

LAND USE COMMISSION
NOTIFICATION OF LAND USE COMMISSION MEETING

July 11, 2019 – 9:30 a.m.
Airport Conference Center
400 Rodgers Blvd. Suite 700, Room #IIT#2
(in Hawaiian Airlines Terminal Building)
Honolulu, HI 96819

COMMIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Nancy Cabral
Aaron Mahi
Edmund Aczon
Dawn Chang

COMMISSIONERS EXCUSED: Dan Giovanni
(9 Seated Commissioners) Lee Ohigashi
Arnold Wong

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

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:30 a.m. and announced that the Petitioner for Docket No. DR19-66 Pōmaika`i Partners LLC notified the Commission after the agenda notice was mailed out that it was not ready to appear as scheduled and agenda

item IX would not be heard at this meeting.

There were no questions or comments.

Chair Scheuer moved on to Docket No. A05-758 A Charitable Foundation Corporation.

ACTION

A05-758 A CHARITABLE FOUNDATION CORPORATION (O`AHU)

- To Consider Motion for Order Releasing Condition Nos. 1, 4, 7, 8, 10 and 11 As Set Forth in the Findings of Fact, Conclusions of Law, And Decision and Order dated April 21, 2006 and In the Declaration of Conditions Recorded in the Bureau of Conveyances of the State of Hawai`i as Document No. 2006-105635

APPEARANCES

Dickson Lee, Esq., attorney for Petitioner A Charitable Foundation Corporation (“CF”)

Dr. David Druz, CF Representative

Tracy Fukuda, Planner, Wilson Okamoto representing CF

Eugene Takahashi, Deputy Director, Department of Planning and Permitting (DPP)

Dina Wong, Division Chief, DPP

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

Rodney Funakoshi, Land Use Administrator, OP

Chair Scheuer updated the record and 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. Mr. Lee replied that Petitioner had no objections to the Commission’s policy and would comply. There were no questions or comments regarding the procedures.

Chair Scheuer called for Public Testimony.

PUBLIC TESTIMONY

None.

DISCLOSURES

Chair Scheuer recognized Commissioner Okuda’s request to make a disclosure. Commissioner Okuda described his relationship with Mr. Lee and stated that he felt that he could remain fair and impartial during the proceedings and that his relationship would not affect his decision-making. Chair Scheuer asked if there were any objections to Commissioner Okuda’s continued participation in the proceedings. There were no objections.

Chair Scheuer recognized Commissioner Cabral. Commissioner Cabral stated that she was distantly familiar with Mr. Lee through business correspondence related to her real estate business but felt that she could remain fair and impartial during the proceedings. Chair Scheuer asked if there were any objections to Commissioner Cabral’s continued participation. There were no objections.

There were no other disclosures.

Chair Scheuer called for the Parties to make their presentations.

PETITIONER PRESENTATION

Mr. Lee provided a background of the docket and argued in support of his Motion for Order Releasing Conditions.

Commissioners Aczon, and Chang requested clarification on what specific conditions Petitioner wanted to be released from and who the adjacent landowners were. Mr. Lee responded that Petitioner sought release from Conditions 1, 4, 7, 8, 10, and 11 and was uncertain about the neighboring land ownership. Chair Scheuer volunteered that through his past employment with the Office of Hawaiian Affairs, he was familiar with the surrounding properties and shared his knowledge of who the adjacent land owners were and how the North Shore Community was involved with land use matters.

Commissioner Cabral requested clarification on how the prohibition on hunting was applied to the Petition Area. Mr. Lee responded that only pig eradication hunting was permitted.

There were no further Commission questions for Petitioner.

COUNTY

DPP stated that it had no formal presentation and no objections to the Motion for Order Releasing Conditions.

Commissioner Chang requested clarification on how the public or the Commission would be made aware of any DPP action to subdivide the Petition Area. Mr. Takahashi described how the public and Commission would be unaware of any activity since the DPP had no hearing process when administratively subdividing an area.

OP

OP stated that it believed Condition Nos. 1, 4, 10, and 11 had been satisfied, and could be deleted; and that it opposed the deletion of Condition Nos. 7 and 8. Ms. Apuna argued why Conditions 7 and 8 should be retained and stated that it would

defer to the Commission on whether any additional action regarding Conditions 2, 3 and 5 was necessary.

There were no questions for OP.

REBUTTAL/FINAL QUESTIONS

Mr. Lee addressed Commissioner Chang's question regarding how the public and Commission would be aware of DPP actions and argued how no further subdivision could occur without LUC and OP approval; and how any other changes would also involve the Commission's participation.

Discussion ensued to clarify why it was onerous for Petitioner to continue to comply with Conditions 7 and 8. Chair Scheuer inquired if the use of a conservation easement instead of Conditions, Covenants and Restrictions (CCRs) was considered. Mr. Lee described how the remaining parcels that Petitioner had control of had CCRs in place.

Commissioner Okuda asked if OP might have changed its position after hearing Petitioner's presentation; and considered how deed and conveyance documents provide standing to take measures to enforce CCRs. Ms. Apuna stated her concerns that CCRs were not enforceable and described how LUC conditions provided greater oversight and how Conditions 7 and 8 would keep the Commission informed on Petition Area activity.

Commissioner Chang provided her perspective of how the community relied on annual reports for information and how not having annual reports could negatively affect concerned residents and Chair Scheuer questioned the County's role with CCRs.

Mr. Lee argued how other safeguards existed to keep the community aware of Petition Area activity.

DELIBERATIONS

Following discussion, Commissioner Aczon moved to delete Condition Nos. 1, 4, 10, 11, and to retain Condition Nos. 7 and 8. Commissioner Mahi seconded the motion.

Following further discussion, counsel for Petitioner requested that Dr. Druz be permitted to provide testimony in support of the Motion for Order Releasing Conditions.

Chair Scheuer asked if there were any objections to Dr. Druz testifying. OP and the DPP had no objections to Dr. Druz's untimely oral testimony.

Petitioner Witness- Dr. David Druz

Dr. Druz described the frustration his organization had experienced with accomplishing its conservation efforts in the Petition Area; and provided his perspective of how costly and inconvenient retaining Conditions 7 and 8 would be to his organization.

Commissioner Okuda asked if OP had a response to Dr. Druz's testimony. Chair Scheuer stated that he would like to complete questions for Dr. Druz before hearing from OP.

Commissioner Chang provided her perception of how responsible reporting on Petition Area activity should be conducted. Dr. Druz shared why his organization could no longer comply with the conditions as they were worded.

Chair Scheuer requested clarification on what the LUC annual report process was for the landowners of the Petition Area. Mr. Orodener described how landowners were responsible for providing annual reporting on their portions of land.

Chair Scheuer allowed Commissioner Okuda to direct questions at OP. Commissioner Okuda asked if OP's position had changed after hearing Dr. Druz's testimony. Ms. Apuna responded that OP's position had not changed and described why OP did not consider annual reports onerous and noted that Condition 5 was not covered in the CCRs.

Following further discussion, Commissioner Aczon moved to withdraw the motion. Commissioner Mahi seconded the motion. Thereafter, Commissioner Aczon moved to delete Condition Nos. 1, 4, 10, and 11. The motion was seconded by Commissioner Mahi. There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion passed.

Thereafter, Commissioner Okuda moved to delete Condition No. 7. The motion was seconded by Commissioner Cabral. The Commission voted as follows:

Ayes: Commissioners Okuda and Cabral.

Nays: Commissioners Aczon, Chang, Mahi and Chair Scheuer.

The motion failed. (2-4-3 excused).

Commissioner Okuda then moved to delete Condition No. 8. The motion was seconded by Commissioner Cabral.

The Commission voted as follows:

Ayes: Commissioners Okuda and Cabral.

Nays: Commissioners Aczon, Chang, Mahi and Chair Scheuer.

The motion failed. (2-4-3 excused). .

There being no further business to conduct, Chair Scheuer adjourned the meeting at 11:15 a.m.