

LAND USE COMMISSION
MEETING MINUTES
July 25, 2013, 11:00 a.m.
Malcolm Center
1305 North Holopono Street, Suite 1
Kihei, Maui, Hawai`i, 96753

COMMISSIONERS PRESENT: Chad McDonald
Ernest Matsumura
Lance Inouye
Carol Torigoe
Sheldon Biga
Dennis Esaki
Ronald Heller

COMMISSIONERS EXCUSED: Jaye Napua Nakasone
Kyle Chock

STAFF PRESENT: Daniel Orodenker, Executive Officer
Bert Saruwatari, Staff Planner
Diane Erickson, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Heller called the meeting to order at 11:00 a.m.

APPROVAL OF MINUTES

Chair Heller asked if there were any corrections or additions to the June 27-28, 2013 minutes. There were none. Commissioner Biga 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.
- The August 8-9 meeting in August will be on Maui with a continued hearing of Docket No.A10-787.
- The August 22nd and 23rd meeting will be on Oahu to hear Docket No.A92-683 Halekua Development Co. (Royal Kunia) Petitioner’s Motion to Amend the Amended Findings of Fact, Conclusions of Law and Decision and Order Petition on the 22nd and presentations from OEQC, C-WRM and SHPD.
- The September 5-6, 2013 meeting will be on Maui for the beginning of Docket No. A13-797 CMBY, a Public Hearing on Proposed Amendments to the LUC Administrative Rules; and a continued hearing on Docket No. A10-787.
- The second LUC meeting in September is combined with the HCPO Conference in Kona on the 18th, 19th and 20th; with a Public Hearing on Proposed Amendments to Administrative Rules.
- On October 3rd, a continued hearing is planned on Maui for Docket No. A10-787 and a hearing on a motion for Docket No. A84-595 Kuilima Development.
- Any questions or conflicts, please contact LUC staff.

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

HEARING AND ACTION

A84-585 Maui Economic Development Board (Maui)

Chair Heller announced that this was an action meeting on Docket No. A84-585 Maui Economic Development Board, Inc. (Maui) to consider:

- Petitioner’s Motion to Consolidate Hearing with Docket No. A10-787 (“Motion to Consolidate”) and
- Petitioner’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law and Decision and Order filed February 25, 1986 (“Motion for Order to Amend”)

APPEARANCES

Curtis Tabata, Esq., Wyeth Matsubara, Esq. and Benjamin Matsubara, Esq., represented Petitioner Maui R&T Partners, LLC

Steve Perkins, Maui R&T Partners, LLC, Project Manager and Representative

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

William Spence, Director, County
Kurt Wollenhaupt, Planner, County
Bryan Yee, Deputy Attorney General, represented State Office of Planning ("OP")
Rodney Funakoshi, OP

Chair Heller updated the record, described the procedures to be followed for the day and disclosed that his firm represents clients in tax cases adverse to the County of Maui; but that he did not believe that this representation would interfere with his decision-making in this matter and was disclosing this information to allow the Parties an opportunity to comment and object to his continued participation.

There were no questions, comments or objections to the procedures and the continued participation of Chair Heller.

Chair Heller clarified that the Motion to Consolidate would be heard first and called for the Parties to make their presentations.

PRESENTATIONS-MOTION TO CONSOLIDATE

Petitioner

Mr. Tabata described why Petitioner decided to initiate the Motion to Consolidate with Docket No. A10-787 and provided the history and background of the initial Petition and why its evolution required being consolidated to the more current docket submitted by Petitioner.

Mr. Tabata asked if he should continue with his presentation on the Motion to Amend, Chair Heller stated that the presentation on the Motion to Amend would be deferred for now.

County

Mr. Giroux stated that he had no objection to the Motion to Consolidate.

OP

Mr. Yee stated that OP agreed with the Motion to Consolidate and described why OP thought the consolidation of the dockets was appropriate.

There were no comments or questions regarding the Motion to Consolidate. Commissioner McDonald moved to approve the Motion to Consolidate. Commissioner Biga seconded the motion. There was no discussion.

The Commission unanimously voted (7-0) to grant the Motion to Consolidate.

Chair Heller stated that with regards to the Motion for Order Amending the Amended Findings of Fact, Conclusions of Law and Decision and Order filed February

25, 1986; if there are no objections from the Commissioners, he would defer presentations and a decision on this motion until completion of the hearing on the consolidated case. There was no discussion on or objections to the Chair's recommendation and the Commission moved on to the hearing of Docket No. A10-787.

HEARING

A10-787 MAUI R&T PARTNERS, LLC (Maui)

Chair Heller announced that this was a hearing on Docket No A10-787 Maui R&T Partners LLC To Amend the Land Use District Boundary of Certain Lands Situated at Kihei, Island of Maui, State of Hawaii, Consisting of 253.05 Acres from the Agricultural District to the Urban District, Tax Map Key Nos. (2) 2-2-024:016 and 017, and (2) 2-2-002-084(por).

Chair Heller updated the record and described the procedures to be followed; and asked if Petitioner had been made aware of and would comply with the LUC's reimbursement for hearing expenses policy. Mr. Tabata acknowledged that his client was agreeable to the LUC's reimbursement policy.

PUBLIC WITNESSES

1. Mike Moran-

Mr. Moran stated that he represented the Kihei Community Association and described how Petitioner had cooperated with his organization to provide information regarding the proposed project and shared his organization's appreciation and support for Petitioner's efforts.

There were no questions for Mr. Moran.

2. Barbara Longo

Ms. Longo described why she felt the Petition Area land use designation should remain Agricultural and provided her perception of how the lands of Hawaii needed to be protected and preserved.

There were no questions for Ms. Longo.

3. Brad Reeves

Mr. Reeves stated that he had no comments after he was called.

4. Jeannie Skog

Ms. Skog stated that she represented the Maui Economic Development Board as President and CEO and shared the reasons why her organization felt the proposed project was necessary and would benefit the community and the State.

County had no questions.

Mr. Yee requested clarification on how the proposed project would evolve and how the elimination of specified “hi-tech” uses would contribute to that end. Ms. Skog described how her organization had determined that allowing a wider array of allowed uses would benefit the Petition Area, and how the increase in uses in the second phase of the proposed project would facilitate its development.

Commissioner Matsumura asked how many startups had occurred with the assistance of the Maui Economic Development Board; how many were “local”; and how many students might benefit from her program. Ms. Skog shared what startup achievements had occurred from 1999 that she was aware of, how the students were involved in the programs and what her expectations were for the future.

5. Gene Zarro

Mr. Zarro stated that he was the CEO of the South Maui Learning Ohana and Chair of the Kihei Charter School Board; and described the concerns that his organizations had regarding the proposed project.

Commissioner Biga requested clarification on the current student population for the school. Mr. Zarro described what the current population was and what possible future school populations and grade level adjustments were anticipated.

Commissioner Matsumura inquired what timeframe would be involved to provide the student facilities necessary to service the students. Mr. Zarro shared his perception of what it would take to establish the facilities and estimated that it might take 10 years.

There were no further questions for Mr. Zarro

6. Bruce U`u

Mr. U`u stated that he supported the Petition and shared his reasons why.

Commissioner Biga requested clarification on how the local work force would benefit from the proposed project. Mr. U`u shared his perception of how the current project was providing jobs for the community and how the proposed project would continue to do the same.

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

There were no further Public Witnesses.

ADMISSION OF EXHIBITS

Petitioner

Mr. Tabata offered Petitioner's Exhibits 1- 48 to be admitted for the record. There were no objections to Petitioner's Exhibits and they were admitted.

County

Mr. Giroux offered County Exhibits 1-11 to be admitted to the record. There were no objections to County's Exhibits and they were admitted.

OP

Mr. Yee offered OP Exhibits 1-5, and 7- 8 to be admitted to the record and stated that Exhibits 6 and 9 had been withdrawn due to the withdrawal of the C-WRM witness.

There were no objections to OP's Exhibits and they were admitted.

Chair Heller noted that the Commission would hear Petitioner's first witness. Mr. Tabata stated that Benjamin Matsubara would be handling the presentation of the first witness.

PETITIONER WITNESSES

Mr. Matsubara stated that Steve Perkins would be Petitioner's first witness and described that a list of witnesses and exhibits had been provided to the Commission and the Parties for their reference during the Petitioner's presentation. Discussion ensued to determine which witnesses needed to appear before the Commission and which witnesses could be excused because the parties waived cross-examination. Chair Heller asked for Mr. Matsubara to identify the witnesses that the Parties had agreed to have waived. Mr. Giroux and Mr. Yee acknowledged and confirmed the witnesses that Mr. Tabata said they had agreed to waive. Chair Heller requested that the Commission be allowed time to consider what witnesses needed to remain for questioning by the Commission and asked Petitioner to continue with its case.

PRESENTATIONS

Petitioner Witnesses

1. Steve Perkins-Project Manager/Petitioner's Representative

Mr. Perkins described his background with the Maui Economic Board and the Research and Technology Park; provided a brief history and background on the Petition Area; and summarized his written testimony.

Mr. Giroux had no questions.

Mr. Yee requested clarification on various features and uses to be included in the Petition Area. Mr. Perkins deferred to the Calthorpe planner to provide the details regarding the proposed project's features; and identified retailing, service and housing as the primary uses included for the proposed project. Discussion occurred to further determine who to address for different aspects about the proposed project.

Mr. Yee asked if OP's proposed conditions other than 1 and 6 were acceptable to Petitioner. Mr. Perkins acknowledged that the terms and language for conditions 1 and 6 were still being discussed and described the various matters that were being considered with each condition and stated that Petitioner had agreed to all the other remaining conditions. Mr. Perkins stated that Petitioner would provide a revised TIAR to the DOT for approval and funding to mitigate traffic impacts as set forth in the approved TIAR. There were additional questions on how traffic matters would be addressed during the proceedings to allow for more specific details to be presented and reviewed. Mr. Matsubara requested deferring the details of the final language for traffic conditions till after the witness on traffic had testified and the proposed D&Os were being negotiated to better facilitate the hearing. Mr. Yee explained that he was trying to determine where the points of disagreement were in the discussions. Chair Heller allowed questioning to continue regarding "fair share" contributions for regional traffic improvements, payment for "access rights" to Pi'ilani Highway, Petitioner's position on entering into Memoranda of Agreement with the DOT, and timing of the acceptance of the TIAR by the DOT. Mr. Perkins deferred questions that he could not address to Petitioner's Traffic Expert witness or replied that he was unable to address the question at the current time.

Mr. Yee also requested clarification on the representations made regarding the mix of uses planned for the Petition Area. Mr. Perkins replied that Petitioner planned to conform to the representations that had been described and that the project planner could best address the planned "phasing" of the proposed project. Mr. Matsubara stated that Mr. Perkins would remain available to respond to questions throughout the hearing. Mr. Yee stated that he was agreeable to that arrangement and concluded his questioning.

Mr. Giroux asked if County's conditions had been reviewed. Mr. Perkins responded that they had been reviewed and that there were no objections to any of the County's conditions.

Commissioner Questions

Commissioner McDonald requested clarification on the total square footage of the park, its vacancy rate, and the proposed development time frame for the Petition Area. Mr. Perkins replied that there were currently 5 main buildings in the park with approximately 180,000 square feet of space; and shared his estimates of what the current occupancy rates were for the buildings. Mr. Perkins stated that the estimated development timeframe for the Petition Area was 20 years and that incremental re-districting was not being requested; and deferred to Petitioner's project planner to provide further details on how and why full approval of the entire project without incremental re-districting was needed and justifiable for the master plan to occur.

Commissioner Esaki requested clarification on the proposed time frame since the history of the Petition Area's development seemed to indicate a "disconnect" in its progress. Mr. Perkins described the revised planning and reassessments that had occurred within his organization regarding the future development of the Petition Area and how other Petition witnesses could better address market absorption rates and planning details. Commissioner Esaki stated that he would withhold his further questions for the appropriate witnesses.

Commissioner Matsumura requested clarification on how Petitioner would integrate providing homes and jobs in the Petition Area. Mr. Perkins replied that he felt that the market demand would drive matters and deferred to other witnesses to provide further details of how the proposed project would respond to the situation, and described how Petitioner was attempting to implement the changes necessary to provide the catalyst for such progress.

Mr. Matsubara commented in response to Commissioner McDonald's questions that Petitioner's Exhibit 11P depicted the incremental development plan to meet the Commission's rules regarding a ten year time line and that the Petitioner was requesting a land use designation change for the entire Petition Area to allow for the implementation of the Master Plan for the proposed project.

There were no further Commissioner questions.

Chair Heller asked if the Commissioners had reviewed and determined what witnesses they would like to have retained for questioning. Commissioner Torigoe stated that she would like Thomas Holliday to remain; and Commissioner Inouye requested that the Cultural Impacts

witness be available for questioning. Discussion ensued to clarify on what days the various witnesses would be appearing and which witnesses the Parties wanted to question. Commissioner Inouye commented that he would like to have Michael Dega available. Mr. Matsubara noted that Michael Dega would not be able to appear till August due to his travel.

Commissioner McDonald requested clarification from Mr. Yee on why the cultural monitoring condition was being withdrawn. Mr. Yee stated that no sites had been discovered in the Petition Area and that was why the condition requiring a site monitoring plan had been withdrawn. Discussion occurred regarding the withdrawal of OP's condition 8. It was noted that SHPD was in concurrence with the withdrawal of the condition and Mr. Matsubara commented that cultural/archaeological discoveries would continue to be treated in accordance with established procedures. Mr. Yee cited additional actions that had been agreed to that also justified the condition's removal.

There were no further questions.

Chair Heller declared a recess at 12:25 p.m. and reconvened the proceedings at 1:49 p.m.

Petitioner Witnesses (continued)

(Mr. Wyeth Matsubara handled this portion of Petitioner's presentation.)

2. John Beutler – Calthorpe Associates, Planner

Mr. Beutler was qualified, without objection, as an Expert Witness in planning and used a PowerPoint presentation to describe the Petition Area and its proposed development; and summarized his written testimony.

Mr. Wyeth Matsubara requested clarification on the "campus concept" design used in the existing and proposed development. Mr. Beutler described the reasoning and objectives involved with using the various design concepts within the Petition Area.

Mr. Matsubara also requested clarification on the answer to Commissioner McDonald's question regarding the timetable for implementing the Master Plan for the proposed project. Mr. Beutler described additional details on how the development of the Petition Area needed the ability to react to the

marketplace and make adjustments in the uses allowed within its boundaries.

Mr. Matsubara requested clarification on the answer to Commissioner Matsumura's question regarding jobs and homes. Mr. Beutler described how the "mixed use" plan for the Petition Area was envisioned to be implemented to facilitate the existing and projected job growth in the area.

Mr. Giroux requested clarification on Mr. Beutler's perception of what "mixed use-form based code" was. Mr. Beutler described how he envisioned development would occur utilizing "mixed use-form based code" and provided examples of communities where the code had been applied and implemented.

Mr. Yee requested clarification on how Mr. Beutler anticipated the "synergy" that he had described in his presentation would occur, how designating industries would develop, why the elimination of restriction on uses within the Petition Area was needed and for definitions of various terms and concepts that had been expressed. Mr. Beutler provided his understanding of the various terms and concepts; and shared how the various dynamics of the proposed project were expected to evolve if the limitation of uses were removed. Mr. Beutler also described how different aspects and issues of the development would be addressed and resolved at various government agency levels in the area of education and transportation. Mr. Beutler deferred questions that he could not answer in this subject to other Petitioner witnesses or Mr. Perkins; and described the difficulties in trying to provide finite answers for conditions and proposals which still had no substance.

Mr. Yee requested clarification on how incremental phasing of the proposed project would occur and function if the master plan for the Petition Area was allowed to move forward. Mr. Beutler deferred portions of his responses to Mr. Perkins and described why he felt the various features of

the master plan enhanced the chances of success for the Petition Area's sustainability; and shared how diversity of uses, connectivity, conservation and human scale contributed to achieving the master plan's sustainability objectives.

The Commission recessed at 2:57 p.m. and reconvened at 3:11 p.m.

Commissioner Questions

Commissioner Matsumura requested clarification on industrial park projects and how the mix of uses was beneficial; and how the "campus" format was useful. Mr. Beutler provided examples of various communities where the mix of uses and campus complexes had been implemented and succeeded in helping them thrive.

Commissioner Esaki requested clarification on what agricultural programs, research and development companies and programs had been considered; and how various transportation modes would serve the proposed project. Mr. Beutler replied that there had not been much focus on agricultural prospects for the Petition Area and described the types of businesses and transportation systems that had been planned instead.

Commissioner Torigoe requested clarification on the design features for community and connectivity and whether agricultural "food to table" aspects had been considered. Mr. Beutler described how a "quarter mile" radius had been used in the design plans and how the open spaces within the Petition Area could be utilized to support community gardens.

Commissioner Biga requested clarification on the types of roadway designs and features that were being considered for implementation within the Petition Area; and the types of housing designs that were being proposed. Mr. Beutler described how narrower street network designs were expected to be used to suppress speeding; and responded that the architectural designs for the houses were not ready, but that the housing sizes would be geared for affordability; and would be fairly modest; and how various house design features affecting unit costs needed to be worked out at the County level.

Commissioner Inouye asked how the Commission could be assured that the mixed-use concept would be controlled and developed as proposed to avoid the appearance of being “urban sprawl”. Mr. Beutler described the various design components that he hoped would foster a robust “mixed use” community.

Commissioner Esaki asked why there was not a firmer commitment to provide affordable housing. Mr. Beutler described how the developers had attempted to target providing workforce housing. Mr. Tabata stated that the Petitioner had made representations to comply with the county workforce housing ordinance and assured the Commission that Petitioner would comply.

There were no further questions for Mr. Beutler.

Discussion occurred to determine the order of witnesses that would appear before the Commission. Mr. Wyeth Matsubara explained that although Petitioner’s planner, Jennifer Maydan, was scheduled next, the Parties had agreed that Mr. Yoichi Ebisu could be taken out of order to testify next. There were no objections to Mr. Ebisu’s appearing out of order.

3. Yoichi Ebisu

Mr. Ebisu was offered and admitted as an expert in acoustic assessment with no objections.

Mr. Ebisu described the various methodologies and data collection techniques that were used in his study of the Petition Area; and stated that there were no noise impacts that he had discovered and that there were no mitigation recommendations necessary as a result.

Mr. Giroux had no questions.

Mr. Yee requested clarification on how different scenarios described in the revised TIAR had been assessed. Mr. Ebisu shared the various considerations and analyses that had been made for each scenario and how his findings compared to the older TIAR. Mr. Ebisu acknowledged that based upon his analysis and the conceptual plan, the proposed project would not exceed the impact threshold level under either the State DOT or Federal guidelines.

Chair Heller requested clarification on whether noise level studies at potential school sites had been conducted. Mr. Ebisu responded that if a

school site was located in the Petition Area that was part of Phase I or II, then any location within that area would be acceptable for a school.

Chair Heller also asked whether there were separate school guidelines that were different from DOT guidelines. Mr. Ebisu stated that there weren't any specific standards or criteria, but that the DOE might have internal standards for naturally ventilated classrooms.

Mr. Wyeth Matsubara referred to Petitioner's Exhibit 11 and requested clarification on whether there would be noise impact concerns based on the proposed school site depicted in the exhibit. Mr. Ebisu described how the noise levels would be about 50 DNL under the new TIAR with a three point increase.

There were no further questions for Mr. Ebisu.

4. Jennifer Maydan

Ms. Maydan was offered and admitted without objection as an expert witness in the field of planning, environmental impacts and land use.

Ms. Maydan summarized her testimony using a PowerPoint presentation (Petitioner's Exhibit 33) and described the land entitlements necessary for implementation of the proposed master plan, its impacts and proposed mitigation for them, and how it was consistent with the LUC's Urban District Standards.

Mr. Giroux had no questions.

Mr. Yee requested clarification on the mauka collector road system and various design details. Ms. Maydan provided what information she could and deferred to Petitioner's Traffic witness to address issues that she could not respond to.

Mr. Yee requested clarification on how potable water would be provided for the proposed project. Ms. Maydan stated that it was Petitioner's preference to have County supply the water, but that there was no commitment to do so at the present time and described how a private water supply was being considered; and deferred to Petitioner's expert witnesses on water and engineering to provide further details of how water would be supplied to and within the Petition Area.

Mr. Yee requested clarification on what uses were being considered for the Petition Area. Ms. Maydan described how details regarding zoning code and associated uses would be fleshed out at the County level

Mr. Yee also requested clarification on sustainability features, residential development, and the interaction the Petitioner and DOE had regarding a physical connection between the adjoining proposed high school and the Petition Area. Ms. Maydan described the various features that were being considered for the proposed development and stated that there had been a single conference call that had been made to the DOE planners that resulted in agreeing to continue to coordinate on the development of a physical connection.

Commissioner Questions

Commissioner Esaki requested clarification on the drainage and private water system for the Petition Area. Ms. Maydan stated that Petitioner would comply with all State, County and Federal drainage guidelines; and that the DOH was involved with regulation of the water supply, but she was not sure if the PUC would have any jurisdiction; and deferred to Petitioner's Expert Witness on Water on how the water might be regulated for the proposed project.

Commissioner Inouye requested clarification on the terms "employment core" and "knowledge industry"; and what type of restrictions would be imposed on the planned uses for Petition Area. Ms. Maydan stated that both terms referred to essentially the same thing, and that a "cap" on the amount of commercial that could go in within each district and on the size and square footage of commercial buildings; and described the boundary lines between the mixed use center and the knowledge industry expansion. Further questions ensued to explain Petitioner's Exhibit 11Q (the development code). Mr. Perkins commented that Exhibit 11-the EIS for the proposed project had the controlling plan on page 59; and described what the Petitioner was willing to commit to regarding roadway build out, backbone infrastructure, and other infrastructure components.

Commissioner Matsumura requested clarification on how the market's influence was expected to affect the proposed project during the ten year framework that was described. Ms. Maydan deferred this question to Thomas Holliday.

There were no further questions for Ms. Maydan.

Chair Heller assessed how much time was needed for the final Petitioner's witness and declared a recess at 4:33 p.m. and reconvened the hearing at 4:40 p.m.

5. Leonard Kimokea Kapahulehua

Mr. Kapahulehua was offered as an expert in Cultural Assessment Investigation[?]. There were no objections to Mr. Kapaheulehua's qualification as an expert in that field.

Mr. Kapahulehua summarized his testimony and described how he had conducted his investigation and what his findings were.

Mr. Giroux and Mr. Yee had no questions.

Commissioner Inouye requested clarification on details regarding the 5 cultural sites that had been discovered by Michael Dega. Mr. Kapahulehua stated that they were temporary sites and shared how they may have been used in the past and why they were relatively insignificant cultural sites.

There were no further questions for Mr. Kapahulehua.

Chair Heller announced that the hearing would resume at 9:00 a.m., July 26, 2013 and recessed the meeting at 4:50 p.m.