

LAND USE COMMISSION
MEETING MINUTES
September 23, 2010

Leiopapa A Kamehameha
Conference Room 406, 4th Floor
235 S. Beretania St.
Honolulu, Hawai`i 96813

COMMISSIONERS PRESENT: Vladimir Devens
Nicholas Teves, Jr.
Charles Jencks
Kyle Chock
Thomas Contrades
Duane Kanuha
Normand Lezy
Lisa Judge

COMMISSIONERS EXCUSED: Ronald Heller

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

Chair Devens called the meeting to order at 9:45 a.m.

APPROVAL OF MINUTES

Chair Devens asked if there were any corrections or additions to the September 9-10, 2010 minutes. There were none. Commissioner Judge moved to approve the

minutes. Commissioner Contrades seconded the motion. The minutes were unanimously approved by a show of hands (8-0).

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 upcoming meeting schedule has been readjusted due to a delay in the A10-788 HHFDC/Forest City 201H project. The planned meeting dates for October are now October 7 with the primary agenda item being A07-774 North Kona Village Docket Oral Argument and October 21-22, 2010.
- Any questions or concerns- please contact LUC staff.

A10-789 A&B Properties Inc. (Wai`ale) (Maui)

Chair Devens announced that this was an action meeting to determine whether the Land Use Commission was the appropriate accepting authority pursuant to Chapter 343, Hawai`i Revised Statutes, of an environmental impact statement relating to the reclassification of approximately 545.229 acres at Wailuku and Waikapū, County of Maui, State of Hawai`i, TMK: 3-8-05: portion of 23 and 3 and 3-8-07: 71, portion of 101 and 104; and to determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawai`i Revised Statutes.

APPEARANCES

Benjamin Matsubara, Esq., and Curtis Tabata, Esq., represented A&B Properties Inc.
Grant Chun, A&B Properties
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning

[County of Maui Department of Planning advised the LUC that they would not be appearing and filed a Statement of No Objections that the Land Use Commission is the Accepting Authority for the Environmental Impact Statement and a Statement Regarding Whether the Project Will Have a Significant Effect (an environmental impact statement is warranted)]

Chair Devens recited the state of the record, announced the hearing procedures for the day, and inquired if Petitioner had been advised and concurred with the Commission's policy on reimbursement of hearing expenses. Mr. Matsubara acknowledged that the Petitioner was agreeable to the policy.

PUBLIC WITNESSES

1. Robert Harris, Director of The Sierra Club- Hawai'i Chapter

Mr. Harris shared environmental concerns that his organization's Maui group would like considered during the preparation of the proposed project's EIS .

There were no questions for Mr. Harris.

Chair Devens noted that the LUC had also received written correspondence from Clare Apana on September 23, 2010.

PETITIONER

Mr. Matsubara described the background and history of the proposed Project and its components, and explained the purpose of the Petition. He also indicated that the Petitioner believed that an EIS was warranted and had included an EIS Preparation Notice as Exhibit 7 to its Petition.

OFFICE OF PLANNING

Mr. Yee stated that the Office of Planning supported the request the Land Use Commission be the Accepting Authority for the Environmental Impact Statement and that an EIS was warranted.

There were no questions or discussions.

Commissioner Judge moved that the Commission find that the Project did warrant an Environmental Impact Statement and that the LUC was the appropriate accepting authority. Commissioner Contrades seconded the motion.

There was no discussion.

The Commission was polled as follows:

Ayes- Commissioners Judge, Contrades, Teves, Jencks, Lezy, Chock, Kanuha and Chair Devens

Nays- None

Excused- Commissioner Heller

The motion passed unanimously 8-0, with 1 excused.

A10-788 HHFDC/Forest City Hawai`i Kona LLC (201H) (Hawai`i)

Chair Devens announced that this matter would be deferred. Chair Devens asked if there were any public witnesses that wished to testify on the matter since it was on the agenda.

Public Witness Testimony

None

A07-775 Castle & Cooke Homes Hawai`i, Inc. (O`ahu)

Chair Devens announced that this was an action meeting to consider The Sierra Club's Motion to Disqualify Charles Jencks, *Nunc Pro Tunc*, as of August 6, 2010. and to Consider The Sierra Club's Motion to Disqualify Duane Kanuha, *Nunc Pro Tunc*, as of April 26, 2010.

APPEARANCES

Benjamin Matsubara, Esq., and Curtis Tabata, Esq., represented Castle & Cooke Homes Hawai`i, Inc.

Dawn Takeuchi-Apuna Esq., represented City and County of Honolulu
Department of Planning and Permitting

Matthew Higashida, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Robert Harris, Esq., The Sierra Club

Karen Loomis, Intervenor-Mililani/Waipio /Melemanu Neighborhood Board No.25

PUBLIC WITNESSES

None

ARGUMENTS

The Sierra Club

Mr. Harris stated that with respect to the motion regarding Commissioner Jencks, The Sierra Club would rest on its written submissions and that he wished to add more legal points to the motion regarding Commissioner Kanuha.

Mr. Harris provided his additional information to the Commission on Commissioner Kanuha and argued the reasons why both Commissioners should be disqualified.

Chair Devens requested clarification on how Mr. Harris responded to the argument regarding a waiver pertaining to the Senate confirmation or vote that occurred in April and the subsequent filing in September. Mr. Harris provided his perspective on the circumstances involved with his September filing.

There were no further questions for Mr. Harris.

Petitioner

Mr. Matsubara argued the reasons why Commissioner Jencks should not be disqualified and provided information to differentiate between special sessions for confirming judges and regular sessions.

Mr. Matsubara argued the reasons why Commissioner Kanuha should not be disqualified and referred to his earlier response in opposition to The Sierra Club's Motion and the LUC imposed filing date requirement of September 20, 2010 for filing responses to what the Petitioner had submitted. Mr. Matsubara stated that his office had not received any filings from The Sierra Club or the material included in its current argument and described an Attorney General's opinion in a memo in opposition that he had filed which further discussed the interpretation of the statute he had based his argument on.

There were no questions for Mr. Matsubara.

City and County of Honolulu

Ms. Takeuchi-Apuna stated that the City had "no position".

There were no questions for Ms. Takeuchi-Apuna.

Office of Planning

Mr. Yee provided his perspective on the Motion to Disqualify Commissioner Jencks and argued the differences between judicial nominations and executive nominations and what his interpretation was of how appointments and confirmations were handled by State government.

Mr. Yee argued that Commissioner Kanuha should not be disqualified and provided his perspective on the requirements, qualifications and process for interim appointments and holdover appointments.

Mr. Yee provided his perspective on the arguments brought forward today by The Sierra Club and argued the reasons why he felt that they were faulty, and why the Office of Planning opposed both Motions.

There were no questions for Mr. Yee.

Chair Devens requested that the record reflect the arrival of Ms. Takeuchi-Apuna and Mr. Matt Higashida for the City and County of Honolulu-Department of Planning and Permitting and that the City had an opportunity to hear the arguments on this matter.

Mr. Matsubara and Mr. Yee declined additional time for addressing any of the arguments that The Sierra Club had made and stated that they were comfortable with the LUC proceeding.

Chair Devens recognized Karen Loomis from Neighborhood Board No. 25 and inquired if the Neighborhood Board had a position in this matter. Ms. Loomis replied that the Neighborhood Board had not taken a position.

Chair Devens requested clarification from Mr. Matsubara and Mr. Yee regarding their interpretations of reconciling subsection (a) with subsection (b) of Hawai'i Revised Statutes section 26-34. Mr. Yee provided his perception of how an appointee could remain eligible as a holdover if not approved by the Senate and explained his interpretation on the details of how "eligibility" for purposes of subsection (a) was determined. Mr. Matsubara agreed with Mr. Yee's interpretation and discussion ensued.

There were no further questions.

Commissioner Chock moved to deny both Motions for disqualification. Commissioner Teves seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioner Chock, Teves, Judge, Lezy, Contrades, Chair Devens

Nays: None

Abstain: Commissioners Jencks, Kanuha

Excused: Commissioner Heller

The Motion passed 6-0, with 2 abstentions and 1 excused.

The Commission went into recess at 10:20 a.m. and reconvened at 10:35 a.m.

A07-775 Castle & Cooke Homes Hawai`i, Inc. (O`ahu)

Chair Devens announced that this was a deliberation and action meeting on Docket No. A07-775 Castle & Cooke Homes Hawai`i, Inc. to amend the Agricultural Use District Boundary into the Urban District Boundary for approximately 767.649 acres at Waipi`o and Waiawa, Island of O`ahu, State of Hawai`i.

APPEARANCES

Benjamin Matsubara, Esq., and Curtis Tabata, Esq., represented Castle & Cooke Homes Hawai`i Inc.

Dawn Takeuchi-Apuna Esq., represented City and County of Honolulu
Department of Planning and Permitting

Matthew Higashida, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Robert Harris, Esq., The Sierra Club

Karen Loomis, Intervenor-Mililani/Waipi`o /Melemanu Neighborhood Board No.25

Chair Devens reminded the parties and the public that the evidentiary portion of the hearing had concluded and that all public testimony from previous hearings had been transcribed and were part of the record. Chair Devens explained the timing procedures for providing public testimony for new and returning witnesses.

PUBLIC WITNESSES

1. Dawn Kovach

Miss Kovach shared her concerns about traffic and congestion.

There were no questions for Ms. Kovach.

2. Kevin Killeen

Mr. Killeen provided his concerns regarding the lack of emergency plans in the State and possible anti-trust issues with the development.

There were no questions for Mr. Killeen.

There were no other Public Witnesses.

Commissioner Judge requested an Executive Session to consult with the Commission's attorney, pursuant to section 92-5, Hawai'i Revised Statutes. Commissioner Kanuha seconded the motion. By a show of hands, the Commission voted unanimously to enter into Executive Session (8-0).

The Commission exited the meeting room at 10:40 a.m. and reconvened at 11:02 a.m.

FORMAL DELIBERATIONS

Chair Devens thanked the Parties and the Public for their efforts during the proceedings and announced that the Commission would enter formal deliberations. All Commissioners and the Chair (8-0) confirmed that they had reviewed the record and read the transcripts for any meetings that they may have missed and were prepared to deliberate.

Commissioner Contrades moved to approve the Petition. Commissioner Teves seconded the motion.

Discussion

Commissioner Judge shared her concerns regarding the loss of agricultural lands and the OP suggestion of the use of agricultural easements to mitigate the loss. Commissioner Judge stated that she could not support the requirement for agricultural easements since she felt it was outside of the LUC's jurisdiction to do so and there were other agencies or statutes that had the authority to impose them; and that she recalled that the Petitioner had mentioned submitting a voluntary Important Agricultural Lands designation prior to the end of 2010 which she preferred to use to mitigate the loss of agricultural lands.

Commissioner Judge noted that traffic was another concern and that she felt strongly that the Pineapple Interchange as recommended by the City and County, should be built by a certain date as a Condition.

Commissioner Lezy provided his perspective on the loss of agricultural land and the imposition of agricultural easements and shared his thoughts on using incremental districting for the proposed Project.

Commissioner Teves shared his concerns for including a Condition requiring the installation of an operational civil defense disaster warning system. Chair Devens inquired if the Petitioner would have a problem with this requirement. Mr. Matsubara responded that it would not be a problem.

Commissioner Chock stated that he shared Chair Devens appreciation of the efforts of the Parties and the Public and provided his perspective on economic employment and affordable housing opportunities that he felt that the proposed Project would provide; and that his concerns on infrastructure and the mitigation issues for traffic and agriculture would be addressed more closely as deliberations on the Conditions were worked on should the Petition be approved.

Commissioner Judge requested clarification on the Motion on the floor. Chair Devens confirmed that the Motion included approving all portions of the proposed Project without incremental districting. Discussion ensued.

Commissioner Judge made a friendly amendment to make the Waiawa portion of the Petition Area a candidate for incremental districting but not for approval and provided the reasons for her amendment.

Commissioner Contrades accepted the amendment to his Motion. Commissioner Teves seconded the accepted amendment. There was no further discussion.

Commissioner Lezy requested clarification of the Motion. Executive Officer Davidson re-stated the Motion to grant the Petition by incremental approval of Koa Ridge first and the Waiawa parcel afterwards as the second phase.

Chair Devens commented on his concerns regarding traffic and the loss of agricultural land; and the ability of the Petitioner to mitigate their impacts and stated that he would be voting against the Motion. Chair Devens commended the efforts of the Petitioner and stated that he felt that the Petitioner deserved to know the reasons for his decision

The Commission was polled as follows:

Ayes: Commissioners Contrades, Teves, Judge, Jencks, Chock, Lezy, Kanuha

Nays: Chair Devens

Excused: Commissioner Heller

The Motion passed 7-1 with 1 excused.

Chair Devens directed LUC staff to prepare the appropriate Findings of Fact, Conclusions of Law and Decision and Order for the next meeting on this matter on October 15, 2010. Chair Devens noted that Commissioner Heller was excused from this meeting due to his recusal for the A07-775 docket.

There being no further business, Chair Devens adjourned the meeting at 11:22 a.m.