

LAND USE COMMISSION
MEETING MINUTES

February 18, 2010

Leiopapa A Kamehameha
Conference Room 405, 4th Floor
235 S. Beretania St.
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Duane Kanuha
Normand Lezy
Kyle Chock (arrived at 10:30 a.m.)
Vladimir Devens
Lisa Judge
Reuben Wong

COMMISSIONERS ABSENT: Nicholas Teves, Jr.
Ransom Piltz
Thomas Contrades

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Vice-Chair Devens called the meeting to order at 9:32 a.m.

APPROVAL OF MINUTES

Commissioner Wong moved to approve the minutes. Commissioner Kanuha seconded the motion. The minutes were unanimously approved by voice votes (5-0).

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.
- Upcoming meetings will involve travel to the Big Island and the HHFDC/Forest City Petition is anticipated to be placed on the calendar to meet its deadline requirements.
- A site visit to the BR09- Ka Iwi docket is planned for March 19, 2010 at 1:00 p.m.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative schedule.

ACTION

A06-765 MAALAEA PROPERTIES, LLC and LODI DEVELOPMENT, INC. (Maui)

Vice-Chair Devens announced that this was an action meeting on Docket No. A06-765 MAALAEA PROPERTIES, LLC and LODI DEVELOPMENT, INC. (Maui)

- To consider Motion to Withdraw Petition for Land Use District Boundary Amendment for the reclassification of approximately 260 acres of land currently in the Agricultural District to the Urban District for residential, community center, and park uses at Ma`alaea, Maui, Hawaii, Tax Map Key No. (2) 3-6-01:018.
- To consider Motion to Rescind Order Determining that the Land Use Commission Agrees to be the accepting authority pursuant to Chapter 343, Hawai`i Revised Statutes and that the proposed action may have a “significant effect” to warrant the preparation of an Environmental Impact Statement.

APPEARANCES

James Geiger, Esq., represented Maalaea Properties LLC and Lodi Development, Inc. (Movant)

Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning

PUBLIC WITNESSES

None

PRESENTATIONS

Petitioner (Movant)

Mr. Geiger argued that his motions were housekeeping measures as his clients had originally initiated the reclassification as part of their development efforts, had subsequently sold the property and no longer had the requisite interest in the land to continue the petition for reclassification.

There were no questions for the Mr. Geiger.

OP

Mr. Yee stated that OP had no objection to the Movant's motions.

There were no questions for OP.

The County of Maui was notified of the hearing on the motion but was not present or represented at the hearing.

Commissioner Judge moved to grant the motion to withdraw the Petition for Land Use District Boundary Amendment and the Motion to Rescind the Order Determining that the Land Use Commission Agrees to be the Accepting Authority Pursuant to Chapter 343. Commissioner Wong seconded the motion.

There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Judge, Wong, Lezy, Kanuha, Vice-Chair Devens.

Nays: None

The motion passed 5-0 with 4 excused.

The Commission went into recess at 9:38 a.m. and reconvened at 9:44 a.m.

HEARING

A07-775 Castle & Cooke Homes Hawaii Inc. (OAHU)

Vice-Chair Devens announced that this was a continued hearing on Docket No. A07-775 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

Ben Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq.,
represented Castle & Cooke Homes Inc.
Laura Kodama, Castle & Cooke Homes, Inc.
Rodney Funakoshi, Castle & Cooke Homes, Inc.
Dawn Takeuchi-Apuna Esq., represented City and County of Honolulu
Department of Planning and Permitting
Randolph Hara, Department of Planning and Permitting
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Colin Yost, Esq., represented Intervenor-The Sierra Club
Karen Loomis, Intervenor-Mililani/Waipio/Melemanu Neighborhood Board
No.25

PUBLIC WITNESSES

1. Jon Rapisura

Mr. Rapisura testified in support of the Petition. He shared that he had grown up in Mililani and provided his reasons for supporting the proposed project. There were no questions for Mr. Rapisura.

2. Dean Okimoto

Mr. Okimoto stated that he was appearing on behalf of the Hawaii Farm Bureau. He submitted written testimony and referred to it to explain the reasons why his organization supported the proposed Project.

Mr. Yee requested clarification on the Hawaii Farm Bureau's position in regards to loss of farm land and keeping agriculture viable. Mr. Okimoto described various aspects of the farming business and its operations and provided his perception of what the farm industry needed to do to accommodate urban growth boundaries.

Mr. Yost requested clarification on Mr. Okimoto's involvement with the Hawaii Farm Bureau (HFB) and what role the HFB had when the Urban Growth Boundaries were being determined. Mr. Okimoto described how the Hawaii Farm Bureau determined the actions that the farm industry needed to take when dealing with Urban Growth Boundaries, explained his position on the loss and replacement of productive farmland and provided his understanding of the requirements necessary for achieving Important Agricultural Land designation.

3. Randy Ching

Mr. Ching referred to his submitted written testimony and shared his concerns about food sustainability and the importance of preserving agricultural lands. There were no questions for Mr. Ching.

4. Pamela Boyar

Ms. Boyar stated that she was part-owner of Haleiwa Farmers Market and described her concerns about loss of agricultural land, the struggles of small farmers and scarcity of water. There were no questions for Ms. Boyar.

5. Annie Suite

Ms. Suite stated that she was co-owner of Haleiwa Farmers Market and a member of the Hawaii Farm Union and provided her reasons to protect agricultural land and the farming industry.

Mr. Yee requested clarification on the difference between the Hawaii Farm Bureau and the Hawaii Farm Union. Ms. Suite stated that a Hawaii Farm Union representative would be testifying after her and Mr. Yee reserved his questions. There were no further questions for Ms. Suite.

6. Jeanne Aeby

Ms. Aeby shared her experiences with urban sprawl and appealed for the preservation of agricultural farm land. There were no questions for Ms. Aeby.

7. Lydi Morgan

Ms. Morgan stated that she represented the Hawaii Farm Union and described the nature of her organization and the role that it assumed in the community. She shared her reasoning for preserving agricultural land.

Mr. Yee requested clarification on the differences between the Hawaii Farm Bureau and the Hawaii Farm Union. Ms. Morgan described the differences between the two organizations.

8. Anthony Aalto

Mr. Aalto shared his experiences with urban sprawl in Majorca, Spain and provided his reasons for wanting to protect the landscape against development. There were no questions for Mr. Aalto.

The Commission went into recess at 10:34 a.m. and reconvened at 10:51 a.m.

PRESENTATION OF EXHIBITS

The Sierra Club

Mr. Yost stated that he would be offering Exhibits 6-9 for the record on behalf of Intervenor The Sierra Club. He described the exhibits and their relevance. There were no objections to accepting the exhibits.

OP

Mr. Yee offered OP's Supplemental Exhibit 1 for the record and described how it pertained to OP's position. There were no objections to accepting the exhibit.

PETITIONER'S WITNESSES

Mr. Benjamin Matsubara updated his witness list based on stipulations among the parties and stated that it had been agreed that Dr. Art Whistler need not be present to testify and that his written testimony (Exh.#35) would be sufficient contingent upon the approval of the Commission. The Commission agreed that Mr. Whistler need not appear.

1. Joseph Toy

Mr. Benjamin Matsubara offered Mr. Toy as an expert witness in Hotel Industry Forecasting and Market Analysis based on his submitted resume (Exh. #12). Mr. Toy had prepared a written report for the Petitioner that was identified as Exhibit #41. There were no objections to Mr. Toy appearing as an expert in this field.

Mr. Toy described the methodology and reasoning that went into constructing his written testimony and provided the results of his studies.

Mr. Yee requested clarification on what the niche markets for extended stay hotels would be and how it would need to be targeted and accommodated. Mr. Toy described how he envisioned the hotel facilities would be implemented into the project and the possible timetable that could be followed.

Mr. Yost requested clarification on Mr. Toy's participation in the project's planning process and on the estimated hotel capacities required to provide for the demand for extended stay units. Mr. Toy provided his estimates as to what would be required in land area for the hotel component and the types of amenities and accommodations that were necessary in the marketplace.

Commissioner Devens requested clarification on the determination of market demand for hotel accommodations in the Petition Area. Mr. Toy described the market segment demand for Temporary Lodging Accommodations (TLA) and the types of customers and events that it would appeal to. There were no further questions for Mr. Toy.

2. Bruce Plasch

Dr. Plasch was offered as an expert witness in Agriculture and Economic Assessment and had prepared written testimony and curriculum vitae that had been submitted as Petitioner's Exhibit 38.

Mr. Yost requested clarification on Dr. Plasch's qualifications and background. Dr. Plasch stated that he had not farmed and had no formal classroom training in agriculture and described his experiences and knowledge of agronomy. Mr. Yost stated that he would not object to Dr. Plasch as an expert witness, but indicated there were concerns regarding the weight of his testimony on agricultural matters. There were no objections to accepting Dr. Plasch as an expert witness.

Dr. Plasch described the methodology and considerations made in conducting his studies and explained his various reported impacts, findings and conclusions. Mr. Wyeth Matsubara asked questions to clarify Dr. Plasch's report for the benefit of the Commission.

Mr. Yee requested clarification on the reported availability of water in the Petition Area, and on various details from the report on the agricultural industry. Dr. Plasch explained the discrepancy between his written testimony and his oral presentation and clarified details from his report on the agricultural industry. Dr. Plasch expressed that he used his background and experience in other areas that he had studied and reported on to prepare his report.

The Commission went into recess at 12:00 noon and reconvened at 1:32 p.m. with Commissioners Judge, Kanuha, Lezy, Wong and Vice-Chair Devens present. Commissioner Chock rejoined the meeting at 1:34 p.m.

Mr. Yee requested clarification of the portion of the report regarding growth trends and diversified agriculture. Dr. Plasch provided the methodology involved in collecting the data for that portion of his report and stated that some of the information was not in the public domain. Mr. Yee requested clarification for the why the recommendation for mitigation measures was contained in Dr. Plasch's Hoopili report and was not included in the Castle and Cooke report. Dr. Plasch provided his rationale for not recommending mitigation measures and stated his perspective of the amount of land owned by Castle & Cooke.

Mr. Yost requested clarification on the fees and billing methods and nature and scope of the work that Dr. Plasch performed for Castle & Cooke and other

clients. Dr. Plasch described the activities and costs involved for his consulting business and clarified portions of his report in regards to available A and B rated agricultural lands and his awareness of and participation in past land studies regarding the urban growth boundaries. Dr. Plasch shared his opinions regarding food security and self-sufficiency and provided his perception of why there was ample agricultural land available.

Mr. Yost requested clarification on the amount of water supplied by Lake Wilson to the proposed replacement North Shore agricultural farm lands and how it would meet water standards for farm use. Dr. Plasch replied that it was his understanding that R-1 rated water would be provided when the Wahiawa treatment facility upgrades were completed and provided his explanations on why the North Shore lands were not being put into use and not being speculated on for development. Dr. Plasch provided his perception on whether or not the Petition Area lands could be classified Important Agricultural Land and identified features that he felt did not meet the necessary criteria.

Mr. Wyeth Matsubara requested clarification on Dr. Plasch's explanation of Urban Growth Boundaries, farm lease terms and rent costs, the Aloun Farms relocation effort and the availability of water to support the relocation.

Commissioner Kanuha requested clarification on whether Aloun Farms had a lease or license for using the Petition Area lands and what the terms and length of the license for the replacement lands were.

Commissioner Lezy asked Dr. Plasch to define the term "100% self-sufficiency". Dr. Plasch responded that it meant no imports with everything being produced locally and provided his perspective of what life would be like if everything was raised in Hawaii.

Commissioner Kanuha requested additional information on the terms and conditions of the current Aloun Farms rental agreement. Dr. Plasch expressed his perspective of how Aloun Farms might have studied the feasibility of entering into the current lease.

Commissioner Devens requested clarification on how it could be determined that the limits of development on agricultural land had been reached. Dr. Plasch provided his understanding of how the state and county authorities had planned to accommodate urban growth and the effectiveness of urban growth boundaries.

Mr. Wyeth Matsubara stated that the form of the rental agreement for the North Shore replacement lands was a lease.

Mr. Yost requested clarification on the acreage amounts reported to be in use for agriculture. Dr. Plasch provided his methodology in calculating the acreage amounts.

There were no further questions for Dr. Plasch.

The Commission went into recess at 2:34 p.m. and reconvened at 2:49 p.m. (Commissioner Wong rejoined the hearing at 2:50 p.m.)

3. Daniel Lum

Mr. Lum was offered as an expert witness in hydrology and his resume, prepared written testimony, and reports were submitted as Exhibit #44. There were no objections to Mr. Lum's qualification as an expert witness in hydrology.

Mr. Lum provided the reasoning and methodology used to construct his studies and reported on his findings and recommendations.

Mr. Yee requested clarification on how current the data in the study was and on details of the water resource designation for the Petition Area. Mr. Lum replied that the gathering and reporting of data had been updated and explained the terminology used in reporting his findings and the other details of his analysis and data collection.

Mr. Yost requested clarification on the calculation for sustainable yield and long term average use for water, and why the Petition Area had been designated a water resource management area. Mr. Lum provided his account of how the area came to be designated and described why the area was resilient to drought and expressed his perspective on providing for future water demand.

Ms. Loomis inquired what would happen after the wells were dedicated by Castle & Cooke to the Board of Water Supply and how maintenance costs would be determined. Mr. Lum replied that he assumed that the Board of Water Supply would be responsible for the wells.

There was no redirect and no further questions for Mr. Lum.

4. Ronald Nishihara

Mr. Nishihara was offered as an expert witness in Energy Conservation and LEED standards for the Petitioner and his written testimony had been submitted as Petitioner's Exhibit #33. There were no objections to Mr. Nishihara being qualified as an expert witness in those areas.

Mr. Nishihara described his relationship with Castle & Cooke and shared information about LEED construction standards and why he favored voluntary incentives to implement LEED features rather than having them mandated. Mr. Nishihara described types of incentives that he was aware of, identified builders

who were implementing LEED and sustainability measures, and current market and technology forces that were associated with sustainable practices.

Mr. Yee requested clarification on what sustainability measures Mr. Nishihara supported and what should be voluntary or mandated. Mr. Nishihara explained details of Petitioner's Sustainability Plan (Exhibit #20) and described how he envisioned they would be implemented.

Mr. Yost requested clarification on the terminology used in the Sustainability Plan and asked how Castle & Cooke would be conforming to the Plan. Mr. Nishihara provided his perception of how Castle & Cooke would implement the recommendations of the Sustainability Plan.

Commissioner Judge requested clarification on what portions of the Sustainability Plan Castle & Cooke was willing to agree to. Mr. Nishihara responded that Castle & Cooke agreed with the strategies of the Plan but wanted to reserve the ability to select the appropriate measures to attain them. (Mr. Nishihara indicated that there were some implementation measures that Castle & Cooke was willing to agree to, but wanted others to be left open for assessment later due to possible technological improvements).

Commissioner Chock requested clarification on differences between solar and photo-voltaic technology. Mr. Nishihara described how the two systems operated and identified local projects that were using them. Mr. Nishihara explained how LEED certifications were determined and gave examples relating to what the costs and economics were involved with attaining LEED credits for different features.

Commissioner Chock requested clarification on the types of incentives that Mr. Nishihara felt should be considered by the Land Use Commission. Discussion ensued over what might be feasibly considered.

Commissioner Judge requested clarification on the implementation methodology for LEED standards. Mr. Nishihara described the considerations that were involved in determining what standards to promote and how commercial developments differed from residential developments.

Vice Chair Devens requested clarification on how LEED credentials were attained. Mr. Nishihara described the accreditation process and estimated that about 100-150 people in Hawaii may have LEED credentials.

There were no further questions for Mr. Nishihara.

Mr. Matsubara advised the Commission that the order of witnesses list that had been earlier submitted would be modified. Barry Neal would appear as the first witness for the February 19, 2010 hearing and Damon Hamura would not be called. Discussion ensued among the parties regarding witness

appearances to assess and structure the possible timetable for the Friday hearing. There were no objections to the changes in **Petitioner's** order of witnesses; specifically that its traffic expert would be deferred until March and that the City would proceed with its case in the interim.

There being no further business, the hearing was recessed at 4:11 p.m. and set to resume at 9:00 a.m., February 19, 2010, in Room 405, 4th Floor of the Leiopapa A Kamehameha Building.