

LAND USE COMMISSION  
MEETING MINUTES  
April 8, 2011  
Conference Room 405, Fourth Floor,  
Leiopapa A Kamehameha,  
235 S. Beretania Street, Honolulu, Hawai`i 96804

COMMISSIONERS PRESENT: Vladimir Devens  
Charles Jencks  
Ronald Heller  
Kyle Chock  
Duane Kanuha  
Normand Lezy (arrived at 12:20 p.m.)  
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Thomas Contrades  
Lisa Judge

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Scott Derrickson, Staff Planner (attended A87-  
617 DW/Bridge `Āina Le`a portion)  
Bert Saruwatari, Staff Planner (attended A09-  
782 Tropic Land LLC portion)  
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 9:42 a.m.

**APPROVAL OF MINUTES**

Chair Devens asked if there were any corrections or additions to the March 23, 2011 minutes. There were none. Commissioner Jencks moved to

approve the minutes. Commissioner Heller 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 2011 was distributed in the handout material for the Commissioners.
- The upcoming May 12-13, 2011 meeting will involve travel to Kaua`i and the second meeting in May will involve travel to Lanai.
- Any questions or concerns- please contact LUC staff.

### **ORAL ARGUMENT, DELIBERATION AND ACTION**

#### **A09-782 Tropic Land LLC**

Chair Devens announced that this was a meeting for Oral Argument, Deliberation and Action on Docket No.A09-782 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 No. (1) 8-7-09:02 (por.)

### **APPEARANCES**

William Yuen, Esq., represented Tropic Land LLC

Arick Yanagihara, Tropic Land LLC

Michael Nekoba, Tropic Land LLC

Dawn Takeuchi-Apuna, Esq., represented City and County of Honolulu,  
Department of Planning and Permitting

Mike Watkins, City and County of Honolulu, Department of Planning and  
Permitting

Bryan Yee, Esq., represented State Office of Planning

Jesse Souki, Director, State Office of Planning

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

Alice Greenwood, Concerned Elders of Wai`anae

## PUBLIC WITNESSES

1. Patricia Patterson

Ms. Patterson shared her concerns about the need for further archaeological studies in the Petition Area and reasons why she opposed the proposed project.

There were no questions for Ms. Patterson.

2. Kaanohi Kaleikini

Ms. Kaleikini stated that she opposed the project and read her submitted written testimony opposing the proposed project.

There were no questions for Ms. Kaleikini

3. Donaleia Malinousky

Ms. Malinousky expressed her concerns and submitted written testimony opposing the proposed project.

There were no questions for Ms. Malinousky.

4. Patty Teruya

Ms. Teruya submitted written testimony and stated that she was the Chair of the Nānākuli-Mai`ili Neighborhood Board and described why her Neighborhood Board supported the proposed project.

There were no questions for Ms. Teruya.

5. Kimo Kelii

Mr. Kelii submitted written testimony and provided his reasons for supporting the Petition.

Mr. Yuen asked if Mr. Kelii supported the proposed project. Mr. Kelii responded that he did.

There were no further questions for Mr. Kelii.

6. Roberta Searle

Ms. Searle stated that she was a Hawaiian cultural practitioner and expressed her support for the Petition.

Ms. Townsend asked if Ms. Searle was related to Mr. Kelii and a paid consultant of the Petitioner. Ms. Searle replied that she was.

There were no further questions for Ms. Searle.

7. Kahu Victor Kila

Kahu Kila provided his reasons for supporting the Petition and how he envisioned locating a church on the Petition Area.

There were no questions for Kahu Kila.

8. Kaiawe Makanani

Mr. Makanani shared why he supported the Petition.

There were no questions for Ms. Makanani.

9. Rocky Naeole

Mr. Naeole stated that he represented the Wai`anae Rotary Club and expressed why his organization supported the Petition.

There were no questions for Mr. Naeole.

10. Michael Kumukauohu Lee

Mr. Lee described his concerns about genealogical and cultural statements made by Petitioner's cultural expert witnesses and why he opposed the proposed project.

There were no questions for Mr. Lee.

11. Sean Mullen

Mr. Mullen stated that he supported the proposed project and described his company's interests in using the Petition Area for a solar farm site.

Ms. Townsend asked when his company became aware of the site and whether or not he was aware of the shadow generated by the nearby ridgeline. Mr. Mullen responded that his company identified the area a couple of months ago and was aware of the sunlight exposure for the Petition Area.

There were no further questions for Mr. Mullen

12. Daniel Gomes

Mr. Gomes shared his concerns about lack of job opportunities in the region and provided his reasons for supporting the Petition.

13. J.R. Keohekapu

Mr. Keohekapu provided his reasons for opposing the Petition and submitted written testimony.

There were no questions for Mr. Keohekapu.

14. Maria Samson

Ms. Samson submitted written testimony and described why she opposed the Petition.

There were no questions for Ms. Samson.

15. Lance Yoshimura

Mr. Yoshimura stated that he represented the Hawai'i Carpenters Union and provided the reasons why his organization supported the Petition.

There were no questions for Mr. Yoshimura.

16. Jack De Feo

Mr. De Feo expressed his opposition to the Petition and shared his concerns about losing agricultural land to urban development.

There were no questions for Mr. De Feo.

17. Airleen Lucero

Ms. Lucero submitted written testimony opposing the Petition and described how she had initially voted for the proposed project as a member of the Hawaiian Homestead Community and had since changed her mind.

There were no questions for Ms. Lucero.

Commissioner Teves excused himself at 10:45 a.m. and returned at 10:48 a.m.

18. Polly "Granny" Grace

Ms. Grace provided her reasons for opposing the proposed project.

There were no questions for Ms. Grace.

19. Kyle Kajihiro

Mr. Kajihiro shared his reasons for opposing the Petition.

There were no questions for Mr. Kajihiro.

The Commission went into recess at 10:58 a.m. and reconvened at 11:15 a.m.

## **ORAL ARGUMENT**

Chair Devens noted that there were no more public witnesses and oral argument would begin.

Chair Devens inquired if Mr. Yuen wished to reserve time for rebuttal. Mr. Yuen acknowledged that he did.

## PETITIONER

Mr. Yuen argued how Petitioner's proposed project satisfied decision-making criteria for State and urban district plans; would provide economic benefit to the area, was in the urban district boundary, near basic electric, transportation and water services; and how cultural practices and area significance should not deter granting the Petition. Mr. Yuen also described the poor soil conditions and lack of water which made the Petition Area less conducive for farming or ranching.

## DPP

Ms. Takeuchi-Apuna stated that DPP joined Petitioner's Findings of Fact, Conclusions of Law and Decision and Order and had made some recommendations/modifications that DPP was agreeable to; and that DPP took no position on the Petition. Ms. Takeuchi-Apuna commented that the Commission should consider having the Petitioner have a signed agreement with the Navy for the use of its access road at the time of zone change approval and not at the time of application for zone change approval; and that although DPP had recommended changes to the Wai`anae Sustainable Community Plan to allow the proposed project, there was no guarantee that the Planning Commission or the City Council would support the change.

## OP

Mr. Yee stated that OP had no objection to Petitioner's reclassification request but disagreed on the Findings of Fact, Conclusions of Law and some of the conditions; and would rest primarily on its pleadings for the specifics of those objections. Mr. Yee remarked that OP had four major concerns: 1) access to the Navy's Lualualei Road and the terms and condition of any agreement relating to access; 2) the still unresolved Department of Transportation issues with the TIAR and associated mitigation measures that needed to be addressed, 3) that the Wai`anae Sustainable Community Plan amendment should include

the proposed project in the rural community boundary and be approved within five years, and 4).that sustainable energy conservation and low impact development design features be included in the proposed conditions. Mr. Yee stated that OP recommended reclassification with conditions.

#### INTERVENOR

Ms. Townsend stated that the Petition should be denied since it failed to meet urban classification standards and argued the reasons why the Commission should not grant it. Ms. Townsend provided her perception of why the Navy road was not an urban road and why the topography and location of the Petition Area did not support urbanization.

Ms. Townsend provided her perception of how granting the Petition could alter the surrounding area and how current existing urban uses were examples of “urban spot zoning”. Ms. Townsend also described how the existing farms, traffic, Coastal Zone Management Act and cultural impact assessments needed to be considered in the decision making process.

#### REBUTTAL

Mr. Yuen stated that the Petition Area had been permitted for a golf course and the choices for the Petition Area were between a golf course and an industrial park, and argued for the proposed conditions made by Petitioner for the proposed project. Mr. Yuen requested that the Commission approve the Petition subject to the conditions that Petitioner had submitted.

#### COMMISSIONER QUESTIONS

Commissioner Heller requested clarification on the current status of the negotiations with the Navy for the access easement. Mr. Yuen replied that Petitioner had been in communication with the Navy and was currently waiting for a response to its request for clarification on some of the requirements that the Navy had requested.

Commissioner Kanuha asked what Petitioner would do if it were unable to comply and obtain a long-term lease agreement with the Navy or with the Wai`anae Sustainable Community Plan within five years. Mr. Yuen replied that Petitioner was willing to accept the proposed Petition Conditions and that the Commission could file an Order to Show Cause upon the Petitioner if it did not comply.

Commissioner Kanuha requested clarification on how Petitioner proposed to process its county zone change application. Mr. Yuen described his perception of how Petitioner would file and process its zone change application while continuing to work with the Navy for easement approval.

There were no further questions. Chair Devens polled the Commission on whether it was ready to deliberate on this matter.

Commissioners Chock, Heller, Jencks, Kanuha, Teves and Chair Devens affirmed that they were ready to deliberate (6-0).

Commissioner Jencks stated his concerns regarding the proposed project and moved to deny the Petition.

Commissioner Heller seconded the motion.

Commissioner Heller stated that he agreed with Commissioner Jencks and added that the road access issue was critical and that until it was resolved, granting the Petition might be premature.

There was no further discussion.

The Commission voted as follows:

Ayes: Commissioners Jencks and Heller

Nays: Commissioners Teves, Kanuha, Chock, and Chair Devens.



The Motion failed 2-4 with 3 excused.

Chair Devens asked for another Motion and none were offered.

Chair Devens moved for an Executive Session. Commissioner Teves seconded the Motion. By voice vote, the Commission unanimously voted 6-0 to enter into Executive Session.

The Commission exited the room for an Executive Session at 12:11 p.m. and reconvened at 12:15 p.m.

Chair Devens announced that he would defer further deliberation on this docket till April 21, 2011 and asked if the Parties objected to the deferral. There were no objections and discussion ensued to clarify procedures and possible scheduling.

The Commission went into recess at 12:20 p.m. and reconvened at 12:27p.m. (Commissioner Lezy arrived-7 Commissioners now in attendance)

## **ORAL ARGUMENT, DELIBERATION AND ACTION**

### **DOCKET A87-617**

Chair Devens announced that this was an action meeting on Docket No.A87-617 in the matter of the Petition of Bridge Āina Lea LLC and DW Āina Lea Development LLC.

Chair Devens stated that the Commission would first hear DW Āina Le`a's Motion to Reconsider and to Defer Entry of Final Findings of Fact, Conclusions of Law, and Decision and Order; and Request for Hearing; followed by DW Āina Le`a's Motion to Amend Conditions 1, 5, and 7 filed August 31, 2010 and finally, Oral Argument on Exceptions and Objections to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order Reverting the Petition Area. There were no questions or comments in regards to the revised order of agenda items.

### APPEARANCES

Bruce Voss, Esq., represented Co-Petitioner Bridge `Āina Le`a LLC  
Alan Okamoto, Esq., represented Co-Petitioner DW `Āina Le`a Development  
LLC  
William Brillhante, Esq., Deputy Corporation Counsel, Hawai`i County,  
represented County of Hawaii Planning Department  
Bryan Yee, Esq., represented the State Office of Planning  
Jesse Souki, Director, State Office of Planning

PUBLIC WITNESSES

1. Alethea Lai

Ms. Lai stated that she was a Puako area resident and shared her reasons for supporting the Petition.

There were no questions for Ms. Lai.

2. Lance Yoshimura

Mr. Yoshimura stated that he represented the Hawai`i Carpenters Union and provided the reasons why his organization supported giving the proposed project a “second chance” and described how a decision to revert the proposed projects land use classification would punish more than the Petitioner.

There were no questions for Mr. Yoshimura.

3. Willis Buford

Mr. Buford expressed that he represented Truestyle Pacific Builders and provided the reasons why his company supported the Petition.

There were no questions for Mr. Buford.

4. Gretchen Lambeth

Ms. Lambeth provided her reasons for supporting the Petition. Mr. Okamoto asked where the people who worked in the area lived. Ms. Lambeth replied that some come from as far away as Hawai`i Oceanview Estates or Puna, which is a two hour drive away or longer.

There were no further questions for Ms. Lambeth.

5. Tracy Takano

Mr. Takano stated that he was presenting testimony on behalf of Isaac Fiesta Jr., President of ILWU Local 142 and shared the reasons why his organization supported the proposed project.

There were no questions for Mr. Takano.

6. Dean Uchida

Mr. Uchida stated that he represented SSFM International and provided the reasons why his company supported the proposed project.

There were no questions for Mr. Uchida.

7. Pua Correa

Ms. Correa stated that she was not a paid consultant and provided the reasons why she supported the proposed project.

There were no questions for Ms. Correa.

8. John Bansemer

Mr. Bansemer submitted written testimony from Capital Asia Group and read an attached letter which described why this group supported the Petition.

There were no questions for Mr. Bansemer.

## **ORAL ARGUMENT**

Chair Devens announced that this was Oral Argument on DW `Āina Le`a's Motion to Reconsider and to Defer Entry of Final Findings of Fact, Conclusions of Law, and Decision and Order; and Request for Hearing.

## **PETITIONER-DW `ĀINA LE`A DEVELOPMENT LLC**

Mr. Okamoto asked if the Commission would allow Mr. Wessels to speak to the financing difficulties that he anticipated his company would incur if the Commission were to revert the Petition Area. Discussion ensued and Chair Devens asked to hear Mr. Okamoto's argument on the Motion.

Chair Devens asked if Mr. Wessels' statement differed from the affidavit that had been already submitted. Mr. Okamoto replied that a financing source had recently corresponded with Mr. Wessels and that a copy of the correspondence had been submitted to the Commission as public testimony and

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

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continued his argument to allow Mr. Wessels to address the Commission. Chair Devens determined that Mr. Wessels could provide additional new information to the affidavit that had already been submitted.

Mr. Wessels apologized for the turmoil he felt he had created in the local marketplace and described his latest conversations made with lenders while attempting to obtain the necessary financing to satisfy the representations made to the Commission; and requested that he be allowed to finish what he had committed to do.

Mr. Okamoto had nothing further to add and concluded his argument.

#### PETITIONER- BRIDGE `ĀINA LE`A LLC

Mr. Voss argued how reverting the Petition Area to its former agricultural land use designation would be detrimental to the building and finance industries, the economy and the local community. Mr. Voss requested that the Commission allow the Office of Planning and the County to continue working with the Petitioner to amend Condition 1 so that a new proposal could be presented for consideration at the next LUC meeting on this matter.

#### HAWAII COUNTY

Mr. Brillhante stated that Hawai`i County took no position on the Petitioner's Motion and that the current urban classification was considered to be the appropriate land use designation for the Petition Area.

#### OP

Mr. Yee stated that OP took no position on the Motion.

There were no questions or comments by the Commission. Chair Devens stated that the Commission intended to take all the arguments on the A87-617 agenda items at this hearing under advisement and defer decision-making till a later meeting.

Mr. Okamoto expressed his concerns about the possible turnover of Commissioners in the near future and in making his Oral Argument to Commissioners who might not be in office at upcoming LUC meetings. Chair Devens noted Mr. Okamoto's concerns for the record.

## ORAL ARGUMENT

Chair Devens announced that this was Oral Argument on DW Āina Le'a Development LLC's Motion to Amend Conditions 1, 5, and 7 and the Amendment to the Motion to Amend Conditions 1, 5, and 7.

### PETITIONER-DW ĀINA LE'A DEVELOPMENT LLC

Mr. Okamoto described why he maintained the Motion to Amend Conditions and argued why it should be considered by the Commission to address the problems that have arisen with this docket and why DW Āina Le'a should be allowed to continue its efforts to complete its proposed project by amending Conditions 1, 5, and 7; and how DW planned to accomplish its plans.

### PETITIONER- BRIDGE ĀINA LE'A LLC

Mr. Voss stated that Bridge Āina Le'a did not object to DW's Motion to Amend Conditions with the understanding that the Commission would work with the Office of Planning and DW to establish reasonable conditions and time frames to help the proposed project succeed. Mr. Voss provided his opinion on arguing the Proposed Findings of Fact, Conclusions of Law, and Decision and Order before the present Commission members with the possibility of three new replacements and described why the Commission should act today instead of deferring action. Mr. Voss described how he envisioned the Commission could vote on the A87-617 agenda items and defer argument of the Findings of Fact, Conclusions of Law and Decision and Order to reclassify the Petition Area.

### HAWAII COUNTY

Mr. Brilhante stated that Hawai'i County took no position on the Petitioners Motion to Amend Conditions 1, 5, and 7.

### OP

Mr. Yee stated that OP considered that the Motion to Amend Conditions was tied into the Motion for Reconsideration and would take no position on the Motion to Amend Conditions except that OP opposed the request to change the condition regarding the location of Department of Education's facilities outside of the Petition Area and onto currently Agriculture designated

lands. Mr. Yee also clarified that OP was not proposing conditions to the proposal from Petitioner DW but would provide comments and collaboration.

Commissioner Kanuha asked if OP was taking no position on the Motion to Amend Conditions. Mr. Yee confirmed that OP was not taking a position except for the request to change the condition regarding the DOE school facilities, which it opposed. Discussion ensued over OP's prior position and testimony and Mr. Yee provided his perception of the procedural processes that dictated OP's current position.

Mr. Okamoto stated that Petitioner would withdraw the DOE site relocation condition and set aside acreage in the urban area for now and continue to address it in future negotiations.

## **ORAL ARGUMENT**

Chair Devens announced that this was Oral Argument on Bridge Āina Lea LLC and DW Āina Lea Development LLC's Exceptions and Objections to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order Reverting the Petition Area and action on whether to adopt Proposed Findings of Fact, Conclusions of Law & Decision and Order reverting the Petition Area as the Commission's Final Decision.

Mr. Okamoto described the process used by Petitioner to review the proposed Findings and other areas that were in disagreement. Chair Devens asked Mr. Okamoto and Mr. Voss how much time they estimated their arguments would take and declared a recess after hearing their responses.

The Commission went into recess at 1:30 p.m. and reconvened at 1:40 p.m.

Presiding Officer Kanuha announced that Chair Devens had to leave for an appointment and he would be presiding in his absence.

Presiding Officer Kanuha asked the parties if there were any objections to taking Mr. Brillhante's argument first to allow him to attend another appointment. There were no objections.

## **HAWAII COUNTY**

Mr. Brillhante stated that Hawai'i County took no position on the Proposed Findings of Fact, Conclusions of Law and Decision and Order; as well as the Decision and Order proposed in this matter.

There were no questions for Mr. Brillhante and the Commission resumed hearing Mr. Okamoto's argument.

#### PETITIONER-DW `ĀINA LE`A DEVELOPMENT LLC (DW)

Mr. Okamoto argued why by its terms, the statutory standards of section 205-4 (h) applied to an amendment of a land use district regardless of the procedure by which the change occurred; why the Proposed Findings did not support reverting the land use to its original designation; and how allowing DW to continue with its proposed project would aid economic conditions in the area and benefit its residents.

Mr. Okamoto argued why estoppel should be considered; and why past statements that DW had made were not misrepresentations, but rather statements of DW's intentions and efforts. Mr. Okamoto cited the example of properly locating the proposed project wastewater treatment plants and the associated problems in accommodating it.

Mr. Okamoto expressed his objections to various proposed Conclusions of Law and argued why his proposed revisions to the proposed Order should be accepted.

#### PETITIONER- BRIDGE `ĀINA LE`A LLC

Mr. Voss stated that he wanted to cover three general points 1) "what are we doing here?" 2) whether the proposed D& O complied with statute and 3) the validity of the voting results for the motion made on January 20<sup>th</sup>, 2011. Mr. Voss argued that the proposed D&O violated several statutory requirements; that fairness had not been applied evenly by the Commission when considering the proposed project, and why the opinions of Professor Callies regarding Petitioners objections should be reviewed before decision-making.

Mr. Voss asserted that adopting the proposed D&O would create monetary liabilities for the State of Hawai'i and argued against various proposed D&O Findings of Fact and Conclusions of Law; and why the Commission should adopt Petitioner Bridge's Proposed Findings of Fact, Conclusions of Law and D&O instead.

OP

Mr. Yee stated that OP had no objection to the form of the Proposed Decision and Order.

COMMISSIONERS

Presiding Officer Kanuha asked if there were any questions or comments. There were none.

Presiding Officer Kanuha stated that the Commission would defer action on all three matters.

Presiding Officer Kanuha noted that this docket would be next heard on April 21, 2011. There were no questions or comments.

There being no further business to discuss, the meeting was adjourned at 2:20 p.m.