

LAND USE COMMISSION
MEETING MINUTES

September 9, 2010
Conference Room 111 A&B, Kakuhihewa Building
601 Kamōkila Boulevard
Kapolei, Hawai`i, 96707

COMMISSIONERS PRESENT: Vladimir Devens
Nicholas Teves, Jr. (arrived at 9:53 a.m.)
Charles Jencks
Ronald Heller (arrived at 9:46 a.m.)
Kyle Chock
Thomas Contrades
Duane Kanuha
Normand Lezy
Lisa Judge

COMMISSIONERS ABSENT: None

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Devens called the meeting to order at 9:44 a.m.

APPROVAL OF MINUTES

Chair Devens asked if there were any corrections or additions to the August 19, 2010 minutes. There were none. Commissioner Contrades moved to approve the minutes. Commissioner Kanuha seconded the motion. The minutes were unanimously approved by a show of hands (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 meetings are set through December and the A10-788 HHFDC/Forest City 201H project is now scheduled as posted for October 6-7 and 21-22, 2010.
- Any questions or concerns- please contact LUC staff.

ACTION A09-782 Tropic Land LLC

Chair Devens announced that this was a hearing on Docket No. A09-782, to consider Tropic Land LLC's Petition to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 96.0 acres in Lualualei, Wai`anae District, O`ahu, Hawai`i, Tax Map Key Nos. (1)8-7-09:02 (por.)

Chair Devens announced the hearing procedures for the day and indicated that the introductory portion of A09-782 would be handled first, then that Docket would be recessed so the Commission could consider agenda item V, A07-775 Castle & Cooke Homes Hawai`i, Inc. Upon completion of A07-775 matters, the Commission would resume proceedings for A09-782 Tropic Land LLC.

APPEARANCES

William Yuen, Esq., represented Petitioner Tropic Land LLC

Arick Yanagihara, Tropic Land LLC

Dawn Takeuchi-Apuna, Esq. Deputy Corporation Counsel represented City and County of Honolulu

Mike Watkins, City and County of Honolulu,

Bryan Yee, Esq. represented State Office of Planning

Abbey Mayer, State Office of Planning

Martha Townsend, Esq. represented The Concerned Elders of Wai`anae

Alice Greenwood, Director, The Concerned Elders of Wai`anae

Chair Devens inquired if the Petitioner had been advised and concurred with the Commission's policy on reimbursement of hearing expenses. Mr. Yuen acknowledged that the Petitioner was agreeable to the policy.

The Commission went into recess at 9:51 a.m. and reconvened at 9:53 a.m. (Commissioner Heller exited the meeting and returned at 10:25 a.m., Commissioner Teves joined the hearing at 9:52, there were 8 Commissioners in attendance)

Chair Devens announced that the Commission had received Motions on September 8, 2010 from Intervenor The Sierra Club to disqualify Commissioners Jencks and Kanuha, *Nunc Pro Tunc*, and also Petitioner's Memoranda in Opposition to the Intervenor's Motions as related to Agenda item V. A07-775 Castle & Cooke Homes Hawai'i Inc. (O'ahu) that had been set for deliberation and action.

Commissioner Chock moved to enter into Executive Session. Commissioner Contrades seconded the motion. By a show of hands, the Commission voted unanimously to enter into Executive Session (8-0).

The Commission went into Executive Session at 9:54 a.m. and reconvened at 10:13 a.m.

DELIBERATION AND ACTION

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

Chair Devens announced that this was Deliberation and Action 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

Ben Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq., represented Castle & Cooke Homes Inc.
Laura Kodama, Castle & Cooke Homes, 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

Chair Devens inquired if all Parties had received copies of the Intervenor's Motions and Petitioner's Memoranda regarding Commissioners Jencks and Kanuha. All Parties indicated that they had received copies of the documents.

Chair Devens asked Intervenor The Sierra Club to explain the timing of the submittals of the Motions to the Commission. Mr. Harris provided his explanation for the timing of the submittals. Discussion ensued regarding what the intention of The Sierra Club's Motions filings were and The Sierra Club's expectations for LUC action on the Motions given the position that the Sierra Club was not requesting a hearing on the motions

Chair Devens announced that the Commission would defer decision making and oral arguments on the Motions till September 23, 2010 and provided the planned procedures for continuing its future Deliberation and Action. Commissioner Devens stated that any party desiring to file an opposing or supporting Memorandum in response to the Motions must do so by September 15, 2010; any response thereto must be filed by September 20, 2010 by the Movant. Chair Devens inquired if the Parties had any problems with the proposed filing schedule. Discussion ensued to clarify the filing requirements and subsequent deliberation and action on the docket. All parties indicated that there were no problems with the proposed schedule.

PUBLIC WITNESSES

None

The Commission went into recess at 10:19 a.m. and reconvened at 10:25 a.m. (Commissioner Heller rejoined the hearing at 10:25 a.m. There were 9 Commissioners now present)

ACTION A09-782 Tropic Land LLC

Chair Devens announced that the Commission would be continuing proceedings for A09-782 Tropic Land LLC and disclosed his acquaintance with Ali`i Tampos, a community member, who is participating in activities surrounding the Petition. Chair Devens stated that his acquaintance with Mr. Tampos would not in anyway affect his ability to remain impartial and objective in this matter and explained the procedures and time limit guidelines for Public Testimony.

There were no objections to Chair Devens' continued participation in the proceedings.

PUBLIC WITNESSES

1. Patricia Patterson

Ms. Patterson shared her concerns about truck traffic in the Wai`anae Coastal region and the need for agricultural lands.

There were no questions for Ms. Patterson.

2. Donna L. Melinousky

Ms. Melinousky submitted a petition with 1001 signatures that opposed reclassification of Agricultural Land to Urban and provided her perspective of how the Wai`anae Community perceived urbanization and access problems.

There were no questions for Ms. Melinousky.

Chair Devens inquired if the Parties had any objections to making the submitted petition part of the record. There were no objections.

3. Faith Arakawa

Ms. Arakawa shared her family history with agriculture in the community and expressed her opposition to the Petition and concerns about the loss of agricultural land.

Mr. Yuen inquired if Ms. Arakawa or her family was presently farming. Ms. Arakawa responded that she and her family no longer farmed.

There were no further questions for Ms. Arakawa.

4. James Manakū Sr.

Mr. Manakū shared his concerns about food resources and water and providing for future generations.

Mr. Yuen inquired if Mr. Manakū was a farmer. Mr. Manakū responded that he wasn't and described the type of agricultural experience that he had.

Ms. Townsend requested clarification on Mr. Manakū's participation with the Nanakuli Neighborhood Board. Mr. Manakū described his community service.

There were no further questions for Mr. Manakū.

5. Pono Kealoha

Mr. Kealoha questioned the jurisdictional authority of the United States in Hawai`i and provided his perspective on the matter.

There were no questions for Mr. Kealoha.

6. Lillette Subedi

Ms. Subedi stated that she was appearing as a Native Hawaiian, a private citizen, and as President of Pūowaina O Mākaha and shared her organization's concerns about the Petition.

Commissioner Lezy requested clarification on the type of work that Ms. Subedi's organization did. Ms. Subedi described the activities that her organization performed.

Commissioner Contrades asked how Ms. Subedi's organization proposed to expand farming. Ms. Subedi provided her perception of how farming could be expanded in the O`ahu area.

There were no further questions for Ms. Subedi.

7. Jolyn Ballenti

Ms. Ballenti expressed her opposition to the Petition and shared her concerns about the negative impacts to the environment and culture.

There were no questions for Ms. Ballenti.

8. Pake Salmon Mahelona

Ms. Mahelona provided her reasons for opposing the Petition.

There were no questions for Ms. Mahelona.

9. Paulette Kaanoi Kaleikini

Ms. Kaleikini shared her reasons for opposing the Petition.

There were no questions for Ms. Kaleikini.

10. Lucy Gay

Ms. Gay expressed her concerns regarding the reclassification of agricultural land and community planning.

There were no questions for Ms. Gay.

11. Edward Hanohano

Mr. Hanohano shared his personal history within the community and knowledge of the Petition Area.

Ms. Townsend requested clarification on flooding issues in the area and his reasons for signing a Petition in support for the Tropic Land Petition in the past. Mr. Hanohano provided his recollection of area flooding and why he signed the Tropic Land petition.

Mr. Yuen requested clarification on the flooding in the area. Mr. Hanohano described how the flood conditions affected the crops in the Petition Area.

There were no further questions for Mr. Hanohano.

12. David Hoppe-Cruz

Mr. Hoppe-Cruz shared his personal history of growing up in the area and voiced his opposition to and concerns about the Petition.

Mr. Yuen inquired if Mr. Hoppe-Cruz was presently a farmer. Mr. Hoppe-Cruz replied that he was not but was planning to start an aquaponics business in the area.

There were no further questions for Mr. Hoppe-Cruz.

13. Angela Hoppe-Cruz

Ms. Hoppe-Cruz expressed her concerns about and opposition to the Petition and described flooding conditions in the Petition Area.

Mr. Yuen inquired where Ms. Hoppe-Cruz worked. She replied that she was employed at the University of Hawai`i-Mānoa and described her commuting experiences to/from Wai`anae and her ideas for improving future conditions in the community.

There were no further questions for Ms. Hoppe-Cruz.

14. Candace Fujikane

Ms. Fujikane provided her account of the farming history of the Petition Area and submitted reference map material to help describe how she perceived the Petition Area lands could be improved with irrigation and sustain its agricultural use. Ms. Fujikane stated that she had consulted a UH soil scientist, Professor Jonathan Deenick, to confirm the data included in her presentation and that Professor Deenick would be

submitting his own information regarding the soils of Lualualei and arguing against the rezoning of the Petition Area.

Chair Devens acknowledged that the submitted material would become part of the record. Discussion ensued to identify the features in the various maps contained in the submitted material.

Mr. Yuen requested an opportunity to review Ms. Fujikane's submission.

Chair Devens concurred and the Commission went into recess at 11:19 a.m. and reconvened at 11:30 a.m.

Mr. Yuen inquired about Ms. Fujikane's farming experience and her familiarity with the Petition Area conditions and water availability. Ms. Fujikane described her recollection of her step-father's farming efforts in upcountry Maui and shared her knowledge of the farming attributes of the Petition site.

There were no further questions for Ms. Fujikane.

15. Georgette Myers

Ms. Myers shared her experiences with growing her own food and working on the Higa farm and provided her opinion of where the proposed activities for the Petition Area should be conducted. Ms. Myers expressed that she would submit her testimony presentation materials to the Commission for the record on September 10, 2010.

Ms. Townsend requested clarification of Ms. Myers' work experience on the Higa farm. Ms. Myers recollected her past and current efforts to oppose the development in the Petition Area and provided her perception of why the Higa family ceased farming operations.

16. Mapuana Tector

Ms. Tector provided her personal experiences within the community and expressed her reasons for opposing the Petition.

There were no questions for Ms. Tector.

17. Rockwell Naeole

Mr. Naeole expressed his support for the Petition and described how he perceived the project would benefit the community.

There were no questions for Mr. Naeole.

18. Alii Tampos

Mr. Tampos stated he was an independent truck owner and provided the reasons why he supported the Petition.

Mr. Yee requested clarification of Mr. Tampos' truck parking requirements and how a light industrial area would be beneficial.

Ms. Townsend requested clarification on lease/ownership of Petition Area lots. Mr. Tampos replied that he was interested in leasing space in the proposed project.

There were no further questions for Mr. Tampos.

19. Patty Kahanamoku Teruya

Ms. Teruya stated that she was testifying as Chair of the Mā'ili/Nānākuli Neighborhood Board and provided the reasons why her organization supported the Petition.

Mr. Yuen requested clarification on why the Neighborhood Board was in favor of the Petition. Ms. Teruya described the factors that the Neighborhood Board had considered in deciding to support the Petition.

Mr. Yee inquired if Ms. Teruya was testifying as Chair on behalf of the Mā'ili/Nānākuli Neighborhood Board. Ms. Teruya acknowledged that she was and described how her Neighborhood Board had dealt with past and present community issues.

Ms. Townsend requested clarification on how the Mā'ili/Nānākuli Board had decided to support a light industrial area for the region and where vacant industrial sites were located. Ms. Teruya used the Wai`anae Sustainable Community Plan to explain incompatible land uses and provided her perception of land use in the community and other details of her involvement.

There were no further questions for Ms. Teruya.

Commissioner Teves departed the hearing with the approval of Chair Devens at 12:00 p.m. (8 Commissioners remained)

20. Kimo Keali`i

Mr. Keali`i described his community involvement and testified using his submitted written testimony in support of the Petition.

Mr. Yuen requested clarification for Mr. Keali`i's support for the Petition. Mr. Keali`i provided the reasons for his support and the results of the surveys he had conducted for community needs.

Mr. Yee requested clarification on the basis for Mr. Keali`i's support for a light industrial area. Mr. Keali`i explained how he had gathered his information and used it to identify the community's desire for a light industrial area.

Ms. Townsend requested clarification on the reasons why truckers were conducting their operations in the neighborhood in the current manner. Mr. Keali`i provided his perspective of the economic reasons why the local area truckers were operating in their current fashion and discussed the factors that were involved in his discussions with the Petitioner. Mr. Keali`i disclosed that he did not work for the Petitioner and that both supporters and opponents of the Petition were related or closely associated with him.

There were no further questions for Mr. Keali`i.

Mr. Keali`i also submitted testimony for Kahu Kamaki Kanahele.

21. Shelly Muneoka

Ms. Muneoka voiced her concerns over the loss of agricultural land and provided her reasons for opposing the Petition.

Commissioner Lezy inquired about where Ms. Muneoka's friends farmed, what type of crops they produced and whether they were commercial farmers. Ms. Muneoka stated that she was not aware of the scale of her friend's farming operations and identified where their farms were located and the various produce that they grew.

The Commission went into recess at 12:21 p.m. and reconvened at 1:35 p.m.

PUBLIC WITNESSES (continued)

22. Darlene Rodrigues

Ms. Rodrigues described her work with Wai`anae Community youths and provided her reasons for preserving Agricultural Land.

There were no questions for Ms. Rodrigues.

23. Kamuela Kamaka

Mr. Kamaka provided the reasons why he supported the Petition.

There were no questions for Mr. Kamaka.

There were no other Public Witnesses.

MAP ORIENTATION

LUC Staff Planner Bert Saruwatari provided a Map Orientation of the Petition Area and identified the various features of the property and neighboring areas.

There were no questions for Mr. Saruwatari.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Yuen offered Petitioner's Exhibits #1-63 into into the record.

The City and County of Honolulu and OP had no objections.

Intervenor- The Concerned Elders of Wai`anae objected to Petitioner's Exhibit #50, the Wai`anae Sustainable Communities Plan Public Review Draft 2008-2009, since it was a pre-decisional document and had not been made public yet. Discussion ensued regarding how the Petitioner intended to use the exhibit. Chair Devens ruled that Exhibits 1-49 and 51-63 would be admitted into evidence and would reserve ruling on Exhibit 50 till Petitioner's Witness, Glenn Kimura's testimony.

City and County of Honolulu

Ms. Takeuchi-Apuna offered City's Exhibits #1-6 into the record.

There were no objections to the City's Exhibits.

Office of Planning

Mr. Yee offered OP's Exhibits#1-21, 3A, 3B, and 8A into the record.

There were no objections to OP's Exhibits.

Intervenor-The Concerned Elders of Wai`anae

Ms. Townsend offered Intervenor's Exhibits#1-19 into the record.

Mr. Yuen objected to Exhibits 14-19. Discussion ensued regarding the nature of the objections. Chair Devens ruled that Exhibits 1-13 would be admitted and that rulings on Exhibits 14-19 would occur as the associated witnesses appeared before the Commission.

Discussion ensued regarding the hearing schedule for the balance of the day and the presentation order of the Petitioner's Witnesses.

The Commission went into recess at 1:50 p.m. and reconvened at 1:55 p.m.

PETITIONER WITNESSES

1. ALBERT SILVA

Mr. Yuen offered Mr. Silva as an expert witness in Native Hawaiian Traditions and Cultural Practices and referenced Petitioner's Exhibits 13, 56 and App. L to substantiate Mr. Silva's qualifications.

City and OP had no objections to Mr. Silva's participation.

Intervenor- The Concerned Elders of Wai`anae objected to Mr. Silva's qualifications as an Expert Witness in Native Hawaiian Traditions and Cultural Practices. Discussion ensued and Chair Devens offered Ms. Townsend an opportunity to voir dire Mr. Silva.

Ms. Townsend inquired as to the extent that Mr. Silva engaged in traditional cultural/religious practices in the community. Mr. Silva provided his experiences and participation in Hawaiian civic groups and community services. Discussion ensued to clarify the type of testimony that Mr. Silva would be providing. Chair Devens ruled that Mr. Silva's testimony would be allowed.

Mr. Silva described the historical background and features of the community and the Petition Area and shared his cultural/religious experiences while growing up in the region.

The City had no questions for Mr. Silva.

Mr. Yee requested clarification on the types of Native Hawaiian cultural/religious practices that Mr. Silva had participated in during his upbringing. Mr. Silva shared the personal experiences that he had while growing up in the community.

Ms. Townsend requested clarification on Mr. Silva's participation in the interview process for the Cultural Impact Assessment for Tropic Land and asked if Mr. Silva recognized the photographed features in Intervenor's Exhibit 3A, 3B, and 3C. Mr. Silva provided his perception of

the exhibits and explained how he had participated in the interview process and local farming and ranching. Ms. Townsend inquired about local flooding in the area.

Mr. Yee objected that the line of questioning was outside the scope of Mr. Silva's expertise. Discussion ensued to determine the relevance of the questions. Chair Devens allowed Mr. Silva to provide his personal historical awareness of local flooding.

Commissioner Lezy inquired if Mr. Silva was being compensated for his testimony and if his intent for testifying was to help the community. Mr. Silva replied that he was not being paid and was testifying as a community service and described how he felt the community would benefit if the Petition were approved; and provided his recollection of the Araki and Higa farm operations.

Commissioner Kanuha requested clarification on Mr. Silva's past cattle operations and whether any evidence of cultural/historic significance was noticed in the area. Mr. Silva described how he had improved the ranching area and had not noticed any cultural/historic evidence.

Mr. Yuen referenced a photo of watermelons produced on the Araki farm and asked Mr. Silva's opinion of their quality. Mr. Silva shared his recollection that the watermelons were tasteless.

There were no further questions for Mr. Silva.

The Commission went into recess at 2:30 p.m. and reconvened at 2:38 p.m. (Commissioner Judge returned at 2:40 p.m.)

2. JOSEPH LAPILIO III

Mr. Yuen offered Mr. Lapilio as a witness on the subject matter of Community support/Business Incubator. Mr. Lapilio described his professional background and experiences in the local business community and shared how he became aware of the Tropic Land project and determining the various feasibilities for it; and how the community could benefit from improving agricultural resources and exploring opportunities for other future community endeavors.

The City had no questions for Mr. Lapilio.

Mr. Yee requested clarification on how Mr. Lapilio envisioned the community incubator project for digital media would operate. Mr. Lapilio provided his perception of how the incubator project would use the

proposed and other facilities in the area, be capially funded; and what economic feasibilities should be considered.

Ms. Townsend requested clarification on Mr. Lapilio's participation in community affairs and how he expected to expand and improve local business opportunities. Mr. Lapilio shared his vision for developing business in the region, his awareness of other community business resources and provided his understanding of what light industrial and commercial uses consisted of.

Commissioner Lezy requested clarification on how business would be attracted to the area if the Petition were granted and what regional business sites had been assessed. Mr. Lapilio provided his opinion on how the businesses would develop and what sites were reviewed.

Ms. Townsend requested clarification on the feasibility of using the Nanakuli village site. Mr. Lapilio provided his perception of what the feasibility of using that site would be.

The Commission adjourned at 3:37 p.m. to resume at 9:00 a.m., September 10, 2010 in Room 406 of the Leiopapa A Kamehameha Building, 235 S. Beretania Street, Honolulu, Hawai`i, 96813.