

LAND USE COMMISSION
MEETING MINUTES

October 21, 2011 – 9:00 a.m.
Leiopapa A Kamehameha,
Second Floor, Room 204,
235 South Beretania Street, Honolulu, HI 96804

COMMISSIONERS PRESENT: Nicholas Teves, Jr
Chad McDonald
Thomas Contrades
Kyle Chock
Lisa Judge
Ernest Matsumura
Normand Lezy (arrived at 1:08 p.m.)
Ronald Heller

COMMISSIONERS EXCUSED: Napua Makua

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

Acting Chair Chock called the meeting to order at 9:12 a.m. and announced that this was a continued action meeting on A06-771 D.R. HORTON – SCHULER HOMES, LLC.

APPEARANCES

Benjamin Kudo, Esq., Naomi Kuwaye, Esq. and Yuko Funaki, Esq., represented Petitioner D.R. Horton-Schuler Homes LLC

Cameron Nekota, D.R. Horton-Schuler Homes LLC
Dawn Takeuchi-Apuna, Esq., Deputy Corporate Counsel, represented City and County of Honolulu, Department of Planning and Permitting (DPP)
Tim Hata, DPP
Bryan Yee, Esq., represented State Office of Planning (OP)
Mary Lou Kobayashi, OP
Dr. Kioni Dudley, represented Intervenor Friends of Makakilo (FOM)
Tatyana Cerullo, Esq. and Elizabeth Dunne, Esq., represented Intervenor The Sierra Club
Eric Seitz, Esq. and Sierra Devine, Esq., represented Intervenor Clayton Hee
State Senator Clayton Hee

PRESENTATIONS

PETITIONER WITNESSES (continued)

Acting Chair Chock reminded Mr. Nekota that he was still under oath

1. Cameron Nekota (continued from October 20, 2011)

Mr. Kudo stated that Petitioner had no redirect and that Mr. Nekota was available for questions.

Commissioner Judge requested clarification on the size of the “steward lots” mentioned in Mr. Nekota’s presentation. Mr. Nekota described the various features that he envisioned the “steward lots” would have, how it would be offered to the public, what home energy efficiency measures would be utilized and how the infrastructure system to provide irrigation water to the proposed units would be constructed and function.

There were no further questions for Mr. Nekota.

2. Timothy Van Meter

Mr. Van Meter was offered as Petitioner’s expert witness on Transit Oriented

Development (TOD). Mr. Kudo stated that Mr. Van Meter had testified at the 2009 proceedings in this matter and had been recalled by OP to further clarify the “Sustainability Plan” of the proposed project .

Mr. Van Meter used a PowerPoint presentation to describe the design considerations and methodologies that were used to plan the proposed project; and what TOD “sustainability” measures were included in Petitioner’s proposed development. Acting Chair Chock asked what exhibit was being referenced for this portion of the presentation. Mr. Van Meter responded that he was using “94 B” The Ewa Regional Plan and described the factors that were considered during the design planning process; how phased development would occur and what he thought the proposed project would look like upon completion.

Questions

DPP

Ms. Takeuchi-Apuna inquired if the proposed project was consistent with the Ewa Development Plan and fell within the Ewa Development Urban Growth Boundary. Mr. Van Meter responded that it did.

OP

Mr. Yee requested clarification on whether Mr. Van Meter had any updates or changes to his 2009 testimony. Mr. Van Meter described how the high capacity rail transit stop locations had been determined since 2009 and provided details on how the proposed project’s sustainability plan was conceived and developed.

Mr. Yee requested clarification on the terminology used to describe how sustainability measures would be implemented and if representations made to the Commission were reliable and what the Petitioner “intended” to do. . Discussion ensued to clarify Mr. Yee’s question and Mr. Van Meter shared his understanding of what the sustainability plan’s intent and baseline for development relative to the goals and objectives of the proposed project would be; and commented that it would be an ongoing process that would require making improvements and adjustments as it moved forward over time.

Mr. Yee requested clarification on the agricultural component of the sustainability plan and how the “steward farm” option factored into it. Mr. Van Meter provided his perception of how the “steward farm” option might operate and what design features were needed to support it.

Acting Chair Chock noted that Mr. Van Meter was admitted as an expert in TOD matters and not farming. Mr. Yee responded that he had been advised to direct questions on the sustainability plan and its agricultural component to this witness and discussion ensued to determine which witness Petitioner wished to have answer questions about farming and agriculture. Mr. Kudo stated that Mr. Jones would be available to respond to OP’s questions. Mr. Yee cited his concerns with that arrangement and Acting Chair Chock decided to allow the continued line of questioning.

Mr. Van Meter described how the “steward farm” option addressed aspects of the sustainability plan and how civic farms, commercial projects, mixed use developments, non-potable water and storm water re-use would factor into it. Mr. Van Meter deferred to Mr. Jones to respond to portions of the questions regarding the sustainability plan that he could not answer.

FOM

Dr. Dudley requested clarification on how lot sizes were determined and how “steward farms” could operate on those urban lot sizes. Mr. Van Meter provided his perception of how the “new paradigm” of urban farming would develop and deferred to Mr. Jones to respond to how Petitioner might make adjustments to lot sizes in the proposed project as it evolved.

Dr. Dudley also requested clarification on how ground site preparation for the proposed project’s construction would be done; and how the city of Honolulu and the second city of the Ewa region would be defined and separated. Mr. Van Meter responded that Mr. Jones could better answer questions regarding how the proposed project would be built; and described how he perceived the term “the second city” and the Ewa Development Plan demarcation boundary lines.

SIERRA CLUB

Ms. Dunne requested clarification on Mr. Van Meter’s role in preparing the master development plan for the Petition Area and what considerations were made for urbanizing the area from its agriculture land use designation. Mr. Van Meter provided

the principles and methodology that he used to construct and assemble the different components of the master plan for the Petition Area.

Ms. Dunne also requested clarification of Petitioner's Exhibit 11B-Conceptual Land Use Plan. Acting Chair Chock declared a recess at 10:15 a.m. and reconvened the meeting at 10:28 a.m. (Commissioner Heller returned at 10:29 a.m. and Commissioner Judge returned at 10:35 a.m.)

Acting Chair announced that the Court Reporter was experiencing equipment problems and described the procedures that would be followed to allow the proceedings to continue.

Ms. Dunne requested clarification on how the "open space" buffer zone design and location of the "civic farms" was determined. Mr. Van Meter shared how the considerations and criteria for the "open space" buffer zones' locations; and "steward lots" and "civic farm" designations were intended to be used and indicated where they were planned to be located in the Petition Area. Mr. Van Meter also stated that TSR was the urban agriculture consultant that the Petitioner was using and that he did not have any "hard data" yet but did have the intent to use these features. Mr. Van Meter described the conceptual ideas that were being considered and deferred further questions about expected actual agricultural productivity results to Mr. Jones. Mr. Kudo added that Petitioner had an agriculture expert who might be able to provide more information to the Commission.

Ms. Dunne requested clarification on agricultural transition plans for farming activities in the Petition Area and how smart growth principles were incorporated into the planning of the proposed project; and on the client relationships Mr. Van Meter had with Petitioner and the City and County of Honolulu. Mr. Van Meter described how he thought the anticipated phasing of urban development and reduction in agricultural activities would occur; how the various principles of smart growth were utilized; and the distinctions between his clients and the details of progress that had been made regarding the TOD work in the Petition Area for the DPP.

Ms. Dunne referred to Petitioner's Exhibit 89B and requested clarification on how transportation features in the Petition Area would provide for its future residents. Mr. Van Meter provided his perspective of how he envisioned the two designated transit stations for the planned high capacity rail system in the Petition Area would provide for the proposed future communities. Discussion ensued to determine which witnesses would be answering specific questions regarding the anticipated rail system.

(Please refer to LUC Transcript for more details on this matter)

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Ms. Takeuchi-Apuna noted that DPP had a witness that would be providing that information.

Ms. Dunne also asked how the TOD and infill development principles factored in designing the residential densities and distances to transit/transportation facilities and associated commercial areas in the surrounding region and the Petition Area. Mr. Van Meter described the considerations and criteria used for the proposed project and opined that questions regarding market pricing of units within the proposed project were better answered by other witnesses. Discussion ensued to determine what specific information was being sought and Ms. Dunne responded that she was attempting to discover what considerations were used in locating transit stations. Mr. Kudo suggested that DPP's witness might be better able to answer the questions. Ms. Dunne agreed and concluded her questioning.

SENATOR HEE

Mr. Seitz requested clarification on Mr. Van Meter's company, work experience and professional licensing and asked if City development plans trumped State policies and practices; and whether he was familiar with Act 183 and Act 283 that were recently passed by the State Legislature. Mr. Van Meter replied that he was not familiar with the named Acts but was familiar with the Ewa Sustainability Plan and that his sustainability plan was a concept that may or may not be enforced under State law and that Mr. Jones would be the proper authority to direct questions to regarding legalities.

Mr. Seitz requested clarification of the term "intent" and how it had been used in Petitioner's representations to the Commission. Mr. Van Meter replied that he was not familiar with the entitlement process and was attempting to describe concepts and not absolutes in the formulation of plans for the Petition Area.

Mr. Seitz requested clarification on whether "key partnerships" and "stakeholders" involved with the plans for the Petition Area included members of the current users of the agricultural land. Mr. Van Meter deferred to Mr. Jones and others to answer these questions and described the community meetings that had been held during the planning process.

Mr. Seitz requested clarification on the impact of the mass transit component to the proposed project and how the "steward plots" could be commercially viable. Mr. Van Meter opined that the mass transit component was considered an amenity and that the proposed project would still be worthy without it and that "steward plots" were still being studied in different communities on the mainland. Mr. Van Meter deferred
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questions on urban agriculture to Mr. Jones and to the consultant firm to the Petitioner, TSR. Mr. Kudo suggested that Petitioner's agriculture expert, Bruce Plasch, might also address those questions.

Mr. Seitz had no further questions.

PETITIONER

Mr. Kudo requested clarification on the community meetings and the type of attendees that Mr. Van Meter had in preparing his master plan for the Petition Area. Mr. Van Meter described the community members who participated in the community input to the proposed project; his company's efforts in scheduling and conducting the community meetings, gathering and processing the information obtained from the attendees, and utilizing the data from the community in decision-making on design features in the Petition Area.

Mr. Kudo asked if Mr. Van Meter was familiar with Senate Bill 283, Act 183 and that it was not in effect yet. Mr. Van Meter responded that he was not familiar with it. Mr. Kudo had no further questions for Mr. Van Meter.

COMMISSIONERS

Commissioner Heller requested clarification on how the sustainability plan provided for the ongoing efforts for agriculture replacement. Mr. Van Meter described how the analysis for urban farming had been performed to locate "civic farms" in drainage ways and how these areas would be protected from flooding.

Commissioner Heller also inquired about how the "steward farm" acreage was calculated and expected to be handled by potential residents of the completed proposed project to address the agriculture replacement component of the sustainability plan. Mr. Van Meter described how the acreage for agriculture in the proposed project was estimated and how he anticipated potential residents would engage in "steward farming" and that he did not have any data to gauge how many residents might engage in "steward farming".

Commissioner Judge requested clarification on considerations made for LEED-ND and other sustainability measures; examples of "soft" and "hard" scapes and whether any successful models for "new urbanism" for comparable communities were already in existence. Mr. Van Meter described LEED aspects of the plans and shared examples of "new urban" designed communities that he thought were successful; and described the sustainability principles that he utilized for the design of the proposed

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project. Mr. Van Meter estimated that more than 50% of the proposed project would be “soft” scaped and deferred questions on the use of the term “baseline” for the proposed implementation of sustainability features to Mr. Jones.

Commissioner Contrades requested clarification on how the proposed project provided a complete community and where churches would be located. Mr. Van Meter described where and how church sites were provided for in the community master plan. Mr. Kudo added that Mr. Jones could address this subject after having met with various church groups during the community meetings for the proposed project.

There were no further questions for Mr. Van Meter.

3. Keith Niiya- Traffic Engineer

Discussion regarding an offer of proof to satisfy Mr. Seitz as to the expertise of the witness occurred prior to the start of Mr. Niiya’s testimony. Mr. Seitz was satisfied by Mr. Kudo’s offering of proof regarding Mr. Niiya’s credentials.

Mr. Niiya described how his firm had become involved in the proposed project and summarized his written direct testimony for the Commission. Mr. Niiya described the criteria and methodology used to produce the TIARs for the Commission and DOT’s review and what his findings were.

Ms. Takeuchi-Apuna stated that DPP had no questions.

Mr. Yee inquired how long Mr. Niiya had been associated with the proposed project and whether he had been involved with the State DOT during that period of time. Mr. Niiya responded that he had started on the project in late 2009/early 2010 and had been meeting with the DOT and that a revised TIAR that included mitigation measures to the H-1 Freeway would be submitted. Discussion ensued to clarify Mr. Niiya’s phrasing in his response to the question since the awarding of the contract for the amended TIAR had not been concluded yet by the Petitioner.

Mr. Yee requested clarification on the proposed mitigation measures and the section of freeway that they covered. Mr. Niiya expressed his understanding of the sections of freeway that would have mitigation improvements, what type of mitigation measures would be implemented, the timing and phasing of the

mitigation measures, direct and regional traffic impacts; who would pay for the improvements and what traffic data would be relied upon by the DOT.

The Commission went into recess at 11:55 a.m. (Chair Lezy arrived during the recess and relieved Acting Chair Chock.)

Chair Lezy reconvened the meeting at 1:08 p.m.

Commissioner Judge moved for an Executive Session. Commissioner McDonald seconded the motion. By a unanimous voice vote (8-0), the Commission elected to enter into Executive Session and exited the meeting at 1:25 p.m. (Commissioner Judge returned at 1:33 p.m., Commissioner Teves returned at 1:35 p.m.)

Chair Lezy reconvened the meeting at 1:25 p.m.

Dr. Dudley requested clarification on what years and locations the traffic count covered. Mr. Niiya provided his understanding of what years were reported and the areas that they spanned. Discussion ensued to determine what exhibit was being referenced. Dr. Dudley did not have an exhibit reference number and moved on.

Dr. Dudley requested clarification on the projected traffic volumes from the proposed project onto the freeway. Mr. Niiya responded that there were multiple ways to access the freeway and that he needed to re-examine his traffic studies to better answer the question; and described freeway improvements that were currently in progress.

Dr. Dudley requested clarification on how cars would access the freeway from the proposed project. Mr. Niiya described his understanding of what traffic patterns in the area would be like for cars attempting to access the freeway from the proposed project. Dr. Dudley commented on the quality of Mr. Niiya's response and was advised by Chair Lezy to avoid editorializing during his questioning.

Dr. Dudley requested clarification on Mr. Niiya's perception on what adequate capacity and levels of service would be relative to the Ewa Development Plan's Transportation System Functions and how much longer it might take Ewa region residents to travel to Honolulu in 2030. Mr. Niiya

described how he perceived the DOT interpreted levels of service and the mitigations associated with them, and stated that he did not know how long travel to Honolulu in 2030 would take. Dr. Dudley had no further questions.

Ms. Cerullo asked if the TIAR submitted for the Commission to consider was dated February 2008. Mr. Niiya acknowledged that it was and described how the traffic report reflected existing traffic conditions; and how future traffic projections were calculated using industry standards; and how levels of service factored in the traffic assessment studies. Mr. Niiya noted that the traffic studies that were submitted did not include subsequent improvements and were outdated, and described different scenarios that could affect traffic volumes and the pro rata share that the Petitioner would be responsible for.

Mr. Yee raised a point of clarification regarding whether the mitigation measures identified in Petitioner's Exhibit 43B and those identified in the revised TIAR were being referred to by Mr. Niiya in his responses. Ms. Cerullo clarified that she was referring to whether funding for the improvement projects was available to initiate and complete them. Mr. Niiya responded that he did not know whether funding for the improvements was available.

Ms. Cerullo asked if the current TIAR had been approved by the DOT and whether Mr. Niiya was aware of prior amended DOT testimony which did not support the proposed project. Mr. Niiya responded that he thought that the current TIAR still had not been accepted and that he had not been retained when the amended DOT testimony was submitted. Discussion ensued to assess what exhibits were being referenced and whose exhibits they were.

The Commission went into recess at 2:07 p.m. and reconvened at 2:09 p.m.

Mr. Yee stated that OP's exhibits were withdrawn to define the parameters of their case and that OP did not object to their use in cross-examination. Chair Lezy acknowledged OP comments.

Ms. Cerullo asked if Mr. Niiya was aware of the previous administration's DOT position on the proposed project. Mr. Niiya replied that he was not aware of the amended testimony by Brennon Morioka-former DOT Director and that the testimony may have referred to possible roadway conditions with no improvements. Discussion ensued over the form of the question.

Ms. Cerullo requested clarification on the updates and improvements that were assumed to be included in the existing TIAR. Mr. Niiya described the types of improvements that he was aware of that were included in the TIAR, and restated that he was not retained in 2009 and did not have the details that led to the conclusions of that report.

Ms. Cerullo asked whether an April 2011 TIAR report existed. Mr. Niiya acknowledged that it did and described why the traffic information that the Commission was reviewing for this docket would not be impacted by the 2011 report. Ms. Cerullo had no further questions.

Mr. Seitz requested clarification on how travel time, traffic volume and number of trips were calculated if rail was available. Mr. Niiya provided his estimates on the traffic volumes and shared the criteria and methodology used to determine his answer, and on what impact of additional traffic might impose on the existing infrastructure. Mr. Niiya suggested questioning DOT for more information and validation of his understanding of traffic matters and funding.

Mr. Seitz also requested further clarification on why TIAR data collected from prior years would remain valid for consideration by the Commission; and on why the past DOT Director would not support the proposed project and why the current DOT Director would. Mr. Niiya provided his understanding of how the collected data would continue to be reliable and described how the 2011 TIAR update was performed to check on and affirm that the prior TIAR findings remained accurate and stated that he could not explain why the DOT Directors differed in their positions regarding the proposed project. Mr. Seitz had no further questions.

Mr. Kudo requested clarification on what the proposed project's local and regional impacts were, and why the Ewa Impact Fee Ordinance was imposed by the State and City. Mr. Niiya provided his understanding of what local and regional impacts were, and what the Ewa Impact Fee Ordinance was and why it was imposed for the area.

Mr. Kudo requested clarification on what efforts had been made to update the TIAR since 2009 and why the DOT currently had a different position now. Mr. Niiya described the TIAR approval process and the activities that had occurred since 2009 that may have affected how DOT perceived the proposed project TIAR situation and its traffic impacts; and how the DOT and DPP had

also been jointly working together on traffic issues. Mr. Kudo had no further questions.

Commissioner McDonald requested clarification on DOT improvements mentioned in Mr. Niiya's oral testimony regarding the corridor from Waiawa to Makakilo, the Middle Street area, and the "PM zipper lane". Mr. Yee noted that he had made a reference in his cross-examination to a required analysis for traffic mitigation on the H1 Freeway between Makakilo and Waiawa and the response had been that these mitigation measures were going to be done. Discussion ensued to determine whether Petitioner would be responsible for some of the costs and how "pro-rata shares" would be determined by traffic studies. Mr. Niiya shared his understanding of what type of findings the DOT would require for traffic studies that it commissioned and how improvement requirements might be determined; and also described how the Ewa impact fee was administered and calculated; and how Petitioner would be affected by it

Commissioner Judge requested clarification on what improvements would be implemented during the phasing of the proposed incremental development plan during the next 10 years. Mr. Niiya responded that he had not received response comments to the 2011 TIAR from the DOT and did not know the current status of improvements suggested in the report. Commissioner Judge also requested clarification on what mitigation measures would follow in the second decade afterwards. Mr. Niiya referred to the 2008 Traffic Impact Study and described what improvements were proposed for the eleventh through twentieth years.

Commissioner Judge requested clarification on how the Commission could be assured that the proposed project would not adversely affect traffic, without knowledge of what mitigation measures had been suggested. Discussion ensued about why the April 2011 TIAR was not submitted as evidence. Mr. Kudo stated the reasons why Petitioner had not done so. Commissioner Judge expressed her concerns about the lack of current information regarding traffic mitigation.

Mr. Seitz requested that Chair Lezy direct Petitioner to provide copies of the April 2011 TIAR so that the Parties would be prepared for the DOT's testimony. Chair Lezy responded that he would take the request under consideration and asked what the 2011 TIAR said about mitigation. Mr. Niiya described the mitigation alternatives that were submitted. Mr. Kudo remarked that copies of the April 2011 TIAR had been provided to OP and The Sierra Club. Chair Lezy requested that copies be provided to the remaining Parties. Discussion ensued to

clarify how copies had been distributed to The Sierra Club. Ms. Funaki stated that she would re-send the report to The Sierra Club.

There were no further questions for Mr. Niiya.

4. James "Jim" Charlier- Transportation Planner

Ms. Kuwaye described Mr. Charlier's qualifications and work experience for the Commission. Mr. Charlier summarized his written testimony and provided the considerations that he made in planning a pedestrian oriented environment for connectivity, transit considerations and community circulation. Mr. Charlier also stated that he had reviewed the phased development plan and that it had not changed his opinion or recommendations for the proposed project and described how his design features had been developed in a manner that did not factor in the existence of a rail transit system.

Ms. Takeuchi-Apuna did not have any questions.

Mr. Yee requested clarification of Mr. Charlier's written testimony regarding modernized street standards and connected streets networks. Mr. Charlier described how connectivity and street standards were inter-related and stated that it was too early in the process to make statements regarding street designs until the county zoning/planning phase was reached and expressed feature details that future plans would include. Mr. Charlier also expressed what components would need to be added to enhance the proposed project if rail transit stations were part of the mix, how multiple, flexible design standards were better than lesser, more fixed ones, and how concurrency of the phased development in the Petition Area over the span of estimated construction time might occur.

Mr. Yee requested clarification on whether it was better to locate schools on the planned interior or fringe exterior of the proposed project. Mr. Charlier provided his opinion of what considerations might be necessary to determine the appropriate location of the school sites.

Chair Lezy announced that he would be reversing the order of questioning and called on Mr. Seitz.

Mr. Seitz responded that he had no questions.

Commissioner Teves excused himself at 3:08 p.m. and returned at 3:11 p.m.

Ms. Dunne asked if focus on island population growth was the basis of the transportation plan and whether “carrying capacity” factored in the plans for the Petition Area. Mr. Charlier described the data that was used to prepare plans to achieve their anticipated goals, how he perceived what “carrying capacity” concepts were used in the transportation planning arena and what his focus for the proposed project was.

Commissioner Chock excused himself at 2:50 p.m. and returned at 2:53 p.m.

Ms. Dunne requested clarification on how transit stations could be situated along the proposed rail system route. Ms. Kuwaye commented that DPP’s witness might better answer this question. Chair Lezy allowed the question and Mr. Charlier opined that since rail had been under consideration for over 30 years, the transit station locations had been well studied. Ms. Dunne elected to direct her questions about transit station locations to the DPP witness.

Ms. Dunne asked if Mr. Charlier’s recommendations had ever failed to be accepted by developers for their final development plans. Mr. Charlier responded that he had not experienced a rejection of his recommendations and described how his firm conducted business and supported his clients; and that he was very confident that his recommendations would be accepted by Petitioner.

Dr. Dudley requested clarification on the street sizes that Mr. Charlier envisioned for the proposed project. Mr. Charlier stated that it was still premature to discuss street sizes until discussions with DPP could make those determinations and described the experiences that he had with mainland communities and how narrow streets were designed to achieve their intended purpose and still accommodate emergency vehicles. Mr. Charlier also described how streets impacted the marketability and property values of residential properties. Dr. Dudley had no further questions.

Ms. Kuwaye stated that she had no re-direct.

Commissioner Heller requested clarification on low-speed streets and how bike lanes factored into the community transportation plans. Mr. Charlier described how he envisioned and included bike lanes in his plan.

There were no further questions for Mr. Charlier.

There being no further business, Chair Lezy adjourned the meeting at 3:22 p.m.