

LAND USE COMMISSION
MEETING MINUTES

June 6, 2012 – 10:00 a.m.

Maui Arts & Cultural Center, Alexa Higashi Room, One Cameron Way
Kahului, Maui, Hawai'i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Thomas Contrades
Kyle Chock
Normand Lezy
Napua Makua
Ronald Heller
Nicholas Teves, Jr.
Lisa Judge

COMMISSIONERS EXCUSED: Ernest Matsumura

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 10:23 a.m.

APPROVAL OF MINUTES

Chair Lezy asked if there were any corrections or additions to the May 21-22, 2012 minutes. There were none. Commissioner Judge moved to approve the minutes. Commissioner McDonald seconded the motion. The minutes were unanimously approved by a voice vote (8-0).

TENTATIVE MEETING SCHEDULE

Presiding Officer Saruwatari provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The next set of meetings will be on Oahu to address the possible adoption of orders for A06-771 and A11-793.
- Any questions or concerns- please contact LUC staff.

Chair Lezy introduced the new Land Use Commission Executive Officer, Dan Orodener, to the audience.

ACTION

A10-789 A&B Properties, Inc. (Wai'ale)

Chair Lezy announced that this was a hearing for the Adoption of Order on Docket No. A10-789 A&B Properties, Inc. (Wai'ale) Petition To Amend the Agricultural Land Use District Boundary into the Urban District for approximately 545.229 acres at Wailuku and Waikapu, County of Maui, State of Hawai'i, TMK: 3-8-05: portion of 23 and 37, 3-8-07: 71, portion of 101 and 104.

Chair Lezy updated the record and described the procedures to be followed for the hearing. . There were no comments, questions or objections to the procedures and Chair Lezy announced that public testimony would be taken.

PUBLIC WITNESSES

1. Kaniloa Kaumanu

Mr. Kaumanu stated that he was protesting the actions of the LUC and asserted why he felt the legal system failed to properly recognize his tenancy to the land and how his past testimony regarding land commission awards, royal patents, title issues and vested rights concerns had not been addressed; and also described his concerns over the disturbance and handling of "iwi kupuna" in the Petition Area.

There were no questions for Mr. Kaumanu

2. Johanna Kaumanu

Ms. Kaumanu echoed Mr. Kaumanu's objection to the LUC's decision and reiterated her concerns about the need to consider, protect and preserve regional forest and water resources looking forward into the future; and to

include conditions in the order to ensure the types of preservation measures that she was suggesting.

There were no questions for Ms. Kaumanu.

3. Victoria Nohealani Kaluna- Palafox

Ms. Kaluna- Palafox stated her concerns about the jurisdictional source of the LUC's authority and requested that the Commission cease and desist in its actions; and opined how the natural resources and local sand dunes needed to be protected and preserved.

There were no questions for Ms. Kaluna- Palafox

4. Mikahala Roy

Ms. Roy requested that Chair Lezy restate his opening statements regarding the docket and then described her family's lineal connection to the Petition Area and her concerns about Petitioner's failure to address Hawaiian cultural issues; and provided her reasons why the Petition should be denied.

There were no questions for Ms. Roy.

5. Clare Apana

Ms. Apana expressed her disappointment with the Commission and the lack of conditions in the proposed decision and order to include provisions for future burial discoveries and sand dune protection; and how no protection was included for her concerns about what would happen in the event of future sales of property in the Petition Area.

There were no questions for Ms. Apana.

6. Routh Bolomet

Ms. Bolomet stated that she had recently discovered that she was a lineal descendant with property rights to the Petition Area and described why she felt the Commission and the Petitioner had no authority to supersede her land entitlements; and what various Constitutional and legal authorities supported her assertions.

Commissioner Makua asked Ms. Bolomet to explain the process Ms. Bolomet followed after the discovery of her allodial title or patent to the property. Ms. Bolomet described how considerations for imminent harm and international law were applied to assess her claims; and how Hawaii sovereignty and the protection of her rights also factored into her pursuit to reclaim her land. Discussion ensued regarding how real the rights that Ms. Bolomet was claiming were and how allodial title and legal claims needed to be resolved.

There were no further questions for Ms. Bolomet.

There were no other public witnesses.

APPEARANCES

Benjamin Matsubara, Esq. and Curtis Tabata, Esq., represented Petitioner A&B Properties Inc. (A&B)

Grant Chun and Daniel Yasui, A&B

Michael Hopper, Esq., Deputy Corporate Counsel, represented County of Maui Planning Department (County)

Danny Dias, County

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

Rodney Funakoshi, OP

Chair Lezy inquired if there was anything further that the Parties would like to discuss. The Parties had no comments.

Commissioner Judge requested confirmation from Petitioner and OP that they had reached agreement on all the Conditions that had been included in the decision and order. Mr. Matsubara and Mr. Yee acknowledged that they had.

Commissioner Judge moved to adopt the form of the order. Commissioner Heller seconded the motion. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Judge, Heller, Teves, McDonald, Contrades, Chock, Chair Lezy

Nays: Commissioner Makua

The Motion passed 7-1 with 1 excused.

Chair Lezy thanked the Parties and the public for their participation in the hearing.

The Commission went into recess at 11:06 a.m. and reconvened at 11:18 a.m.

ACTION

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

Chair Lezy announced that this was an action meeting to consider Petitions to Intervene by Routh Bolomet and by Michelle Lincoln.

Chair Lezy entertained a motion to amend the agenda to consider Ms. Bolomet's Motion to Waive Filing Fees to Intervene. Commissioner Chock moved, and Commissioner Teves seconded the motion to amend the agenda. By a unanimous voice vote (8-0), the Commission voted to amend the agenda.

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, Petitioner to Intervene

Routh Bolomet, Petitioner to Intervene

Johanna Kaumanu, assisting Routh Bolomet.

Chair Lezy updated the record and explained the procedures to be followed for the proceedings. There were no comments, questions or objections to the procedures.

Commissioner Judge moved, and Commissioner Chock seconded the motion for an Executive Session. By a unanimous voice vote (8-0), the Commission voted to enter Executive Session.

The Commission exited for Executive Session at 11:25 a.m. and reconvened at 11:38 a.m.

Chair Lezy announced that Public Testimony specific to granting or denying the Petitions to Intervene would be taken.

PUBLIC WITNESSES

1. Victoria Kaluna- Palafox

Ms. Kaluna- Palafox described her lineal connection to the Petition Area and provided her perception of information that she thought would be helpful to the Commission to understand her concerns about the rights of the nation of Hawaii and how it conflicted with the legal practices of the United States.

There were no questions for Ms. Kaluna-Palafox.

2. Mikahala Roy

Ms. Roy stated that she was related to Ms. Bolomet and provided her reasons why she supported the Petitions to Intervene.

There were no questions for Ms. Roy.

3. Kaniloa Kaumanu

Mr. Kaumanu stated that he supported Ms. Bolomet's Petition to Intervene and described why he thought she was legally entitled to do so.

There were no questions for Mr. Kaumanu.

There were no further public witnesses.

ACTION

TO CONSIDER ROUTH BOLOMET'S MOTION TO WAIVE FILING FEES

Chair Lezy stated that he was authorized as Chair to solely decide on the Motion as a procedural matter and requested clarification on the circumstances that prompted Ms. Bolomet's motion to waive filing fees. Ms. Bolomet described her financial circumstances and stated that she would incur financial hardship if she had to pay the fee. Chair Lezy granted the motion. There were no questions, comments or objections to Chair Lezy's actions.

ACTION

TO CONSIDER ROUTH BOLOMET'S PETITION TO INTERVENE

Chair Lezy verified that Petitioner still opposed Ms. Bolomet's Petition to Intervene and that County and OP had no opposition. Petitioner, County and OP acknowledged that their positions were unchanged.

Chair Lezy asked if Ms. Bolomet had anything further to add. Ms. Bolomet responded that she did and described why she felt compelled to intervene and what her perception of her ownership to the Petition Area lands was. Discussion ensued to clarify what would be involved with the Commission's proceedings in considering this Petition to Intervene and what protocol the Intervenors were expected to follow.

Ms. Bolomet described her genealogical links and relationship to the Petition Area and expressed why she felt she needed to be involved as an Intervenor to protect her allodial title and ownership/chain of title claims to the Petition Area; and how she felt the Land Use Commission would be liable for failing to uphold their oaths of office.

There were no Commissioner questions for Ms. Bolomet.

Chair Lezy restated his expectations for Ms. Bolomet's behavior during the proceedings and requested that she observe the protocol he had described if her Petition to Intervene was granted. Ms. Bolomet acknowledged his request.

Commissioner Judge voiced her concerns about whether or not the Commission had authority and jurisdiction to decide chain of title issues and matters regarding controlling title interests in property; and described why she thought Ms. Bolomet should consider alternate courses of action to defend her title claims.

Discussion ensued to determine what actions Ms. Bolomet felt needed to be taken to resolve the "controlling interest" issues of title for the Petition Area. Ms. Bolomet stated that her intent with intervening was to demonstrate that Petitioner did not have control of the Petition Area land titles as was represented to the Commission, and that she felt that her interests would experience imminent harm. Commissioner Judge expressed that she did not believe that the Commission was the proper avenue to determine title issues with the intervention process. Ms. Bolomet argued that what she wanted the Commission to notice was that the Petitioner did not have control of the lands and provided an example of her perspective of how the title issue was affecting her.

Commissioner Teves asked whether or not ownership of the Petition Area had been determined by LUC staff. Mr. Saruwatari replied that the Petition had met the criteria according to the Commission's Administrative Rules 15-15.

Mr. Geiger stated that Commissioner Judge's remarks supported the reason why Petitioner opposed the intervention. Ms. Bolomet argued that she felt that according to the Commission's rules, she did have a standing as a Party of interest with her allodial title.

There was no further discussion.

Commissioner Chock moved, and Commissioner Makua seconded to grant Ms. Bolomet's Petition to Intervene. Commissioner Chock stated that he supported the Intervention and echoed the concerns that the Commission's proceedings were not the proper forum for determining title and that there were other avenues to determine tenure of title, and that intervention would be for issues other than title.

There was no further discussion.

The Commission voted as follows:

Ayes: Commissioners Chock, Makua, McDonald, Heller, and Chair Lezy

Nays: Commissioner Judge, Teves and Contrades

The Motion passed 5-3 with 1 excused.

Chair Lezy reminded Ms. Bolomet of the Commission's expectation of her and advised her to contact LUC staff if she had further questions.

ACTION

TO CONSIDER MICHELE LINCOLN'S PETITION TO INTERVENE

Chair Lezy announced that the Commission would now address the Motion to Intervene from Michele Lincoln and verified that Petitioner still opposed Ms. Lincoln's Petition to Intervene. Mr. Geiger responded that Petitioner opposed the Petition and would like it limited to the three areas that Petitioner had indicated. County and OP had no opposition and acknowledged that their positions were unchanged.

Chair Lezy requested clarification on the scope of Ms. Lincoln's intended intervention and discussion ensued on why Ms. Lincoln did not want to limit the scope of her intervention. Chair Lezy described the Commission's expectations of Ms. Lincoln in presenting her case and what authority and role the LUC had in the decision-making process. Mr. Geiger stated the areas that he thought the intervention should be limited to. Ms. Lincoln responded that she needed additional clarification on the limits for her intervention and Chair Lezy declared a recess to allow time for Ms. Lincoln to review her position. Ms. Lincoln submitted her resume to the Commission and the Parties for consideration.

The Commission went into recess at 12:15 p.m. and reconvened at 12:20 p.m.

Ms. Lincoln stated that in addition to her original three (3) areas of intervention, she would also like to address traffic, as it applied to the commitment of State funds and resources. Mr. Geiger responded that he was amenable to the additional area.

There was no further discussion.

Commissioner Heller moved and Commissioner McDonald seconded to grant Michele Lincoln's Petition to Intervene subject to the limitations stated. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Heller, McDonald, Contrades, Judge, Chock, Makua, Teves, and Chair Lezy

Nays: None

The Motion passed 8-0 with 1 excused

Chair Lezy advised Ms. Lincoln to contact LUC staff to ensure she had the information she needed to meet the Commission's deadlines.

Mr. Geiger requested clarification on what limits were imposed on Ms. Bolomet's intervention. Chair Lezy responded that Ms. Bolomet's intervention did not have any limits.

There was no further discussion.

Chair Lezy thanked the Parties and the public for their participation in the hearing and announced that the LUC hearing would continue at 9 a.m., June 7-8, 2012 in Honolulu.

The Commission went into recess at 12:27 p.m.

LAND USE COMMISSION
MEETING MINUTES
June 7, 2012 – 9:00 a.m.
Leiopapa A Kamehameha
Conference Room 204, 2nd Floor
235 S. Beretania St.
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Lisa Judge
Jaye Napua Makua
Chad McDonald
Nicholas Teves, Jr.
Normand Lezy

COMMISSIONERS EXCUSED: Ernest Matsumura
Ronald Heller

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 9:10 a.m.

ADOPTION OF ORDER

DR12-46, James Spencer and Pamela V. Spencer

Chair Lezy announced that this was an action meeting on Docket No. DR12-46 to approve the form of the order in this matter and updated the record.

PUBLIC WITNESSES

None

APPEARANCES

Sean Smith, Esq., represented Petitioner- James Spencer and Pamela V. Spencer
No representative for the County of Hawaii Planning Department (County) was present.

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

Rodney Funakoshi, OP

Chair Lezy described the procedures to be followed for the hearing. There were no questions, comments or objections to the procedures.

Commissioner Judge excused herself at 9:12 a.m. and returned at 9:14 a.m.

Chair Lezy announced that he would entertain a motion to approve the order. Commissioner McDonald moved and Commissioner Contrades seconded the motion to approve the form of the order for DR12-46. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners McDonald, Contrades, Judge, Chock, Makua, Teves, and Chair Lezy

Nays: None

The Motion passed 7-0 with 2 excused

ORAL ARGUMENT AND DECISION MAKING

A11-793 Castle & Cooke Homes Hawaii Inc. (OAHU)

Chair Lezy announced that this was Oral Argument and Decision Making on Docket No. A11-793 to amend the Agricultural Land Use District Boundary into the Urban District for approximately 767.649 acres at Waipio and Waiawa, Island of Oahu, State of Hawaii.

APPEARANCES

Benjamin Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq., represented Castle & Cooke Homes Inc.

Laura Kodama, Castle & Cooke Homes, Inc.

Don Kitaoka, Esq., represented City and County of Honolulu
Department of Planning and Permitting (DPP)

Mike Watkins, Department of Planning and Permitting

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

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Bryan Yee, Esq., represented State Office of Planning (OP)
Richard Poirier represented Intervenor-Mililani/Waipio/Melemanu Neighborhood
Board No.25 (NHB#25)
Karen Loomis, Intervenor- NHB#25
Eric Seitz, Esq., and Sarah Devine, Esq., represented Intervenor-The Sierra Club and
Intervenor Senator Clayton Hee

Chair Lezy updated the record and described the procedures to be followed for the hearing. There were no comments, questions or objections to the procedures. Chair Lezy stated that public testimony would be taken

PUBLIC WITNESSES

1. Adam Rensley-
Mr. Rensley expressed why he opposed the proposed project and urged the Commission to deny the Petition.

There were no questions for Mr. Rensley.

2. Dr. Kioni Dudley
Dr. Dudley shared his concerns about loss of farmlands, how the City Council might consider the Petition Area lands for Important Agricultural Land designation, and how excess housing had already been approved for Oahu.

There were no questions for Dr. Dudley.

3. Cynthia Frith
Ms. Frith described her concerns about traffic and loss of productive Farmlands and why the Petition should be denied.

There were no questions for Ms. Frith.

4. Michael Dan
Mr. Dan described why he opposed granting the Petition.
There were no questions for Mr. Dan.

5. Susan Rich
Ms. Rich described her affiliation with Wahiawa General Hospital and how her organization and the communities that it serves could benefit if the Petition was granted.

There were no questions for Ms. Rich.

6. Gary Ropert

Mr. Ropert described his affiliation with Wahiawa General Hospital and why the relocation of the facility could benefit the community and region.

There were no questions for Mr. Ropert.

7. Pearl Johnson

Ms. Johnson submitted written testimony and shared her reasons for opposing the Petition.

There were no questions for Ms. Johnson.

ORAL ARGUMENT

Petitioner-

Mr. Matsubara argued why the Petition should be granted and described how the Petitioner had addressed the various conditions required to gain LUC approval and had met the goals and criteria expected by other State and County agencies including providing community and economic benefits, replacement agricultural lands, and traffic mitigation. Mr. Matsubara also argued the Constitutionality of the LUC's role in agricultural land use preservation and other elements involved in district boundary amendments.

DPP-

Mr. Kitaoka stated that the DPP supported the Petition and argued why the Petition should be granted and described how the County had determined its position and would oversee the Petitioner to ensure that the public's interest would be protected after the Petition was granted.

OP

Mr. Yee stated that OP supported the Petition and argued how the proposed project met all the legal standards and criteria required of it; and why certain proposed findings of facts and conditions in the Petition should not be included in the final decision and order if it was granted; and why the LUC should grant the Petition subject to the amendments made by OP and agreed to by Petitioner. Mr. Yee also provided OP's analysis of the Intervenor's concerns about agriculture, traffic, water, and a finding of fact regarding the OP Director's testimony regarding the proposed Petition Area medical center; and how the

concerns factored into the crafting of OP's proposed decision and order; and why the Director's comments should not be included as a finding of fact.

Commissioner Teves excused himself at 10:07 a.m. and returned at 10:09 a.m.

The Commission went into recess at 10:17 a.m. and reconvened at 10:38 a.m.

NHB25

Mr. Poirier shared the concerns of NHB25 and described how urban growth had negatively affected their community area and argued why community concerns should be better addressed by the State and County in its plans for the future and why the concerns presented by NHB25 should be addressed in the Petition if it were granted.

THE SIERRA CLUB/SENATOR HEE

Mr. Seitz shared the concerns that The Sierra Club and Senator Hee had about water resources and preserving agricultural land; and argued why the Commission needed to take a role to fill the breach of failures that he felt that the State and County had created as urban development occurred; why a County review and reassessment of Important Agricultural Lands needed to be allowed; and why the Petition should be denied.

REBUTTAL

Mr. Matsubara stated that he had nothing further to add and thanked the Commission for hearing the Petition.

COMMISSIONER QUESTIONS

There were no further questions or comments.

DELIBERATION

Chair Lezy asked if the Commissioners were prepared to deliberate on this docket. The Commission unanimously (7-0) responded that they were ready to deliberate.

Commissioner McDonald thanked the Parties for their participation in this matter and acknowledged Petitioner's proactive efforts in IAL designations and moved to grant the Petition subject to the Commission's standard conditions and the conditions

agreed to between OP and Petitioner; and described the type of deadline that he would like to have included in Condition 11 regarding the TIAR memorandum of agreement (MOA) between the DOT and Petitioner and inquired what timeline would be acceptable to OP and Petitioner.

Discussion ensued to clarify Commissioner McDonald's proposed deadline expectations. Mr. Matsubara provided his understanding of what DOT's performance would be and when he could expect to include the desired details in the MOA. Mr. Yee described what OP's expectations were and the type of terms that it would like to have in the MOA; and indicated that the type of MOA that had been used in another recent docket case was different than what was being considered in this docket; and did not have a date that could be provided for the docket at the present time; and shared how concurrency considerations were also used in drafting an MOA. Discussion further ensued to determine the specifics and differences involved with the MOA and what it should contain and how it would pertain to Condition 11. Mr. Yee described the differences between the terms of an MOA and an agreement in principle. Mr. Matsubara described the elements contained in the letters of intent that were circulated regarding additional details that help to formulate the version of Condition 11 that was proposed.

Commissioner McDonald moved for an Executive Session. Commissioner Chock seconded the motion. By a unanimous voice vote (7-0) the Commission elected to enter into Executive Session and exited at 11:25 a.m. and reconvened at 11:45 a.m.

Chair Lezy reconvened the hearing and stated that the Commissioner McDonald had made a motion regarding granting the Petition. Commissioner McDonald restated his motion to approve the Petition subject to the LUC's standard conditions and the conditions agreed to between OP and the Petitioner and provided the details of the highway improvements that he would like to have included in the Conditions to have the Petitioner fund, construct and implement all construction improvements and measures required to mitigate impacts to State roadway facilities caused by the Project and as set forth in an MOA agreed to and executed between DOT and the Petitioner. Commissioner McDonald also added that the Petitioner shall submit to DOT prior to application for zone change, an updated TIAR and obtain acceptance of the TIAR from DOT and shall execute the MOA prior to final subdivision approval of the initial phase of the onsite development by the Petitioner.

Chair Lezy requested clarification on what Condition number that Commissioner McDonald was referring to. Commissioner McDonald replied that it was Condition 11.

Commissioner Judge seconded the motion with a friendly amendment and described her concerns about the need for concurrency during the development of the proposed project; and added that she would like to address the need for concurrency of the necessary improvements for accommodating the proposed project as it developed with her amendment to add that "The executed MOA shall contain language that ensures that identified transportation improvements will be built concurrently with the commercial and residential improvements" and to include a change to Finding of Fact 87 to the proposed Fact 87A that OP had incorporated regarding the statement of acreage needed for agricultural production. Commissioner McDonald indicated that he accepted the friendly amendments as stated by Commissioner Judge.

Commissioner Teves stated he wished to add a friendly amendment for clarification of Petitioner's Finding of Fact 182 regarding construction of the Pineapple Interchange; and that he wanted to add language to specify that "after the 1800th residential unit is completed and/or after the 320,000th square foot of commercial floor area is completed, that the Pineapple Interchange and all on/off ramps and highway improvements be completed and operational before any further residential or commercial units are occupied." Commissioners McDonald and Judge accepted the friendly amendment.

Chair Lezy thanked the Parties, the Public and LUC staff for their contributions to the proceedings and stated why he supported the prior and current versions of the Petition to reclassify the Petition Area; and described the balance that he felt that the Commission tries to achieve when making its decisions.

Commissioner Judge commented how the latest Petition was an improved version of the original and encouraged the participants to continue their efforts at the County level when community meetings on it are held; and described why she supported the prior and current versions of the Petition.

The Commission voted as follows:

Ayes: Commissioners McDonald, Judge, Teves, Contrades, Makua, Chock and Chair Lezy

Nays: None

The Motion passed 7-0 with 2 excused

The Commission recessed at 11:58 a.m.

LAND USE COMMISSION
MEETING MINUTES
June 8, 2012 – 9:00 a.m.
Leiopapa A Kamehameha
Conference Room 204, 2nd Floor
235 S. Beretania St.
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Lisa Judge
Jaye Napua Makua
Chad McDonald
Nicholas Teves, Jr.
Normand Lezy
Ronald Heller
Ernest Matsumura (arrived at 11:18 a.m.)

COMMISSIONERS EXCUSED: None

STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General (morning)
and Sarah Hirakami, Deputy Attorney General
(afternoon)
Bert Saruwatari, Temporary Assignment as Executive
Officer/Staff Planner
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 9:10 a.m.

ORAL ARGUMENT AND DECISION MAKING

A06-771 D.R. HORTON-SCHULER HOMES, LLC., (O`ahu)

Chair Lezy announced that this was Oral Argument and Decision Making on A06-771 D.R. HORTON – SCHULER HOMES, LLC, a Delaware limited liability company, d.b.a. D.R. Horton-Schuler Division.

APPEARANCES

Benjamin Kudo, Esq., and Naomi Kuwaye, Esq., represented Petitioner D.R. Horton-Schuler Homes, LLC

Cameron Nekota, D.R. Horton-Schuler Homes, LLC

Don Kitaoka, Esq., Deputy Corporate Counsel, represented City and County of Honolulu, Department of Planning and Permitting (DPP)

Tim Hata, DPP

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

Mary Lou Kobayashi, OP

Dr. Kioni Dudley, represented Intervenor Friends of Makakilo (FOM)

Linda Paul, Esq., legal advisor to FOM

Elizabeth Dunne, Esq., represented Intervenor The Sierra Club

Eric Seitz, Esq. and Sarah Devine, Esq., represented Intervenor Clayton Hee
Senator Hee

Chair Lezy updated the record and described the procedures for the hearing. There were no questions, comments or objections to the procedures. Chair Lezy called for Public Witnesses..

PUBLIC WITNESSES

1. David Nakamura-Mutual Housing Association of Hawaii

Mr. Nakamura described how Petitioner had assisted his organization in building rental units and expressed his support for the Petition.

Dr. Dudley asked for clarification on what Mr. Nakamura's project was and how Mr. Nakamura's project was related to the proposed project. Mr. Nakamura replied that his project was not part of the proposed project and that he was appearing to support the Petitioner.

There were no further questions for Mr. Nakamura

2. Gary Kai

Mr. Kai provided his endorsement to the character of Jim Schuler and Schuler Homes.

Dr. Dudley asked if Mr. Kai was aware that- Schuler Homes was not a local company anymore. Mr. Kai acknowledged that the company was now D.R. Horton-Schuler Homes.

Mr. Seitz asked why Mr. Kai was testifying. Mr. Kai responded that he was testifying to support Mr. Schuler and the Petitioner and had been asked to appear.

There were no further questions for Mr. Kai.

3. Karen Nakamura- Building Industry Association of Hawaii

Ms. Nakamura expressed her organization's support for the project and asked the Commission to grant the Petition.

There were no questions for Ms. Nakamura.

4. Glen Oamilda-

Mr. Oamilda voiced his reasons why the Commission should deny the petition

There were no questions for Mr. Oamilda

5. D'Angelo McIntyre

Mr. McIntyre expressed his concerns about an uncertain future, and why the Commission should deny the petition.

There were no questions for Mr. McIntyre,

6. Ralna Pacada

Ms. Pacada expressed her support for the Petition.

There were no questions for Ms. Pacada.

7. Cheryl Johnson-

Ms. Johnson described why the Petition should be granted.

There were no questions for Ms. Johnson.

8. Pearl Johnson

Ms. Johnson stated that she represented the Woman's League of voters and requested that the Commission deny Petition

There were no questions for Ms. Johnson.

9. Paul Ricky Cassiday

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

Mr. Cassiday provided his support for the Petition.

There were no questions for Mr. Cassiday

10. Henry Kwock

Mr. Kwock described why he supported the Petition.

There were no questions for Mr. Kwock.

11. Jason Espero

Mr. Espero expressed his support of the Petition

There were no questions for Mr. Espero.

12. Pele Yuen

Mr. Yuen described his union affiliation and described why he supported the Petition.

There were no questions for Mr. Yuen.

13. Pat Kuniyoshi

Mr. Kuniyoshi described his agricultural background and why he supported the proposed project.

Mr. Seitz requested clarification on what was currently growing in the Petition Area and whether Mr. Kuniyoshi was aware of the quality of the soil in the region. Mr. Kuniyoshi provided his perception of what the Petition Area was growing and the quality of its soils.

There were no further questions for Mr. Kuniyoshi

14. Thomas Shirai Jr.

Mr. Shirai stated that he was a North Shore agriculture specialist-and shared his background and experience in agriculture and how fertile the Petition Area land was.

There were no questions for Mr. Shirai

The Commission went into recess at 10:15 a.m. and reconvened at 10:30 a.m.

15. Midori Rumpungworn

Ms. Rumpungworn provided her philosophical advice on decision-making to the Commission.

There were no questions for Ms. Rumpungworn.

16. Thad Spreg

Mr. Spreg voiced his opinions on why the Commission should deny the Petition.

There were no questions for Mr. Spreg.

17. Philip Deng

Mr. Deng stated that he supported the Petition and described why he felt that there was a need for more housing and why the Petition should be granted.

There were no questions for Mr. Deng.

18. Dennis Egge

Mr. Egge expressed his opinion on why efforts should be made to preserve farmland, and local farms; and why the Commission should deny the Petition/

There were no questions for Mr. Egge.

19. Linda Young

Ms. Young described her support of the Petition.

There were no questions for Ms. Young.

20. Choon James

Ms. James shared her experiences and requested that the Commission deny the Petition.

There were no questions for Ms. James.

21. Dana Patria

Ms. Patria described why the Petition should be denied.

There were no questions for Mr. Patria.

22. Patricia Patterson-

Ms. Patterson provided her opinion on why the Commission should deny the Petition.

There were no questions for Ms. Patterson.

23. Kika Bukowski

Mr. Bukowski shared the reasons for his support of the Petition.

There were no questions for Mr. Bukowski.

24. Birke Dunlap

Mr. Dunlap stated that he was a farmer/landscaper and described why he supported the petition.

There were no questions for Mr. Dunlap.

There were no more public witnesses.

ORAL ARGUMENTS

Petitioner-

Mr. Kudo argued why the Petition should be granted and shared the genesis of the proposed project, and what the expected benefits of granting the Petition would be for State, County and surrounding communities.

(*Commissioner Matsumura arrived at 11:18 a.m.- 9 Commissioners now in attendance at hearing.)

The Commission went into recess at 11:33 a.m. and reconvened at 12:25 p.m.

County

Mr. Kitaoka stated that County supported the Petition and argued why it should be granted and described how the County had determined its position and would oversee the Petitioner to ensure that the public's interest would be protected after the Petition was granted.

OP

Mr. Yee stated that OP supported the Petition and argued why the Petition should be granted and what benefits granting the Petition would have. Mr. Yee shared OP's concerns about agriculture, traffic, and water issues and described the considerations and analyses made to arrive at its position; and restated why OP recommended granting the Petition subject to the conditions stipulated to by OP, the Petitioner, and the County.

FOM

Dr. Dudley argued why the Petition should be denied and described why the issues of traffic, and the lack of need for houses should be considered in evaluating the Petition..

Commissioner Matsumura excused himself at 12:55 p.m. and returned at 12:57 p.m.

Dr. Dudley also argued why green areas and landscape vistas should be preserved; and how they were important to tourism and the vitality of Hawaiian economy.

The Sierra Club

Ms. Dunne argued why the Petition should be denied and why the Commission should act to preserve and protect farmland and water resources and Hawaiian cultural practices; and how granting the Petition would be inconsistent with the State plan and would ignore State Constitutional issues.

Senator Hee

Mr. Seitz argued why the Petition should be denied and described why he was troubled by alleged remarks attributed to a mayoral candidate saying that the votes for this docket could already be counted; and why this matter would be taken to court. Mr. Seitz restated that the Commission should deny the petition based on evidence presented and described additional details regarding the concerns that motivated Senator Hee to intervene in this docket..

The Commission went into recess at 1:26 p.m. and reconvened at 1:37 p.m.

REBUTTAL

Mr. Kudo stated that sufficient evidence had been presented for the LUC's consideration and argued why the evidence was sufficient to meet the LUC's statutory requirements for granting the Petition; and how The Sierra Club's position was not supported by various Findings of Fact.

COMMISSIONER QUESTIONS

None

DELIBERATION

Chair Lezy asked if the Commissioners were prepared to deliberate on this docket. The Commissioners unanimously (9-0) responded that they were ready to deliberate.

Commissioner Chock moved and Commissioner Contrades seconded the motion for an Executive Session. The Commission unanimously voice voted (9-0) to enter into Executive Session and exited at 1:47 p.m. and reconvened at 1:56 p.m.

Commissioner Teves thanked the Parties for their efforts and moved to grant the Petition and stated that he was open to friendly amendments.

Commissioner Heller seconded the motion and echoed Commissioner Teves acknowledgements and thanks to the Parties and the Public and expressed why he supported the motion and described the considerations that he had made in arriving at his decision; and added a friendly amendment to the motion with a requirement for a new TIAR with new data and mitigation measures specific to Condition #10 to account for the schedule of construction for the proposed rail system and any anticipated significant changes to it; and to add clarification to the stormwater runoff addressed in Condition #11 by adding requirements to the drainage plan about whether or not the Navy's consent was obtained and then submitting it to the County prior to subdivision approval or if the subdivision approval is in phases, prior to any phase that includes the West Loch drainage area. Commissioner Heller clarified that he was proposing two amendments- one to proposed Condition 10 to include a specific requirement in the TIAR as he described to address his concerns about changes to the proposed rail system schedule and another to Condition 11 to contain a modification to deal with stormwater runoff. Commissioner Teves stated that he accepted the friendly amendment as proposed.

Commissioner Makua echoed the gratitude expressed by the Commission to the Parties and the Public and described why she was not in support of the Petition.

Commissioner Contrades also echoed the comments thanking the Parties and the Public and shared his perception of the changes to island lifestyles and the need to accommodate urban growth and indicated that he would also like to add an additional friendly amendment to include the requirement that the Petitioner shall pay for and construct adequate civil defense measures serving the Petition Area as determined by the State Department of Defense and the State Civil Defense in Condition 15, and that these measures shall be operational prior to occupancy of homes or businesses. Commissioner Teves stated that he accepted the friendly amendment.

Commissioner Judge echoed the sentiments of her fellow Commissioners to thank the Parties and the Public, and described how difficult decision-making was for this docket and her disappointment with the DOT's testimony about traffic and offered a friendly amendment to include the list of Petitioner's proposed traffic mitigation and

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

improvement measures that Mr. Kudo cited in his oral argument's opening statement. Commissioner Teves stated that he accepted the friendly amendment.

Commissioner Chock also echoed the sentiments of his fellow Commissioner to thank the Parties and the Public, and recognized the contributions of Senator Hee, Dr. Dudley, and The Sierra Club; and the House of Labor. Commissioner Chock also recognized Intervenors that had participated in past Petitions that he was familiar with and described the efforts of the Commission in designating Important Agricultural Land for perpetuity, reclassifying the Ka Iwi shoreline to conservation use; and reverting Petitions if necessary; and expressed his concern with the continued export of Hawaii's youth from the Islands due to the difficulties of dealing with the high cost of living.

Commissioner McDonald thanked the Parties and the Public and expressed how a balance between development and preservation was difficult to maintain; and how the second city vision attempted to direct growth to the Ewa plain and relieve pressure to agricultural areas. Commissioner McDonald stated that he was in support of the Petition.

Commissioner Matsumura expressed his concern about how the large tracts of land owned by the State and large land owners could be subdivided to prevent speculation and allow private citizens and farmers to thrive.

Chair Lezy requested clarification on whether or not Commissioner Teves accepted Commissioner Judge's friendly amendment. Commissioner Teves stated that he accepted the friendly amendment.

Chair Lezy also requested clarification on whether or not Commissioner Teves' motion included approving the stipulated Conditions between the Petitioner, the County, and the State. Commissioner Teves responded that his motion did include the stipulated Conditions.

Chair Lezy commented on the alleged remark that the Commission's votes were already counted and expressed his disappointment that remarks like that could be made without consideration for the efforts that the Commission put forth in executing its voluntary duties.

The Commission voted as follows:
Ayes: Commissioners Teves, Heller, McDonald, Judge, Contrades, Chock, Matsumura and Chair Lezy

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

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Nays: Makua

The Motion passed 8-1

Chair Lezy thanked the Parties for their efforts and stated that further scheduling would be communicated to the Parties by LUC staff.

Commissioner Judge moved and Commissioner Heller seconded the motion to enter into Executive Session. The Commission exited for Executive Session at 2:40 p.m. and reconvened at 2:50 p.m. There being no further business, the Commission adjourned the regular meeting immediately thereafter at 2:51 p.m.