BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

ERIKA & ACHIM GINSBERG-KLEMMT

for a Boundary Interpretation of Tax Map Key: 4-3-05: 80 & 81, Kailua, Koolaupoko, Oahu, Hawaii

DOCKET NO. DR02-25
ORDER DENYING PETITION FOR LAND USE DECLARATORY ORDER

ORDER DENYING PETITION FOR LAND USE DECLARATORY ORDER

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

JAN 9 2003
Date

Executive Officer

(Handwritten signature)
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

In The Matter Of The Petition Of
Erika and Achim Ginsberg-Klemmt
For A Declaratory Ruling Clarifying
And Correcting The Boundary
Interpretation (BI) 02-03 of the Land
Use Commission Dated May 31, 2002

DOCKET NO. DR02-25
ORDER DENYING PETITION
FOR LAND USE
DECLARATORY ORDER

ORDER DENYING PETITION FOR LAND USE DECLARATORY ORDER

On October 16, 2002, Erika and Achim Ginsberg-Klemmt ("Petitioner"),
filed a Petition For Land Use Declaratory Order ("Petition"), pursuant to section
15-15-98 et seq., Hawai‘i Administrative Rules ("HAR"), and section 91-8, Hawai‘i
Revised Statutes ("HRS"). Petitioner sought a declaratory ruling from the Land Use
Commission ("Commission") relating to boundary interpretation (BI) 02-03 of the Land
Use Commission dated May 31, 2002, which located the State Land Use Agricultural
Conservation District boundary at Tax Map Key (TMK) 4-3-05:80 & 81, Kailua,
Koolaupoko, Oahu (the "Property").

Petitioner specifically requested that the Commission determine whether
the Property is entirely located within the State Land Use Conservation District as
described in BI 02-03 and certified by the Commission’s Executive Officer, or in the
alternative, utilize precise measurement of the Conservation District boundary, in accordance with section 15-15-11 and section 15-15-22e, HAR.

On October 29, 2002, the Commission received a letter from Deidre Mamiya, administrator of the Land Division of the Department of Land and Natural Resources stating that the subject parcel is located within the Conservation District, limited subzone and takes no position for or against the subject petition.

On October 31, 2002, the Commission received a letter from David Blane, Director of the Office of Planning ("OP"), stating that the Office of Planning concurs with the Boundary Interpretation of the Land Use Commission dated May 31, 2002.

On November 14, 2002, the Commission met in Honolulu, Hawai‘i, to consider the Petition pursuant to section 15-15-100, HAR. Erika and Achim Ginsberg-Klemmt appeared on behalf of Petitioner. John W. K. Chang, Esq., and Abe Mitsuda provided testimony on the Petition on behalf of OP. A motion was made and seconded that the Commission defer action on the matter until an optional field trip could be scheduled. Following discussion by the Commission, a vote was taken on the motion. There being a vote tally of 6 ayes, 0 nays, and 3 absent, the motion carried.

On November 29, 2002, the Commission received from the Petitioner supplemental exhibits A, B-1 to B-5, C-1 to C-14, D-1 to D-9 and E-1 to E-7.

On December 4, 2002 the Commission conducted a site visit to Lanikai, Oahu, to view the subject area.
On December 5, 2002, the Commission met in Honolulu, Hawaii to consider the Petition pursuant to section 15-15-100, HAR. Erika and Achim Ginsberg-Klemmt appeared on behalf of the Petitioner.

At the meeting, there was a discussion, among other things, that pursuant to section 15-15-102(1), HAR, if a matter before the Commission is speculative and does not involve existing facts or facts that can be expected to exist in the near future or if a matter may affect the interest of the Commission in litigation that is either pending or may reasonably be expected to arise, the Commission may refuse to issue a declaratory order. Because there is some question whether the Property has been legally subdivided, whether if not legally subdivided what is the status of the lots, and whether the lots will become legally subdivided, the issue before the Commission involves speculative facts. Furthermore, because of the cloud on the lots relating to the existence of the subdivision, litigation can reasonably be expected involving the status of the Property, which would affect the interest of the Commission. In addition, it was noted that Petitioner had not carried the burden of persuasion that the methodology used by the Executive Officer in determining the boundary of the Property, based on what the Executive Officer believed to be the facts, was erroneous and not in compliance with applicable laws and rules.

Thereafter, a motion was made and seconded to deny the Petition because it does not involve facts that exist and because it may affect the interests of the
Commission in litigation that may reasonably be expected to arise. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 7 ayes, 0 nays, and 2 absent, the motion carried.

ORDER

Having duly considered the Petition, the written and/or oral arguments presented by Petitioner, and a motion having been made at a meeting conducted on December 5, 2002, in Honolulu, Hawai‘i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS that the Petition be DENIED.

Dated: Honolulu, Hawai‘i,

LAND USE COMMISSION
STATE OF HAWAI‘I

By LAWRENCE N. CHING
Chairperson and Commissioner

APPROVED AS TO FORM:

Deputy Attorney General

Filed and effective on JAN 9 2003

Certified by:

Executive Officer
BEFORE THE LAND USE COMMISSION
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In the Matter of the Petition
of
ERIKA & ACHIM GINSBERG-
KLEMMT

for a Boundary Interpretation of Tax
Map Key: 4-3-05: 80 & 81, Kailua,
Koolaupoko, Oahu, Hawaii

DOCKET NO. DR02-25
CERTIFICATE OF SERVICE

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I hereby certify that a copy of the Order Denying Petition for Land Use
Declaratory Order was served upon the following by either hand delivery or depositing
the same in the U. S. Postal Service by certified mail:

DAVID W. BLANE, Director
DEL.
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

MR. RANDALL K. FUJIKI, Director
CERT.
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813
ERIKA AND ACHIM GINSBERG-KLEMMT

CERT.  322 Aoloa Street #710
       Kailua, Hawaii  96744


[Signature]

ANTHONY J. H. CHING
Executive Officer