

LAND USE COMMISSION  
MEETING MINUTES

May 22, 2012

Leiopapa A Kamehameha, Conference Room 204, 2<sup>nd</sup> Floor  
235 South Beretania Street, Honolulu, Hawai`i 96804

COMMISSIONERS PRESENT: Kyle Chock  
Thomas Contrades  
Lisa Judge  
Jaye Napua Makua  
Chad McDonald  
Nicholas Teves, Jr.  
Normand Lezy  
Ronald Heller

COMMISSIONERS EXCUSED: Ernest Matsumura

STAFF PRESENT: Bert Saruwatari, Acting Executive Officer , Staff  
Planner  
Sarah Hirakami, Deputy Attorney General  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Hotai Zerba

**CALL TO ORDER**

Chair Lezy called the meeting to order at 9:02 a.m.

**ORAL ARGUMENT AND DECISION MAKING**

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

Chair Lezy announced that this was a continued hearing on A06-771 D.R.  
HORTON – SCHULER HOMES, LLC, a Delaware limited liability company, d.b.a. D.R.  
Horton-Schuler Division.

## APPEARANCES

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

Cameron Nekota, D.R. Horton-Schuler Homes, LLC

Don Kitaoka, 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. and Sarah Devine, Esq., represented Intervenor Clayton Hee

Chair Lezy updated the record and entertained a motion to amend the agenda to address Petitioner's Motion for Leave for the Parties to Submit Written Legal Briefs and for Hearing. Commissioner Chock moved and Commissioner Judge seconded to amend the agenda. By a unanimous voice vote (8-0), the Commission elected to amend the agenda.

Chair Lezy stated that the Commission had received notice from OP in support of the motion and from FOM opposing the motion; and asked what County, Sierra Club, and Senator Hee's positions were. Mr. Kitaoka responded that County supported the Motion; Ms. Dunne responded that she opposed the Motion; and Mr. Seitz stated that he had no objection to the Motion being heard but opposed the substance of the Motion.

Chair Lezy stated that he would entertain a motion for Executive Session. Commissioner Judge moved and Commissioner Makua seconded the motion for an Executive Session. By a unanimous voice vote (8-0), the Commission voted to enter Executive Session. The Commission exited for its Executive Session at 9:12 a.m. and reconvened at 9:40 a.m.

## ARGUMENTS ON MOTION

Petitioner

Mr. Kudo described the background and reasoning for filing the Motion for Leave and argued why the Motion should be granted. Mr. Kudo cited recent court decisions that had prompted him to file his Motion and argued how he felt that there

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

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was impending litigation in this matter and why granting the Motion would demonstrate to the Courts that the Commission had carefully examined all legal matters in making its decision.

#### County

Mr. Kitaoka stated that the County supported the Motion and commented that this docket could be considered a “landmark” decision; and why it would be beneficial to all Parties to further examine the Commission’s legal authority.

#### OP

Mr. Yee stated that OP rested on its Statement of No Objection.

#### FOM

Dr. Dudley stated that FOM opposed the Motion and argued why it should not be granted; and why the Motion failed to describe what the “matter” was. Dr. Dudley cautioned how the Petitioner appeared to be deliberately delaying the proceedings and advocated that the Commission move forward in this matter.

#### Sierra Club

Ms. Dunne stated that The Sierra Club opposed the Motion and argued why no further briefings were necessary. Ms. Dunne further argued the importance of the currently constituted Commission completing the decision-making on this docket since there had been so much information and time invested in its presentation.

#### Senator Hee

Mr. Seitz argued why he felt additional briefings were not necessary; why an offer of proof should be provided and stated that he opposed the Motion and that the Commission should proceed as scheduled.

#### Rebuttal

Mr. Kudo described how Petitioner did not want a default approval of its Petition and argued how recent judicial decisions against the LUC’s authority in land use matters had prompted him to file his motion to ensure that future challenges against an approved Petition could be withstood.

#### Commissioner Questions

Commissioner Judge asked if Petitioner was prepared to file its briefs now and what the expected timing of the Commission’s handling of the Motion was. Mr. Kudo responded that he could file within two weeks and described how he envisioned the Commission could process the Motion.

Commissioner Heller asked if Petitioner agreed that the Constitutional questions had been raised earlier and for additional clarification on why the decision to file the motion was made. Mr. Kudo replied that he agreed that the Constitutionality questions had been aired earlier and provided the details that motivated him to file his motion and take additional precautions to cover all aspects of any future appeal.

Chair Lezy stated that he agreed with Mr. Seitz's request for offer of proof and requested further details regarding why it was necessary for the LUC to grant the motion. Mr. Kudo provided additional details on his reasoning for bringing forth his motion. Chair Lezy requested clarification on what Mr. Kudo's expectations were for the format that the LUC would use to consider his motion if it were granted. Mr. Kudo responded that he was amenable to whatever format the LUC chose to use to handle the briefs.

Chair Lezy commented that he agreed that additional briefings would have utility and asked Mr. Seitz what prejudices he might have.

Mr. Seitz commented that no citations were contained in the Motion and reargued why no further research and briefings were necessary; and stated his concerns about Commissioner turnover and the time deadlines that needed to be observed.

There were no further comments or questions.

Commissioner Chock moved to grant the motion. Commissioner McDonald seconded the motion.

Commissioner Heller commented that he was aware of the benefits of further briefings on the Constitutional issues and stated that if granted, he would prefer a tight time frame for addressing the motion and suggested that briefings be filed by the close of business on Friday, May 25, 2012; and that the Parties be allotted a reasonable amount of time to respond.

Chair Lezy restated how he felt the briefings would further complete the record and agreed with Commissioner Heller on the need for tight time frames to allow the currently constituted Commission to decide on this Petition if the motion was granted. Chair Lezy noted that he would not allow this matter to pass to a newly constituted Commission due to its complexity and notified the Parties that he intended to complete the docket before the end of the 2012 fiscal year.

Chair Lezy offered a friendly amendment to the motion that Petitioner's filing of briefs would be on Friday, June 25, 2012 and Monday, June 4, 2012 would be the date for responses to Petitioner's briefs. Discussion ensued regarding the abilities of the Parties to comply with the filing dates. Chair Lezy stated that the deadlines were firm and described the considerations that had been made in determining them. Commissioners Chock and McDonald concurred with the friendly amendment to the motion.

The Commission was polled as follows:

*(Please refer to LUC Transcript for more details on this matters)*  
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Ayes: Commissioners Chock, McDonald, Judge, Teves, Makua, Heller and Chair Lezy.  
Nays: Commissioner Contrades  
The motion passed 7-1 with 1 excused.

Dr. Dudley expressed concerns with the timetable that the Commission had decided upon. Chair Lezy acknowledged Dr. Dudley's concerns and restated how the Commission was committed to completing its proceedings as promised.

#### PUBLIC WITNESSES

Chair Lezy announced that public testimony would be taken first from the four members of the public that had signed up at the last LUC meeting on this docket but did not get a chance to speak due to time limitations. Jessica De Vera was the sole responder to Chair Lezy's offer.

1. Jessica De Vera  
Ms. De Vera described her concerns about the issue of jobs and water resources and stated why she opposed the Petition.  
There were no questions for Ms. De Vera
2. Willis Moore  
Mr. Moore shared his reasons for supporting the Petition.  
There were no questions for Mr. Moore.
3. Pearl Johnson  
Ms. Johnson described why she opposed the Petition.  
There were no questions for Ms. Johnson.
4. Charles Zahn  
Mr. Zahn shared why he supported the Petition.  
There were no questions for Mr. Zahn.
5. Glenn Oamilda  
Mr. Oamilda shared his concerns about the proposed project and what he felt needed to be further studied.  
There were no questions for Mr. Oamilda
6. Stuart Scott  
Mr. Scott stated that he opposed the Petition and described his reasons for taking his position.  
There were no questions for Mr. Scott.

Commissioner Judge excused herself at 10:30 a.m. and returned at 10:33 a.m.

7. Lynne Kobayashi  
Ms. Kobayashi requested that the Commission deny the Petition and shared the reasons for her request.  
There were no questions for Ms. Kobayashi.
8. Sadie Green  
Ms. Green expressed the need to preserve the environment and shared her concerns about the proposed project.  
There were no questions for Ms. Green.
9. Donovan Lewis  
Mr. Lewis described his reasons for supporting the Petition.  
There were no questions for Mr. Lewis.
10. Chris Keliiwaihoikeone Camarillo  
Mr. Camarillo voiced his concerns about the proposed Petition and why he opposed it.  
There were no questions for Mr. Camarillo.
11. Sydney Higa  
Mr. Higa described his reasons for supporting the proposed project.  
There were no questions for Mr. Higa.
12. Victoria Cannon  
Ms. Cannon described why she felt the Commission should deny the Petition.  
There were no questions for Ms. Cannon.
13. Alfonso Olivera  
Mr. Olivera shared his reasons for supporting the Petition.  
There were no questions for Mr. Olivera.
14. Phyllis Kacher  
Ms. Kacher stated that she supported the Petition and described her reasons for doing so.  
There were no questions for Ms. Kacher.
15. Madori Rumpungworn  
Ms. Rumpungworn expressed her concerns for Oahu's future.  
There were no questions for Ms. Rumpungworn.

The Commission went into recess at 10:54 p.m. and reconvened at 11:06 a.m.

16. Georgette Stevens  
Ms. Stevens shared that she had participated in the Hoopili task force and shared her support of the Petition.  
There were no questions for Ms. Stevens.
17. Vern Taa  
Mr. Taa stated that he was a local area resident and supported the Petition.

- There were no questions for Mr. Taa.
18. DeAngelo McIntyre  
Mr. McIntyre apologized for his behavior in a prior LUC appearance and described his environmental concerns and why they should be considered in decision-making for the Petition.  
There were no questions for Mr. McIntyre.
19. Scott Cooney  
Mr. Cooney described his concerns about the long term economics involved with the Petition and why he opposed the Petition.  
There were no questions for Mr. Cooney.
20. Pat Patterson  
Ms. Patterson shared why the Commission should deny the Petition and submitted a school program handout to the Commission.  
There were no questions for Ms. Patterson.
21. Jesse Ponce de Leon  
Mr. Ponce de Leon shared his concerns about proposed developments.  
There were no questions for Mr. Ponce de Leon.
22. Alice Fisher  
Ms. Fisher described the deteriorating environment that she feared was occurring and asked the Commission to deny the Petition.  
There were no questions for Ms. Fisher.
23. Cynthia Frith  
Ms. Frith described her reasons for opposing the Petition.  
There were no questions for Mr. Frith.
24. Lucas Miller  
Mr. Miller shared his concerns about sustainability and the loss of farmland.  
There were no questions for Mr. Miller.
25. Elaine Kam  
Ms. Kam expressed her concerns about the proposed project.  
There were no questions for Ms. Kam.
26. Anthony Aalto  
Mr. Aalto described his role with the Sierra Club and how primary consideration should be given to developing urban downtown Honolulu and asked that the Commission deny the Petition.  
Mr. Seitz asked if Mr. Aalto was aware that the Sierra Club already had discussions with Senator Hee and the Governor's office regarding development in the primary urban core of downtown Honolulu. Mr. Aalto responded that he had heard that discussions about the proposed downtown Honolulu project had occurred but was not aware that D.R. Horton-Schuler Homes had been invited.

27. Dennis Egge  
Mr. Egge thanked the Commission for its efforts and asked that farmland be saved and alternate replacement housing sites be sought.  
There were no questions for Mr. Egge.
28. Esther Roberts  
Ms. Roberts stated that she supported the Petition and provided the reasons why.  
There were no questions for Ms. Roberts.
29. Kahu Manu Mook  
Kahu Mook described why everyone should act with the spirit of aloha and do what is right for Oahu.  
There were no questions for Kahu Mook.
30. Rickey Ricardo Tye  
Mr. Tye shared how the future could be positively affected by granting the Petition.  
There were no questions for Mr. Tye.

There were no further public testifiers.

Chair Lezy announced that the Commission would be working on scheduling the new hearing date for this docket and that the agenda would be available online and to those on the mailing list; and that members of the public who wished to be added to the mailing list should advise LUC staff of their addresses.

Ms. Dunne requested clarification on the scope of the briefing. Chair Lezy replied that it would primarily address the Commission's authority and Mr. Kudo provided the legal references that would be involved, specifically Article 11, section 3 of the Hawaii State Constitution, and section 205-47 of the Hawaii Revised Statutes. Chair Lezy restated how the LUC would be notifying the Parties in the coming week.

Commissioner Contrades moved and Commissioner Heller seconded the motion to enter into Executive Session. The Commission exited to enter Executive Session at 11:55 a.m. Chair Lezy excused the LUC staff to allow the Commission to discuss personnel matters.

The Commission reconvened at 12:28 p.m. and there being no further business, the regular meeting was immediately adjourned at that time.