

# **LAND USE COMMISSION**

## **MEETING MINUTES**

February 4, 2010

Leiopapa A Kamehameha  
Conference Room 204, 2<sup>nd</sup> Floor  
235 S. Beretania St.  
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Duane Kanuha  
Kyle Chock  
Thomas Contrades  
Reuben Wong  
Nicholas Teves, Jr.  
Normand Lezy

COMMISSIONERS ABSENT: Lisa Judge  
Ransom Piltz  
Vladimir Devens

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

### **CALL TO ORDER**

Vice Chair Wong called the meeting to order at 9:35 a.m.

### **APPROVAL OF MINUTES**

Commissioner Kanuha moved to approve the minutes. Commissioner Wong seconded the motion. The minutes were unanimously approved by voice votes (6-0).

## TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2010 was distributed in the handout material for the Commissioners.
- The intent to file a Petition has been received from HHFDC/Forest City for a 201 H development in West Hawaii and upcoming meetings in March and April will involve travel to the Big Island.
- If there were conflicts or problems with the scheduling, Commissioners should advise LUC staff. There were no questions or comments regarding the tentative schedule.

## HEARING

### A83-558 MSM & Associates, Inc. (OAHU)- Haseko (Ewa)

Vice Chair Wong announced that this was an action hearing on Docket No. A83-558 to consider Motion to Delete Condition No. 9 of the Amendment to the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 181 acres at Oneula, Ewa, Island of Oahu, State of Hawaii. TMK 9-1-12:7, 8, 9, 11, 12, 13, 16, 17, and Portion of 5.

## APPEARANCES

Yvonne Izu, Esq., represented Petitioner Haseko (Ewa) Inc.  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, State Office of Planning  
Don Kitaoka, Esq., represented City and County of Honolulu  
Department of Planning and Permitting

## PUBLIC WITNESSES

1. Glenn Oamilda

Mr. Oamilda submitted written testimony and provided his reasons why he was against the Petition to delete Condition 9. There were no questions for Mr. Oamilda.

## PRESENTATIONS

### Petitioner

Ms. Izu argued Movant's reasons for granting the Motion to Delete Condition No. 9. She expressed that Petitioner had been in communication with the Department of Land and Natural Resources, the responsible government agency in regards to Condition 9, and it had been determined that there was no need to reclassify the lands that will become the marina to the Conservation District and explained the reasoning involved for this decision.

### OP

Mr. Yee stated that the Office of Planning had no opposition to the Motion and provided the reasoning for their position.

### CITY

Mr. Kitaoka stated that the City had no objection to the Motion.

### COMMISSIONERS

Commissioner Lezy asked why Condition No. 9 had been included in the original Decision and Order. Ms. Izu provided her perspective of what had transpired when Haseko took over the property from MSM and stated that she had been unable to determine why this condition had been included. Mr. Yee provided that when DLNR determined that it had no objection to deleting Condition No. 9, no further investigation was conducted.

Commissioner Chock requested clarification on the amount of community dialog that Haseko (Ewa) had done with regard to deleting Condition No. 9 and on the Project's current and future plans. Ms. Izu provided a brief history and updates on the status of the Project and Haseko's development activities.

Vice Chair Wong requested clarification on the reasoning for filing the request the deletion of Condition No. 9. Ms. Izu replied that the land was currently designated Urban and that the Condition required that it be reclassified Conservation upon completion of the marina. During conversations with the DLNR to ascertain what constituted "completion", it was determined that this Condition was not necessary.

Commissioner Wong asked if there might be an adverse or negative impact to the public if the Condition was deleted. Mr. Yee replied that there was none and provided his reasoning why the Conservation classification would not be necessary and how deleting the condition would allow the land area to remain under a single jurisdiction to coordinate and protect its resources, resulting in a better regulatory structure.

There were no further comments by the Parties.

Commissioner Lezy moved to grant the Motion to Delete Condition No. 9 of the Amendment to the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 181 acres at Oneula, Ewa, Island of Oahu, State of Hawaii. TMK 9-1-12:7, 8, 9, 11, 12, 13, 16, 17, and Portion of 5 and provided his reasoning for making his motion. The motion was seconded by Commissioner Contrades.

There was no further discussion on the Motion.

The Commission was polled as follows:

Ayes: Commissioners Lezy, Contrades, Teves, Kanuha, Chock and Vice Chair Wong.

Nays: None

The motion passed 6-0 with 3 excused.

The Commission went into recess at 10:17 a.m. and reconvened at 10:29 a.m.

**Docket No. A85-595, Defend Oahu Coalition's Motion for Issuance of an Order to Show Cause**

Vice Chair Wong announced that this was an action meeting on Docket No. A85-595 to consider Defend Oahu Coalition's Motion for Issuance of an Order to Show Cause why the boundary reclassification of Kuilima Development Company should not be revoked for Failure to Perform Conditions, Representations, and Commitments by Kuilima Development Company.

**APPEARANCES**

Wyeth Matsubara, Esq. and Curtis Tabata, Esq., represented Petitioner Kuilima Resort Company  
Stanford Carr, Kuilima Resort Company  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, State Office of Planning  
Don Kitaoka, Esq., represented City and County of Honolulu  
Department of Planning and Permitting  
Gregory W. Kugle, Esq. represented Defend Oahu Coalition (Movant)

**PUBLIC WITNESSES**

1. Bob Boyle

Mr. Boyle stated that he was Vice President and General Manager of Turtle Bay Resorts and provided his reasons for asking the Commission to deny Defend Oahu Coalition's motion. There were no questions for Mr. Boyle.

2. Ralph Makaiau

Mr. Makaiau described his community background and provided his reasons for denying the Motion. There were no questions for Mr. Makaiau.

3. Gil Riviere

Mr. Riviere testified in support of the Motion and provided his perception of the financial position of Kuilima Resort and the reasons for his position. There were no questions for Mr. Riviere.

4. Junior Ah You

Mr. Ah You provided his reasons why the Motion should be denied. There were no questions for Mr. Ah You.

5. Ipolani Thompson

Ms. Thompson shared her reasons to deny the Motion. There were no questions for Ms. Thompson.

6. Benjamin Shafer

Mr. Shafer testified in favor of Kuilima and provided his reasons why the Motion should be granted. There were no questions for Mr. Shafer.

7. James O'Shea

Mr. O'Shea provided his reasons for granting the Motion and shared his concerns about the increased need for water and electricity. There were no questions for Mr. O'Shea.

8. Mark Manley

Mr. Manley stated that he was a past testifier and provided his reasoning for granting the Motion. There were no questions for Mr. Manley.

9. Margaret Primacio

Ms. Primacio testified in support of the Motion. There were no questions for Ms. Primacio.

10. Bob Leinau

Mr. Leinau provided his reasons for supporting the Motion. There were no questions for Mr. Leinau.

11. Bob Nakata

Rev. Nakata provided his perception of the project's history, and shared his concerns about infrastructure needs and his reasons for supporting the Motion. There were no questions for Rev. Nakata.

12. Stuart Coleman

Mr. Coleman stated that he was a member of the Surfrider Foundation and provided his reasons for supporting the Motion. There were no questions for Mr. Coleman.

The Commission went into recess at 11:18 a.m. and reconvened at 11:32 a.m.

13. Kent Fonoimoana

Mr. Fonoimoana provided his reasons for supporting the Motion. There were no questions for Mr. Fonoimoana.

14. Laura Gray

Ms. Gray testified in support of the Motion. There were no questions for Ms. Gray.

15. Mark Cunningham

Mr. Cunningham provided his reasons why he felt an Order to Show to Cause was justified. There were no questions for Mr. Cunningham.

16. Timothy Vandever

Mr. Vandever provided his reasons why the Motion should be granted. There were no questions for Mr. Vandever.

17. Kevin Kelly

Mr. Kelly provided his reasons why an Order to Show Cause should be granted. There were no questions for Mr. Kelly.

18. Kathleen Connors

Ms. Connors shared her concerns about jobs, traffic and overcrowding in support of the Motion. There were no questions for Ms. Connors.

19. Bonnie Leatananga

Ms. Leatananga provided her reasons for denying the Motion. There were no questions for Ms. Leatananga.

20. Bill Quinlan

Mr. Quinlan provided his reasoning for supporting the Motion. There were no questions for Mr. Quinlan.

Commissioner Kanuha moved for an Executive Session to consult with the Board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Contrades seconded the motion. The Commission voted by a show of hands to enter into Executive Session 6-0.

Chair Wong advised the audience that the hearing would reconvene at 1:45 p.m. and the Commission exited to enter into Executive Session at 12:00 p.m.

The Commission reconvened at 1:52 p.m.

## PRESENTATIONS

### DEFEND OAHU COALITION (MOVANT)

Mr. Kugle argued why the Motion for an Order to Show Cause should be granted. He reviewed the various conditions of the Decision and Order that he felt had not been fulfilled by Petitioner and cited various legal decisions, rules, statutes and findings to support his position.

There were no questions for Mr. Kugle.

### PETITIONER

Mr. Wyeth Matsubara argued why the Motion should be denied and provided information on Petitioner's efforts to comply with the original Decision and Order conditions. Mr. Matsubara commented that a decision by the Hawaii Supreme Court on the EIS matter currently pending before it might impact Petitioner and affect some of its development actions and decisions.

Commissioner Lezy requested an update on the Kuilima master plan and clarification on Petitioner's perception of Rule 6-3. Mr. Carr provided the update on Petitioner's accomplishments.

Commissioner Chock requested further clarification on Rule 6-3 and on Petitioner's understanding of the term "substantial progress". Mr. Matsubara provided his understanding of Rule 6-3 requirements and his interpretation of what "substantial progress" meant.

Commissioner Chock requested clarification on the value of the improvements that had been made to the Petition Area and plans for completing the components of the master plan. Mr. Carr provided the dollar amounts for the installed and anticipated design plan and construction features of the Project.

Commissioner Wong requested clarification of the marsh area within the Petition Area. Commissioner Wong requested clarification of Mr. Matsubara's understanding of the imposition of time limits as applied by the Commission in the original Decision and Order.

Commissioner Kanuha requested clarification on Petitioner's compliance and intent to comply with the Master Development Plan. Mr. Carr provided updates and explanations for items that were not completed.

There were no other questions for Petitioner.

#### CITY

Mr. Kitaoka stated that the Project had been consistent with all applicable City plans and policies and that the City would continue to monitor the Petition Area to ensure compliance with permits and land use approvals. Mr. Kitaoka cautioned the Commission to be cognizant of the time elements involved with obtaining permit approvals if it were inclined to establish performance deadlines upon the Petitioner.

There were no questions for the City.

#### OP

Mr. Mayer stated that OP was in general agreement with the goals of the Movant and explained the reasoning for taking this position, but opposing the Motion for Order to Show Cause. Mr. Mayer made recommendations for resolving the matter.

Commissioner Chock asked if OP considered that "substantial progress" had been made based on the 1986 Decision and Order.

Commissioner Kanuha requested clarification on the suggested "modifications" that would be included in a revised Decision and Order and asked if Petitioner was agreeable to modifying the original Decision and Order (D&O). Mr. Mayer described certain modifications that he would like to



implement. Mr. Matsubara replied that Petitioner was opposed to modifications to the D & O.

Vice Chair Wong questioned how OP perceived a modified D&O could be properly implemented if no motion for modification had been presented for consideration.

Mr. Kugle provided his rebuttal argument why the Order to Show Cause should be granted.

Commissioner Teves excused himself at 3:17 p.m.

The Commission went into recess at 3:19 p.m. and reconvened with 6 Commissioners in attendance at 3:28 p.m.

Commissioner Lezy moved to enter into Executive Session. Commissioner Chock seconded the motion. By a unanimous show of hands, the Commissioners exited to enter Executive Session at 3:29 p.m.

The Commission reconvened at 3:49 p.m.

Commissioner Chock moved to deny the Petition. Commissioner Contrades seconded the motion.

Commissioner Lezy stated that he could not support the motion and provided the reasoning for his decision.

Commissioner Kanuha shared his perspective of the matters before the Commission. Commissioner Kanuha stated that he supported Commissioner Chock's Motion but that specific timeframes should be included to avoid ambiguity of performance deadlines and that the standing of Defend Oahu Coalition's position should be better defined.

Commissioner Chock suggested that the parties continue to work together and that Mr. Kugle be included in future discussions.

Commissioner Lezy commented on the need for the Movant to be involved with discussions.

Commissioner Contrades stated that he would be voting for the motion to deny the Motion for Order to Show Cause, and would like to see movement in the affordable housing area.

Commissioner Wong expressed concern about the "threshold" at which an Order to Show Cause could be issued and described the details of his concern.

There was no more discussion on the motion.

The Commission was polled as follows:

Ayes: Commissioners Chock, Teves, Contrades, Kanuha  
Nays: Commissioner Lezy  
Abstain: Commissioner Wong

The Motion failed 4 ayes-1 nay-1 abstain with 3 excused.

Commissioner Lezy moved to grant the Motion and that the Executive Officer set an appropriate hearing date for said order. There was no second.

Commissioner Contrades moved to have the Commission modify the 1986 Decision and Order and schedule it on the LUC calendar as soon as the Executive Officer is able to accommodate the matter. Commissioner Teves seconded the Motion.

Commissioner Kanuha requested clarification on the status of the Movant's motion on the agenda. Vice Chair Wong expressed that his perception was that it would remain on the calendar for resolution.

Commissioner Lezy requested clarification on the status of the current pending Motion and whether the Movant would be included. Commissioner Lezy then moved to enter Executive Session to consult with the Board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Chock seconded the Motion. By a show of hands, the Commission unanimously voted to enter into Executive Session at 4:16 p.m. in place.

The Commission reconvened at 4:30 p.m.

Commissioner Contrades withdrew his motion with respect to modification of the D&O. Commissioner Teves withdrew his second.

Vice Chair Wong announced that with the withdrawal of the motion, the Commission was unable to make a ruling on the Motion and the matter would still remain on the calendar with the date for a new hearing to be set by the Executive Officer.

The hearing was adjourned at 4:31 p.m.