

LAND USE COMMISSION
MEETING MINUTES

December 1, 2011 – 9:30 a.m.
Leiopapa A Kamehameha Building Room 405,
235 South Beretania Street Honolulu, HI 96804

COMMISSIONERS PRESENT: Normand Lezy
Ronald Heller
Lisa Judge
Nicholas Teves, Jr
Chad McDonald
Thomas Contrades
Kyle Chock (arrived at 9:31 a.m.)
Ernest Matsumura

COMMISSIONERS EXCUSED: Napua Makua

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner (A06-771)
Bert Saruwatari, Staff Planner (A11-793)
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 9:30 a.m. (7 Commissioners present- Commissioner Chock arrived at 9:31 a.m. 8 Commissioners now in attendance)

APPROVAL OF MINUTES

Chair Lezy asked if there were any corrections or additions to the November 17-18, 2011 minutes. There were none. Commissioner Contrades moved to approve the minutes. Commissioner Teves seconded the motion and the minutes were unanimously approved by voice vote (8-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The tentative meeting schedule for the remainder of the calendar year 2011 was distributed in the handout material for the Commissioners.
- The first 6 months of tentative meeting schedules for 2012 are posted on the LUC website.
- The next meeting is on January 5, 2012 and will be a continued hearing on A06-771.
- On January 6, 2012 the Commission will travel to Maui for a variety of matters.
- Any questions or concerns- please contact LUC staff.

Chair Lezy stated that the next item on the agenda was a scheduled Executive Session and asked for a motion.

EXECUTIVE SESSION

Commissioner Contrades moved for Executive Session. Commissioner Heller seconded the motion. By unanimous voice vote (8-0) the Commission elected to enter Executive Session and exited the meeting room at 9:32 a.m. The Commission reconvened at 10:04 a.m.

ACTION

A06-771 D.R. HORTON-SCHULER HOMES, LLC., (O`ahu)

Chair Lezy announced that this was an action meeting on A06-771 D.R. HORTON – SCHULER HOMES, LLC , a Delaware limited liability company, d.b.a. D.R. Horton-Schuler Division, to consider Friends of Makakilo’s Motion for Leave to File Amended Witness and Exhibit Lists and to consider objections, if any, to Witnesses and Exhibits offered by Intervenors Friends of Makakilo and Sierra Club.

APPEARANCES

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

Linda Paul, Esq., legal advisor to FOM

Elizabeth Dunne, Esq., represented Intervenor The Sierra Club

Eric Seitz, Esq., represented Intervenor Clayton Hee

Chair Lezy updated the record and described the procedures for the proceedings and informed the Parties that the non-hearing Motion for a Second Site Visit filed by the Intervenors would be heard later as a separate issue. There were no questions or comments regarding the procedures or matters regarding the witness and exhibit lists.

Chair Lezy asked if there were any Public Witnesses who wished to give testimony

PUBLIC WITNESSES

1. Victoria Cannon

Ms. Cannon provided her opinion of why the amended witness and exhibit lists were important to the case and why they should be admitted.

She also stated why she felt a second site visit for the Commission was necessary.

There were no questions for Ms. Cannon.

There were no other Public Witnesses.

Chair Lezy commented that it appeared to him that the Intervenors had not displayed the cooperation in presenting their witness and exhibits as

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represented to the Commission when they were granted Intervenor status and described how he expected the Intervenors to seek better efficiency and management of their presentations during the course of the proceedings to avoid any redundancy.

Chair Lezy stated that only the Petitioner had filed objections to the offered exhibits and described the procedures of how The Sierra Club and then FOM would offer their exhibits. There were no questions or comments on the proposed procedures.

OFFERING OF EXHIBITS

SIERRA CLUB

Ms. Dunne offered The Sierra Club's Exhibits in a sequential order and Mr. Kudo stated Petitioner's position on each of them with Chair Lezy ruling on whether to admit or exclude the exhibits. Chair Lezy described the rationale that he used to consider each objection and determine whether to allow each exhibit as Ms. Dunne offered them.

Mr. Kudo stated that he had no objection to Exhibits 40B, 41B, 42B, 43B, 44B and 46B and Ms. Dunne confirmed that Exhibits 45B, 49B and 50B had been withdrawn.

Mr. Kudo objected to the offerings of Exhibits 47B, 48B, 51B, and 52B and argued his reasons for wanting them not admitted. Ms. Dunne argued what evidentiary value each Exhibit had and why they should be allowed. Chair Lezy admitted Exhibits 47B, 48B, 51B, and 52B after hearing the arguments.

There were no further exhibits offered by The Sierra Club.

Chair Lezy called for the FOM to offer its exhibits and noted that during the initial proceedings, the FOM had displayed an inability to observe the deadlines established by the Commission and cautioned Dr. Dudley that further leeway should not be expected. Chair Lezy described how the failure to observe

the deadlines impeded the proceedings and asked if Dr. Dudley understood the gravity of the situation. Dr. Dudley acknowledged Chair Lezy's comments.

Chair Lezy noted that he understood that only the Petitioner had filed objections and stated that the same procedures would apply to the offering of FOM's exhibits. Discussion ensued to clarify what exhibits were going to be offered by FOM.

Chair Lezy declared a recess at 10:25 a.m. and reconvened the proceedings at 10:35 a.m.

Chair Lezy confirmed with the Parties that only the Petitioner had objections to FOM's exhibits. DPP, OP, The Sierra Club and Senator Hee stated that they had no objections to FOM's exhibits.

FOM

Dr. Dudley offered FOM's Exhibits in a sequential numbered and alphabetical order and Mr. Kudo stated Petitioner's position on each of them with Chair Lezy deciding whether to admit or exclude each exhibit as it was offered. Chair Lezy described the rationale that he used to consider each objection and determine whether to allow each exhibit as Dr. Dudley offered them.

Mr. Kudo stated that he had no objection to Exhibits 20, S, B3, B19, and B35. Dr. Dudley confirmed that Exhibits B4, B8, B17, B18, B22, 21, 22, 23, 25, 26, 27, 30, 31, 32, 34, 35, and 36 had been withdrawn, and that Exhibits R1, R4, R6, R7, R8, and R10 had previously been stricken by the Commission.

Mr. Kudo objected to Exhibits N, O, P, Q, R, B1, B2, B5, B6, B7, B9, B10, B11, B12, B13, B14, B15, B16, B23-B34, B36, 24, 28, 29, 33, 37-40, R2, R3, R5, and R9 and argued his reasons for wanting them not admitted. Dr. Dudley described his exhibits and argued why they should be allowed. Chair Lezy decided to allow Exhibits N, O, P, Q, R, B1, B2, B5, B6, B7, B9, B10, B11, B12, B13, B14, B15, B16, B23-B34, B36, 24, 28, 29, 33, 37-40, R2, R3, R5, and R9 after hearing the arguments.

The Commission went into recess at 10:55 a.m. and reconvened at 11:01 a.m. during the offering of the above exhibits.

There were no further exhibits offered by FOM.

At the conclusion of FOM's Exhibit offerings Chair Lezy stated that FOM should consider the objections that Petitioner had voiced and be prepared to respond to them when it was time to call witnesses. Dr. Dudley acknowledged Chair Lezy's comments.

Chair Lezy stated that the Commission would now address FOM's Motion for Leave to File Amended Witness and Exhibit Lists and asked for a motion to deny this motion since it had been rendered moot by the actions just taken. Ms. Paul stated that Intervenor FOM wished to withdraw its motion. Chair Lezy acknowledged FOM's request to withdraw its motion.

Mr. Kudo inquired when the Commission would cover witnesses for the proceedings. Chair Lezy responded that the witnesses would be taken up at the time that they are offered.

ACTION

A06-771 D.R. HORTON-SCHULER HOMES, LLC., (O`ahu)

Chair Lezy announced that this was an action meeting on Docket No. A06-771 D.R. HORTON – SCHULER HOMES, LLC , a Delaware limited liability company, d.b.a. D.R. Horton-Schuler Division to deliberate and decide on a Non-hearing Motion for a Second Site visit filed by Intervenors -The Sierra Club, Friends of Makakilo and Senator Clayton Hee.

Chair Lezy called for public witnesses for this agenda item.

PUBLIC WITNESSES

There were no public witnesses.

Commissioner Teves stated that it was his understanding that the site visit was for the benefit of the Commissioners and not for the public and the other parties involved and made a motion to deny the request for the site visit. Commissioner Heller seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Teves, Heller, Matsumura, Judge, McDonald, Contrades, Chock and Chair Lezy.

Nays: None

Excused: Commissioner Makua

The motion passed 8-0-with 1 excused.

Chair Lezy stated that the next agenda item would be Docket No. A11-793 and asked if there were any comments or questions regarding the concluded business for A06-771. Mr. Kudo expressed his concerns about the large number of witnesses that the Intervenors had offered and strongly objected to all 19 witnesses being allowed on the basis of over-redundancy and the possibility of rendering the proceedings unmanageable. Chair Lezy acknowledged Petitioner's concerns and responded that the Intervenors were aware that prolonging the proceedings was not in anyone's interest and were aware of the need to be sensitive to this issue.

There were no further comments or questions.

Chair Lezy declared a recess at 11:10 and reconvened the meeting at 11:23 a.m. (Commissioner Heller departed the meeting with the approval of the Chair-7 Commissioners remained)

ACTION

A11-793 Castle & Cooke Homes Hawaii, Inc.

Chair Lezy announced that this was an action meeting on Docket No. A11-793 to amend the Agricultural Land Use District Boundary into the Urban District for approximately 767.649 acres to consider Petitions to Intervene from the Sierra Club, The Mililani/Melemanu/Waipio Neighborhood Board #25 and Senator Clayton Hee.

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

Benjamin Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq., represented Petitioner Castle & Cooke Homes Hawaii Inc.
Laura Kodama, Castle & Cooke Homes Hawaii Inc.
Rodney Funakoshi, Castle & Cooke Homes Hawaii, Inc.
Dawn Takeuchi-Apuna Esq., represented City and County of Honolulu Department of Planning and Permitting (DPP)
Randy Hara, DPP
Bryan Yee, Esq., represented State Office of Planning
Jessie Souki, State Office of Planning (OP)
Jamila Jarmon, Esq., represented Intervenor-The Sierra Club
Richard Poirier, Intervenor-Mililani/Waipii`o/Melemanu Neighborhood Board No.25 (NHB25)
Eric Seitz, Esq.- (Mr. Seitz stated that he was appearing specially for Senator Hee and that discussions on his future representation of Senator Hee and possibly Sierra Club in this docket were being conducted. Chair Lezy acknowledged Mr. Seitz's comments)

Chair Lezy updated the record for the docket and asked if Petitioner was aware of and agreeable to the reimbursement policy of the Commission. Mr. Matsubara responded that Petitioner had been informed about the LUC's reimbursement policy and that Petitioner was agreeable to it. Chair Lezy asked if there were any Public Witnesses who wished to give testimony regarding the Petitions to Intervene filed by The Sierra Club, the Mililani/Waipii`o/Melemanu Neighborhood Board No.25, and Senator Hee.

PUBLIC WITNESSES

There were no public witnesses.

PETITIONS TO INTERVENE

SIERRA CLUB

Executive Officer Davidson stated that the Commission had received notice from the Petitioner that it had no opposition to The Sierra Club's Petition (Please refer to LUC Transcript for more details on this matter) ©PAGE 08©
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to Intervene. Chair Lezy acknowledged Mr. Davidson's remarks and confirmed that there were no public witnesses and that Petitioner had no opposition to the Petition and asked if The Sierra Club had any final comments to make.

Mr. Matsubara stated that Petitioner had no opposition to The Sierra Club's Petition to Intervene and Ms. Jarmon stated that The Sierra Club had nothing to add.

Commissioner Contrades moved to grant The Sierra Club's Petition to Intervene. Commissioner Judge seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Judge, Matsumura, Teves, McDonald, Chock and Chair Lezy.

Nays: None

Excused: Commissioners Makua and Heller

The motion passed 7-0 with 2 excused.

NHB25

Chair Lezy stated that the next matter before the Commission was to consider the Petition to Intervene from the NHB25 and added that it was his understanding that Petitioner had no opposition to the Petition and asked Petitioner to confirm that it had no opposition and if NHB25 had any final comments to make. Mr. Matsubara stated that Petitioner had no opposition to NHB's Petition to Intervene and Mr. Poirier stated that NHB25 had nothing to add.

Commissioner Contrades moved to grant the Petition. Commissioner Judge seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Judge, Matsumura, Teves, McDonald, Chock and Chair Lezy.

Nays: None

Excused: Commissioners Makua and Heller

The motion passed 7-0 with 2 excused.

SENATOR HEE

Chair Lezy stated that the next matter before the Commission was to consider the Petition For Leave to Intervene from Senator Hee and that the only opposition to this Petition had been filed by DPP.

Mr. Matsubara clarified that Petitioner had no objection to the Petition for Leave to Intervene if Senator Hee's participation was similar to his participation in Docket No. A06-771. Mr. Seitz argued that DPP's opposition was frivolous and had no legal grounds to prevent the Senator's participation as a Senator. Ms. Takeuchi-Apuna argued why DPP's argument in A06-771 was valid and applicable to this docket, and why Senator Hee's participation should be as an individual and not as a State Senator. Mr. Seitz restated why he considered DPP's opposition to Senator Hee's Petition to Intervene frivolous.

Commissioner Judge moved to grant Senator Hee's Petition to Intervene in the same individual Intervenor capacity that had been granted to him in Docket No. A06-771. Commissioner Teves seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Judge, Teves, Matsumura, McDonald, Contrades, Chock and Chair Lezy.

Nays: None

Excused: Commissioners Makua and Heller

The motion passed 7-0 with 2 excused

Chair Lezy stated that all the action items on the agenda had been concluded and noted that the discussion on the administrative rules would be deferred. Executive Officer Davidson stated that the proposed amendments were being finalized would soon be ready for public review.

Mr. Souki requested and was granted an opportunity to make a comment on the proceedings for Docket No. A11-793. Mr. Souki stated his concerns regarding the number of intervenors and the need for a cooperative effort to keep the proceedings efficient and manageable. Executive Officer Davidson announced that the pre-hearing meeting would be held on December 13, 2011 and that the Commission would be sending letters to the Parties to confirm the pre-hearing meeting time, date and place.

There being no other business, Chair Lezy adjourned the meeting at 11:40 a.m.