

LAND USE COMMISSION
MEETING MINUTES

July 19, 2012 – 10:00 a.m.
Marriott Courtyard Hotel, Haleakala Room
Kahului, Maui, Hawai'i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Sheldon Biga
Ronald Heller
Nicholas Teves, Jr.
Ernest Matsumura
Thomas Contrades

COMMISSIONERS EXCUSED: Napua Makua

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 10:05 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the July 5, 2012 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 (8-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The August 2-3, 2012 meeting is tentatively set to be held on Maui for Docket No. A94-721 ATC Makena Entities with site visits for Docket Nos. A94-706 and A12-795. The Commission also is tentatively planning to return to Maui on August 23-24, and September 6-7.
- Any questions or concerns- please contact LUC staff.

Chair Chock introduced new Commissioner Sheldon Biga to the audience.

ACTION

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

(Maui)

Chair Chock announced that this was an action meeting to consider:

- Intervenor Bolomet's Motion for an extension to enter exhibits
- Petitioner's Motion to Exclude Intervenor Bolomet's Witnesses on International Law and Title
- Petitioner's Motion to Exclude Intervenor Bolomet's Exhibits "1"- "13" and "15"- "17"
- Petitioner's Motion to Exclude Expert Testimony from Witness for Which No Written Direct Testimony Was Provided and...
- The reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lahaina, 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 Corporate 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

(Please refer to LUC Transcript for more details on these matters)

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Routh Bolomet, Intervenor
Michael Lee, assisting Routh Bolomet.

Chair Chock updated the record and explained the procedures to be followed for the proceedings. Ms. Lincoln and Ms. Bolomet requested clarification on how and when public testimony would be taken during the proceedings. Discussion ensued to explain Commission proceeding procedures to the Intervenor; and what the expectations were of them for future hearings. There were no further comments, questions or objections to the procedures.

Commissioner Heller disclosed that he had noticed that Hawaiian Telcom and Maui Electric were noted on the certificate of service on the Petition documents; and that his law firm did work for those companies; but did not feel that this relationship would impair his ability to remain impartial during the proceedings; and that this relationship was being revealed to allow the Parties to voice any opposition to his continued participation in this matter. There were no questions, comments or objections to Commissioner Heller's continued participation.

Intervenor Bolomet stated that she had received an email from Mr. Yee that prompted her to file a Motion to Present Evidence of Lineal Descendancy to Awardee and requested clarification on the authority of the LUC Executive Officer to determine the ownership of land involved in a Petition filing and argued how she had documents to contest the ownership claims of the Petitioner.

Chair Chock entertained a motion for an Executive Session. Commissioner Heller moved and Commissioner McDonald seconded the motion. By unanimous voice vote (8-0) the Commission elected to enter into Executive Session and had the room vacated at 10:25 a.m. The Commission reconvened at 10:37 a.m.

Chair Chock stated that based on the prima facie evidence presented by Petitioner regarding title and adequacy of title to the Commission, that he was denying the motion and advised Ms. Bolomet that the LUC was not the proper jurisdictional body to make determinations as to the adequacy of title and that the more appropriate venue to address those types of concerns was in the court system; and that the Commission would now move on to addressing the other motions before it. Ms. Bolomet requested clarification on whether a court ruling on ownership of the disputed title to the property might affect how the Commission perceived her situation. Chair Chock restated how the Petitioner had submitted sufficient evidence of title for the Commission to consider its Petition complete. Ms. Bolomet stated that she wanted to

get on the record that the Commission was denying her due process that was offered to Petitioner. Chair Chock noted Ms. Bolomet's comment and moved on to Intervenor Bolomet's Motion to extend time to enter exhibits.

ACTION

TO CONSIDER INTERVENOR ROUTH BOLOMET'S MOTION TO EXTEND TIME

Ms. Bolomet stated that she did not need the extension and described why she felt she no longer needed the extension; and how everything that she felt needed to be submitted, had been submitted. Discussion ensued to confirm that Ms. Bolomet was withdrawing her motion and exhibits. Ms. Bolomet stated that she was unclear about the status of her exhibits. Mr. Geiger clarified that he was addressing the withdrawal of her motion and not her exhibits. Ms. Bolomet replied that if the matter at hand was just the withdrawal of her motion and not her exhibits, she agreed that she was withdrawing her motion to extend time only.

There were no further questions, comments or objections to Ms. Bolomet's withdrawal of her motion to extend; and Chair Chock stated that the Commission would now consider Petitioner's Motion to Exclude Intervenor Bolomet's Witnesses on International Law and Title.

Mr. Geiger requested clarification on whether Ms. Bolomet's withdrawal of her motion to extend time had been formally accepted by the Commission. Chair Chock asked Ms. Bolomet whether she was aware that she had submitted exhibits past the established deadline. Further discussion ensued regarding the witnesses and exhibits that Ms. Bolomet had submitted to clarify the content of Ms. Bolomet's withdrawal of her motion. Ms. Bolomet stated that her understanding was that she would be arguing to keep all of her witnesses and described how she felt that she had meet all the Commission submittal requirements by the prescribed time. Mr. Yee provided OP's understanding of the status of Ms. Bolomet's filings. After hearing OP's understanding of the status of her filings, Ms. Bolomet stated that she did not wish to withdraw her motion.

Chair Chock requested that Mr. Geiger restate his request for clarification to the Commission. Mr. Geiger argued why the Motion to Extend should not be granted and described his understanding of how the late filings would impact Petitioner.

Mr. Giroux stated that County had no position on the matter.

Mr. Yee stated that OP did not disagree with Petitioner's comments and that the State had no objection to the late submission of the exhibits that had already been submitted with the understanding that no further exhibits would be submitted, as there were several exhibits that had not yet been filed with the Commission; and that Ms. Bolomet would be withdrawing those exhibits. Mr. Yee restated that with this understanding, OP had no objections to the extension.

Ms. Lincoln stated that she had no objection.

Chair Chock reminded Ms. Bolomet of the Commission's procedures and performance requirements of the Parties for submitting exhibits and witnesses; or other evidence; and described his expectations of how she would need to conform to them; and stated that he would grant an extension till August 1 to submit all documents to the Commission.

Mr. Geiger, Mr. Giroux and Mr. Yee requested and were granted a period for rebuttal based on the extended deadline until August 10, 2012. Mr. Geiger stated that due to the granting of the motion to extend time, there was a possibility that the witnesses that would be appearing before the Commission would need to be recalled to rebut the late materials. Chair Chock acknowledged Mr. Geiger's comments.

Ms. Bolomet requested clarification on what was expected of her during the rebuttal process. Chair Chock referred Ms. Bolomet to LUC staff to obtain clarification on procedures and moved on to Petitioner's motions.

ACTION

TO CONSIDER PETITIONER'S MOTION TO EXCLUDE INTERVENOR BOLOMET'S WITNESSES ON INTERNATIONAL LAW AND TITLE

Petitioner

Mr. Geiger described the background and reasoning for filing the Motion and argued why the Motion should be granted and the witnesses excluded.

County

Mr. Giroux stated that the County joined Petitioner's Motion and argued how the County perceived the Petition as a "use" issue and not an "ownership" issue.

OP

Mr. Yee stated that OP strongly supported the Motion and argued how the issue of completeness had been determined and why the witnesses should be excluded.

INTERVENOR LINCOLN

Ms. Lincoln stated that she had no comment.

INTERVENOR BOLOMET

Ms. Bolomet argued how all her witnesses laid the foundation for the agricultural use of her land and bolstered her intervention efforts; and were within the scope of her intervention.

REBUTTAL

Mr. Geiger stated that Petitioner had not objected to Robin Knox and Michael Lee and identified the witnesses that had been objected to and argued why Petitioner had decided to object to the identified witnesses; and why they should be excluded.

Chair Chock stated that the witnesses that were related to the issues of farming, water, native Hawaiian culture, traditions and practices would be allowed and that witnesses that had been attempted to be brought forth on international law and title would be denied (David Keanu Sai, Dexter Kaiyama, Aaron Ardaiz, Wilmont Kahaialii, Leon Siu, James Geiger, and David Louie). Ms. Bolomet argued why Wilmont Kahaialii should be allowed. Discussion ensued to determine the limits of Mr. Kahaialii's participation and Chair Chock confirmed that Mr. Kahaialii's testimony would be limited to matters relating to farming, water, and culture, and traditional practices. Ms. Bolomet affirmed Mr. Kahaialii's testimony limits.

Discussion ensued regarding the content of Mr. Kahaialii's written testimony and how it did not address the issues that Chair Chock had described. Mr. Geiger described his concerns of whether Mr. Kahaialii's testimony would be relevant or not. Chair Chock noted Mr. Geiger's comments.

ACTION

TO CONSIDER PETITIONER'S MOTION TO EXCLUDE INTERVENOR BOLOMET'S EXHIBITS "1"- "13" AND "15"- "17"

ARGUMENTS ON MOTION

Petitioner

Mr. Geiger described the background and reasoning for filing the Motion and argued why the Motion should be granted and the stated exhibits excluded. Mr. Geiger identified the exhibits that he wanted to exclude (1, 2, 3, 4, 5, 5a, 5b, 6, 7, 8, 8a, 9, 11 and 13). Mr. Geiger then further identified the exhibits that were not provided (10, 12, 16 and 17); and the exhibits that were incomplete (1, 2, 8, and 13) that he wanted to exclude.

County

Mr. Giroux stated that the County rested on its concurrence with Petitioner's argument.

OP

Mr. Yee stated that OP generally supported the Motion in particular, the exhibits that dealt with title (1-9 and 11-13); and noted that OP reserved the right to dispute the late exhibits (10, 12, 16, and 17) that the Commission had granted to Intervenor Bolomet and that there was no clear link of Exhibit 15 to the Petition Area. Mr. Yee reserved comment on Exhibit 15 till its relevancy could be established.

INTERVENOR LINCOLN

Ms. Lincoln had no comment.

INTERVENOR BOLOMET

Ms. Bolomet argued why her exhibits should be allowed if they pertained to her right to farm and how she could use her lands; and how Hawaiian Kingdom laws were relevant to her position and "konohiki" responsibilities; and stated that she would be withdrawing Exhibit 10.

REBUTTAL

Mr. Geiger argued how it was easy to say that the exhibits were related to culture and shared his reasons why the Commission should deny the motion and disallow the exhibits

Ms. Bolomet argued how Petitioner failed to understand the connections of exhibits to the cultural significance of the Petition area and its uses.

The Commission went into recess at 11:25 a.m. and reconvened at 11:35 a.m. (Commissioners Contrades and Teves returned at 11:27 a.m.).

Chair Chock reminded Ms. Bolomet of the imposed deadline for submitting the remaining exhibits and the criteria that was applied in assessing whether or not to allow the exhibits; and stated that Exhibits 1-9, 11, and 13 would be excluded (Exhibit 10 was

(Please refer to LUC Transcript for more details on these matters)

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withdrawn, and Exhibits 12, 14, 15, 16 and 17 were allowed). Mr. Geiger requested clarification on whether or not the relevance of the exhibits to be submitted would need to be established. Chair Chock acknowledged that was the case.

ACTION

TO CONSIDER PETITIONER'S MOTION PETITIONER'S MOTION TO EXCLUDE EXPERT TESTIMONY FROM WITNESS FOR WHICH NO WRITTEN DIRECT TESTIMONY WAS PROVIDED

ARGUMENTS ON MOTION

Petitioner

Mr. Geiger described the background and reasoning for filing the Motion and argued why the Motion should be granted.

County

Mr. Giroux stated that the County concurred with Petitioner.

OP

Mr. Yee stated that OP had No Objection to the motion.

INTERVENOR LINCOLN

Miss Lincoln had no comment.

INTERVENOR BOLOMET

Ms. Bolomet described the reasoning that she used to select her witnesses and argued why she would like to retain Mele Carroll and Clare Apana. Chair Chock asked why written testimony had not been provided for her witnesses. Ms. Bolomet replied that her witnesses were out of town and described her attempts to obtain their testimony.

REBUTTAL

Mr. Geiger argued why he did not have an issue with the witnesses appearing as lay witnesses instead of expert witnesses and restated why Petitioner objected to certain witnesses. Discussion ensued to clarify Petitioner's reason for objecting to certain witnesses. Chair Chock decided to allow Ms. Bolomet until August 1, 2012 to submit supporting documents for her witnesses and allowed witnesses Mele Carroll, Robin Knox, Keeaumoku Kapu, Victoria Kaluna, Jonah Keahi, William Spence, and Clare Apana. Ms. Bolomet requested clarification on what qualifications an expert witness

needed to have. Chair Chock referred Ms. Bolomet to LUC staff to obtain information on expert witnesses.

Mr. Geiger requested clarification on which Intervenor witnesses would be identified as experts. Ms. Bolomet identified Mele Carroll and Clare Apana; and described the qualifications of her other witnesses and how they would probably be “lay” witnesses. Discussion ensued to further identify other expert witnesses and Chair Chock stated that Robin Knox, Keeaumoku Kapu, Victoria Kaluna, Jonah Keahi, William Spence, and Clare Apana appeared to be potential expert witnesses; and that August 1, 2012 would be the submittal deadline for supporting documents for them.

Mr. Giroux stated that Mr. Spence was on County’s witness list and Ms. Bolomet would have an opportunity to question him during his testimony as an expert on planning.

Mr. Geiger requested clarification on whether or not August 10, 2012 would be the response date for anything submitted and if there would be opportunity to determine relevancy and provide rebuttal; and whether written testimony would be required for lay and expert witnesses. Chair Chock acknowledged that his expectation was that the submittals would be considered for relevancy and that only expert witnesses required written testimonies.

Chair Chock reminded the Parties of the Commission’s expectations during the proceedings and announced that Public Testimony would now be taken.

PUBLIC WITNESSES

1. Mike Gerry- Construction Supervisor- Habitat for Humanity-Maui (Habitat)

Mr. Gerry described his role within his organization and described how projects were considered and selected for renovation work; and stated that he had been asked to respond to Intervenor’s question on why Habitat for Humanity did not build new homes and do more with bank repossessed homes. Mr. Gerry described the economic obstacles in the Maui real estate market that made Intervenor’s suggestion unfeasible due to the high land costs involved.

Petitioner, County and OP had no questions.

Intervenor Lincoln requested clarification on why Habitat could not find properties in a price range in the Lahaina area that might allow for an

affordable restoration project. Mr. Gerry described how cost estimates for the Habitat projects described by Ms. Lincoln were calculated that made it too financially challenging to undertake; and how he could not provide estimates for structures described by Ms. Lincoln without seeing any drawings.

Mr. Gerry referred questions regarding the proposed project to Ms. Bigelow and described projects on the mainland that Habitat had been successful with.

Ms. Bolomet requested clarification on whether Habitat had any arrangements to build homes on her land. Chair Chock reminded Ms. Bolomet what the scope of her intervention was and requested that she not include matters regarding title in her questioning.

Ms. Bolomet requested clarification on how Habitat operated and whether farmer residences might be included in considering construction projects. Mr. Gerry provided his understanding of how Habitat provided affordable housing packages to families and replied that he was not on the homeowner selection committee; and described how, when opportunities for successful projects appeared in the Maui marketplace, how Habitat would react. Discussion ensued to determine what types of projects Mr. Gerry would undertake and what Mr. Gerry's role would be. Mr. Gerry restated that his primary role was to describe why Habitat did not do "repos" at the current time.

There were no Commissioner questions

2. Bobby Pahia

Mr. Pahia stated that he was a full-time taro farmer and was appearing in support of Habitat since he was a beneficiary family of the organizations work and described his experience as a recipient of those services.

Petitioner, County and OP had no questions.

Ms. Lincoln requested clarification of how Mr. Pahia would perceive Habitat providing its benefits in different locations in the region. Mr. Pahia shared why he felt more land was needed for farming and what he thought about Habitat services being provided for different locales.

Ms. Bolomet requested clarification on how Mr. Pahia perceived his cultural values as a farmer by working the land. Discussion ensued to determine what type of cultural lifestyle Mr. Pahia preferred. Mr. Pahia acknowledged that if given the opportunity to live and farm on the land for free, he would be interested.

There were no further questions for Mr. Pahia.

3. Johanna Kaumanu

Ms. Kaumanu shared her perception of the LUC's purpose, and her assessment of the cultural and agricultural aspects of the Petition Area that needed to be included in evaluating its change of land use.

Petitioner, County, OP and Ms. Lincoln had no questions.

Ms. Bolomet requested clarification on how Ms. Kaumanu perceived agriculture; and how Hawaii culture was nature based. Ms. Kaumanu described the efforts and experiences that she and her husband had undertaken to use agriculture to teach students and help rehabilitate native Hawaiians who had been incarcerated; and shared her perception of how Hawaiians interacted with nature. Ms. Bolomet also asked what Ms. Kaumanu's perception of the clearing of land and its regeneration was. Ms. Kaumanu shared her personal experiences and observations of land clearing recovery.

There were no other questions for Ms. Kaumanu.

4. Elena Walker- real estate agent

Ms. Walker shared her opinion on affordable housing and the real estate market; and the efforts of Habitat in the community.

Petitioner, County, OP and Ms. Lincoln had no questions.

Ms. Bolomet asked what Ms. Walker's opinion was regarding the allocation of affordable housing for the proposed project. Ms. Walker described how she thought affordable homes would benefit the community and how the Habitat efforts benefited the Lahaina area.

There were no further public witnesses.

The Commission went into recess at 12:30 p.m. and reconvened at 1:40 p.m.

MAP ORIENTATION

LUC Staff Planner Scott Derrickson provided a map orientation of A12-795 for the Commission. There were no questions for Mr. Derrickson.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Geiger offered Petitioner Exhibits 1-14, 15a-34 and 36 for the record.

There were no objections by the Parties or the Commissioners to County's exhibits and they were admitted to the record.

County

Mr. Giroux offered County Exhibits 1-13 for the record.

There were no objections by the Parties or the Commissioners to Petitioner's exhibits and they were admitted to the record.

OP

Mr. Yee offered OP's Exhibits 1-5 for the record.

There were no objections by the Parties or the Commissioners to OP's exhibits and they were admitted to the record.

Intervenor Lincoln

Ms. Lincoln offered her Exhibits and stated that she wished to have the Exhibits admitted that she had already identified to the Commission.

Mr. Geiger stated that he had objections to various portions of Intervenor Lincoln's Exhibit 1 and described what sections he would like to have disallowed.

Mr. Giroux stated that County concurred with Mr. Geiger's objections.

Mr. Yee and Ms. Bolomet had no objections.

Chair Chock requested more information on the portions of Exhibit 1 that had been objected and how they were relevant to the Petition. Mr. Geiger clarified that he also had objections to other Exhibits but was taking them in order.

Discussion ensued to clarify what Mr. Geiger was objecting to in Exhibit 1. Ms. Lincoln stated that she was withdrawing page 11 of Exhibit 1. Chair Chock determined that all of Exhibit 1, with the exception of page 11 would be allowed and commented that Mr. Geiger could address the portions of Exhibit 1 that he objected to as they appeared in the proceedings. Further discussion ensued to determine what exhibits would be objected to on the basis that they were cumulative. Chair Chock determined that all remaining Intervenor Lincoln Exhibits except for 14 would be allowed.

Intervenor Bolomet

Chair Chock determined that Ms. Bolomet's Exhibits would be reviewed after August 1, 2012. Mr. Geiger stated that Exhibits 12, 14, 15, 16 and 17 were going to be addressed. Discussion ensued to determine what exhibits should be addressed. Chair Chock noted that he did not have Exhibit 16. Mr. Yee stated that Exhibit 16 had not been submitted and his understanding was that it was due by August 1. Chair Chock concurred.

There were no further questions, comments or objections regarding the exhibits.

PRESENTATIONS FOR THE RECLASSIFICATION OF APPROXIMATELY 16.7 ACRES OF LAND FROM THE AGRICULTURAL DISTRICT TO THE URBAN DISTRICT AT LAHAINA, MAUI, HAWAII 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

Petitioner

Mr. Geiger introduced Heidi Bigelow to the Commission; provided a historical background of the proposed project and described how he would present his case, what expert witnesses would be appearing; and what types of County hurdles had been overcome to move the Petition forward.

Petitioner's Witnesses

1. Rory Frampton- Project Planner

Mr. Frampton was qualified and admitted as an expert in planning and made a correction to page 23 of his written testimony regarding the views from the proposed project. Mr. Frampton used a PowerPoint presentation to describe the genesis of the Petition and summarized his testimony for the Commission.

Ms. Lincoln requested clarification on which exhibit was being shown and whether Intervenors had been given an opportunity to view it. Mr. Geiger identified the presentation as Petitioner's Exhibit 23 and stated that he had provided copies to all the Parties. Chair Chock described the procedures that he expected the Parties to follow and restated his expectation of how the Parties should perform during the course of the Commission's proceedings.

Mr. Frampton also described past problems with area flooding; developments that had occurred or would be occurring in the region; how they would be affecting the Petition Area; and the methodology and considerations that were applied in the design and planning of the infrastructure and layout of the proposed project for traffic, parking, recreational and residential use; and vertical construction design. Mr. Frampton provided further details of how he perceived how the project conformed to various island, County and State plan requirements and how external changes in the surrounding community had rendered the Petition Area more suitable for an urban use designation. Mr.

Frampton stated that he had nothing further to add to his testimony and concluded his presentation.

Questions for Mr. Frampton

County

Mr. Giroux requested that Mr. Frampton provide his understanding of the 201H process. Mr. Frampton described how applications for 201H projects were processed by the County agencies and how the resolutions and amendments to the plan were handled. Mr. Frampton stated that 8 conditions had been applied in the County's resolution regarding the proposed project and described them to the Commission; and that Petitioner had no objections to the conditions imposed by the County being incorporated into the Land Use Commission's Decision and Order.

There were no further questions by County.

OP

Mr. Yee requested clarification on how educational contribution impact fees would be calculated and administered for housing units; how setbacks in the community would be accounted for or required; how traffic improvements would be implemented and on what timetable; why improvements needed to be done before occupancy; how FEA lighting standards would be complied with; how houses and vacant lots in the proposed project and their pricing and purchase conditions had been determined; what environmental assessment triggers were involved ; what sustainability considerations had been incorporated and implemented in the construction of the housing units; how potable and non-potable water sources had been determined, how housing need considerations and economies of scales factored into design plans; how vacant lots contributed to the affordability of the proposed project; what environmental assessment triggers and sustainability considerations were involved ; and how issues relating to pricing, homeowner commitments; and water sources had been analyzed and considered.

Mr. Frampton shared his understanding of how the various questions raised by Mr. Yee had been dealt with during the planning process.

The Commission went into recess at 3:00 p.m. and reconvened at 3:13 p.m.

Intervenor Lincoln

Ms. Lincoln requested clarification on various aspects of Mr. Frampton's November 16, 2011 testimony before the Maui Council and his PowerPoint presentation to the LUC. Mr. Frampton provided his recollection of the events that transpired at the Maui Council presentation and reviewed various slides that were shown to the Commission and answered Ms. Lincoln's questions about them.

Mr. Frampton described the crowded neighborhood conditions in the Lahaina area and provided his perception of contributing factors to those conditions; and how view planes, recreational areas, roadways and access considerations figured into the proposed project design. Mr. Giroux noted that Ms. Lincoln was providing unsubstantiated testimony as she questioned the witness and requested that the Commission be aware of her questioning technique. Chair Chock acknowledged Mr. Giroux's request. Discussion ensued to clarify and attempt to remedy the situation.

Ms. Lincoln requested clarification on various features in the Petition Area- a cul-de-sac, a manhole on the property, storm diversion channels, and ground fill. Mr. Frampton provided his awareness of what the background was regarding these items.

Ms. Lincoln also requested clarification on the price range of homes that the proposed project was designed for and on the performance deadlines and penalties for failing to meeting them were. Mr. Frampton described how the pricing structure for the proposed project had been calculated and stated that there was a 7 year allowance to complete the infrastructure for the Petition Area and that each vacant lot had to have a completed house on it within 36 months of closing and was not aware of what the penalties were.

Ms. Lincoln stated that her next series of questions would address Mr. Frampton's written testimony. Chair Chock advised her of the impending time constraints confronting the Commission and that he might call a recess to the proceedings during her questioning. Ms. Lincoln acknowledged Chair Chock's comment.

Ms. Lincoln requested clarification on references to agriculture in Mr. Frampton's written testimony. Mr. Frampton provided additional details on the agricultural references that were included in his testimony. Discussion ensued several times to clarify what other information Ms. Lincoln was trying to obtain and who would provide it for Petitioner. Mr. Frampton stated that he believed Ms. Lincoln was referencing State land use criteria rules that needed to be considered when re-designating agricultural land.

Chair Chock commented that he would like to recess proceedings and assessed how many questions Ms. Lincoln had remaining. Ms. Lincoln reported how many questions she still had and Chair Chock asked the Parties if there were any questions, comments or objections before going into recess. There were none and Chair Chock reminded the audience that proceedings would resume on July 20, 2012 beginning with Docket No. SP70-85 Ernest DeLuz Trucking on July 20, 2012 at 9:30 a.m.

The Commission recessed at 3:56 p.m.

LAND USE COMMISSION
MEETING MINUTES

July 20, 2012 – 9:30 a.m.
Marriott Courtyard Hotel, Haleakala Room
Kahului, Maui, Hawai`i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Sheldon Biga (arrived at 9:46 a.m.)
Ronald Heller
Nicholas Teves, Jr.
Ernest Matsumura
Thomas Contrades (departed meeting at 11:36 a.m.)

COMMISSIONERS EXCUSED: Napua Makua

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

COURT REPORTER: Cammie Gilett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Chock called the meeting to order at 9:32 a.m. (7 Commissioners Present-
Commissioner Biga not yet present.)

ACTION

SP 70-85 ERNEST DELUZ TRUCKING, (Hawai`i)

Chair Chock announced that this was an action meeting on SP70-85 DeLUZ TRUCKING & GRAVEL (Hawaii) to consider granting a Time extension until June 30, 2012 to comply with Condition No. 5 Tax Map Key: 6-8-002: portion of 050.

APPEARANCES

B.J. Leithead-Todd, Director, Hawaii County Planning Department (County)

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

Rodney Funakoshi, OP

Chair Chock updated the record and described the procedures that would be followed for the docket proceedings. There were no questions, comments or objections by the Parties.

Chair Chock noted that Petitioner's representative was absent and announced that public testimony would taken.

PUBLIC WITNESSES

None

MAP ORIENTATION

LUC Staff Planner Scott Derrickson provided a map orientation for the Commission and described the Petition Area and its features. There were no questions.

ARGUMENTS ON MOTION

Petitioner

Not present

County

Ms. Leithead-Todd stated that the County supported the application and the granting of the Motion.

OP

Mr. Yee stated that OP had No Objection.

Rebuttal

None

Commissioner Questions

(Please refer to LUC Transcript for more details on these matters)

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There were no comments or questions.

Commissioner Contrades moved to extend the life of the permit. Commissioner Teves seconded the motion.

Commissioner Heller commented that rather than a motion to extend the life of the permit, the motion could more accurately be stated "to grant a time extension to comply with Condition No. 5 until May, 2013." Commissioner Contrades stated that he stood corrected and Commissioner Heller identified the time parameters of when the time extension would start and end. Commissioners Contrades and Teves acknowledged the friendly amendment to the motion.

There were no further questions or comments.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Teves, Inouye, McDonald, Heller, Matsumura and Chair Chock.

Nays: None

The motion passed 7-0 with 1 excused.

The Commission went into recess at 9:37 a.m. and reconvened at 9:42 a.m.

CONTINUED HEARING

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

APPEARANCES

James Geiger, Esq., represented West Maui Land Inc.

Heidi Bigelow, West Maui Land Inc.

James Giroux, Esq., Deputy Corporate Counsel, represented County of Maui Planning Department (County)

Kurt Wollenhaupt, County

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

Rodney Funakoshi, OP

Michele Lincoln, Intervenor

Routh Bolomet, Intervenor

Michael Lee, assisting Routh Bolomet

Chair Chock announced that this was a continued hearing on Docket No. A12-795 and resumed the previous day's proceedings with Intervenor Lincoln's questioning of Petitioner's witness Mr. Frampton.

PETITIONER'S WITNESSES (CONTINUED)

1. Rory Frampton

Questions for Mr. Frampton

Intervenor Lincoln

Ms. Lincoln requested clarification on procedural matters regarding her testifying in lieu of an opening statement. Discussion ensued to clarify the nature of her situation and what the Parties would agree to allow Ms. Lincoln to do. Petitioner, County, OP and Intervenor Bolomet indicated that Ms. Lincoln could testify in lieu of providing an opening statement. Ms. Lincoln further clarified the amount of questions that she still had for Mr. Frampton and asked whether she could ask questions on evidence that she had recently provided to the Parties. Discussion ensued to determine what evidence she was referring to, and when she had submitted it to the Parties. Chair Chock determined that Ms. Lincoln's exhibits would be allowed. Mr. Geiger noted for the record that the evidence had not been produced in accordance with the pre-hearing order. Chair Chock acknowledged Mr. Geiger's objection.

(Commissioner Biga arrived at 9:46 a.m. 8 Commissioners present)

Petitioner, OP and County requested that copies of any exhibits be provided to the Parties before being introduced. Chair Chock noted the requested.

Ms. Lincoln requested clarification on vacant lot prices and on the criteria used for agricultural use determination by State and County standards. Mr. Frampton shared how vacant lot prices had been determined and deferred questions regarding County standards for agricultural use to Will Spence, Maui County Planning Department Director.

Ms. Lincoln requested clarification on affordable housing in the region and whether the Petitioner or other parties might have interest in pursuing additional affordable housing development in the area; State Historic Preservation Division (SHPD) concerns; and community/neighborhood meetings that occurred regarding the proposed project. Mr. Frampton provided his perception of affordable housing

efforts in the region and discussion ensued to determine the nature of Ms. Lincoln's SHPD questions and how she might otherwise obtain her desired information. Mr. Frampton described the community/neighborhood meetings that he had attended and stated that he had addressed concerns about the proposed project during the meetings and had advised concerned area residents that the County Council was the proper agency to approach in regards to having a park in the Petition Area. Mr. Frampton also described the various suggestions that had been made and what the reaction of the Council was to them; and how the decision for designating the Petition Area for affordable housing had been determined.

Ms. Lincoln requested clarification on whether a letter that she had circulated to the Parties could be addressed. Discussion ensued to clarify what exhibit she was referring to. Chair Chock determined that the letter had not been submitted in a timely manner.

Ms. Lincoln requested clarification on property tax valuation of the Petition Area and what the Petitioner would do with the land if its Petition were no granted. Mr. Frampton responded that he was not aware of how the tax valuation could be determined and that alternate uses for the Petition Area had not been explored.

There were no further question from Ms. Lincoln.

Intervenor Bolomet

Ms. Bolomet described what she was intending to accomplish with her questions and discussion ensued to clarify what Mr. Frampton was testifying about and how any questions for him should be relevant to his area of expertise. Chair Chock reminded Ms. Bolomet that other expert witnesses with more specific information about the Petition Area would be appearing and to consider what their testimony would include. Ms. Bolomet acknowledged Chair Chock's comment.

Ms. Bolomet requested clarification on the Petitioners and entities involved in the proposed project and on the environmental assessment that was performed on the Petition Area. Mr. Frampton shared his understanding of who the Petitioners and entities were, what the history of the Petition Area was, what his qualifications in cultural and environmental assessment were, and how the various aspects of the environmental assessment were performed to meet various agency requirements. Mr. Frampton also clarified how Petitioner was allowing landfill activities in the Petition Area and described how issues with the Lahaina wastewater treatment facility were being or going to be addressed. Discussion ensued on the matters that Ms. Bolomet had questions on. Mr. Giroux noted that no evidence had been

provided on the subject matter that Ms. Bolomet was asking about. Chair Chock requested that Ms. Bolomet be more specific in her questioning. Ms. Bolomet described the information that she had received from Robin Knox regarding the sewage capacity levels and further discussion ensued to determine what Ms. Bolomet was attempting to ask. Mr. Giroux suggested a recess to allow Ms. Bolomet to organize her thoughts and Chair Chock concurred.

The Commission went into recess at 10:20 a.m. and reconvened at 10:25 a.m. (Commissioners Contrades and Teves returned at 10:26 a.m.)

Ms. Bolomet requested clarification on Mr. Frampton's response to Mr. Geiger's question on July 19, 2012 regarding whether or not any new evidence had been introduced that would change his environmental assessment. Mr. Frampton disagreed with Ms. Bolomet's representation of what had been asked of him and provided his perspective on the matter. Ms. Bolomet referred to testimony she had submitted from Robin Knox. Discussion ensued as to how Ms. Bolomet was characterizing her question and Mr. Giroux also voiced his opposition to how questions were being formatted. Chair Chock restated his expectations regarding Ms. Bolomet's questions and Mr. Frampton restated his recollection of his testimony on the previous day and suggested witnesses who could more capably address Ms. Bolomet's concerns; and that he would not change his testimony.

Ms. Bolomet requested clarification on Mr. Frampton's credentials to perform cultural assessments and past experiences with archaeological findings. Mr. Frampton described his academic training and work experience and stated that there were no criteria in Hawaii for degrees or certifications for providing cultural assessments. Discussion ensued over the nature of the questions that were being asked and who should respond to them. Mr. Frampton described his familiarity with the Petition Area and his experience with archaeological findings and the Burial Council.

Ms. Bolomet requested clarification on how attendance at neighborhood, community and Council meetings was recorded and how individuals were made aware of the meetings. Mr. Frampton provided his understanding of how attendance was kept at formal community and Council meetings and estimated attendance for informal meetings that he had conducted, and how people were notified of meetings.

Ms. Bolomet requested clarification on why the entire proposed project was not designed to be low-cost affordable housing and what deadlines had been applied to

it. Mr. Frampton described the considerations that were made to design a financially viable project and how workforce affordable housing credits could be applied by the project developer and what timelines needed to be followed according to the resolution regarding the proposed project's development and what type of provisions had been made for flooding considerations in the Petition Area design.

There were no further questions.

Redirect

Mr. Geiger asked what the triggering feature was for the environmental assessment. Mr. Frampton stated that the trigger was the roadway connection to the property.

There were no further questions.

Commissioner Questions

Commissioner Heller requested clarification on the flood channel boundaries and on the use of the areas alongside the greenway designated lands and their design features. Mr. Frampton described the measurements and spacing consideration used for the flood channel and greenways.

(Commissioner Contrades departed the meeting at 11:06 a.m.)

Mr. Geiger stated that due to timing issues, his witnesses would not be appearing in the order he expected and that Dylan Payne would be his next witness. There were no objections or comments regarding the appearance of witnesses out of order.

2. Dillon Payne

Mr. Payne shared his personal background and reasons for wanting to live in the Lahaina area and being able to purchase a unit in the proposed project.

Questions for Mr. Payne County

Mr. Giroux requested clarification on Mr. Payne's ability to qualify for the affordable units being offered. Mr. Payne provided his opinion of what he could qualify for.

OP

Mr. Yee had no questions.

Chair Chock reminded Intervenors of his expectations for their questions of the witness.

Intervenor Lincoln

Ms. Lincoln requested clarification on Mr. Payne's ability to participate in purchasing homes in different price ranges and circumstances. Mr. Payne shared his house hunting experiences and the factors that entered into his assessment of the different properties he had evaluated for purchase and the community features that appealed to him.

Intervenor Bolomet

Ms. Bolomet requested clarification on how Mr. Payne learned of the proposed project and whether or not he would be compensated for testifying. Mr. Payne replied that he was an employee of West Maui Land Company and was not receiving any compensation or special treatment for appearing.

Redirect

None

Commissioner Questions

There were no Commissioner questions and no further comments.

3. Sherri Dodson- Executive Director, Habitat for Humanity

Ms. Dodson summarized her written testimony and described the mission of her organization and its accomplishments in the area.

Questions for Ms. Dodson

OP and County had not questions.

Intervenor Lincoln

Ms. Lincoln asked how many qualified homeowners the proposed project had, and how Ms. Dodson felt about the loss of open space in the interest of providing affordable homes. Ms. Dodson replied that no waiting lists were kept and described the time frames that her organization had agreed to in the resolution passed by Maui County Council; and that she favored providing much-needed housing to people that needed it.

Ms. Lincoln requested clarification on the financial considerations that were involved when Habitat decides to do a project. Ms. Dodson described how Habitat selected properties and evaluated the financial situation for each benefiting family before deciding the scale of the work involved.

Ms. Bolomet requested clarification on the income qualifications to be considered by her organization. Ms. Dodson provided her recollection of what the income qualifications were.

Redirect

Mr. Geiger asked what the time frames for completing projects were and referred to Exhibit 11 Maui County Resolution. Ms. Dodson identified the section of the resolution that stated that her organization's houses did not have a completion time limit.

Commissioner Questions

Chair Chock requested clarification on Habitat's obtaining a contractor's license. Ms. Dodson described how Habitat had obtained its license and how it intended to make use of it.

There were no further questions for Ms. Dodson.

Discussion ensued to plan the order of witnesses for the remainder of the day. Mr. Giroux suggested that Mr. Spence could testify in the time void that was anticipated. Chair Chock accepted Mr. Giroux suggestion and asked if the Parties had any objections to the proposed adjustments for the appearance of witnesses. There were no objections.

The Commission went into recess at 11:30 a.m. and reconvened at 12:33 p.m.

Chair Chock thanked the Parties for their cooperation, patience and efforts during the proceedings and encouraged them to continue their decorum during the proceedings.

Mr. Geiger stated that his witness Leonard Kimokeo Kapahulehua was ready to testify. Mr. Giroux stated that Mr. Kapahulehua's appearance had been discussed and agreed to by the Parties. Chair Chock asked if all the Parties concurred on Mr. Kapahulehua's appearance and all Parties acknowledged that there were no objections to the witness testifying.

Ms. Bolomet requested permission for Mr. Lee to do the questioning for this portion of the proceedings instead of her. Chair Chock granted Ms. Bolomet's request
(Please refer to LUC Transcript for more details on these matters)

with the understanding that Mr. Lee would be the only person doing the questioning. There were no questions, comments or objection to Chair Chock's decision.

4. Leonard Kimokeo Kapahulehua- Cultural Expert

Mr. Kapahulehua stated that he had prepared written testimony and was qualified and offered as a Cultural Expert. There were no objections to Mr. Kapahulehua's admittance and corresponding exhibits. Mr. Kapahulehua made two corrections to his testimony regarding the spelling of "Ahapua'a" and the date the flood control project occurred (should be 1990 vs. 1980); and summarized his testimony for the Commission. Mr. Kapahulehua described the methodology and criteria that he had used to gather the information for his report from pre-contact to modern times; and provided a recap of his findings.

Questions for Mr. Kapahulehua

County, OP, and Ms. Lincoln had no questions.

Intervenor Bolomet

Mr. Lee requested clarification on whether Mr. Kapahulehua would be surprised by various culturally related items, significant geological features and past occurrences on the Petition Area. Mr. Kapahulehua described his perspective on the various questions that Mr. Lee asked and shared why he would not be surprised by various findings on the property and what his clan lineage was.

Mr. Lee had no further questions.

Redirect

Mr. Geiger confirmed that Mr. Kapahulehua had no further information on the Petition Area and that there were no present day cultural practices occurring in the Petition Area and restated the time periods covered by his report. Mr. Geiger also confirmed if Mr. Kapahulehua had recently walked the grounds of the proposed project and asked whether there were any findings that he would like to report. Mr. Kapahulehua affirmed that he had recently walked on the Petition Area and did not see anything to alter his report.

There were no further questions for Mr. Kapahulehua.

5. Joshua Guth

Mr. Guth was offered and admitted as a witness after correcting a portion of his written testimony regarding a description of real estate property that he

(Please refer to LUC Transcript for more details on these matters)

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had mentioned; and shared how he had sought and attempted to purchase a residence.

OP and County had no questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on portions of Mr. Guth's testimony at the County Council meeting in November, 2011 and where his house hunting experiences had taken him. Mr. Guth provided his recollection of what he was attempting to communicate at the Council meeting and voiced the desirable locations and qualities in housing that he preferred.

Intervenor Bolomet had no questions.

Mr. Geiger had no redirect.

There were no further questions for the witness.

Mr. Geiger stated that his next witness was enroute to the meeting and suggested taking County Witness Will Spence out of order. Chair Chock concurred and stated that his preference was to complete all the questioning of Mr. Spence without interruptions. There were no objections, comments or questions regarding Chair Chock's determination.

County Witnesses

1. Will Spence

Mr. Spence and County's associated exhibits 1, 5 and 6 were offered and admitted to the record. Mr. Spence was qualified as an Expert in Planning and described the considerations and county processes that the proposed project had undergone and provided his perspective of why the County was in favor of the Petition.

Questions for Mr. Spence

Petitioner

Mr. Geiger requested clarification of the County review process for the proposed project. Mr. Spence described how the proposed project had been vetted by the County Planning Department and the County Council and how conditions had been established in the County resolution to specifically assure that mitigation measures and requirements for all the identified concerns and issues had been addressed. Mr. Spence deferred water related questions to Dave Taylor, County Water Resources Director.

OP

Mr. Yee requested clarifications on street and roadway improvements that Petitioner would be making to the Petition Area. Mr. Spence described how County assessed that infrastructure component and what types of criteria would be applied.

Intervenor Lincoln

Ms. Lincoln requested clarification on County Exhibit 5-Zoning, Title 19-Maui County Code. Mr. Spence shared his interpretation of how the zoning criteria would be applied to the proposed project by County agencies, what the LUC's role was and how zoning exemptions and other considerations were included during the County planning process to facilitate the 201H aspect of the proposed project.

Ms. Lincoln requested clarification on how challenges to the Petition could be mounted. Mr. Spence shared his understanding of what government agencies were involved and what courses of action Ms. Lincoln could consider, but noted that the challenge period for this specific Petition had passed.

Ms. Lincoln requested clarification on County Exhibit 6-(Comments made during a Council meeting regarding open space). Mr. Spence shared his recollection of what had occurred during the Council meeting and why certain comments were made and what performance details were documented; and how the decision-making for the Petition was done.

Discussion occurred to determine the specific information that Ms. Lincoln's questions were attempting to obtain. Ms. Lincoln restated her question and Mr. Spence shared the challenges that the County and the Petitioner had regarding determining home prices, development costs, and other factors involved with the urbanization of agricultural land; and clarified the terms of "eminent domain" and "condemnation" as they applied to the proposed project.

Ms. Lincoln requested clarification on County-Exhibit 8 County Water Availability Policy. Discussion ensued to determine whether Mr. Spence could provide the clarification on the information that Ms. Lincoln desired. Mr. Spence stated that he could address the planning aspects of

the policy but deferred more detailed questions to the Water Director-Dave Taylor.

Ms. Lincoln requested clarification on whether the County Council could issue a variance to eliminate the cul-de-sac in the proposed project and on what criteria it could grant exemptions. Mr. Spence described the County Council's ability to grant variances and exemptions and deferred more specific questions on housing to Jo Ann Ridaio, Director of Housing and Human Concerns.

Ms. Lincoln requested clarification on County Exhibit 5-Urban Design Goals, the Greenway Master Plan and how a gravel road in the Petition Area factored into the greenway design. Mr. Spence described how the social infrastructure goal was expected to be met and how open space concerns factored into the prioritization of the goals and the master plan and opined on how the gravel road factored into the Petitioner's future plans.

Ms. Lincoln asked if time extensions could be obtained for the proposed project and what the consequences were for non-compliance with State and County mandates. Mr. Spence responded that extensions could be obtained and shared his understanding of what actions the State or County might take for non-compliance. Ms. Lincoln also requested clarification on stormwater runoff and Mr. Spence deferred the question to the Petitioner's engineer and the Department of Public Works.

Intervenor Bolomet

Mr. Lee requested clarification on a water runoff feature on the Petition Area. Mr. Spencer was unfamiliar with what Mr. Lee was referring to. Mr. Lee had no further questions.

Redirect

Mr. Giroux asked if Mr. Spence felt that a thorough explanation of the 201H process had been provided to the Commission. Mr. Spence replied that he felt he had thoroughly explained the process and described how the Maui County Council was the ultimate authority on planning matters, property purchases and county land use change reviews; and how affordable housing goals were included in these considerations.

Mr. Giroux requested clarification on what the role of the State Office of Environmental Quality Control (OEQC) had in the planning process and what Mr. Spence's experience was with "takings". Mr. Spence shared his understanding of what OEQC was responsible for and what his experiences with "takings" had been; and stated that he was not aware of whether any actions to turn the Petition Area into a park had occurred over the last 15 years.

Commissioner Questions

Commissioner McDonald requested clarification on where the County was on the mapping of Important Agricultural Lands (IAL). Mr. Spence responded that County was waiting for Legislative funding and that County would be trying to attempt to do some of the work if possible within a year or two.

Commissioner Heller requested clarification on whether or not the Petition Area could be considered IAL; and if the County agreed with exempting the Petition Area from the "show me the water" policy. Mr. Spence replied that the Petition Area probably would not be an IAL candidate and cited the qualities that it lacked, and that the County was agreeable with the water policy exemption and deferred further details on water issues to David Taylor, County Water Department Director.

Commissioner Biga requested clarification on whether a small farm operation might be able to use the Petition Area and whether the roadway on the Petition Area would be dedicated. Mr. Spence speculated how a small "sustainability" farming operation might be able to use the Petition Area and described the challenges that would confront it and deferred the question on the dedication of the roadway to the Petitioner and the Department of Public Works.

There were no further questions.

Chair Chock stated that the Commission would adjourn for the day and encouraged the Parties to be cognizant of the deadlines confronting them. Chair Chock asked if the Parties had any further questions.

Mr. Geiger asked whether future meeting dates for A12-795 had been scheduled. LUC staff advised him that August 23-24, 2012 would be the next time the Commission would address the docket.

Ms. Lincoln asked where the meeting would be held. LUC staff advised that efforts were being made to schedule the meeting in the West Maui area and that she should be prepared with her presentation by then.

Ms. Bolomet asked if a site visit was being planned and whether she could make a cultural testimony presentation to indicate features and findings that she wanted to make the Commission aware of. LUC staff advised that a site visit was being planned for A12-795 on August 2, 2012. Chair Chock stated what the protocol was for site visits and that no testimony would be taken.

Ms. Lincoln requested clarification on what notices would be circulated and how a site visit was conducted. Discussion ensued to clarify how the LUC provided public notice and what to expect on a site visit.

There were no further questions.

Commissioner Teves moved to adjourn the meeting, Commissioner Biga seconded the motion. By a unanimous voice vote (7-0) the Commission voted to adjourn the meeting at 2:04 p.m.