

LAND USE COMMISSION
MEETING MINUTES
May 13, 2011
Airport Conference Center,
400 Rodgers Boulevard, Suite 700, Room #3
Hawaiian Airlines Terminal Building
Honolulu, HI 96819

COMMISSIONERS PRESENT: Vladimir Devens
Napua Makua
Normand Lezy
Nicholas Teves, Jr.
Thomas Contrades
Lisa Judge
Kyle Chock

COMMISSIONER ABSENT: Ronald Heller
Ernest Matsumura

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Hotai Zerba

CALL TO ORDER

Chair Devens called the meeting to order at 10:00 a.m.

DELIBERATION AND ACTION

A09-782 Tropic Land LLC

Chair Devens announced that this was a meeting for Deliberation and Action on the form of the order 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
Bryan Yee, Esq., Deputy Attorney General, represented State Office of Planning
Jesse Souki, Director, State Office of Planning
Alice Greenwood, Concerned Elders of Wai`anae
(City and County of Honolulu, Department of Planning and Permitting had advised the LUC that it would not be attending this hearing.)

Chair Devens asked Commissioner Judge if she was ready to deliberate on this docket. Commissioner Judge acknowledged that she was

Chair Devens introduced Commissioner Makua and announced that she would abstain from voting on the agenda items for the day. Commissioner Makua acknowledged that she would be abstaining from voting.

PUBLIC WITNESSES

There were no public witnesses.

DELIBERATION AND ACTION

Chair Devens inquired if the Parties had anything more they wished to add to the record. There was nothing further that the Parties wanted to add to the record.

There was no further discussion.

Commissioner Lezy moved to approve the proposed final Findings of Fact, Conclusions of Law and Decision and Order. Commissioner Contrades seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Lezy, Contrades, Teves, Judge, Chock and Chair Devens.

Nays: None

Excused: Commissioners Matsumura, and Heller.

Abstain: Commissioner Makua

Chair Devens verified that the vote was for approval of form only.

The Motion passed 6-0 with 2 excused and 1 abstention

There were no further comments or questions.

The Commission went into recess at 10:20 a.m. and reconvened at 10:38 a.m.

DELIBERATION AND ACTION

DOCKET A87-617

Chair Devens announced that this was a deliberation and action meeting on Docket No.A87-617 in the matter of the Petition of Bridge Āina Lea LLC and DW Āina Lea Development LLC regarding DW Āina Le`a's Motion to Amend Conditions 1, 5, and 7 filed August 31, 2010 as amended by Amendment to Motion to Amend filed on March 28, 2011.

APPEARANCES

Bruce Voss, Esq., and Michael Carroll, 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 Corporate Counsel, County of Hawai`i Planning Department

Bryan Yee, Esq., represented the State Office of Planning

Jesse Souki, Director, State Office of Planning

Chair Devens made a motion to enter into Executive Session to discuss the legal rights and authorities that the Commission had. Commissioner Chock seconded the motion. By a voice vote, the Commissioner unanimously voted to enter into Executive Session (7-0) at 10:07 a.m.

The Commission reconvened at 10:14 a.m.

Chair Devens asked Commissioner Judge if she was ready to deliberate on this docket. Commissioner Judge acknowledged that she was

PUBLIC WITNESSES

There were no Public Witnesses.

DELIBERATION AND ACTION

Chair Devens requested clarification from Petitioner Bridge Aina Le`a LLC in regards to a letter received by the LUC from Mr. Carroll relating to the request that the commissioners retain documents relative to the case. Discussion ensued to elicit a response from Mr. Carroll since he had sent the letter to the Commission and determine what action he was attempting to have the Commission take.

Mr. Carroll stated that litigation was being contemplated and described what his intent with requesting the retention of records was.

Chair Devens stated for the record that he had done further research on a litigation case involving his law firm and Bridge Aina Le`a that Mr. Voss had raised in a prior hearing and confirmed that he had not worked on the case. Chair Devens added that further research had revealed that Mr. Voss and his law firm had actually participated in the past litigation and therefore had knowledge of the litigation long before raising the issue before the Commission when he did. In response to Chair Devens' questions, Mr. Voss confirmed that he and his law firm had in fact worked on the prior litigation.

There were no further comments or questions.

Commissioner Chock moved to deny the motion. Commissioner Lezy seconded the motion. There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Chock, Lezy, Contrades, Teves, Judge, and Chair Devens.

Nays: None

Excused: Commissioners Matsumura, and Heller.

Abstain: Commissioner Makua

The Motion passed 6-0 with 2 excused and 1 abstention

Mr. Voss advised that he had file a Notice of Appeal in Circuit Court and that he did not consider the vote on amending conditions 1, 5, and 7 to have cured any procedural defects and that he interpreted today's vote as an acknowledgement and admission by the Commission that it retained jurisdiction over this docket, notwithstanding the Circuit Court appeal.

Mr. Yee stated that OP reserved its position on the matter.

Mr. Okamoto stated that DW Aina Le`a would be filing an appeal notice shortly relating to the final decision and order filed last week, and that it would be handled by the McCorriston law firm.

Mr. Brillhante stated that like OP, the County of Hawai`i reserved its right in the matter.

There were no further questions or comments on the matter, and no further business to discuss. Chair Devens adjourned the meeting at 10:23 a.m.