

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

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

by *Anthony J. King*  
Executive Officer

ORDER DENYING PETITION FOR LAND USE DECLARATORY ORDER

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. DR02-25
	)	
Erika and Achim Ginsberg-Klemmt	)	ORDER DENYING PETITION
	)	FOR LAND USE
For A Declaratory Ruling Clarifying	)	DECLARATORY ORDER
And Correcting The Boundary	)	
Interpretation (BI) 02-03 of the Land	)	
Use Commission Dated May 31, 2002	)	
_____	)	

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, Koolau-poko, 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

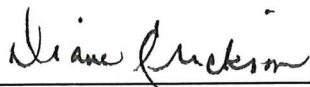
Having duly considered the Petition, the written and/or oral arguments presented by Petitioner, and a motion having been made at a meeting conducted on December 5, 2002, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good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

Dated: Honolulu, Hawai'i, JAN 9 2003

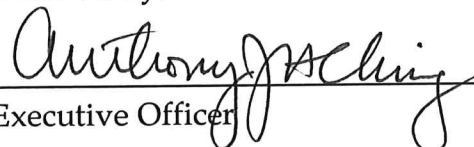
LAND USE COMMISSION  
STATE OF HAWAII

  
By LAWRENCE N. C. ING  
Chairperson and Commissioner

APPROVED AS TO FORM:

  
Deputy Attorney General

Filed and effective on  
JAN 9 2003, 2003  
Certified by:

  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition

DOCKET NO. DR02-25

of

CERTIFICATE OF SERVICE

ERIKA & ACHIM GINSBERG-  
KLEMMT

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

CERTIFICATE OF SERVICE


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:

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

CERT.         MR. RANDALL K. FUJIKI, Director  
                  Department of Planning and Permitting  
                  City and County of Honolulu  
                  650 South King Street  
                  Honolulu, Hawaii 96813

CERT. ERIKA AND ACHIM GINSBERG-KLEMMT  
322 Aoloa Street #710  
Kailua, Hawaii 96744

DATED: Honolulu, Hawaii, this 10th day of January, 2003.

  
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ANTHONY J. H. CHING  
Executive Officer