

LAND USE COMMISSION  
MEETING MINUTES

April 8, 2010

Leiopapa A Kamehameha  
Conference Room 204, 2nd Floor  
235 S. Beretania St.  
Honolulu, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha  
Normand Lezy  
Ransom Piltz  
Vladimir Devens  
Reuben Wong  
Kyle Chock  
Thomas Contrades  
Lisa Judge

COMMISSIONERS ABSENT: Nicholas Teves, Jr.

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Scott Dickerson, Staff Planner  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

**CALL TO ORDER**

Chair Piltz called the meeting to order at 9:46 a.m.

**APPROVAL OF MINUTES**

Chair Piltz asked if there were any corrections or additions to the minutes. Commissioner Wong moved to approve the minutes. Commissioner Devens

seconded the motion... The minutes were unanimously approved by voice votes (8-0).

### **TENTATIVE MEETING SCHEDULE**

Executive Davidson provided the following:

- The tentative meeting schedule for the calendar year had been circulated but matters were pending that might alter it.
- The LUC will be conducting a video conference on April 9, 2010 for SP87-364Kāhili Adventist School and the details of how the meeting would be conducted were presented.

### **HEARING**

BR09-784 State Office of Planning, State of Hawai`i

Chair Piltz announced that this was a hearing on the State Office of Planning's Petition To Amend the State Land Use Urban District Boundary into the Conservation Land Use District For Approximately 215 Acres of Land Situated At Ka Iwi State Park and Queen's Beach, Maunaloa, Island of Oahu, State of Hawai`i. Identified by TMK 3-9-011:002 (por.)

### **APPEARANCES**

Bryan Yee, Esq., represented State Office of Planning (Petitioner)  
Abbey Mayer, State Office of Planning  
Mary Alice Evans, State Office of Planning  
Don Kitaoka, Esq., represented City and County of Honolulu  
Department of Planning and Permitting  
Timothy Hata, Department of Planning and Permitting

### **PUBLIC WITNESSES**

1. Lyla B. Berg- State Representative District 18

Rep. Berg submitted written testimony and provided her perspective as a State Representative for East Honolulu as to why the Petition should be granted. There were no questions for Rep. Berg.

2. Gene Ward- State Representative District 17

Rep. Ward submitted written testimony and provided his reasons as a State Representative of his District for why the Petition should be granted. There were no questions for Rep. Ward.

3. Mardi Laprade

Ms. Laprade read her submitted written testimony as a member of Livable Hawai'i Kai Hui in favor of granting the Petition. There were no questions for Ms. Laprade.

4. Cynthia Rezentes

Ms. Rezentes stated that she was testifying as Executive Director of the Oahu Land Trust and expressed the reasons that her organization supported the Petition. There were no questions for Ms. Rezentes.

5. Jasmine Johnson

Ms. Johnson stated that she represented the Kuli`ou`ou Neighborhood Board No. 2 and provided the reasons why her organization strongly supported the Petition. There were no questions for Ms. Johnson.

6. Miya Tsukazaki

Ms. Tsukazaki stated that she stood on her written testimony and represented several law school students in support of the Petition. There were no questions for Ms. Tsukazaki.

7. Greg Knudsen

Mr. Knudsen stated that he represented the Hawai'i Kai Neighborhood Board and provided the reasons why his organization supported the Petition. There were no questions for Mr. Knudsen.

8. Elizabeth Reilly

Ms. Reilly read her submitted written testimony and stated that her testimony was in honor of Dave Matthews and on behalf of the Ka Iwi

Coalition in support of the Petition. There were no questions for Ms. Reilly.

9. Kaumaka Wong

Ms. Wong stated that she represented the Livable Hawai'i Kai Hui and read from her submitted written testimony. There were no questions for Ms. Wong.

10. Shirley Lum

Ms. Lum expressed her reasons for supporting the Petition. There were no questions for Ms. Lum.

11. Art Mori

Mr. Mori shared his personal history with advocating for the land designation change and provided his reasons for supporting the Petition. There were no questions for Mr. Mori.

Commissioner Judge excused herself at 10:25 a.m. and returned at 10:28 a.m.

12. Doug Cole

Mr. Cole provided his reasons for supporting the Petition. There were no questions for Mr. Cole.

There were no further public witnesses.

Chair Piltz called upon Staff Planner Scott Derrickson to do a map orientation. Mr. Derrickson referred to Map No. 1- a large scale map of the Petition area and a smaller 8 1/2" x 11" map handout that was provided to the Commissioners to identify features and facts about the Petition Area. There were no questions for Mr. Derrickson.

## INTRODUCTION OF EXHIBITS

OP

Mr. Yee offered Office of Planning's ("OP") Exhibits 1-18. There were no objections to OP's exhibits.

#### CITY & COUNTY OF HONOLULU

Mr. Kitaoka described City 's Exhibits 1-8. There were no objections to the City's exhibits.

#### PETITIONER'S WITNESSES

Russell Kumabe

Mr. Yee called Russell Kumabe-State of Hawai`i Department of Parks/DLNR as his witness. Mr. Kumabe described his work background and relationship to the project, shared his knowledge of the Petition Area, and described proposed improvements that would occur as funding was provided. Mr. Kumabe stated that DLNR supported the Petition.for reclassification.

Mr. Kitaoka requested clarification on the areas where plans for improvements would be done in the Petition Area in the future. Mr. Kumabe provided his understanding of what improvements would occur in the Petition Area. There were no other questions for Mr. Kumabe.

Abbey Mayer

Mr. Mayer described the role that the Office of Planning had in preparing and presenting the Petition for reclassification. He verified that the representations made in the Petition were true, provided the property title history and background of the Petition Area, stated OP's position that the Petition met all of the legal requirements for reclassification, and indicated the features that conformed to the definitions of "Conservation Area" listed in Chapter 205. Mr. Mayer described the community's involvement that contributed to OP's preparation of the Petition. There were no questions for Mr. Mayer.

Commissioner Lezy excused himself at 10:57 a.m. and returned at 11:02 a.m.

## COUNTY WITNESS

Timothy Hata

Mr. Hata described his qualifications as an urban planner for the Department of Planning and Permitting and provided the reasons why the City and County of Honolulu supported the Petition. There were no questions for Mr. Hata.

## CLOSING STATEMENTS

Mr. Yee acknowledged the efforts of the parties involved with bringing the Petition before the Commission and described the Petition Area characteristics that OP believes conform to the "Conservation Area" definition cited in Haw. Rev. Stat. § 205-2(e).

Mr. Kitaoka stated that the reclassification of the Petition Area would be consistent with the City's plans and policies and confirmed that the City supported the Petition.

Chair Piltz declared the evidentiary portion of proceedings complete and provided the dates for the Parties to submit proposed findings of fact, conclusions of law, and decision and order to the Commission.

The Commission went into recess at 11:20 a.m. and reconvened at 11:30 a.m.

## **ACTION**

**A10-785 Hawai'i Housing Finance and Development Corporation and Forest City Hawai'i, Kona LLC**

Chair Piltz announced that this was an action meeting to consider Petitioner's Motion to Withdraw its Petition Without Prejudice

## **APPEARANCES**

Jennifer Benck, Esq., and Steven Lim, Esq. represented Petitioner HHFDC/Forest City Hawai'i, Kona LLC

Craig Iha, Esq., represented HHFDC

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

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

Chair Piltz announced for the record that the County of Hawai'i was not present.

#### PUBLIC WITNESSES

There were no Public Witnesses.

#### PRESENTATIONS

#### PETITIONER

Mr. Iha expressed Petitioners' reasons for requesting the withdrawal of the Petition without prejudice and argued that there was good cause for the Commission to waive the one-year prohibition on re-filing contained in HAR §15-15-76 since the hearing had not yet started and there was no prejudice to any of the parties.

#### OP

Mr. Yee stated that OP supported Petitioner's request to withdraw its Petition without prejudice and provided the reasoning for OP's position.

Commissioner Lezy requested clarification on the reasoning for OP's argument to grant the withdrawal. Mr. Yee expressed the reasons why OP did not feel that the "before the Commission" determination should be applied. Commissioner Lezy expressed his concerns with setting a precedent by allowing Petitioner's withdrawal.

Commissioner Devens asked Mr. Yee for OP's perspective of Mr. Iha's assessment of the intent of the one-year rule. Mr. Yee replied that OP had no position on the matter.

Commissioner Devens moved for an Executive Session to discuss the Commissioner's powers, duties, privileges, immunities and liabilities. Commissioner Chock seconded the motion.

The Commission exited the room and entered into an Executive Session at 11:57 a.m. and reconvened at 12:05 p.m.

Commissioner Wong questioned Mr. Kudo, attorney for Queen Lili'uokalani Trust, a potential Intervenor to this docket, if they intended participation in the hearing on the motion. Mr. Kudo replied that his client was not a party so would not participate in the hearing on the motion.

Commissioner Devens requested clarification on Forest City's reasons for withdrawal request. Mr. Iha referred to his memorandum for the reasons for withdrawal and clarified that he would be working with OP to resolve the SHPD concerns about the Petition Area. Mr. Iha stated that due to the time critical nature of the docket, it was not possible to resolve matters within the 45-day period for Commission action established by Haw. Rev. Stat. § 201H-38.

Chair Piltz inquired what the estimate of time was required for SHPD's response. Mr. Yee replied that he estimated it would take one or two weeks to obtain SHPD approval once the Petitioners' updated information was provided to SHPD.

Ms. Benck stated that she estimated that it might take till mid June to submit the updated AIS to SHPD to resolve the situation.

Commissioner Devens moved to grant the Petitioner's Motion to voluntarily withdraw its Petition without prejudice with the specific finding of good cause for waiver of the one year requirement for the Petition. Commissioner Kanuha seconded the Motion.

The Commission was polled as follows:  
Ayes- Commissioners Devens, Kanuha, Judge, Wong, Chock, Lezy, Contrades and Chair Piltz.  
Nays-None  
The motion passed 8-0 with 1 excused.

Discussion ensued regarding the next agenda item regarding the Petition to Intervene. Mr. Kudo stated that he considered his Petition to Intervene moot due the action taken by the Commission to grant the Petitioner's withdrawal without prejudice.



## **Adoption of Administrative Rules, Chapter 15-15, HAR**

Chair Piltz announced that this was an action meeting to consider adoption of Amendments to Administrative Rules, Chapter 15-15, HAR.

Staff Planner Scott Derrickson provided the LUC staff report on the Administrative Rules. There were no questions for Mr. Derrickson.

Commissioner Judge requested clarification on the LUC staff recommendations for sections 15-15-29 & 30- “conforming uses”. Mr. Derrickson responded that those sections would remain “as is”.

Commissioner Devens inquired about the status of the substantive rule changes that had been previously discussed, and when those changes would be brought forward. Discussion ensued over how the rule changes evolved to this point of decision making and what considerations and reviews had taken place. LUC staff indicated that there would be a second round of the Administrative Rules to deal with more substantive changes and also the “Important Agricultural Lands” legislation.

Commissioner Kanuha requested clarification on the portion of the rules 15-15-79 (e) using the terms “shall” and “may” interchangeably. LUC staff explained what reasoning was used in arriving at the staff recommendation.

Commissioner Devens indicated that there were some “form over substance” issues that needed to be addressed for consistency and expressed concern over the definition of the word “filing” and handling documents properly when received. Commissioner Devens requested clarification on the definition of “unauthorized Ex Parte Communication” and expressed his ideas on what Parties would be affected. Discussion ensued over how future changes would be handled.

Commissioner Wong moved to defer decision-making on the Administrative Rules. Commissioner Kanuha seconded the motion. Discussion ensued to clarify the specifics of the motion and the type of deferral that was

intended by the motion and how the rule changes could be accomplished efficiently.

Commissioner Kanuha requested clarification on what constituted substantive and non-substantive change. Deputy Attorney General Erickson provided her understanding of what the terms meant. Discussion ensued on how Commissioners and LUC staff members could proceed on the rule changes.

...Commissioner Wong re-stated his motion to defer the Administrative Rules to allow Commissioners to submit their comments within 30 days to the Executive Officer to allow LUC staff to compile and circulate the suggested changes for evaluation by Commissioners for future decision-making within 30 days after all the changes had been circulated by the Executive Officer. Commissioner Kanuha concurred his second to the re-stated motion.

The Commission was polled as follows:

Ayes- Commissioners Devens, Kanuha, Judge, Wong, Chock, Lezy, Contrades and Piltz.

Nays-None

The motion passed 8-0 with 1 excused.

There being no further business to discuss, the meeting was adjourned till the scheduled video conference at 9:00 a.m., April 9, 2010