

1 have certain standards that I think the Commission
2 has to evaluate the case on based on what we have
3 right here and now. Of course, we will take into
4 account all necessary and admissible evidence and
5 factors we have to take into account.

6 But just so I can try to clear up the
7 standard in my mind, do you agree that, as we look at
8 the conditions that are stated in black and white
9 right now, and the facts that have been stated by
10 your updated -- or your client's updated annual
11 reports, that the Petitioner has failed to perform
12 according to the conditions imposed and to the
13 representations and commitment made to the Commission
14 in obtaining reclassification of the subject
15 property?

16 Do you agree that -- I mean, I'm not saying
17 that, you know, your answer stipulates to a reversion
18 or to an order to show cause, and your answer is not
19 to be deemed as a waiver of any objections to
20 whatever the Commission might look forward. But just
21 looking at that question, do you agree that -- let me
22 ask you first -- that there's at least some evidence
23 that shows there has not been performance according
24 to the representations made in obtaining the original
25 reclassification?

1 MR. CHING: Commissioner, I would
2 respectfully disagree with that representation that
3 Petitioner has failed to deliver on LUC conditions.

4 COMMISSIONER OKUDA: So your position, or
5 your statement is there's no evidence at all that the
6 Petitioner has not delivered or performed on the
7 conditions and representations made to obtain the
8 reclassification; that's your statement?

9 MR. CHING: Yes, it is.

10 COMMISSIONER OKUDA: Thank you. I have no
11 further questions, Mr. Chairman.

12 CHAIRPERSON SCHEUER: It's 9:59. We'll
13 reconvene at 10:09.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: We're back in
16 session, and the Commissioners were asking questions
17 of the Petitioner.

18 Commissioners, any further questions for
19 the Petitioner at this time?

20 I have a few questions. And I suppose the
21 core questions that I have is:

22 Do you have clarity at this time as to what
23 you want to do with the subject property? Or are you
24 still on your journey to figuring that out?

25 MR. CHILDERS: We believe we want to move

1 forward with this in a way for education to serve the
2 community locally, as well as to extend our mission
3 here on the Big Island and abroad.

4 So with that, it's educational as well as
5 the service of the Big Island community, yes.

6 CHAIRPERSON SCHEUER: How far along are you
7 in terms of translating that vision, if you will, to
8 an understanding of what might physically occur on
9 the property? Or do you have a thought on the
10 process by which you might go from that vision of
11 serving this island and the global community through
12 education and service on the property?

13 MR. CHILDERS: Yes. We're at the beginning
14 of that process, and we're beginning to make plans.
15 Nothing is finalized yet.

16 CHAIRPERSON SCHEUER: Can you share
17 anything about your process for how you're going to
18 develop that vision into a physical understanding of
19 how it might -- how the property might be used?

20 MR. CHILDERS: We have gathered a team
21 around of professionals to help us facing truth. And
22 we're in the process of discussing that and seeing
23 how that would best serve our vision and the local
24 community.

25 CHAIRPERSON SCHEUER: This is not directed

1 to the last person. Everyone please silence your
2 phones.

3 I did want to note for the record, just so
4 it's clear to everybody having reviewed the historic
5 record on this, I just want to clarify, Tony, that is
6 your signature at the bottom of the Decision and
7 Order originally on this docket?

8 MR. CHING: Yes, Chair.

9 CHAIRPERSON SCHEUER: My last set of
10 questions for now have to do with what happened in
11 2007.

12 I understand from your presentation, Mr.
13 Childers, that Petition to Amend Conditions was
14 submitted, and the Commission took it up, but the
15 Commission lost quorum.

16 Did the Petitioner, to your knowledge,
17 follow up with the Commission to ask them to
18 reconsider or take action on that Petition to Amend
19 Conditions?

20 MR. CHING: Chair, at the time on
21 March 1st, 2007, I was the Executive Officer for the
22 Land Use Commission. I was a part of that hearing
23 that took place. There was very much interest from
24 the Commission with respect to Petitioner's
25 intentions and capacity to move on.

1 I think just before we lost quorum, it's my
2 recollection that there was a comment made to the
3 Petitioner to don't come back to us until you have
4 all your ducks in a line and financing and ready to
5 go. That was an off-the-record comment that I offer
6 not substantiated, just by my testimony.

7 CHAIRPERSON SCHEUER: But based on that
8 representation here, you believe that the Petitioner
9 went away based on that comment to, in your words,
10 get their ducks in a row. Then other things
11 intervened and this is where we are now?

12 MR. CHING: Yes.

13 CHAIRPERSON SCHEUER: So just to be clear
14 for the record, it wasn't necessarily the action of
15 the Land Use Commission in any professional capacity
16 that prevented the Petitioner to come back to us to
17 take action on that Petition to Amend Conditions?

18 MR. CHING: Yes.

19 CHAIRPERSON SCHEUER: Any further questions
20 at this point, Commissioners? Then we will move on
21 to Hawaii County's presentation.

22 MR. KIM: Thank you, Chair.

23 Initially Deputy Director Kanuha would like
24 to make a comment.

25 CHAIRPERSON SCHEUER: Do you swear or

1 affirm that the testimony you're about to give is the
2 truth?

3 THE WITNESS: I do.

4 CHAIRPERSON SCHEUER: Please continue
5 Commissioner -- former Commissioner.

6 DUANE KANUHA

7 Was called as a witness by and on behalf of the
8 County of Hawaii, was sworn to tell the truth, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 THE WITNESS: Thank you, Mr. Chairman,
12 members of the Commission. My name is Duane Kanuha,
13 currently Deputy Director for Hawaii County Planning
14 Department.

15 With respect to the updated status report
16 of this project, we really have no comments. The
17 only comment I would like to make is that as you
18 know, the land use entitlement process is a two-step
19 process. And that is the district boundary amendment
20 is given to Petitioners by the State.

21 And the next step to effectuate whatever
22 the project is, is a rezoning to whatever would fit
23 the project within the realm of what was represented
24 to the Land Use Commission.

25 So just for the record, at this point in

1 time, there's been no rezoning request for this
2 particular piece of property, so the current zoning
3 status of it is still Agricultural 1-A, which means
4 that at some point in time to perfect what they want
5 to do, again, within the realm of what they
6 represented to the Commission, the appropriate zoning
7 would have to be sought from Hawaii County with
8 approval of the Hawaii County Council.

9 At this point in time, given that there's
10 still some uncertainty in what this project would be,
11 the appropriate zoning is kind of up in the air. It
12 could be multiple-family. It could be a combination
13 of single-family/multiple-family.

14 Since this district boundary amendment was
15 approved, there is a new zoning category that we have
16 called "project district", which allows for a variety
17 of zoning densities within the project area.

18 So that's just our comment, the comment
19 from the Planning Department at this time, and that
20 the zoning has not been effectuated to actually allow
21 this project to go through as of this date.

22 CHAIRPERSON SCHEUER: Thank you. Anything
23 further, Mr. Kim?

24 MR. KIM: Just add a few more comments from
25 the county.

1 The first one is it was very interesting to
2 hear about the affordable housing project from U of
3 N, and that they might be able to get some credit for
4 that project actually per county code. But, again,
5 we don't know what the requirements are going to be
6 on the housing until, you know, there's something
7 more concrete with what is proposed for development
8 actually too.

9 So I can't say whether or not they
10 satisfied that or not. Normally you come into an
11 agreement with the developer and then we give them
12 the credit that way. So this is going to be a little
13 bit different because it's after-the-fact.

14 From my perspective, if they have work and
15 health and contributed to developing affordable
16 housing, they should get credit for it. I think
17 that's fair.

18 The other comment I would make. Recently I
19 have had contact with University of Nations during
20 our lava eruption disaster, and they were gracious
21 hosts to offer their property and housing to set up
22 temporary housing for evacuees. Unfortunately, I
23 don't think the project ever came to fruition, but
24 there was a real -- (indecipherable).

25 Those are my comments.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioners, are there questions for the
3 County of Hawaii? Thank you.

4 Office of Planning, Ms. Apuna.

5 MS. APUNA: Thank you, Chair. I think that
6 Office of Planning would just like to point out that
7 Finding of Fact 64 of the Decision and Order states
8 that the Hualalai Village residential development was
9 cited to run over a period of five years, and would
10 be completed during the year 2007.

11 And then commencement of the cultural
12 center was targeted to begin during the year 2007,
13 and that the educational facility was being planned
14 for commencement in 2005/2006.

15 I would just like to add that to the
16 record. Thank you.

17 CHAIRPERSON SCHEUER: Thank you.

18 Commissioners, are there any questions for
19 Ms. Apuna?

20 Hearing none, Commissioners are there any
21 further questions for any of the parties at this
22 time? Ms. Cabral.

23 VICE CHAIR CABRAL: Here on the Big Island
24 I appreciate the efforts particularly in your
25 affordable housing efforts and that. And I think

1 that from all I can hear, the project's potential and
2 what you do is positive in so many areas, housing,
3 cultural, language and that, and I would encourage
4 you to work with all parties to try and bring the
5 appropriate use of this land to its best use under
6 the current circumstances. So I encourage you folks
7 to move forward. Thank you.

8 CHAIRPERSON SCHEUER: Commissioner Wong.

9 COMMISSIONER WONG: Chair, I wanted to move
10 into executive session to consult with the board's
11 attorney on questions and issues pertaining to the
12 board's powers, duties, privileges, immunities and
13 liabilities on this issue, especially what we can do
14 with -- since they presented their report.

15 COMMISSIONER ACZON: I would like to second
16 it.

17 CHAIRPERSON SCHEUER: A motion has been
18 made to go into executive session by Commissioner
19 Wong, and seconded by Commissioner Aczon for the
20 reasons stated by Commissioner Wong.

21 Is there discussion of the motion? If not,
22 all in favor say "aye". Anybody opposed? The motion
23 carries. The Commission will go into executive
24 session.

25 (Executive session.)

1 CHAIRPERSON SCHEUER: We're back in
2 session.

3 Commissioners, one last chance. Any
4 further questions for any of the parties?

5 If not, Commissioners we're going to now
6 enter deliberations on this matter. As a reminder,
7 pursuant to Hawaii Administrative Rules Section
8 15-15-93(b), quote, "whenever the Commission shall
9 have reason to believe that there has been a failure
10 to perform according to the conditions imposed, or
11 the representations or commitments made by the
12 Petitioner, the Commission shall issue and serve upon
13 the party or person bound by the conditions,
14 representations or commitments, an order to show
15 cause why the property should not revert back to its
16 former land use classification or be changed to a
17 more appropriate classification," and set the matter
18 for hearing.

19 So we may deliberate on this matter.

20 Commissioner Wong.

21 COMMISSIONER WONG: Go ahead, Commissioner
22 Aczon.

23 CHAIRPERSON SCHEUER: Excuse me,
24 Commissioner Aczon.

25 COMMISSIONER ACZON: Mr. Chair, I would

1 like to make a motion. I kind of waited for the Big
2 Island member.

3 VICE CHAIR CABRAL: Go ahead, I'll second.

4 CHAIRPERSON SCHEUER: Hawai'i Island
5 Commission might wait to hear the motion before it
6 seconds it.

7 VICE CHAIR CABRAL: I'm just so supportive
8 of my Commissioners.

9 COMMISSIONER ACZON: Mr. Chair, I want to
10 make a motion for the Commission to issue an Order to
11 Show Cause for this project, and I'll explain later.

12 VICE CHAIR CABRAL: And I will second that.

13 CHAIRPERSON SCHEUER: Okay, let's
14 deliberate on the motion, which is currently stated
15 as an order to proceed with an order to show cause.

16 Anybody want to speak towards the motion?
17 Commissioner Aczon.

18 COMMISSIONER ACZON: I made a motion. The
19 discussions today, and also previous motion which was
20 withdrawn, I just kind of -- because of that motion,
21 the Petitioner admitted that they're not in
22 compliance with all or some of the conditions. And I
23 just for myself, I don't want to take -- I don't want
24 to have a blind side on those noncompliance, and just
25 to get this project going. So perhaps if you do an

1 order to show cause, more of the information that we
2 needed would come up. And I'm hoping that, you know,
3 if this motion is approved, then the Petitioner can
4 come back with a better plan, better financial plan,
5 better plan to move this project along.

6 CHAIRPERSON SCHEUER: Commissioner Cabral.

7 VICE CHAIR CABRAL: I'll speak in favor of
8 that motion, because it's my intent, as the seconder
9 of it, that to provide the Petitioner time to
10 organize and to really come forward with a new plan,
11 if that's what it's going to take, or to show how
12 they are in compliance, and we can keep this moving
13 ahead.

14 I would hate to have more land on the Big
15 Island go away from being possible housing at this
16 time. Thank you.

17 CHAIRPERSON SCHEUER: Commissioner Wong.

18 COMMISSIONER WONG: So, Chair, thank you.

19 So listening to the status report and also
20 when you asked the question about the 2007 request
21 and it wasn't -- there was no quorum, and nothing
22 came out of that that the Petitioner didn't say I
23 want to come back and have that hearing again to have
24 something done. So it wasn't the Land Use's fault,
25 but it was up to the Petitioner to come back to us.

1 And also that it seems like when the county
2 said that there's no permits have been issued,
3 nothing has been issued yet, that it would be great
4 to hear what is the real plan for this parcel.
5 Because it seemed like there's going to be housing on
6 there but it's for the students or something, but in
7 the original docket, it said for something else.

8 So I would like to hear more to this, and
9 other things. So that's why I'll support the motion.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Wong.

12 Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you, Mr. Chair.

14 I view this motion a little bit more
15 narrowly, that it's simply a question about whether
16 or not, based on the current record, the Commission
17 has reason to believe that the Petitioner has failed
18 to perform according to the conditions imposed and
19 the representations and commitment made to basically
20 get the reclassification.

21 So it's based on that standard. And this
22 motion, or if an order to show cause is issued, it
23 doesn't prejudge what the ultimate outcome is, but
24 just looking at whether or not the standard has been
25 met for the issuance for the Order to Show Cause. I

1 believe the standard has been met.

2 As far as substantial amount of time having
3 been passed where there hasn't been fulfillment of
4 the conditions and representations that have been
5 made.

6 And so for those reasons, and based on the
7 testimony of other good cause as shown in the record,
8 I believe that the standard for issuance for an order
9 to show cause has been met.

10 And, again, this is not to prejudge what
11 the ultimate outcome would be in this process.

12 Thank you.

13 CHAIRPERSON SCHEUER: Commissioners, other
14 comments on the motion or deliberation?

15 I will also be voting in favor of the
16 motion. I'll just lay out the four reasons why I'll
17 be voting in favor of it.

18 First of all, I believe that, just based
19 solely on today's discussions, and the Petitioner's
20 own acknowledgements there's been at least certain
21 issues such as reporting commencement where the
22 Petitioner has apparently failed to comply with the
23 conditions of the order.

24 So I think there's clarity on the record
25 that moving to an order to show cause is justified.

1 I think it's also appropriate, given the
2 duties of the Land Use Commission, we are supposed to
3 facilitate development, not sometimes stop
4 development, or modify development where it's
5 inappropriate or harmful to public trust values, but
6 facilitate where it is appropriate, and holding
7 parties to deadlines is part of that.

8 So I think it's within our duties to try to
9 at least start to set deadlines in this matter to see
10 that progress is made on this.

11 I also think it's a matter of fairness to
12 other petitioners who have had to comply with
13 deadlines and other dockets before this Commission,
14 the third reason.

15 But fourth, I actually do believe, and I
16 believe that Commissioner Okuda's comments reflected
17 this, I believe this offers a good opportunity to the
18 Petitioner to focus their intention, gain clarity on
19 how they're going to try to fulfill their mission on
20 this particular property, and to then come in the
21 context of an OSC hearing with any arguments they
22 have about what their future plans are.

23 So in that sense, while there is a burden
24 to the process, I believe it actually can be of
25 service to the Petitioner as well.

1 Are there any further deliberations on the
2 motion before us? If not, Mr. Orodenker, would you
3 please poll the Commission?

4 EXECUTIVE OFFICER: Thank you, Mr. Chair.
5 The motion is to schedule an Order to Show Cause in
6 this matter.

7 Commissioner Aczon?

8 COMMISSIONER ACZON: Aye.

9 EXECUTIVE OFFICER: Commissioner Cabral?

10 VICE CHAIR CABRAL: Yes.

11 EXECUTIVE OFFICER: Commissioner Mahi?

12 VICE CHAIR MAHI: Aye.

13 EXECUTIVE OFFICER: Commissioner Ohigashi?

14 COMMISSIONER OHIGASHI: Aye.

15 EXECUTIVE OFFICER: Commissioner Okuda?

16 COMMISSIONER OKUDA: Yes.

17 EXECUTIVE OFFICER: Commissioner Wong?

18 COMMISSIONER WONG: Yes.

19 EXECUTIVE OFFICER: Chair Scheuer?

20 CHAIRPERSON SCHEUER: Aye.

21 EXECUTIVE OFFICER: Thank you, Mr. Chair.

22 The motion passes.

23 CHAIRPERSON SCHEUER: Thank you very much.

24 We look forward to working with you on this matter.

25 MS. ANJO: Thank you.

1 CHAIRPERSON SCHEUER: Commissioner Wong.

2 COMMISSIONER WONG: Did you want to
3 schedule a meeting?

4 CHAIRPERSON SCHEUER: The staff will work
5 on it with the parties.

6 We will take a couple moments for the next
7 parties, the parties in the next docket to come
8 forward.

9 (Recess taken.)

10 AO6-770 The Shopoff Group

11 CHAIRPERSON SCHEUER: It's 10:45.

12 The next agenda item is a status report on
13 Docket AO6-770 the Shopoff Group and for Commission
14 to take action if appropriate.

15 Will the parties please identify
16 themselves?

17 MS. BAPTISTA: My name is Nohea Baptista.
18 I'm Robert Lee's daughter.

19 MR. LEE: Robert E. Lee, Jr.

20 MR. CHILDS: Colin Keola Childs.

21 CHAIRPERSON SCHEUER: And you're here --

22 MR. CHILDS: As a consultant adviser to the
23 parties.

24 CHAIRPERSON SCHEUER: Thank you.

25 MR. KIM: Good morning, Chair and

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on March 28, 2019, at 9:00 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 28th day of March, 2019, in Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156