

LAND USE COMMISSION
MEETING MINUTES

August 28, 2009

Leiopapa A Kamehameha
Conference Room 405, 4th Floor
235 S. Beretania St.
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Duane Kanuha (Arrived at 9:07 a.m.)
Ransom Piltz
Vladimir Devens
Kyle Chock (Arrived at 8:57 a.m.)
Reuben Wong
Nicholas Teves, Jr.
Normand Lezy
Lisa Judge

COMMISSIONERS ABSENT: Thomas Contrades

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney
General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner

COURT REPORTER: Holly Hackett

AUDIO TECHNICIANS: Walt Mensching Jr.

CALL TO ORDER

Chair Piltz called the meeting to order at 8:42 a.m. and announced the results of the August 27, 2009 election of officers.

**A99-728 HOUSING AND COMMUNITY DEVELOPMENT CORPORATION
OF HAWAII - KROC CENTER (TSA)**

Chair Piltz announced that this was a hearing and action meeting regarding A99-728 Housing and Community Development Corporation of Hawaii (Kroc Center) to consider Petitioner, The Salvation Army's (TSA), Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated September 8, 1999.

APPEARANCES

Benjamin Matsubara, Esq.- Representing Petitioner Salvation Army
Bryan Yee, Esq.- Represented State Office of Planning
Abby Mayer, State Office of Planning
Scott Derrickson, State Office of Planning
Dana Viola, Esq., represented Haseko (Ewa) Inc., Intervenor

Petitioner

Mr. Matsubara requested that this matter be continued to the first meeting date in September for the purposes of allowing the parties to finalize a proposed stipulated Decision and Order which would be executed and submitted to the Commission for consideration at that time. Mr. Matsubara stated that the stipulated Decision and Order would expedite matters and allow the Commission a reasonable and logical way to consider the request before them. Mr. Matsubara stated that the Parties in this matter had no objection to this request.

Mr. Piltz acknowledged the request and asked if there were members of the public who wished to provide public testimony on this docket. There were no public testifiers and no objection to allowing the request. The matter was continued.

A06-771 D.R. Horton-Schuler

Chair Piltz announced that this was a continued hearing on Docket A06-771 D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company, to Amend the Agricultural Land Use District Boundaries Into the Urban Land District for approximately 1,553.844 Acres of Land at Honouliuli, Ewa District, Oahu, Hawaii, Tax Map Key Nos.: 9-1-17:4, 059 and 072 (por); 9-1-18: 1 and 4 (por).

APPEARANCES

Benjamin Kudo, Esq., Naomi Kuwaye, Esq. and Yuko Funaki, Esq. represented Petitioner
Dawn Takeuchi-Apuna, Esq., represented the City & County of Honolulu, Dept. of Planning and Permitting
Tim Hata, City & County of Honolulu, Dept. of Planning and Permitting
Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Scott Derrickson, State Office of Planning
Dr. Kioni Dudley-Friends of Makakilo, ("FoM"), Intervenor
Dana Viola, Esq.-represented Haseko (Ewa) Inc., Intervenor

Public Witnesses

Victoria Cannon

Ms. Cannon testified that she felt the Project would have a negative impact on the community and explained her reasons why. There were no questions for the witness.

Robert Harris- Director of the Sierra Club-Hawaii Chapter

Mr. Harris testified in support of the Friends of Makakilo's Motion and requested that the Commission deny the Petition to reclassify the Petition Area. There were no questions for the witness.

Danielle Swenson

Ms. Swenson stated that she was testifying to preserve the land. There were no questions for the witness.

Doris Dudley

Mr. Kudo argued that Mrs. Dudley was a member of the Friends of Makakilo and that her testimony would give an unfair advantage to the Intervenor. There was discussion by the parties over allowing Mrs. Dudley to testify. Chair Piltz ruled that Dr. Dudley could call her as a witness but that she could not act as a public witness.

Nalani Wong

Ms. Wong testified against the Project and explained her position. There were no questions for the witness.

Harmony Bentasino

Ms. Bentasino testified against the Project and explained her position. There were no questions for the witness.

Nada Mangialetti

Ms. Mangialetti stated her concerns about the Project. Mr. Kudo commented that Ms. Mangialetti had testified several times before. Ms. Mangialetti replied that she was adding new material to her previous comments and requested the Commission to look into the Aloun Farms lease terms. There were no questions for the witness.

Richard Valasek

Mr. Valasek expressed his concerns for the health of the community and the need for agricultural lands. There were no questions for the witness.

Maeda Timson

Ms. Timson testified in favor of the Project and described her experience in working as a community leader with developments in the region over the years. Dr. Dudley objected to Ms. Timson as a public witness and there was a discussion over her role as a witness. Ms. Timson explained her previous public testimony appearances before the Commission in response to Chair Piltz's questioning. There were no questions for the witness.

John Luan

Mr. Luan testified against the Project and stated his concerns. There were no questions for the witness.

Laura Horigan

Ms. Horigan testified against the Project and explained her position. There were no questions for the witness.

Jackie Ralya

Ms. Ralya testified against the Project and explained her position. There were no questions for the witness.

Melelani Llanis-

Ms. Llanis testified against the Project and explained her position. There were no questions for the witness.

Robin Doak

Ms. Doak testified against the Project and explained her position. There were no questions for the witness.

The Commission went into recess at 9:47 a.m. and reconvened at 10:00 a.m.

Ann Freed (submitted written testimony)

Ms. Freed expressed her concerns about the project and complaints about D.R. Horton and affordable housing issues. There were no questions for the witness.

Senator Clayton Hee

Senator Hee stated he was appearing in his capacity as Senate Chair of the Committee on Water, Land, Agriculture and Hawaiian affairs and expressed his concerns about the Project. Senator Hee explained his reasoning for taking a position against the conversion and loss of agricultural lands. There were no questions for the witness.

Representative Rida Cabanillia-Arakawa

Representative Cabanillia- Arakawa stated that she was appearing as House Chair of the Committee on Housing and expressed her concerns about the Project and objected to the development based on its regional and statewide impact. Representative Cabanillia provided alternatives that might be considered instead of allowing the Project. There were no questions for the witness.

Representative Jon Riki Karamatsu

Representative Karamatsu stated that he was appearing as House Chair of the Judiciary Committee and expressed his concerns about losing prime agricultural land and described the importance and need to preserve the lands in the Petition Area for agriculture.

Matt Johnson

Mr. Johnson described his role with local agricultural non-profits and expressed his concerns with the loss of agricultural land. Mr. Johnson suggested that the proposed plan be revised and reworked to better utilize the land in the Petition Area. There were no questions for the witness.

Jefferey PedersOn

Mr. Pedersen described his experiences as a Southern California resident and how the loss of agricultural land in his area negatively affected its development over time. Mr. Pedersen expressed his objection to the same thing happening to the Petition Area. There were no questions for the witness.

Kamuela Enos (Submitted written testimony)

Mr. Enos described his farming background and explained why he objected to the loss of agricultural land. There were no questions for the witness.

Buzz Hong

Mr. Hong testified that he represented the Hawaii Building Trades Council and stated that he would like to see the Petition continue to move forward. There were no questions for the witness.

Lucia Owens

Ms. Owens testified in favor of preserving the agricultural lands and explained the reasons for her position. There were no questions for the witness.

Steven Lee Montgomery

Dr. Montgomery described his reasoning for supporting the Friends of Makakilo's petition and explained his position. There were no questions for the witness.

Coby Lynn

Mr. Lynn testified in support of the Project and explained the reasons for taking his position. There were no questions for the witness.

Shannon Wood (submitted written testimony)

Ms. Wood represented the Windward Ahupua'a Alliance and testified in opposition to the Project and explained the reasons for her organization's position. There were no questions for the witness.

Vernon Ta'a

Mr. Ta'a stated that he was employed by the Plumber's Union and testified in support of the Project. There were no questions for the witness.

Clyde Hayashi

Mr. Hayashi stated that he was the Director of a Partnership called the Hawaii Laborer's Employer's Cooperation and Education Trust and testified in support of the Project and the Ewa Development Plan. There were no questions for the witness.

Al Lardizabal

Mr. Lardizabal stated that he was Director of Government Relations for the Laborer's Union, Local 368 and why his group supported the Project. There were no questions for the witness.

Lydi Morgan

Ms. Morgan described her background as an educator and explained why she opposed the Project. There were no questions for the witness.

Melianna Judd

Ms. Judd testified in opposition to the Project and explained her relationship to several organizations and the reasons for her position. There were no questions for the witness.

Patricia Beekman

Ms. Beekman testified against the Project and explained the reasons for her position. There were no questions for the witness.

Representative Maile Shimabukuro (had previously submitted written testimony)

Representative Shimabukuro stated that she represented House District 45 and shared that the primary concern of her constituents was traffic and described how her neighborhoods had reacted to the threat of the impact of additional traffic from the Project. Ms. Shimabukuro stated that this was why she supported the Intervenor in the case. There were no questions for the witness.

John Carroll

Mr. Carroll testified that he was appearing on behalf of farmland and described his perception of why farmlands should be preserved. There were no questions for the witness.

Raul Bernal

Mr. Bernal described his background and explained why he felt that agricultural lands should be preserved. There were no questions for the witness.

Commissioner Teves excused himself at 11:32 a.m. and returned at 11:35 a.m.

Kapua Keliikoa Kamai

Ms. Kamai described why she opposed the project. There were no questions for the witness.

The Commission went into recess at 11:40 a.m. and reconvened at 1:16 p.m. Commissioner Chock returned at 1:20 p.m. David Tanoue replaced Tim Hata for the City and County of Honolulu.

Petitioner's Motion to Amend Amended List of Exhibits and Amended List of Witnesses

Petitioner

Ms. Kuwaye argued why the Commission should grant Petitioner's Motion to Amend Amended List of Exhibits and Amended List of Witnesses, to include Exhibits "86" and "87" and cited legal references and past case precedents for her argument.

County

Ms. Takeuchi-Apuna stated that the County had no position on the Motion.

OP

Mr. Yee stated that the State was not opposed to the Amendment of the Witness and Exhibit Lists, but would be objecting at the appropriate time to the admissibility or the introduction of the exhibits. Mr. Yee explained the reasoning for the State's position.

Friends of Makakilo

Dr. Dudley objected to the admitting of the exhibits and argued why they should not be allowed.

Haseko (Ewa)

Ms. Viola stated that Haseko had no position on the Motion.

Commissioners

Commissioner Judge moved to grant the Petitioner's Motion and stated that her motion was not intended to result in the admission of the new exhibits and testimony into the evidentiary record- that was a matter for future determination by the Commission upon proper application by the Petitioner. Commissioner Kanuha seconded the motion.

Commissioner Devens asked the Petitioner which witnesses the Exhibits would be used for. Ms. Kuwaye replied that Mr. Jones intended to address Exhibits "86" and "87" for the purposes on elaborating on the matters which were raised by the Commission on cross-examination. There was discussion on whether or not the other parties would be at an unfair disadvantage if the exhibits were

allowed to be used at this late juncture after the majority of the petitioner's witnesses had been called and subjected to cross examination based on what was available and the form of the petition during that previous time. Commissioner Wong stated that he shared the same concerns as Commissioner Devens and that it might be helpful to defer voting on the current motion and hear the second motion on the agenda so that both could be considered together since he intended to ask for an executive session because he had serious legal concerns and wanted to seek advice from counsel.

Commissioner Judge agreed to delay her motion to accommodate Commissioner Wong's suggestion. Commissioner Kanuha had no objection to delaying the motion as seconder.

Commissioner Lezy asked Petitioner how they would respond to the Intervenor's argument that the exhibits that they were seeking to admit and to the further amendment should have been part of the original Petition. Ms. Kuwaye replied that she intended to address that in response to the Intervenor's Motion and was not seeking to amend the Petition. Ms. Kuwaye argued that the Commission had the power and had handled other dockets in the past to approve dockets with conditions or modify dockets to approve Petitioner requests. Commissioner Lezy asked if she was making an argument urging for a conformance to the evidence type of position. Ms. Kuwaye responded affirmatively.

Friends of Makakilo's Motion to Deny or in the Alternative to Declare the Petition Deficient

Friends of Makakilo

Dr. Dudley argued the reasons why the Intervenor's Motion should be granted.

Commissioner Kanuha asked Dr. Dudley if he was concluding that the LUC had no ability to incrementally approve Petition based on the total record heard during the proceedings. Dr. Dudley responded that he felt that it should have been done before the hearings started and the time for doing that had passed. Commissioner Kanuha restated his question for clarification and asked whether or not, after the entire proceeding, the LUC cannot, based on the record, approve a Petition by increments, even though it was not submitted in any increments. Dr. Dudley replied that he did not think things were at that point now according to HRS 205-4 and it did not apply since it appeared that the Petitioner had not done their part.

OP

Mr. Yee addressed the question that Commissioner Kanuha asked and described his perception of how the Petitioner could have handled an incremental redevelopment plan before arguing the motion. Mr. Yee stated that the Office of Planning strongly recommended that the Petition be declared deficient and

joined in the Intervenor's Motion to the extent that it asked for the deficiency. Mr. Yee commented that the Directors for the Department of Transportation and the Department of Agriculture were present in the audience to respond to the gravity of the Petitioner's potential impacts and suggested that the Petition be denied to prevent an increase in the volume of traffic and that the Petition be sent back to the Petitioner to fix the problems. Mr. Yee argued that the Petitioner should then provide more information on whether the rail would go forward, what its transit-oriented design would look like, what this project would look like, and the status of the West Oahu Campus and Kapolei-Second City Development. Mr. Yee described the reasons why the Petition should be declared deficient and why this decision would be in the best interest for everyone.

Commissioner Wong moved to enter into Executive session. Commissioner Devens seconded the motion. Ms. Kuwaye stated that the Petitioner had not been able to argue against the Motion and Commissioner Wong withheld his Motion pending the rebuttal arguments.

City and County of Honolulu

Mr. Tanoue stated that the City had no position on the Motion. Mr. Tanoue explained the City's comments on the weight and importance of the ten-year incremental project plan and described why, despite the Intervenor's comments, from the City's perspective, because this plan was consistent with the General Plan as well as the Ewa Development Plan, it had little or no effect on their position on the Petition.

Haseko (Ewa) Inc.

Ms. Viola stated that Haseko had no position on the Motion.

Petitioner

Ms. Kuwaye explained why Petitioner's Exhibits "86" and "87" were submitted. Ms. Kuwaye provided her reasons why the Commission should deny the Intervenor's Motion, and allow the Petition to move forward. Ms. Kuwaye offered considerations and alternatives that she perceived the Commission should weigh in its decision making.

OP

Mr. Yee argued that the reasoning for OP's withdrawal of its prior motion to declare the Petition deficient was not a waiver and it was not OP's responsibility to repair the Petition- OP had thought that Petitioner would provide information during the case to enable the OP to make a decision about applicable mitigation measures to each increment to reach a fair conclusion. Mr. Yee explained that as the case progressed it became clear that Petitioner would not be submitting the

expected information and this resulted in the subsequent actions taken by OP and provided his reasoning for requesting that the Petition be declared deficient.

Commissioners

Commissioner Wong asked Ms. Kuwaye to explain how the Petition, as it now stood, conformed to the rules which had a 10 year requirement for project completion. Ms. Kuwaye responded it was their position that the project not be approved in increments and provided her understanding of how the Commission could respond to dealing with this situation. Commissioner Wong requested to renew his motion for an Executive Session. Commissioner Devens seconded the motion.

Commissioner Lezy asked Mr. Yee for clarification on his response to Commissioner Kanuha's question regarding the authority of the Commission to impose a condition that would require incremental districting in approving a Petition. Mr. Yee responded by providing a hypothetical example of how he perceived an incremental development plan should be introduced to the LUC for a determination on whether or not to re-district the land. Mr. Yee explained that it was his understanding that the Petitioner had not submitted any incremental development plan and that it appeared that the Petitioner was suggesting that the LUC could fix this problem by asking for evidence and decide to incrementally redistrict. Mr. Yee argued that this would be unfair and would deny the other parties the opportunity to challenge the Petition since proper notice would not be given.

The Commission entered Executive Session at 2:27 p.m. and reconvened at 3:02 p.m.

Commissioner Wong moved that the Friends of Makakilo's motion to declare the Petition deficient be granted. Commissioner Judge seconded the motion.

Commissioner Wong stated that he felt that rules and regulations clearly provide that a petition for a re-classification must indicate that there be full urban development within a ten year period and that the Petition was deficient in that regard. Commissioner Wong noted that there was a question as to whether backbone infrastructure alone would meet the ten year requirement and it did not appear to do so based on his understanding of requirements set on other projects. Commissioner Wong offered that the Petitioner could cure the deficiencies if they desired and return when the Petition is correctly done. Commissioner Wong described his perception of how the submission of additional evidence to give the basis for this Commission to do an incremental development denied the public a chance to testify on the Petition and alter how the parties might prepare for the Petition.

Commissioner Chock stated that he would be voting "No" on Commissioner Wong's motion since he was still waiting to hear more information from the other

parties in this matter and that there was a need for better clarity of substantial completion of backbone infrastructure versus complete urban development. Commissioner Chock suggested that if the Petition were deemed defective, that all the parties and the Commission reconvene as quickly as possible to re-evaluate the issues that have been raised over the course of this Petition to move forward without wasting more time.

The Commission was polled as follows:

Ayes- Commissioners Wong, Judge, Lezy, Kanuha, and Devens.

No- Commissioners Teves, Chock, and Chair Piltz.

Absent-Commissioner Contrades

The Motion passed 5-3 with 1 absent.

As a housekeeping matter, Commissioner Judge withdrew her motion on the first agenda motion as it was moot and Commissioner Kanuha acknowledged the withdrawal as the seconder.

The Commission went into recess at 3:12 p.m. and reconvened at 3:16 p.m. Commissioner Wong recused himself from this agenda item. Commissioner Chock returned at 3:22 p.m.

DR08-36 _KO OLINA DEVELOPMENT, LLC (OAHU)

Chair Piltz announced that this was a continued hearing on Docket No. DR08-36.

Public Witnesses

Warren Von Arnswald

Mr. Von Arnswald updated his previous testimony and provided information on the current status of the ramp situation. There were no questions for the witness.

Creighton Chang (submitted written testimony)

Mr. Chang described the fishermen's perspective of the current timeline that was being proposed for the new boat ramp inside the marina. Commissioner Devens asked if the timeline was inaccurate. Mr. Chang replied that he had no information other than what he was told. There were no other questions for the witness.

Ed Watamura (submitted written testimony of Roy Morioka)

Mr. Watamura read the submitted testimony of Mr. Morioka into the record, stating his concerns in the boat ramp matter. There were no questions for the witness.

APPEARANCES

Benjamin Matsubara, Esq., for the Petitioner
Wyeth Matsubara, Esq., for the Petitioner
Ken Williams, Petitioner's Representative
Bryan Yee, Esq., for the State Office of Planning
Abby Mayer, State Office of Planning
Scott Derrickson, State Office of Planning

Petitioner

Mr. Ben Matsubara provided a recap and update on activity that the Petitioner had undertaken to comply with the conditions and requirements of the Decision and Order reported in the supplemental status report. Mr. Matsubara identified the two options that the Petitioner had to choose from and described the challenges and processes involved with locating and constructing a boat ramp in either Kalaeloa or in the marina.

Mr. Matsubara described the methodology involved with arriving at choice of location for the boat ramp in the marina and noted that the associated issues which were developing as a consequence to that decision should not cloud the fact that the Petitioner is attempting to conform to the Commission's directive.

OP

Mr. Yee deferred to Mr. Mayer to present the case for OP. Mr. Mayer represented that OP had submitted a response to Petitioner's supplemental status report which found Petitioner in substantial compliance with the Decision and Order and there was no need to open the declaratory order proceeding in this matter. Mr. Mayer stated that the permitting and construction timelines had been made known during the declaratory order proceedings and it was a surprise to him that the Commission had further concerns in light of Petitioner's efforts. Mr. Mayer described the actions that he thought the Commission should have taken to accommodate the additional concerns which were not included in the original decision and explained why he felt the Petitioner should be given the leeway and trust to perform as requested.

Commissioner Teves excused himself at 3:30 p.m. and returned at 3:36 p.m.

Commissioner Devens clarified that the fishermen had not done anything wrong in the case and should not be faulted for raising an issue of compliance relating to a condition that the Commission had previously imposed on the Petitioner. Commissioner Devens explained there had presently not been substantial compliance with the boat ramp condition and until the boat ramp was re-installed, there would be no compliance and that it was a different matter to say steps were being taken to come into compliance. He questioned the Petitioner on how the boat ramp project could be expedited to completion and explained why

he had earlier asked the Petitioner to explore an interim solution to accommodate the fisherman during the lengthy amount of time it will take to complete the boat ramp.

Commissioner Lezy commented that he had not been at the last status conference and like Director Mayer, he was surprised at some of the comments he had heard afterwards because of the basis for those concerns and comments. Commissioner Lezy reiterated points that he felt the Commission should consider in this matter. He recalled that a lengthy timetable had been projected on boat ramp construction in the marina location.

Commissioner Judge left the proceedings at 3:47 p.m.

Commissioner Kanuha echoed Commissioner Devens comments and asked if there were any means to mitigate the circumstances for the fishermen. Commissioner Devens asked if the Petitioner could provide updates on the progress of the ramp construction on a timely basis to allow the Commission to provide updates to fishermen's inquiries regarding the boat ramp and to explore and report on possible mitigation measures for the duration period before construction could be completed.

Commissioner Devens stated that he agreed with Commissioner Lezy that the Commission should not be micro-managing the building of the boat ramp.

Mr. Matsubara requested clarification on when and what the Commission would be requiring of the status reports. A quarterly report and the itemized details were agreed upon.

Chair Piltz adjourned the meeting at 3:58 p.m.