

LAND USE COMMISSION  
MINUTES OF MEETING

July 13, 2007

Leiopapa A Kamehameha  
4th Floor  
Conference Room 405  
235 So. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades  
Michael Formby  
Vladimir Paul Devens  
Lisa Judge  
Ransom Piltz  
Nicholas Teves  
Reuben Wong

COMMISSIONERS ABSENT: Howard Hamamoto  
Duane Kanuha

STAFF PRESENT: Anthony Ching, Executive Officer  
Diane Erickson, Deputy Attorney General  
Russell Suzuki, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 10:15 a.m.

Chair Judge introduced and welcomed the newest Commissioner, Vladimir Devens, to the commission.

A07-775 CASTLE & COOKE HOMES HAWAII, INC. (Oahu)

Chair Judge stated that this was an action meeting to: 1) determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 191.214 acres of land from the State Land Use Agricultural District to the State Land Use Urban District for residential subdivision at Waipio and Waiawa, Oahu, Hawaii; and 2) determine whether the proposed action may have a “significant effect” to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner

Rodney Funakoshi, Castle & Cooke Homes Hawaii, Inc.

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Matt Higashida, City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Commissioner Devens disclosed that his law firm was involved in prior litigation against Castle & Cooke Homes. Commissioner Devens added that this matter did not relate in any way to this docket. The parties did not have any objections to the participation of Commissioner Devens in this matter.

Mr. Matsubara began his presentation and stated that due to the scope of the project, it may have a significant effect on the environment so as to warrant the preparation of an EIS. Mr. Matsubara requested that the LUC be the accepting authority for the EIS adding that the specific trigger for the environmental review was the potential use of State lands for infrastructure work required for the project.

Ms. Sunakoda stated that the City had no position on this matter.

Mr. Yee noted that the State had no objections to the petitioner's request.

Vice Chair Formby moved that based upon the pleadings in the testimony, the LUC is the accepting authority and that the proposed action may have a significant impact warranting the preparation of an EIS. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Formby, Teves, Wong, Piltz, Devens, Contrades, and Judge.

The motion passed with 7 yes, 2 absent.

A recess break was taken at 10:20 a.m. The meeting reconvened at 10:25 a.m.

#### A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (Oahu)

Chair Judge stated that this was a meeting on Docket No. A06-763 Kapolei Property Development, LLC for the presentation of the parties' respective proposed findings of fact, conclusions of law, and decision and order.

#### APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Jesse Souki Esq., represented Petitioner

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Ray Sakai, City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

Chair Judge noted that given the substance of the recent motion filed by the petitioner, it was the LUC's intention to defer the receipt of any presentations by the parties in this docket until a future meeting, after the Commission had ruled on the motion before the LUC today.

## Public Witness

### 1. Maile Shimabukuro

Representative Shimabukuro stated that she was speaking as an individual and not on behalf of the entire State Legislature. Representative Shimabukuro commented that as a Leeward coast representative and Chair of the House Committee on Human Services and Housing, she was in support of workforce housing to be developed as a function of the KPD project. Representative Shimabukuro referenced the Maui Business Park housing mandate and commented on the critical housing need for affordable housing on the Leeward coast.

Commissioner Wong questioned that if there was a provision for affordable workforce housing, which agency would decide on the amount of land and the number of units.

Representative Shimabukuro stated that she had previously worked with the state's HHFDC as well as the City's DPP and suggested that these agencies could be the ones to start with.

Commissioner Teves noted that his concern would be the danger of having residences in this area since the project is adjacent to the Campbell Industrial Park.

After a brief discussion, there were no further questions posed for Representative Shimabukuro from the parties or the Commission.

### 2. Randy Ching

Mr. Ching stated that he was from the Sierra Club and in support of Representative Shimabukuro's testimony and efforts to develop workforce housing in the area.

Chair Judge asked if Mr. Ching was speaking on behalf of the Sierra Club.

Mr. Ching noted that although he was speaking for himself, the Sierra Club would like the opportunity to intervene in a contested case hearing should this docket not include workforce housing.

Chair Judge stated that unfortunately, the evidentiary portion of the hearings had concluded and there would not be any opportunity for intervenor to participate, as the LUC was at the end of the hearing on this matter.

There were no further questions posed for Mr. Ching by the parties or the Commission.

3. Steven Montgomery, PhD

Dr. Montgomery stated that he was representing Representative Karamatsu and also speaking as a resident in the project area. Dr. Montgomery referenced the Maui Business Park and the A&B land donations, the Paia by-pass, and a Friends of Maui article regarding "sprawlification". Dr. Montgomery also read the testimony of Representative Karamatsu.

After a brief discussion, there were no further questions for Dr. Montgomery by the parties or the Commission.

4. Evelyn Cho

Ms. Cho read the testimony of Senator Suzanne Chun-Oakland that urged the LUC to take initiatives in the public's interest and mirror the A&B condition on affordable housing in this docket.

There were no questions posed for Ms. Cho by the parties or the Commission.

Mr. Kudo stated that at the next hearing, he would like the opportunity to address the affordable housing issues in light of the testimony heard today and the post hearing brief that was filed with the LUC.

Chair Judge noted petitioner's request and stated that this matter would be deferred until a future date.

A recess break was taken at 11:00 a.m. The meeting reconvened at 11:07 a.m.

A99-728(a) UNIVERSITY OF HAWAII (Oahu)

*(Formerly part of A99-728 Housing and Community Development Corporation of Hawaii, State of Hawaii)*

Chair Judge stated that this was an action meeting to consider University of Hawaii's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

APPEARANCES

Emi Kaimulua, Esq., represented Petitioner

Alan Ah Sam, University of Hawaii

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Matthew Higashida, City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Ching noted that staff has reviewed the proposed findings of fact, conclusions of law, and decision and order for grammar, verified the findings to the record, and added any appropriate procedural findings. Mr. Ching stated that the appropriate conclusions of law were added for conformance to the LUC's protocols and that staff also inserted a footnote with references to potable water. Mr. Ching added that typical editing for typographical errors and the procedural findings were added to reflect the proceedings. Mr. Ching then referenced Findings of Fact numbers 14, 28, 32, 45a, 47, 102, 115, 153, 158, 161, 168, 183, and 204. Mr. Ching also referenced the Conclusions of Law in its entirety.

Ms. Kaimulua stated that the petitioner found the LUC's proposed order to be consistent with the proceedings and had no objections.

Ms. Sunakoda stated that the City concurred with the petitioner's position.

Mr. Yee commented that the State had no objections to the proposed changes.

Commissioner Wong had a few comments on the Conclusions of Law 10, page 96 regarding the language to adopt energy efficiency. Commissioner Wong also raised comments on page 97, regarding privately developed portions of the lands.

Ms. Kaimulua requested for a few minutes to consult with her client and to review the record on these proposed changes.

A recess break was taken at 11:35 a.m. The meeting reconvened at 11:50 a.m.

Commissioner Wong noted that his suggested changes may require further discussion with their counsel.

### EXECUTIVE SESSION

Commissioner Wong moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Piltz seconded the motion. The motion was approved by a show of hands.

The Commission entered into executive session at 11:55 a.m.

The open meeting reconvened at 12:05 p.m.

Commissioner Wong stated that having reviewed the record, with respect to the second change on page 97 regarding privately developed portions of the lands, he had revised his amendment and called for an amendment to the order that the privately developed lands shall strive to achieve to the fullest extent possible, the applicable design criteria.

Chair Judge read the amendment on page 96 in its entirety, where the petitioner shall adopt energy efficient design practices.

Ms. Kaimulua noted that they have a concern on how this amendment would effect the purchase sales agreement with the UH West Oahu project. However, Ms. Kaimulua added that they have since concurred with the revised language that Commissioner Wong had just offered.

Chair Judge stated that they have checked the transcript and during the testimony of Chancellor Awakuni, it had noted that “strive to” were his exact words.

Ms. Sunakoda stated that the City had no opposition.

Mr. Yee noted that the State had no position.

After a brief discussion, Chair Judge asked whether Commissioner Wong would also like the staff to go back and make the appropriate findings consistent with this language.

Commissioner Wong replied in the affirmative.

On the motion to amend Conclusions of Law 10, as amended by Commissioner Wong and discussed by the Commission.

The Commission was polled as follows:

Ayes: Wong, Piltz, Teves, Contrades, Devens, Formby, and Judge.

The motion passed with 7 yes, 2 absent.

Chair Judge then entertained a motion to adopt the order, as proposed and modified by staff and amended by Commissioner Wong, be adopted in its final form.

The Commission was polled as follows:

Ayes: Contrades, Teves, Wong, Piltz, Devens, Formby, and Judge.

The motion passed with 7 yes, 2 absent.

A recess break was taken at 12:10 p.m. The meeting reconvened at 1:20 p.m.

Executive Officer Anthony Ching and Deputy Attorney General Diane Erickson left the meeting at this time.



DR06-32 MARK J. BENNETT, AS ATTORNEY GENERAL, STATE OF HAWAII (Oahu)

Chair Judge stated that this was an action meeting to Consider Adopting the Hearings Officer's Proposed Findings of Fact, Conclusions of Law, And Recommended Decision and Order as the Commission's Proposed Decision and Order; and Hearing on Exception to Commission's Proposed Decision and Order to treat the exceptions filed to the Hearings Officer's proposed Decision & Order as exceptions to the Commission's Proposed Decision & Order; and To Deliberate and Adopt the Commission's final Decision & Order on the matter.

APPEARANCES

Brian Aburano, Esq., represented Petitioner  
Mark Bennett, Esq., Attorney General  
Katherine Leonard, Esq., represented Intervenor  
David Karlen, Special Counsel to the LUC

Chair Judge noted that there were no public witnesses.

Chair Judge then polled the Commissioners as to their readiness and qualification to deliberate on this matter.

Chair Judge stated that to maintain the independence of the Hearings Officer, he had been provided with the assistance of a special deputy attorney general (Dave Karlen). In addition, the Hearings Officer has recused himself from today's proceeding and was not participating in any manner.

Chair Judge then described the procedures and options for the Commissioners at this proceeding.

Presentation by the Parties

Ms. Leonard stated that KPD's position had not changed noting that they believed that the AG's petition was not a proper request for declaratory relief. Ms. Leonard also argued that the AG has no standing to bring forth this petition and asked that the LUC adopt the Hearings Officer's recommended findings of fact, conclusions of law, and decision and order along with the changes that they had submitted.

Mr. Bennett referenced the "CARD" case and stated that the amended petition is proper since it seeks a declaration on issues where the relevant matters have not yet been decided. Mr. Bennett also argued that the AG is an interested party and that they have subject matter jurisdiction. Mr. Bennett requested for a hearing on the merits to determine what really happened in 1987 and 1989, adding that the public interest demands a hearing on the merits.

### EXECUTIVE SESSION

Commissioner Teves moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Contrades seconded the motion. The motion was approved by a show of hands.

The Commission entered into executive session at 1:50 p.m.

The open meeting reconvened at 2:20 p.m.

Commissioner Wong commented that this case raises novel questions of standing and other legal issues and noted that he had a concern about the most recent Supreme Court decision in May 2007.

Commissioner Wong then moved to grant the KPD and Campbell Estate's request to dismiss the Attorney General's petition for declaratory order. Commissioner Wong stated that in addition to the Supreme Court's decision in the CARD case, the court seemed to make clear that declaratory judgments are a ruling for prospective events of something that is to occur in the future, rather than matters that have already been decided upon. Also, the court went on to say that declaratory judgments shall not be used as a back handed method to reconsider a case. Commissioner Wong believed that for these reasons, the motion to dismiss is appropriate. Commissioner Teves seconded the motion.

The Commission was polled as follows:

Ayes: Wong, Teves, Contrades, Devens, Piltz, and Judge.

Abstain: Formby

The motion passed with 6 yes, 1 abstain, 2 absent.

Chair Judge directed their counsel to prepare an order. The parties would be served and this matter would be scheduled as an agenda item to adopt the order.

A recess break was taken at 2:20 p.m. The meeting reconvened 2:30 p.m.

Executive Officer Anthony Ching and Deputy Attorney General Diane Erickson returned to the meeting at this time.

### ADMINISTRATIVE RULES REVIEW

Mr. Ching provided a summary of staff's report and stated that late in 2006, the LUC directed staff to review their rules and to develop proposals for amendment to the rules. Mr. Ching added that they have not completed the legal review and did not have a draft proposed available, however, staff would summarize the areas of discussion that had been undertaken. Mr. Ching then discussed the highlights of the areas noting that administrative rule updates could only interpret and not legislate.

Mr. Ching commented that they also had considered testimony and amendments offered by other agencies who have an interest in the LUC's rules.

### Public Witnesses

1. Sandra Kunimoto

Ms. Kunimoto stated that she was the Chair of the Department of Agriculture. Ms. Kunimoto expressed their support for clear definitions of the agricultural subdivisions.

Commissioner Wong posed questions related to large residences on agricultural zoned lands, real property taxes versus agricultural tax rates, and incompatible uses on agricultural lands.

Commissioner Piltz commented on Maui County's requirement that a farm agricultural plan be submitted prior to subdivision approvals.

Chair Judge posed a few questions regarding IAL lands and the use of land classification systems when reclassifying agricultural lands.

After a brief discussion, there were no further questions posed for Ms. Kunimoto by the Commission.

2. Bryan Yee

Mr. Yee described the three documents submitted to the LUC. Attachment A is a copy of a letter from the OP identifying sections of the rules that should be amended. Attachment B is a proposed new subchapter by which the counties and the OP could seek DBAs to conform to the state and county general plans. Attachment C is a table comparing the existing rules with the proposed new subchapter.

After a brief discussion, there were no questions for Mr. Yee.

The meeting adjourned at 3:30 p.m.

*(Please refer to LUC Transcript of July 13, 2007 for more details on this matter.)*