

LAND USE COMMISSION
MEETING MINUTES

April 21, 2010

Leiopapa A Kamehameha
Conference Room 406, 4th Floor
235 S. Beretania St.
Honolulu, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha
Normand Lezy
Nicholas Teves, Jr.
Ransom Piltz
Reuben Wong
Kyle Chock
Thomas Contrades
Lisa Judge (arrived at 10:04 a.m.)

COMMISSIONERS ABSENT: Vladimir Devens

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, 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 9:33 a.m.

APPROVAL OF MINUTES

Chair Piltz asked if there were any corrections or additions to the April 8 and 9, 2010 minutes. There were none. Commissioner Wong moved to approve the minutes. Commissioner Contrades seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2010 was distributed in the handout material for the Commissioners.
- The upcoming meeting in Kona expected to involve two site visits. LUC staff will be working on these arrangements
- Today's meeting was scheduled to replace the previously scheduled A10-785 HHFDC/Forest City Petition in Kona, which was withdrawn. Mr. Davidson thanked all the Parties for their flexibility.

ACTION – A97-721 Makena Resort Corp.

Chair Piltz announced that this was an action meeting to consider Receiver's Motion for a Fifth Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, filed on February 19, 1998. Chair Piltz stated that Commissioner Judge had recused herself from this matter.

APPEARANCES

Stephen Mau, Esq., represented Court appointed Receiver
 Bryan Yee, Esq. represented State Office of Planning
 Abbey Mayer, State Office of Planning

Mr. Mau stated that LUC staff had advised him of Commission's policy regarding the reimbursement of hearing expenses and that he had no objections to the reimbursement of expenses.

PUBLIC WITNESSES

None

ARGUMENT OF PARTIES

Mr. Mau described the history and background of the receivership proceedings and provided a status update on why the Fifth Amendment was necessary. Mr. Mau indicated that the two year extension was being requested to reach an agreement with the Department of Transportation and accommodate the transition of ownership of the property to meet conditions of the Findings of Fact, Conclusions of Law, and Decision and Order, filed on February 19, 1998

Mr. Yee stated that OP was not opposed to this extension, however, it was signaling that any further requests for extensions may be opposed. Mr. Yee expressed that the State was interested in having responsibilities for the improvements to the Petition Area worked out by the owners.

Commissioner Wong requested clarification on the reasoning for requesting a two year extension request. Mr. Lum provided his assessment as to why the two year time frame for the extension request was established and stated

that he was not aware of any improvements being done in the Petition Area and could not speak to traffic conditions in the area.

Chair Piltz shared his knowledge of the situation as the Maui Commissioner.

Commissioner Wong inquired why Maui County was not present at the Hearing. Executive Officer Davidson replied that the Maui County attorney had been in communication with the LUC and elected to not appear after filing the statement of no opposition.

Commissioner Wong moved to approve Receiver's Motion for a Fifth Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, filed on February 19, 1998. Commissioner Contrades seconded the motion.

There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Wong, Contrades, Chock, Lezy, Kanuha, Teves, and Chair Piltz.

Nays: None

The motion passed 7-0 with 1 recused and 1 excused.

HEARING

A07-775 Castle & Cooke Homes Hawaii Inc. (OAHU)

Chair Piltz announced that this was a continued hearing on Docket No. A07-775 to amend the Agricultural Land Use District Boundary into the Urban District for approximately 767.649 acres at Waipio and Waiawa, Island of Oahu, State of Hawaii.

APPEARANCES

Benjamin Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq., represented Castle & Cooke Homes Hawaii Inc.
Laura Kodama, Castle & Cooke Homes Hawaii, Inc.
Rodney Funakoshi, Castle & Cooke Homes Hawaii, Inc.
Dawn Takeuchi-Apuna Esq., represented City and County of Honolulu Department of Planning and Permitting
Matthew Higashida, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning
Robert Harris, Esq. represented Intervenor-The Sierra Club
Colin Yost, Esq., represented Intervenor-The Sierra Club (arrived at 10:23 a.m.)
Richard Poirier, Intervenor-Mililani/Waipio/Melemanu Neighborhood Board
No.25
Karen Loomis, , Intervenor-Mililani/Waipio/Melemanu Neighborhood Board
No.25

PUBLIC WITNESSES

1. Wayne Ogasawara

Mr. Ogasawara stated that he was a farmer and described his community/business activities and relationship with the proposed project. He shared his experiences with farming activities in the region and provided his reasons for supporting the Petition.

Chair Piltz requested clarification on the lease arrangements that Mr. Ogasawara had on his property. Mr. Ogasawara replied that he had signed a twenty year lease and described his situation.

Mr. Matsubara requested clarification on Mr. Ogasawara's lease offerings on his farming operation. Mr. Ogasawara responded that water and security were available onsite and described the problems he had with property loss due to theft and vandalism.

Mr. Yee requested clarification on Mr. Ogasawara's support for a permanent agricultural land base in Hawaii. Mr. Ogasawara described how he supported permanent agricultural land designation and provided his opinion on the loss of agricultural land in Hawaii.

Mr. Harris inquired about the types of sub-leases that Mr. Ogasawara provided to his tenants. Mr. Ogasawara described how he negotiated his leases with his tenants and what types of lease arrangements he offered on his property.

Commissioner Lezy requested clarification on Mr. Ogasawara's relationship with the Castle & Cooke visioning team. Mr. Ogasawara described his experiences as a member of the visioning effort.

Commissioner Teves requested clarification on the location of Mr. Ogasawara's farming/leasing operation. Mr. Ogasawara identified the location of his business and described how it was located away from the Petition Area.

There were no further questions for Mr. Ogasawara.

2. Roy Amemiya

Mr. Amemiya stated that he strongly supported the Project and shared his experiences as a Central Oahu resident and provided the reasons for his position. There were no questions for Mr. Amemiya.

3. Randy Kimura

Mr. Kimura shared his experience as a vision team member and provided the reasons for his support of the project.

Commissioner Judge excused herself at 10:23 a.m. and returned at 10:25 a.m.

Commissioner Teves inquired if Mr. Kimura was aware of the Mililani Town Neighborhood Board position on the Petition. Mr. Kimura responded that he was not aware of what their position was.

There were no further questions for Mr. Kimura.

4. Dr. Craig Thomas

Dr. Thomas shared his experiences as a physician working at the Wahiawa General Hospital and provided his reasons for supporting the Petition.

Commissioner Judge requested clarification on the reasons why Dr. Thomas felt a new medical facility was needed. Dr. Thomas provided his perspective of how a new hospital could benefit the Central Oahu area.

There were no further questions for Dr. Thomas.

5. Michael Conway

Mr. Conway stated that he was the Agricultural Foods Manager for Dole Food Company, described his experiences in the agricultural business and provided his perspectives of what myths and realities existed about the State of Hawaii agricultural business.

Chair Piltz requested Mr. Conway's perspective on diversified agriculture and what amount of acreage was required to support the local population, and what was needed to make it successful.

Mr. Yee inquired if Mr. Conway supported dedicating farmlands in perpetuity. Mr. Conway replied that he did.

Mr. Yost asked Mr. Conway if he was essentially a witness for the Petitioner due to his employment. Mr. Conway stated that he worked for a different company but that it was owned by the Petitioner. Mr. Yost requested clarification on Mr. Conway's testimony on diversified agriculture. Mr. Conway provided the reasoning for his position and described what he thought local food production levels and conditions were necessary to ensure food security.

Mr. Yost requested clarification on the impacts of pesticide use and lack of infrastructure for agricultural production. Mr. Conway expressed his perspective of developing alternative crops for former plantation lands.

Commissioner Judge requested clarification on why local agricultural products were more expensive. Mr. Conway responded that Hawaii labor and associated production costs are the causes and described what he felt was necessary to help Hawaii products to be more successful in the marketplace.

There were no further questions for Mr. Conway.

The Commission went into recess at 11:20 a.m. and reconvened at 11:37 a.m.

6. Joy Marshall

Ms. Marshall stated that she had 3 concerns: traffic, the re-location of hospital emergency services to a more distant location for North Shore residents, and the loss of agricultural lands and expressed her reasoning for taking her position against the Petition. There were no questions for Ms. Marshall.

7. Michael Dau

Mr. Dau stated that he wanted to speak about traffic, agricultural land and water and provided the details for his concerns about the Petition. Mr. Yost requested clarification on the Kipapa Gulch Water System Zone C area and how it provided ecological service to the Kipapa Water Source. There were no further questions for Mr. Dau.

8. Amy Peruso

Ms. Peruso stated that she was a teacher from Mililani and shared her reasons that the Petition should be denied. Mr. Yost requested clarification on what her students felt about the Petition. Ms. Peruso described what the activities of the school Environmental Club were and

what the concerns of the students were regarding the loss of agricultural lands and sustainability.

The Commission went into recess at 11:55 a.m. and reconvened at 1:22 p.m. (Commissioner Wong returned at 1:38 p.m.)

PRESENTATION OF EXHIBITS

Petitioner

Mr. Benjamin Matsubara requested that Petitioner's Exhibit #53- be admitted into evidence. There were no objections.

City & County

Ms. Takeuchi-Apuna stated that the City had no exhibits to enter.

OP

Mr. Yee requested that OP's Exhibits #27 and 28 be admitted into evidence. There were no objections.

Sierra Club

Mr. Yost advised that Sierra Club was withdrawing its Exhibit #12, and requested that Exhibits #10, 11, 13, 14, 15, and 16 be admitted into evidence. Mr. Benjamin Matsubara clarified that Exhibit #10 was a photograph of a "toon" plant and not taro, and that there were no cattle in the area represented as "Koa Ridge" in Exhibits 13 & 14. Mr. Matsubara indicated that grazing operations were done in Waiawa. There was discussion about how the photographs were taken and described, and Mr. Yost stated that he would file an amended exhibit list that would contain the corrections that would properly identify the areas in the photographs.

Mr. Poirier requested that Neighborhood Board No. 25's Exhibit 18 be admitted into evidence. Ms. Takeuchi-Apuna objected to the Exhibit. Commissioner Lezy requested clarification on the relevance of the Exhibit to supporting the position of the Neighborhood Board. Mr. Poirier explained why he felt the Exhibit was necessary. Chair Piltz ruled that Exhibit 18 would be accepted.

OP'S WITNESSES

Mr. Yee provided an update on the order of witnesses that the Parties had agreed to in order to accommodate the schedules of their witnesses and made Mr. Mayer available for cross-examination by the City.

Abbey Mayer

Ms. Takeuchi-Apuna requested clarification on OP's permanent agricultural easement policy and its requirements. Mr. Mayer provided his perspective of why these easements were necessary and described how the agricultural easement policy was developed, and how it would be implemented and administered. Ms. Takeuchi-Apuna asked if agricultural easements could be expected to be required in the future and how the agricultural easement were expected to mitigate conditions created by the proposed Project. Mr. Mayer provided his understanding of how the agricultural easements were expected to achieve their designed purpose and function relative to urban growth boundaries.

Ms. Takeuchi-Apuna requested clarification on how agricultural easements would affect Important Agricultural Land designation policies. Mr. Mayer replied that it would be up to the landowner to request the IAL designation and described how agricultural easements would not interfere with IAL determinations.

Mr. Yost requested clarification on how OP's position would be affected by urban growth boundaries and what OP's role had been in working with the County's Central Oahu Sustainable Communities Plan (SCP) and how binding the Sustainable Communities Plan was. Mr. Mayer described his understanding of the type of analysis that could be done to assess the urban growth boundary situation and replied that this analysis had not been done for the Petition Area. Mr. Mayer explained his understanding of Sustainable Communities Plans and provided his perspectives on the 5 year review process for SCPs.

Mr. Yost requested clarification on OP's position on the Petition despite existing and forecasted traffic congestion. Mr. Mayer explained how OP had decided its position on traffic.

Mr. Yost requested clarification on OP's position relative to the recent Supreme Court ruling on the Kuilima Environmental Impact Statement. Mr. Mayer provided his perspective of how the ruling affected OP decision making.

Mr. Yost requested clarification on OP's considerations for entitlement or permit impacts, incremental development, area access, water availability, climate change, energy efficiency and other conditions that might pose reasons for concern about Project. Mr. Mayer provided his understanding of the actions that OP took with regards to sustainability considerations.

Mr. Matsubara requested clarification on how the Agricultural Easement Policy was developed and how it would work in urban areas on Oahu. Mr. Mayer provided his perception of how OP had worked with the Dept. of Agriculture to develop the policy and explained how it would be applied in different land use situations on Oahu due to its high level of development. Mr. Mayer indicated

that no Constitutional issues regarding the agricultural easements had been brought to his attention.

Commissioner Lezy inquired how mitigation negotiations with the Petitioner had been conducted. Mr. Mayer described the activities that occurred during the mitigation negotiations and reported his assessment of the progress that had been made.

Commissioner Kanuha requested clarification on Mr. Mayer's recommendations regarding mitigation measures criteria. Mr. Mayer reviewed the proposed mitigation conditions and explained why he felt they were necessary and how they would be implemented (he described how OP had tried to set their condition to "trigger" the requirement of the agricultural easement with "subdivision" of the Petition Area). Discussion ensued over how the Commission would be involved during and after the process.

Commissioner Kanuha requested clarification on the difference in acreage depicted in OP's Exhibit 27 and in Petitioner's Exhibit 53. Mr. Mayer responded that OP's Exhibit showed state-owned land only.

Commissioner Judge requested clarification on how an agricultural easement differed from IAL designation. Mr. Mayer replied that IAL is a resource overlay which identifies lands which meet certain agricultural criteria and there was nothing in IAL legislation that would prevent re-districting of IAL lands. Discussion ensued over how the uses of the land would be served by using an agricultural easement instead of an IAL designation.

Chair Piltz inquired if OP would make the same recommendation for agricultural easement conditions for a project like Hoopili. Mr. Mayer responded that OP had made such recommendations before the Hoopili petition was determined to be defective.

Commissioner Kanuha questioned how OP would apply the agricultural easement condition on a case by case basis. Mr. Mayer replied that the policy was based on Oahu and that the Neighbor Islands had not been studied yet with the Department of Agriculture. Discussion ensued over what appropriate acreages would be considered.

Commissioner Judge questioned what OP's actions might be to strengthen IAL language. Mr. Mayer described what efforts OP had made to improve the IAL legislation. Discussion ensued over where IAL designated land was located in relation to the county zoning of its lands, and why agricultural easements were more secure.

Commissioner Lezy requested clarification of the specifics of the easement language and whether OP had considered legislation to make it into law. Mr. Mayer reported on OP's efforts to legislate easements.

The Commission went into recess at 2:44 p.m. and reconvened at 3:00 p.m. Commissioner Judge returned at 3:01 p.m.

Mr. Matsubara requested clarification on what was permissible for dwellings under IAL designation. Mr. Mayer provided his understanding of what was permissible and discussion ensued over what was involved in legally changing IAL designation to another land use.

Mr. Yee inquired if land with an agricultural easement would still be subject to zoning requirements. Mr. Mayer provided his understanding of how agricultural easements were expected to be treated by county and state authorities.

There were no further questions for Mr. Mayer.

INTERVENOR SIERRA CLUB WITNESSES

Mr. Yost offered Jeffery Mikulina as an expert witness in Clean Energy/Energy Efficiency Issues. There were no objections.

Mr. Mikulina had submitted written testimony and described the issues that concerned him regarding the proposed Project, its potential additional consumption of energy, and the need for building zero-net energy capable homes. Mr. Mikulina also expressed concern over the energy that would be expended by placing the proposed project in a location that might cause more energy use getting to/through/from it and described transportation mitigation measures that he would like implemented. Mr. Mikulina also expressed his concern over the loss of land that had the potential to be used to produce bio-fuel materials.

Mr. Mikulina suggested conditions that he thought, if imposed, would help increase energy efficiency of the proposed project and described the benefits of photo-voltaic technology and solar energy and retaining a reserve of land for bio-fuel production use.

Commissioner Kanuha excused himself at 3:14 p.m. and returned at 3:20 p.m.

Mr. Tabata requested clarification on the kilowatt hour figures that were used in Mr. Mikulina's Exhibits. Mr. Mikulina described the reasoning used in for his figures and stated that he was speaking to the energy issues that were associated with the proposed project.

Mr. Yee had no questions.

Commissioner Judge requested clarification on energy efficiency applications for residential and commercial uses. Mr. Mikulina described how

the uses differed and how incentives for energy efficiency devices were more attractive for commercial users.

Commissioner Wong requested clarification on the feasibility of setting aside land to use for energy power-producing purposes instead of using roof tops. Mr. Mikulina was not aware of any current practices.

Commissioner Lezy requested clarification on potential additional construction costs for home energy devices. Mr. Mikulina provided his cost estimates and gave examples of cost efficient modifications that could be made to accommodate energy saving technology.

There were no further questions for Mr. Mikulina.

INTERVENOR NEIGHBORHOOD BOARD No. 25

Joe Francher

Mr. Poirier offered Joe Francher, a Wahiawa Neighborhood Board member, to present his view of the proposed Project. Mr. Francher shared his commuting experiences to and from Central Oahu and provided his concerns about the lack of adequate mitigation for anticipated traffic congestion problems resulting from the proposed Project.

Mr. Yee asked if Mr. Francher's understanding of the Environmental Impact Statement and the TIAR within it was what his testimony was based on. Mr. Francher acknowledged that it was.

Commissioner Lezy inquired if Mr. Francher was a sitting member of the Wahiawa Neighborhood Board and if the Wahiawa Neighborhood Board had a position or discussions on the project. Mr. Francher replied that he did sit on the Neighborhood Board and that the Board had no position but had discussions. Mr. Francher expressed his concerns about the relocation of medical services from Wahiawa to the proposed Petition Area.

There were no further questions for Mr. Francher.

David Ellis

Mr. Ellis stated that he was a long-time Mililani resident, and shared his concerns about the proposed Project. He described crowded school conditions in nearby communities and suggested that special assessments be considered as a means of financing the educational facilities.

Mr. Tabata inquired if Mr. Ellis was aware of communications between the Petitioner and the Department of Education. Mr. Ellis described his awareness of communications between those entities.

There were no further questions for Mr. Ellis.

Douglas Thomas

Mr. Thomas was offered as Chair of the Neighborhood Board Planning and Zoning Committee and used Neighborhood Board No. 25's Exhibits 12 -a slide show presentation to describe the Neighborhood Board concerns regarding the proposed development.

Mr. Yee requested clarification on a million dollar DOT appropriation cited during the presentation. Mr. Thomas replied that it was a State DOT appropriation.

There were no further questions for Mr. Thomas.

Discussion ensued on the proposed order of witnesses for the next day. The hearing was adjourned at 4:12 p.m. and set to resume on April 22, 2010 at 9:30 a.m. in Room 405, 4th Floor of the Leiopapa A Kamehameha Building.