

LAND USE COMMISSION
MEETING MINUTES

April 5, 2013

10:30 p.m.

Airport Conference Center
400 Rodgers Blvd. Suite 700, Room #3
Honolulu, Hawai'i 96819

COMMISSIONERS PRESENT: Ronald Heller
Ernest Matsumura
Nicholas Teves, Jr.
Lance Inouye
Sheldon Biga (left at 11:30 a.m.)
Chad McDonald
Kyle Chock

COMMISSIONERS EXCUSED: Thomas Contrades
Jaye Napua Makua

STAFF PRESENT: Daniel Orodener, Executive Officer
Bert Saruwatari, 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 10:45 a.m.

DR12-49 Kunia Loa Ridge Farmlands

Chair Chock announced that this was a hearing and action meeting on DR12-49 Kunia Loa Ridge Farmlands (Oahu) To Consider a Petition for Declaratory Order to Designate Important Agricultural Lands for Approximately 854.23 acres at Kunia, O'ahu, Hawai'i;

APPEARANCES

Raymond Iwamoto, Esq., represented Petitioner Kunia Loa Ridge Farmlands

Debbie Lui-Anderson, Representative - Kunia Loa Ridge Farmlands

Tim Hata, Department of Planning and Permitting, City and County of Honolulu
("County")

Dawn Takeuchi- Apuna, Deputy Corporation Counsel, represented County

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

Rodney Funakoshi, OP

Chair Chock updated the record and asked if Petitioner was willing to abide by the Commission's policy on reimbursement of hearing expenses. Mr. Iwamoto replied that Petitioner would comply

Chair Chock described the procedures for the proceedings and Mr. Yee stated that OP would have two witnesses, Rodney Funakoshi from OP and Earl Yamamoto, Department of Agriculture (DOA), testifying before the Commission during OP's presentation. There were no other questions or comments regarding the procedures.

Chair Chock declared that the documents submitted by the Department of Agriculture, Office of Planning, DPP, and Petitioner's response would become part of the record. Mr. Iwamoto stated that he had no objections and Public Witnesses were called to testify.

PUBLIC WITNESSES

None

PRESENTATIONS

Petitioner

Mr. Iwamoto provided a detailed background and historical summary of how the DR12-49 Important Agricultural Lands ("IAL") Petition evolved and on its past dealings with the County and State with settling Land Court, water and subdivision issues; and argued how the Petition Area qualified for and met IAL designation criteria and why the Commission should grant the Petition.

County

Ms. Takeuchi-Apuna stated that County had reviewed the Petition and had no objections; and described the reasoning for County's position about the Petition Area. Ms. Takeuchi- Apuna also described County's concerns about the tax map key identification number discrepancies for the Petition Area, the lack of available water resources and electrical infrastructure for future use within the Petition Area; and questioned to what extent DPP involvement for issuing building permits would be; and what the motivation was for designating the lands IAL.

OP

Mr. Yee stated that OP had received a copy of a letter from Petitioner addressed to Mr. Iwamoto from Second City Property Management and asked if the Commission had been provided with a copy. Mr. Iwamoto replied that a copy of the letter had been e-mailed to the Commission on April 4, 2013. (The LUC staff was on Maui on April 4, 2013, and had not formally received this document.) Mr. Yee called on his witnesses to testify.

OP Witnesses

1. Earl Yamamoto, Staff Planner, Department of Agriculture (DOA).

Mr. Yamamoto stated that he was appearing as a representative for his department and read his organization's written testimony describing why the Petition Area did not merit Important Agricultural Lands (IAL) designation; and why his department felt there was insufficient water to support crop production in the Petition Area based on comparisons for water needs in the adjacent Kunia Agricultural Park area which were estimated at 3700 gallons/acre/day versus 1500 gallons/acre/day for the Petition Area; and what methodology and information was considered to make this assessment.

Mr. Yamamoto also described the ALISH rating system that was applied to the Petition Area during DOA's IAL assessment and the findings that resulted; what the benefits were for a sub-divided farm lot and how he perceived water availability factoring into obtaining agricultural loans; and stated that the Petition Area was not subdivided into lots in the manner that he was accustomed to seeing.

There were no questions from the County or Petitioner for Mr. Yamamoto.

Questions for Mr. Yamamoto

Commissioner Inouye requested clarification on DOA's role in IAL determinations; what authority it had, and what priority was placed on water when assessing land for potential IAL designation. Mr. Yamamoto described how the Hawaii State Legislature had enacted IAL provisions and incentives to

protect the agricultural industry in the State; and how it applied that authority in evaluating IAL petitions.

Commissioner McDonald requested clarification on the disparity in water usage and demand estimates. Mr. Yamamoto described the methodology and data resources he used to make his water usage and demand estimates.

There were no further questions for Mr. Yamamoto.

2. Mr. Rodney Funakoshi, OP Land Use Division,

Mr. Funakoshi provided OP's position on the Petition. Mr. Funakoshi described the various features of the Petition Area and detailed why OP felt that the Kunia Loa Ridge Farmland acreage was not suitable for IAL designation due to the lack of available water, poor soils, and the allowance of farm dwellings. Mr. Funakoshi summarized his presentation and shared additional OP concerns about meeting the criteria set for designating IAL lands.

Mr. Funakoshi stated that OP recommended denial of the Petition due to inadequate water supply and that OP would be supportive of a new Petition that contained an increase in water supply allocation, or a reduction in the Petition Area IAL acreage more in line with water usage/demand and supply estimates. Mr. Funakoshi also stated that if the Petition were approved by the Commission, that a condition should be included that would prohibit dwellings and disallow special permits for residential uses so long as the property is in IAL.

There were no questions for Mr. Funakoshi.

Mr. Yee described why OP felt that the Petition was inadequate and described how the lack of water, soil quality and farm dwelling/residential dwellings issues factored into making this determination.

Commissioner Biga exited the meeting with Chair's consent at 11:30 and did not return. Six Commissioners remained.

REBUTTAL

Mr. Iwamoto argued why the farm dwelling concern was a non-issue and how water demand estimates applied to the Petition Area were distorted.

COMMISSIONER QUESTIONS

Commissioner Matsumura requested clarification on what level of water quality and water resources were available for aquaponics in the Petition Area; and how FTA/FSMA requirements would be met.

Ms. Lui-Anderson responded on behalf of the Petitioner and described what level of water quality and water resources would supply the Petition Area; and provided her understanding of how FTA/FSMA requirements could be met.

Commissioner Heller requested clarification on the legal structure of the Petitioner and its motivation for seeking IAL designation. Mr. Iwamoto described how the entity behind the Petition was organized and operated/managed; and stated that the IAL economic incentives and tax credits were the reason for seeking the IAL designation; and that the 15 percent urban designation was not being sought.

Commissioner Inouye described his concerns about the lack of plans for how future IAL crops would contribute to Hawai`i's sustainability and requested clarification on what diversified agriculture was being planned for the Petition Area. Mr. Iwamoto described the spectrum of agriculture that was envisioned for the Petition Area.

Commissioner Inouye asked County about the status of its IAL designation efforts, and Mr. Hata described what County had done when funding was provided, and what future plans were in place to continue its IAL designation project.

Commissioner Inouye expressed his concerns about whether the County had a complete plan for designating IAL lands and an implementation strategy for the program. Mr. Hata shared County's progress in IAL determinations and how IAL criteria was weighed before supporting various Petitions.

Commissioner Teves excused himself at 12:01 p.m. and returned at 12:04 p.m.

Commissioner McDonald requested clarification on how OP weighed water availability factors in determining eligibility for IAL designation. Mr. Yee described how the adequacy of water and water demand/availability were important considerations for OP.

Commissioner McDonald expressed his concerns about inconsistent application of criteria as IAL Petitions were brought before the Commission. Mr. Yee described how OP currently applied its criteria and worked with the County authorities to make IAL determinations. Commissioner McDonald commented that he supported the efforts of the farm industry and realized the need to assist it when considering Petitions before the Commission.

Commissioner Heller expressed his concern about procedural matters and moved for an Executive Session. Commissioner McDonald seconded the motion. By a unanimous 6-0 voice vote, the Commission entered Executive Session at 12:11 p.m. and reconvened at 12:29 p.m.

DECISION-MAKING

Chair Chock asked if the Commissioners had any questions for the Parties before proceeding.

There were no further questions.

Commissioner Inouye moved to deny the Petition of Kunia Loa Ridge Farmland for Declaratory Order to Designate Important Agricultural Lands for Approximately 854.23 acres at Kunia, O'ahu, Hawai'i. Commissioner Heller seconded the motion and commented that he felt there was merit to the Petition but that there was insufficient information on water availability and the actual amount of useable agricultural land. Commissioner Heller also stated that he was sympathetic to the Petition but needed more detailed additional information.

There was no discussion regarding the motion.

The Commission was polled as follows:

Ayes: Commissioners, Inouye, Heller, and Matsumura,

Nays: Commissioners McDonald, Teves, and Chair Chock

Excused: Commissioners Contrades, Biga, and Makua.

The Motion failed 3-3, with 3 excused.

Commissioner Teves inquired what options remained for consideration. Chair Chock commented that moving for approval or for a contested case hearing were possibilities. Commissioner Teves moved for a contested case hearing for DR12-49. Commissioner McDonald seconded the motion.

There was no discussion.

The Commission voted unanimously to pass the Motion 6-0, with 3 excused.

Chair Chock asked if Petitioner was prepared to move into a contested case hearing. Mr. Iwamoto responded that he was, subject to the approval of his client.

OP inquired as to whether OP and DPP would be automatic parties to the contested case proceeding. Commissioner Heller moved to include OP and DPP as parties to the proceedings and Commissioner Inouye seconded the motion. There was no discussion.

By a unanimous voice vote (6-0) the Commission elected to have both OP and DPP allowed as parties in the contested case proceeding.

There being no further business, the meeting was adjourned by Chair Chock at 12:36 p.m.