

LAND USE COMMISSION  
MEETING MINUTES  
**July 26, 2013, 09:00 a.m.**  
**Malcolm Center**  
**Kihei, Maui, Hawai`i,**

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

COMMISSIONERS EXCUSED: Jaye Napua Nakasone  
Kyle Chock

STAFF PRESENT: Daniel Orodener, 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 9:10a.m.

**ADOPTION OF ORDER**

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

Chair Heller announced that this was action meeting to adopt the form of the order on Docket No. A11-794 State of Hawaii, Dept. of Education- Kihei 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 Kihei, Maui, Hawaii, Maui Tax Map key No. 2-2-02:81 and 83 and described the procedures for the day.

Chair Heller updated the record and called for Public Witnesses.

PUBLIC WITNESSES

None

#### APPEARANCES

There was no representative for the Petitioner-State of Hawaii, Dept. of Education

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

William Spence, Director, County

Bryan Yee, Deputy Attorney General, represented State Office of Planning ("OP")

Rodney Funakoshi, OP

Commissioner Biga moved to approve the form of the order and Commissioner Matsumura seconded the motion. There was no discussion.

Executive Officer Orodenker commented that Commissioners Esaki and Torigoe were not sitting Commissioners at the time of the hearing and were excused from voting.

The remaining Commissioners voted as follows:

Ayes: Commissioners Biga, Matsumura, McDonald, Inouye and Chair Heller.

Nays: None

The motion passed 5-0 with 4 excused.

#### REQUEST FOR AUTHORIZATION TO COMMENCE PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE LUC ADMINISTRATIVE RULES

Chair Heller announced that the Commission would address Agenda Item VII- Request for Authorization to Commence Public Hearings on Proposed Amendments to LUC Administrative Rules and asked for Executive Officer Orodenker to explain the request for the Commission.

Executive Officer Orodenker described why the Commission's approval was being sought.

Chair Heller asked if there were any questions or comments regarding the request and called for a motion to approve the request. There were no questions or comments and Commissioner Biga moved and Commissioner Matsumura seconded the motion to approve the request. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Biga, Matsumura, McDonald, Inouye, Esaki, Torigoe and Chair Heller.

Nays: None

The motion passed 7-0 with 2 excused

## CONTINUED HEARING

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

Chair Heller announced that this was a continued hearing on Docket No A10-787 Maui R&T Partners LLC

#### 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

Mr. Tabata stated that the Parties had earlier discussions regarding the order of appearances for their witnesses and had agreed that County could have their witness, Dave Taylor, provide his testimony first and asked for the Chair's permission to allow the proposed sequence. Mr. Giroux and Mr. Yee acknowledged that they had agreed to the arrangement. Chair Heller granted Mr. Tabata's request.

#### COUNTY WITNESSES

##### 1. Dave Taylor

Mr. Giroux offered Mr. Taylor as an expert in the matters of water for the County. There were no objections to Mr. Taylor's admission as such an expert.

Mr. Yee referred to County's Exhibit 9 and requested clarification on the viability and risks involved with providing a private, public or joint private and public water supply for the proposed project; and what alternatives were available to the Petitioner and County for this situation. Mr. Taylor detailed the problems of drilling wells to provide potable water with the quality and quantity necessary to support the Petition Area; and indicated that the risks involved would be the same for public and private entities and described the process involved for the County to participate in providing water for the Petition Area. Mr. Taylor stated that the Maui County Council would be the entity that would be the ultimate

decision maker on matters concerning actions that would be taken and on considering ownership interests in the systems; and shared his perception of how difficult it was to provide sufficient water under different scenarios for the County.

Mr. Tabata had no questions.

Commissioner McDonald requested clarification on the estimated County water rates per thousand and Mr. Taylor's perspective on operating and relying upon a reverse osmosis system. Mr. Taylor provided his estimate for different rates for various water uses and stated that he was not familiar with costs for water associated with reverse osmosis systems and suggested asking Petitioner's engineer for more information.

Commissioner Biga requested clarification on what timeline Mr. Taylor anticipated would be required for providing a water supply for the proposed project. Mr. Taylor clarified the scenarios that his department had considered in its planning and explained the various considerations that were involved and the funding processes that would have to occur over the span of time that the proposed project was under development.

There were no further questions for Mr. Taylor.

Commissioner Heller noted that Executive Officer Orodener had an update for the Commission and had him share the new communication from the U.S. Department of the Interior Fish and Wildlife Service regarding the Petition Area. Mr. Orodener read the letter into the record, which described the concerns about the Petition Area that the Fish and Wildlife Service had about critical habitats and endangered species that existed in the area. Mr. Orodener stated that he would have the letter posted to the website as soon as possible.

Chair Heller noted that the Fish and Wildlife Service letter was for informational purposes only and resumed the hearing. Discussion ensued to determine in what order the remaining witnesses would appear. Mr. Tabata stated the proposed order of witness appearances. There were no objections from Mr. Giroux and Mr. Yee regarding the order of appearances.

PETITIONER'S WITNESSES (RESUMED)

6. Tom Nance

Mr. Nance was offered and admitted as an expert in hydrology, groundwater impacts and water resource development.

Mr. Nance summarized his testimony and answered additional questions that had been referred to him during the proceedings regarding the reverse osmosis process, the electrical consumption required for such a system and its economic feasibility. Mr. Nance provided his perception of how the proposed reverse osmosis process would operate, what factors needed to be considered to implement the system, and his estimates of what the operating costs and economic feasibility of the system would be; and how committed the Petitioner was to paying for the design and construction of a plant and water system with the capacities to provide sufficient amounts of water for the proposed project.

Mr. Giroux requested clarification of how the salt from the desalinization process would be handled. Mr. Nance described how the salt disposal process would occur and what permits and agencies were involved in approving/regulating the disposal and what concerns were involved for the protection of the environment.

Mr. Yee requested clarification on the chloride concentration levels for the Petition Area's water; and how it compared to the County water supply. Mr. Nance shared his estimate on what chloride concentrations existed and how they compared to the County water supply; and described the contingency plans and alternatives that needed to be in place in case of a water supply system failure and how alternative sources were being sought out.

Mr. Yee requested clarification on the timeframe involved in the approval process. Mr. Nance described how the State Department of Health was involved; how funding issues and Maui County Council decisions might affect the length of time required; and how his calculations would be affected by the power requirements and costs.

Commissioner McDonald requested clarification on what the previous plan was to supply water. Mr. Nance apologized and stated that the question predated his involvement. Mr. Perkins described how the proposed project had always planned to use County water and how, during the update process, constraints were placed and issues of limitations were brought up.

Commissioner Esaki requested clarification on whether the reverse osmosis system would fall under the PUC's jurisdiction. Mr. Nance stated that there were two jurisdictions- the Department of Health, and the PUC that were involved; and described how some smaller water systems avoided PUC regulation by not charging for their water and applying the costs elsewhere to continue to operate.

Commissioner Biga requested clarification on what water source fed the aquifer that the proposed project planned to use and what impacts the number of wells operating in the area would have on the system. Mr. Nance stated that the primary rainfall recharge for the aquifer fell from the lens above the Petition Area all the way to the top of Haleakala and described what might hypothetically happen if half the number of wells were operational and what impact any water that was removed and discharged into the shoreline or outside of the vicinity might have.

Chair Heller requested clarification on whether brackish well water was usable for irrigation before the reverse osmosis treatment and how the PUC might potentially regulate the pricing of the water; and what the possible price of water might ultimately be. Mr. Nance stated that the brackish water was usable and described the criteria that would be used to select the type of salt-tolerant plants and grass that could survive in the area; and shared his estimates for what water costs might be.

There were no further questions and no redirect.

Chair Heller declared a brief recess at 10:15 a.m. and reconvened the meeting at 10:25 a.m.

7. Dr. Honglong Li

Dr. Li was offered and admitted without objection as an expert in the field of traffic engineering.

Dr. Li described the considerations and methodologies that he used in his traffic studies and summarized his testimony and findings.

Mr. Giroux had no questions.

Mr. Yee requested clarification on the mauka collector road and its design. Dr. Li described the proposed alternatives available to the Petitioner and the features associated with each and how they affected the Maui Island Plan. Dr. Li stated that he was not sure who was "taking the lead" for working on the collector road plans and described the different features that could be part of the various routes

and how changes would or could be made during the development process.

Commissioner Esaki requested clarification on details regarding on-street parking, and roadway design for the proposed transportation and interior roadway plans. Dr. Li deferred questions on how bikes and pedestrian would share the roadways to other witnesses.

Commissioner Biga requested clarification on what information substantiated the use of narrower interior roadways. Dr. Li stated that he was basing the implementation of narrow roadways based on his experience and described the various conditions that affected the design choice.

Commissioner Esaki requested clarification on the final subdivision approval that was needed before roadway construction. Discussion ensued to determine which witness might best address the questions that Commissioner Esaki had.

Chair Heller requested clarification regarding access to the residential area depicted in Petitioner's Exhibit 24. Discussion ensued to identify what area Chair Heller was referring to and Mr. Tabata stated that Mr. Perkins could best address the question.

Mr. Perkins described Petitioner's existing easement rights for the access area; and how traffic volumes and directions of travel were included in the access study.

#### Redirect

Mr. Tabata requested clarification on the different scenarios used in Mr. Li's studies. Dr. Li described study criteria used for the different scenarios and how they related to the collector road over the projected span of years involved in the study and how a memorandum of understanding regarding the large lot subdivision approval timeframe and process would be drafted.

Commissioner McDonald requested clarification on whether the dedication of roads to the County would occur after they were built out. Discussion ensued and Mr. Tabata stated that it had not been determined yet. Mr. Perkins stated that the roads would be built to County standards and explained how Petitioner had allowed for future dedication; but that the plan was to maintain all the current roads in the Petition Area as private roadways till that happened.

Commissioner McDonald requested confirmation that the Petitioner was committed to building existing roadways to County standards. Mr. Perkins affirmed that the existing roads would be built to County standards.

Commissioner Esaki asked if the County inspected private roads. Mr. Perkins deferred to the engineering witness expert to answer this question.

There were no further questions for Dr. Li.

Mr. Wyeth Matsubara commented that the next witness would be market study expert, Tom Holliday.

8. Tom Holliday

Mr. Holliday was offered and admitted without objection as an expert witness in the field of market study, economic impact and public fiscal assessment.

Mr. Holliday described the breadth of his firm's studies and summarized his testimony.

Mr. Giroux and Mr. Yee stated that they had no questions.

Commissioner Matsumura asked if a possible name change for the park was under consideration. Mr. Holliday replied that it would be the developer's decision to change the name.

Commissioner Heller requested clarification on the absorption of the residential units. Mr. Holliday stated that the higher than average occupancy costs due to the private water system and other features of the proposed project had not been considered when the market study was conducted and described how the costs of the units had some allowance for flexibility.

Commissioner Inouye asked if the market projections had factored how many of the housing units would be for people who would work in the park. Mr. Holliday described some of the assumptions that were made and how "in-migration" pressure developed as jobs were created; and stated that no percentage or guess had been made; and that the housing and housing components were planned to meet the needs of the workers that were going to be in the park.

There were no further questions.

Chair Heller declared a recess at 11:32 a.m. and reconvened the meeting at 11:47 a.m.

9. Darren Unemori

Mr. Unemori was offered and admitted without objection as an Expert Witness in the fields of civil engineering and land surveying.

Mr. Unemori focused his summary of his testimony on wastewater and drainage; and described the various methods and strategies that would be used to control and manage the wastewater and drainage for the Petition Area at each stage of its incremental development. Mr. Unemori also provided additional information on Petitioner's GANTT chart and how long he estimated it would take to complete the backbone infrastructure for the entire proposed project which would include both increments. Mr. Unemori explained how he estimated that the completion date would be in 2026 (approximately 13 years), and confirmed the acreages for the existing urban area of the proposed project and how many acres were being sought for reclassification. Mr. Unemori stated that his acreage figures were based on the metes and bounds descriptions and maps of the Petition Area; and described how acreage differences could be attributed to certain roadways being included.

Mr. Tabata asked if the existing roadways were in compliance with the County's roadway requirements. Mr. Unemori replied that they were.

Mr. Giroux stated that County had no questions.

Mr. Yee requested clarification on what happened at the tentative subdivision approval phase when there was a large lot subdivision and when there was not a large lot subdivision. Mr. Unemori differentiated between a preliminary and tentative subdivision approval on a large lot subdivision and described what occurred during each situation.

Mr. Yee requested clarification on whether Mr. Unemori would still recommend the development of a brackish well for purposes of non-potable water; and on stormwater quality issues that still needed to be addressed. Mr. Unemori explained why he thought developing a well was justified and described how the intent for stormwater flooding and stormwater quality controls were to fully comply with Maui County stormwater rules; and that further mitigations might be contained in the CC&R's .

Commissioner Esaki requested clarification on the plans for alleviating stormwater and what provisions for fire protections had

been made. Mr. Unemori shared his perception of how pervious concrete could be used and described how the fire protection would be part of the potable water system since the non-potable system would be for irrigation as a result of using two separate mains for each type of water.

Commissioner Esaki requested clarification on how many lots and units could be built within the Agricultural District without land use redesignation. Mr. Unemori replied that Maui County uses a sliding scale and he could not answer that question.

Commissioner McDonald requested clarification on what type of water the existing tech park was on and whether any discussion had occurred regarding tapping into the adjacent proposed Kihei High School's R-1 water source. Mr. Unemori stated that R1 was being used for irrigation from the wastewater treatment plant and that he was not aware of any discussions between Petitioner and the Kihei High School, County or other State agencies; and described the current limits of the existing R-1 system.

Chair Heller requested clarification on the impact of water usage and the wastewater treatment system and how billing for the two systems would occur. Mr. Unemori responded that he was not sure how the billing would be done. Mr. Perkins commented that it had not been determined how billing would be done but that one of the objectives of the billing would be to recover costs for providing the systems.

There were no more questions for Mr. Unemori.

Mr. Tabata stated that Petitioner's remaining witness, Michael Dega would not be available till August and discussion occurred regarding how the hearing would proceed. Mr. Yee inquired if additional witnesses might be involved with the proceedings. Mr. Tabata replied that there was a possibility that a witness might be desired to address the Fish and Wildlife letter if permitted by the Commission. Mr. Yee stated that OP would have no objection to the witness.

Chair Heller called for the County to proceed with its case. Mr. Giroux replied that he would be calling William Spence.

## COUNTY WITNESSES (continued)

### 2. William Spence

Mr. Spence was offered and admitted without objection as an expert in Planning.

Mr. Spence stated that he also spoke for the Maui Mayor's administration and summarized his testimony; and provided the reasons County supported the proposed project.

Mr. Wyeth Matsubara thanked Mr. Spence for County's support for the proposed project and had no questions.

Mr. Yee requested clarification on who would be responsible for planning the alignment and development of the mauka collector road. Mr. Spence stated that there was no one body responsible, but that there would be coordination between Petitioner, the County and surrounding area land owners, with agencies like Public Works to address the issue.

Mr. Yee asked if "form-based" or proposed ordinances would determine if the technology park would continue or become more of a new town or new development. Mr. Spence replied that he was satisfied that the park would continue to be oriented towards technology and information; and that a new town and associated zoning codes could be part of this development as well.

Commissioner Inouye requested clarification on how the implementation of form-based code was expected to work and how successful it might be. Mr. Spence described examples of other communities that had emulated form-based code and described how urban designs were affected by its use. Mr. Spence stated that it was County's intent to implement form-based code as it had represented to the Commission.

There were no further Commissioner questions.

Redirect

Mr. Giroux asked whether any possible changes within the code or any representations for changes had been made at this point. Mr. Spence replied that the emphasis had been to present the Petition to the Land Use Commission and to address needed changes to the code at the Maui County Planning Department level before making recommendations to the Maui County Council; and described how the Maui County Council would oversee matters.

There were no further questions for Mr. Spence.

### 3. Nolly Yagin

Mr. Yagin was offered and admitted without objection as an expert in roadway designs, plan reviews, and general public complaints.

Mr. Giroux stated that County would rest on Mr. Yagin's written statement.

Mr. Tabata had no questions for Mr. Yagin.

Mr. Yee requested clarification on the status of the makai and mauka collector roads within the Petition Area. Mr. Yagin replied that he was able to comment on the mauka collector road and shared what progress had been made on it. Mr. Yagin described how the makai collector road funding was affecting its progress and how the design funds would be obtained in the coming years; and shared his perspective on how planning and design of the roadway system in and around the Petition Area was evolving.

There were no Commissioner questions and no redirect.

Mr. Giroux stated that County would submit Kyle Ginoza's written testimony, and both Petitioner and OP had waived his cross-examination. Mr. Giroux offered Mr. Ginoza as an expert based on his resume and experience. There were no objections to Mr. Ginoza's admission as such an expert.

Chair Heller noted that there were time constraints on the Commission and asked if OP had any more witnesses. Mr. Yee responded that Charlene Shibuya remained.

Chair Heller assessed the remaining testimony and agenda items and announced that the Commission would continue to hear testimony till 1:15 p.m. and would go into Executive Session, and then adjourn for the day; and called for OP's remaining witness.

OP

1. Charlene Shibuya

Ms. Shibuya was offered and admitted without objections as an expert in the field of traffic.

Ms. Shibuya described the background and history regarding transportation infrastructure development in the Kihei region and summarized her testimony; and shared the reasons why DOT would want the revised TIAR for the Petition Area at the zone change stage.

Mr. Tabata requested clarification regarding the access rights and what their fair market values might be; when TIAR acceptance and zone change approval was desired; and what level of planning needed to be accomplished when the TIAR was submitted. Ms. Shibuya described the appraisal process involved in making the market value determinations for access rights and was explaining the specific details that were needed about the proposed project for the TIAR/zone change approval phase when Chair Heller announced that the Commission needed to halt proceedings for the day to complete its other agenda items.

Chair Heller called for a motion to enter into Executive Session. Commissioner Biga moved for and Commissioner McDonald seconded the motion to enter Executive Session. By a unanimous 7-0 voice vote, the Commission elected to enter into Executive Session. Chair Heller excused LUC staff, the Parties and the Public; and the Commission entered Executive Session at 1:15 p.m. and reconvened in public session at 1:25 p.m.

Chair Heller called for a motion to adjourn the meeting. Commissioner Biga moved for and Commissioner Matsumura seconded the motion to adjourn. By a unanimous 7-0 voice vote, the Commission elected to adjourn the meeting.

Chair Heller announced that Commission would continue the hearing on August 8, 2013 and adjourned the meeting at 1:15 p.m.