

LAND USE COMMISSION
MEETING MINUTES
October 11, 2017 – 9:30 a.m.
Airport Conference Center, Meeting Room IIT#2
400 Rodgers Boulevard, Suite 700,
Honolulu, HI 96819

COMMISSIONERS PRESENT: Lee Ohigashi
Arnold Wong
Nancy Cabral
Linda Estes
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Dawn Chang

COMMISSIONERS EXCUSED: Edmund Aczon

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Priscilla Gonzaga

CALL TO ORDER

Chair Wong called the meeting to order at 9:32 a.m.

APPROVAL OF MINUTES

Chair Wong asked if there were any corrections or additions to the August 23rd, 2017 meeting and the August 23rd and September 22nd, 2017 site visit minutes. There were none. Commissioner Mahi moved to approve the minutes and Commissioner Cabral seconded the motion.

The minutes were unanimously approved by voice vote (8 ayes).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.
 - OCT 18-19- Molokai IAL on Molokai
 - NOV 8-9 – AES Lawai Kauai Solar Special Permit, A17-803 Kealia –LUC Accepting Authority for EIS and LUC OEQC Training, Adopt DR17-59 and DR17-60 Orders
 - NOV 21- Hono`uli`uli Special Permits on Oahu
 - DEC 6- 7- A15-798 Waikapu (Maui) and Adopt Hono`uli`uli Special Permits
 - Any questions or concerns- please contact LUC staff.
- Any questions or conflicts, please contact LUC staff.

DISCLOSURES

Commissioner Okuda stated that he was a personal friend of Carl Kobayashi, Chairman of the Board for the law firm, Carlsmith Ball, representing Petitioner, but did not feel that his relationship with Mr. Kobayashi would interfere with his remaining impartial during the proceedings.

There were no objections to Commissioner Okuda's continued participation.

Commissioner Ohigashi stated that he was a personal friend of Stephen Lim, husband of Ms. Lim, from the law firm, Carlsmith Ball, appearing before the Commission on behalf of the Petitioner; but did not feel that his relationship with Mr. and Mrs. Lim would interfere with his remaining impartial during the proceedings.

There were no objections to Commissioner Ohigashi's continued participation.

Vice-Chair Scheuer noted that DPP was not present and questioned whether they were expected. Chair Wong stated that DPP had been notified and that the proceedings would continue in spite of DPP's absence. (DPP's representative, Raymond Young, Planner-City and County of Honolulu Department of Planning and Permitting, arrived at 09:45 a.m.)

HEARING AND ACTION

DR17-59 MONSANTO COMPANY, a Delaware corporation

To Consider Declaratory Order to Designate Important Agricultural Lands for approximately 1,550 acres at Kunia, O'ahu identified by TMK Nos. (1) 9-2-001-001 (por.); (1) 9-2-001-005; and (1) 9-2-004-009

APPEARANCES

Jennifer Lim, Esq. and Mark Murakami, Esq., attorneys for Petitioner Monsanto Company

Raymond Young, Planner-City and County of Honolulu Department of Planning and Permitting (DPP) (arrived at 09:45 a.m.)

Dawn Takeuchi Apuna, Esq. for State Office of Planning ("OP")

Rodney Funakoshi, Land Use Administrator, OP

Chair Wong described the procedures for the proceedings and asked if Petitioner had been made aware of and was agreeable with the Commission's policy on reimbursement. Ms. Lim replied that Petitioner had no objections to the Commission's policy and would comply. Ms. Lim noted that Petitioner had filed a PowerPoint with the Commission on October 9, 2017. Chair Wong acknowledged and confirmed that the Commission had received the filing.

PUBLIC TESTIMONY

1. Dean Okimoto

Mr. Okimoto testified in support of the Petition.

Commissioner Okuda stated that he wished to disclose that Mr. Okimoto's parents had consulted with him on a legal matter a while ago but that he felt that he could remain impartial through the proceedings.

There were no objections to Commissioner Okuda's disclosure.

Commissioner Cabral thanked Mr. Okimoto for making the effort to provide public testimony.

Commissioner Ohigashi stated that he wished to disclose that he knew Mr. Okimoto socially but that he felt that he could remain impartial through the proceedings.

There were no objections to Commissioner Ohigashi's disclosure.

Commissioner Chang requested clarification on Mr. Okimoto's recollection of the formation of legislation to provide for Important Agricultural Lands (IAL) designation and what the role of the Counties was intended to be. Mr. Okimoto

described his recollection and stated his opinion that DPP had not complied with the IAL legislation.

There were no further questions for Mr. Okimoto.

DPP Representative, Raymond Young arrived at 09:45 a.m. and was recognized by Chair Wong. Chair Wong reviewed the disclosures made by Commissioners Okuda and Ohigashi with him and asked if DPP had any objections. Mr. Young replied that DPP did not.

2. David Arakawa- Land Use Research Foundation (LURF)

Mr. Arakawa circulated written materials for the Commission to review as he provided his public testimony in support of the Petition.

There were no questions for Mr. Arakawa.

PETITIONER PRESENTATION

Ms. Lim provided a brief history and background summary on the Petition and described how she would be making her presentation using a PowerPoint presentation and why the Declaratory Order should be granted.

Ms. Lim stated that she had three witnesses.

Petitioner Witnesses

1. Daniel Clegg- Monsanto Company

Mr. Clegg shared his personal and professional background and described his role with Monsanto Company, and provided organization information on Monsanto and its business mission; why the IAL designation was being sought and how the Japanese Cultural Center of Hawaii (JCCH) factored into Monsanto's operations.

County had no questions. Ms. Apuna, Commissioners Scheuer, Chang, Cabral, Ohigashi and Okuda requested clarification on Mr. Clegg's testimony.

Vice-Chair Scheuer further asked whether Mr. Clegg was aware if water credits had been received by Monsanto in exchange for a land transaction involving the Board of Water Supply. Mr. Murakami, one of the attorneys for Monsanto, responded that no credits had been sought or received as a result of the transaction.

There were no further questions for Mr. Clegg.

Chair Wong declared a recess at 10:45 a.m. and reconvened the proceedings at 10:54 a.m. Ms. Lim called her next witness, Tom Witten.

2. Tom Witten- PBR Hawaii- Expert Witness- Land Use Planning

Mr. Witten was qualified and accepted as an expert witness in the field of land use planning and described his company's work in preparing the IAL Petition for Monsanto Company.

Commissioners Scheuer, Chang, Okuda and Wong requested clarification on Mr. Witten's testimony.

There were no further questions on Mr. Witten's testimony. Ms. Lim called her final witness, Dr. Robert "Bob" Starke.

3. Dr. Robert "Bob" Starke- Expert Witness- Agronomy and Crop/Soil Science

Dr. Starke was qualified and accepted as an expert witness in agronomy and crop/soil science and described his role as farm manager at the Kunia property for Monsanto Company.

Commissioners Chang, Cabral and Scheuer requested clarification on Dr. Starke's testimony.

There were no further questions for Dr. Starke.

Chair Wong inquired whether DPP had any public testimony. Mr. Young replied that DPP stood on its comment letter previously filed with the Commission.

Chair Wong declared a recess at 11:35 a.m. and reconvened the proceedings at 11:40 a.m.

Chair Wong asked whether the Commissioners had any questions for DPP and if a status report on DPP's IAL designation process could be made. Mr. Young provided an update on DPP's efforts in the IAL designation process and responded to questions from Commissioners Scheuer and Chang regarding the DPP progress report.

There were no further questions for DPP.

Chair Wong inquired whether OP had any public testimony. Ms. Apuna described OP's reasons for recommending approval of the Petition.

Commissioner Chang requested clarification on what DPP's position was in regards to OP's position. Mr. Young responded that DPP had no objections to OP's

position and stated that he agreed that the LUC could not grant more IAL land than what was included in the Petition.

Chair Wong asked if the Department of Agriculture had any comments.

Earl Yamamoto, DOA representative, stated that he echoed OP's remarks and provided additional details on why DOA supported the Petition.

There were no questions for Mr. Yamamoto.

FINAL COMMENTS/REMARKS

Ms. Lim summarized her argument regarding why the IAL Petition should be granted and how the Petitioner had voluntarily elected to pursue the IAL designation.

DPP had no comments/remarks to add.

OP stated that they rested on their comments.

DOA stated that they had nothing to add.

Commissioner Cabral inquired about what future landowner IAL obligations might be in case of a change in ownership. Ms. Lim responded that she was reluctant to speculate on what legal matters might be involved and provided her personal opinion on what the IAL obligations would be.

ACTION

Commissioner Estes moved to grant the petition for declaratory order. Commissioner Cabral seconded the motion.

Chair Wong offered a friendly amendment to include that 1) Petitioner shall comply with representations made to the Commission with respect to not claiming any credits described in HRS §205-45(h) with respect to the Petition Area, and 2) Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

Commissioner Estes accepted the friendly amendment. Commissioner Cabral declined the friendly amendment. Commissioner Ohigashi seconded the motion to accept the amendment as Chair Wong had stated and discussion on the amendment only ensued.

Commissioner Okuda stated that he was in favor of the amendment and that, although he shared Commissioner Cabral's concerns, the amendment was consistent with Petitioner's representations. Ms. Lim stated that she concurred with Commissioner Okuda's assessment of the amendment to the motion.

Commissioner Scheuer requested clarification on the matters under consideration by the Commission. Chair Wong described the current status of the proceedings.

Commissioner Chang requested further confirmation that the Commission was only addressing the amendment to the original motion. Chair Wong confirmed that was what was under consideration.

There was no further discussion.

Chair Wong had Mr. Orodenker poll the Commission on whether to adopt and include the amendment to the motion as made by Chair Wong.

The Commission voted as follows in regards to accepting the amendment to the motion.

Ayes- Commissioners Wong, Ohigashi, Estes, Okuda, Scheuer, Chang and Mahi.

Nay- Commissioner Cabral.

The motion to accept the amendment passed (7-1-1 excused).

Chair Wong stated that the Commission would next address voting on the motion as amended and opened the floor to discussion.

Commissioners Scheuer, Cabral, Chang and Okuda shared their reasons for voting in favor of the motion. Commissioner Estes called for the question.

There was no further discussion.

Chair Wong asked Mr. Orodenker to poll the Commission.

The Commission unanimously voted to grant the petition for declaratory order (8-0-1 excused)

There being no further business to address, Chair Wong adjourned the meeting at 12:27 p.m.