.

There were no other public witnesses.

Chair Chock stated that he was aware that the Parties had discussions with regard to the final Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and asked that the Commission be advised on what had been agreed to and formally stipulated on.

Mr. Yuen described the progress that Petitioner had made regarding the proposed Findings of Fact, Conclusions of Law, and Decision and Order. Mr. Yuen stated that his proposed document had been submitted to the Commission on June 25, 2013 and summarized how his submittal contained the various findings and conditions that had been discussed and agreed upon.

Mr. Giroux stated that County had submitted a statement of no opposition to the proposed Findings of Fact, Conclusions of Law and Decision and Order.

Mr. Souki stated that OP had filed a statement of no opposition and described the concerns that OP had considered regarding the future welfare and safety of Hawaii's children during its review of the proposed project; and how OP had assessed and evaluated DOE and DOT concerns in making its conclusions; and described the specific Findings of Fact and Conclusions of Law that had been included to address them.

## PRESENTATIONS

### Petitioner

Mr. Yuen summarized Petitioner's case and argued why the Petition should be granted. Mr. Yuen described how the proposed project conformed to various State and County plans and objectives, how the soils were not highly rated and not worthy of IAL designation; how the Petition Area did not have any cultural or archaeological concerns or threats to any environmental issues; and what the expected benefits of having the Petition Area developed in the region would have for the community in the future.

Mr. Yuen also described how the various concerns about traffic would continue to be monitored during development of the Petition Area and how any

existing or new concerns would be handled; and reserved his remaining time for rebuttal.

#### County

Mr. Giroux stated that County supported the Petition and had already closed its case at the last meeting; and thanked the Parties and Commission for their efforts and help.

#### OP

Mr. Souki stated that he would rest on his earlier statements for his closing and described how, although the evidentiary portion of the hearing had been concluded, conditions were contained within the proposed Findings of Fact, Conclusions of Law and Decision and Order that addressed archaeological concerns to mitigate and handle any archaeological/cultural discoveries in the Petition Area.

#### Rebuttal

Chair Chock inquired if Mr. Yuen needed any time for rebuttal. Mr. Yuen responded that he did not and concluded his presentation.

#### Deliberation and Decision Making

Chair Chock announced that the Commission would conduct formal deliberations and confirmed with the Commissioners present that they were familiar with the record and were ready to deliberate.

All Commissioners present and the Chair stated that they were prepared for deliberation and decision-making.

Commissioner Heller disclosed that he represented tax payers in the County on real property tax matters adverse to the County; but that he did not feel that his representation of tax payers would affect his ability to be impartial in decision-making on this docket. Chair Chock asked if there were any objections from the Parties to Commissioner Heller's continued participation in deliberating and deciding on the docket. There were no objections or comments.

Commissioner Biga made a motion to grant the petition in the general format of the agreed to decision and order submitted by Petitioner with the added condition that an above or below ground pedestrian crossing be constructed prior to the opening of phase 1; and that Petitioner's proposed decision and the order be further modified by staff to be consistent with this motion and with procedural findings reflecting all filings in this docket. Chair Chock commented that he believed that Commissioner Biga was making a motion to approve the Petition with an added condition. Chair Chock asked for

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

clarification that the Motion was to grant the Petition and suggested that discussion ensue on the proposed added condition. He then asked Commissioner Biga to repeat the condition. Chair Chock seconded the motion. Commissioner Biga stated that he agreed with Chair Chock's comment and agreed to the suggestion to discuss the condition separately.

Chair Chock opened the floor to discussion on the motion to grant the petition and asked Commissioner Biga to restate his proposed condition.

Commissioner Biga stated that his condition was that an above or below ground pedestrian crossing be constructed prior to the opening of phase 1 and that Petitioner's proposed decision and the order be further modified by staff to be consistent with this motion and with procedural findings reflecting all filings in this docket

There was discussion regarding the proposed added condition made by Commissioner Biga.

Commissioner Heller shared how he generally agreed with Commissioner Biga's concerns about safety and pedestrian access, and his understanding of how DOT/DOE would be working on resolving those concerns; and why he thought it was more appropriate to allow DOT/DOE authorities to make the determination to require the over/underpass rather than the LUC; and why he would oppose the amendment.

Commissioner Inouye stated that he felt that public welfare was a major concern for the Commission and echoed Commissioner Heller's comments on the matter; and stated that he was prepared to vote to approve the amendment with reservations.

There were no further comments or discussion.

Chair Chock clarified what the Commission was voting on and Commissioner Biga described other additional concerns and reasons why he felt provisions for pedestrian safety needed to be made. Commissioner Heller requested clarification on whether the vote was to grant the Petition including the condition that Commissioner Biga had made. Chair Chock acknowledged that it did.

The Commission voted as follows:

Ayes: Commissioner Biga, Chair Chock, Commissioners Matsumura, McDonald, and Contrades

Ayes with reservations: Commissioner Inouye,

Nays: Commissioner Heller

The Motion passed (6-1) to grant the Petition.

There were no questions or comments by the Parties.

Chair Chock thanked the Parties for their efforts in presenting their cases and declared a brief recess to prepare for the next agenda item.

The Commission went into recess at 10:08 a.m. and reconvened at 10:14 a.m.

## **ACTION**

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

Chair Chock announced that this was a hearing and action meeting to consider the following motions regarding Docket No. A94-706:

- Petitioner Pi`ilani Promenade South LLC and Pi`ilani North LLC`s (Honua`ula Partners filed joinder) Motion to Stay Phase II of the Order to Show Cause Proceedings (hereafter referred to as Petitioner`s Motion to Stay) filed April 8, 2013
- Intervenors Maui Tomorrow Foundation, Inc., South Maui Citizen for Responsible Growth and Daniel Kanahela`s Motion to Conclude Contested Case at the Earliest Practicable Time, (hereafter referred to as Intervenors` Motion to Conclude) filed on April 16, 2013
- Petitioner Pi`ilani Promenade South LLC and Pi`ilani North LLC`s Motion to Strike and Objection to INTERVENORS` SUPPLEMENTAL MEMORANDUM IN SUPPORT OF (1) INTERVENORS` MOTION TO CONCLUDE CONTESTED CASE AT THE EARLIEST PRACTICABLE TIME, FILED APRIL 16, 2013, AND (2) INTERVENORS` MEMORANDUM IN OPPOSITION TO PIILANI PROMENADE SOUTH, LLC`S MOTION TO STAY PHASE II OF THE ORDER TO SHOW CAUSE PROCEEDING. (hereafter referred to as Petitioner`s Motion to Strike)

## APPEARANCES

Jonathan Steiner, Esq., represented Pi`ilani Promenade North LLC, and Pi`ilani Promenade South LLC, ("PP") and Honua`ula Partners ("HP")

Charlie Jencks, representative for Petitioners

Michael Hopper, Deputy Corporation Counsel, Maui County Planning Department ("County")

William Spence, Director, County

Jesse Souki, Director, State Office of Planning ("OP")

Rodney Funakoshi (OP)

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

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

Chair Chock updated the record; and asked if Petitioner agreed with the LUC policy on reimbursement for LUC expenses. Mr. Steiner requested clarification on what reimbursements were expected of the Petitioner. Executive Officer Orodener described the expenses Petitioner would be responsible for. Mr. Steiner stated that Petitioner would comply with LUC's policy.

Chair Chock explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

#### PUBLIC WITNESSES

1. Clayton Nishikawa-

Mr. Nishikawa stated that he supported the Motion to Stay and efforts to amend the existing petition.

There were no questions for Mr. Nishikawa.

2. Joan Martin-

Ms. Martin stated that she was a Kihei resident and described why she felt that the Commission should grant Petitioner's Motion to Stay and allow the initial petition to be amended.

There were no questions for Ms. Martin.

There were no other Public Witnesses.

#### PRESENTATIONS

##### PETITIONER

Mr. Steiner summarized his case and argued why Petitioners Pi'ilani Promenade South LLC and Pi'ilani Promenade North LLC's and Honua'ula Partners ("HP") Motion to Stay for Phase II should be granted and why Intervenor's Motion to Conclude the Case as early as possible should be struck. Mr. Steiner stated that Petitioner was committed to filing a Motion to Amend the initial Decision and Order no later than December 31, 2013; and that until the Motion was filed, Petitioner was committed to not commencing any development or work on the Petition Area and would retain the status quo. Mr. Steiner also argued why the Motion to Stay could not be considered a dismissal of the case and how Petitioner would conduct itself in the coming months; and stated that he rested on his pleadings; and added comments on why Intervenor's motion to conclude the case should be denied.

## COUNTY

Mr. Hopper stated the reasons why County supported Petitioners position and joined in opposing Intervenor's Motion to Conclude; and described the considerations and decisions involved in arriving at its position; and argued why Intervenor's Motion to Conclude be denied. Mr. Hopper stated that he rested on his pleadings and replies to the Intervenor's supplemental memorandums.

## OP

Mr. Souki stated how, after a review of facts and evidence in this case, OP decided on its position to support Petitioner's motion.

## INTERVENOR

Mr. Pierce thanked the Commission for its efforts and argued why Intervenor's Motion to Conclude should be granted and described various points that he had made during his case presentation before the Commission regarding the history on the docket and stated why he felt they were relevant and substantial enough for the Commission to deny Petitioner's Motion to Stay.

Mr. Pierce also added the considerations and reasoning that factored into Intervenor's motion and additional filings.

## COMMISSIONER QUESTIONS

Commissioner Heller moved for an Executive Session to consult with the Deputy Attorney General on the powers and duties of the Commission. Commissioner McDonald seconded the motion.

The Commission went into Executive Session at 10:46 a.m. and reconvened at 10:58.

There were no questions from the Commissioners

## DECISION MAKING

Commissioner Heller suggested that the Commission vote on the Motions one at a time to keep the record clear. Chair Chock acknowledged and agreed with Commissioner Heller's suggestion.

## Motion to Stay

Commissioner Heller made a motion to grant the Motion to Stay with the express condition that Petitioners PP and HP not take any development action till the Motion to Amend was filed; and that the Motion to Stay would be lifted if the condition was violated. Commissioner Biga seconded the motion.

There was no discussion.

The Commission voted as follows:

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Ayes: Commissioner Heller, Biga, Matsumura, McDonald, Contrades, Inouye, and Chair Chock

Nays: None

The Motion to Stay with Commissioner Heller's suggested condition added passed (7-0).

#### Motion to Conclude

Commissioner Heller stated that in view of the outcome of the vote on the Motion to Stay, he moved to formally deny the Motion to Conclude for the record. Commissioner Biga seconded the Motion.

There was no discussion.

The Commission voted as follows:

Ayes: Commissioner Heller, Biga, Matsumura, McDonald, Contrades, Inouye, and Chair Chock

Nays: None

The Motion to deny Intervenor's Motion to Conclude passed (7-0).

#### Motion to Strike

Commissioner Heller commented that although the filings were untimely, given the decision that the Commission had made on the Motion to Stay and to keep the record complete, he moved to deny the Motion to Strike. Commissioner Biga seconded the Motion.

The Commission voted as follows:

Ayes: Commissioner Heller, Biga, Matsumura, McDonald, Contrades, Inouye, and Chair Chock

Nays: None

The Motion to deny Petitioner's Motion to Strike passed (7-0).

There being no further business, Chair Chock announced that the meeting would continue at 9:30 a.m., Friday, June 28, 2013 in Honolulu.

The meeting was adjourned at 11:03 a.m.