

LAND USE COMMISSION
MEETING MINUTES
June 30, 2011
Conference Room 204, Second Floor,
Leiopapa A Kamehameha,
235 South Beretania Street, Honolulu, Hawai`i 96804

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

COMMISSIONER ABSENT: None

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner (attended A06-
771 D.R. Horton-Schuler Homes LLC portion)
Bert Saruwatari, Staff Planner (attended A83-
557 Princeville Development Corporation
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 9:48 a.m.

APPROVAL OF MINUTES

Chair Devens asked if there were any corrections or additions to the June 8, 2011 minutes. There were none. Commissioner Contrades moved to approve

the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (9-0).

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 July 14-15, 2011 meeting will be on Maui and a September meeting for Important Agricultural Lands may involve travel to Kona.
- Any questions or concerns- please contact LUC staff.

ACTION

A83-557 Princeville Development Corporation (Kaua`i)

Chair Devens announced that this was an action meeting to consider the Adoption of an Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated March 28, 1985.

APPEARANCES

Benjamin Matsubara, Esq., and Curtis Tabata, Esq., represented Princeville Development Corporation

Abbey Mayer, Vice-President, Princeville Development Corporation

Bryan Yee, Esq., represented State Office of Planning

Mary Lou Kobayashi, State Office of Planning

County of Kaua`i advised the Commission that it would not be in attendance (Chair Devens noted that Teresa Tico, Esq., representative for Intervenor-The Concerned Citizens of `Anini, was not present)

PUBLIC WITNESSES

None

DISCUSSION

Chair Devens asked if the Parties had anything further to add to the record. The Parties had nothing further to add.

Commissioner Heller disclosed that subsequent to the last meeting on this docket, he had become aware that Jeffrey Stone had some form of ownership interest in Princeville Development Corporation and also a form of ownership interest in Ko `Olina Development LLC and in Resort Management Company, LLC and that his firm represented a community association adversely involved in a litigation matter with the latter two entities. Chair Devens asked the Parties if they had any questions or objections to Commissioner Heller's participation in decision making on this docket.

Mr. Matsubara stated that if Commissioner Heller felt that the matter disclosed would not influence his decision making in this matter, Petitioner had no objection to his participation. Commissioner Heller responded that he did not think that the unrelated litigation would have any impact on his decision-making.

Chair Devens asked if Mr. Matsubara understood that the Commission was only approving the form of the Order. Mr. Matsubara replied that he did.

Mr. Yee had no objections or concerns.

Commissioner Contrades moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order Granting the Motion for Order Amending the Findings of Fact, Conclusions of Law and Decision and Order dated March 26, 1985. Commissioner Teves seconded the motion.

There was no discussion.

The Commission was polled as follows:

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

Nays: None

Abstain: Commissioner Matsumura

The motion passed 8-0 with 1 abstention.

Chair Devens asked if the Parties had anything further to add to the record. Mr. Matsubara recognized and thanked Chair Devens for his exemplary public service during his term as Commissioner. Mr. Yee had nothing further to add.

The Commission went into recess at 9:56 a.m. and reconvened at 10:02 a.m.

A06-771 D.R. Horton-Schuler

Chair Devens announced that this was an action meeting on Docket A06-771 D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company, d.b.a. D.R. Horton-Schuler Division, Honouliuli, `Ewa, O`ahu to Amend the Agricultural Land Use District Boundaries Into the Urban Land District for approximately 1,553.844 Acres of Land at Honouliuli, `Ewa District, O`ahu, Hawai`i, Tax Map Key Nos.: 9-1-17:4, 059 and 072 (por); 9-1-18: 1 and 4 (por).to consider:

- Petitioner’s Motion for Leave to File Its Second Amended Petition to Cure the Deficiency of Its First Amended Petition
- Petitioner’s Motion for Determination that Its Second Amended Petition to Cures the Deficiency of Its First Amended Petition and Is Ready For Processing
- Intervenor The Friends of Makakilo’s Motion To Close the Case of the Petition of D.R. Horton-Schuler Homes LLC Without Further Consideration; or In the Alternative to Reject Their Second Amended Petition As a Cure For the Deficiencies In Their First Petition; and That the Petition Property Be Removed from Redistricting Availability Until 2061.
- Petitioner’s Motion to Consolidate for Hearing Purposes the above listed three motions.

APPEARANCES

Benjamin Kudo, Esq., and Yuko Funaki, Esq. represented Petitioner Cameron Nekota, D.R. Horton-Schuler Homes, LLC
Dawn Takeuchi-Apuna, Esq., represented the City & County of Honolulu, Dept. of Planning and Permitting (“DPP”)
Tim Hata, City & County of Honolulu, Dept. of Planning and Permitting
Bryan Yee, Esq., represented State Office of Planning (“OP”)
Mary Lou Kobayashi, State Office of Planning
Dr. Kioni Dudley-Friends of Makakilo, (“FOM”), Intervenor

Chair Devens noted for the record that the Commission had been informed that Intervenor- Haseko (Hawai`i) would be withdrawing from the docket although nothing formal had yet been filed.

Chair Devens updated the record and asked Mr. Kudo if he had been informed of the Commission's policy regarding reimbursement of hearing expenses. Mr. Kudo replied that he had been informed and that his client would abide and adhere to the policy.

Chair Devens described the proposed procedural actions that the Commission would be taking on the issues before it and asked if the Parties had any objections. Mr. Kudo, Ms. Takeuchi-Apuna, and Mr. Yee had no objections. Dr. Dudley requested further clarification on how all the motions would be heard and how his motion would be specifically addressed. Chair Devens reviewed the proposed actions to Dr. Dudley's satisfaction.

Public Witnesses

1. Senator Clayton Hee

Senator Hee provided written testimony and stated that he was appearing before the Commission as a member of the Senate and as the Chairman of the Judiciary and Labor Committees. Senator Hee provided the reasons why he felt the Second Amended Petition was deficient and defective and shared his concerns regarding the role of the rapid transit system in the proposed project. Senator Hee stated that it was his intention to file as an Intervenor in this matter and that the attorney on staff to the Committee on Judiciary, a former Deputy Attorney General, would be his representative as a member of the Senate.

There were no questions for Senator Hee.

2. Victoria Cannon

Ms. Cannon submitted written testimony and shared the reasons for her opposition to the Petitioner's Motion for Determination and Motion for Leave. Ms. Cannon also expressed her concerns about the financial status of the D.R. Horton- Schuler Homes.

There were no questions for Ms. Cannon.

3. Stuart Scott

Mr. Scott referred to a section of the State Constitution and provided his perspective of why the Commission should deny Petitioner's motions.

There were no questions for Mr. Scott.

4. Pearl Johnson

Ms. Johnson submitted written testimony and shared her concerns regarding the financial ability of Petitioner to complete the proposed project and why she opposed the motions.

There were no questions for Ms. Johnson.

5. Candace Fujikane

Ms. Fujikane submitted written testimony and described why she felt the Second Amended Petition was deficient and why the Commission should approve the FOM's request to close the case without further consideration.

Mr. Kudo requested and was provided copies of the written testimony.

There were no further questions for Ms. Fujikane.

6. Kika Bukowski

Mr. Bukowski stated that he represented the Hawai'i Building and Construction Trades Council and described why his organization was concerned about the motions before the Commission; and why the Petitioner's motions should be granted to move the docket forward for further discussion.

There were no questions for Mr. Bukowski.

7. Tora Hans

Ms. Hans expressed her opinion on the merits of the case. Executive Officer Davidson clarified that the testimony that was currently being taken was to address the merits of the motions before the Commission.

There were no questions for Ms. Hans.

8. Donna Wong

Ms. Wong stated that she was the Executive Director of the Hawai'i's Thousand Friends organization and described why her organization opposed the Petitioner's motions.

There were no questions for Ms. Wong.

9. Joshua Scott

Mr. Scott cited portions of the State Constitution and provided his reasons for denying the motions before the Commission

There were no questions for Mr. Scott.

10. Ben Schafer

Mr. Shafer stated his concerns about Petitioner's motions, and the lack of start and end dates for the proposed project; and described how the North Shore had been impacted by similar issues.

There were no questions for Mr. Schafer.

11. Rosey Goo

Ms. Goo stated that she was an attorney and provided her opinion on how Petitioner had failed to cure deficiencies in the Petition and why the motions should be denied.

There were no questions for Ms. Goo.

12. Choon James

Ms. James started to provide her opinion on land use issues in Hawai'i. Executive Officer Davidson clarified that testimony was being taken on the merits of the motions before the Commission. Ms. James stated that the motions should be carefully examined by the Commission before being approved.

There were no questions for Ms. James.

13. Anthony Alto

Mr. Alto represented that he was the Secretary and representative of the Sierra Club and that his organization had filed a notice of intent to intervene but had not yet received any material relative to the Petition; and as a result, was not able to make a detailed presentation. Mr. Alto described the issues that he felt were not cured and the concerns that his organization had with them.

There were no questions for Mr. Alto.

There were no other public witnesses for the pending motions.

Chair Devens stated that the Commission would first address Petitioner's Motion to Consolidate Petitioner's and Intervenor's Motions for Hearing Purposes and asked Mr. Kudo if any objection or opposition had been filed regarding the Motion to Consolidate. Mr. Kudo responded that no objections had been filed.

Chair Devens inquired if the Parties had any objections or opposition to the motion. Ms. Takeuchi-Apuna and Mr. Yee had no objections. Dr. Dudley expressed his concerns with consolidating the motions and described the order

in which he preferred that the motions be heard. Discussion ensued to clarify the Motion to Consolidate and how the Petitioner's Motion for Leave to File Its Second Amended Petition to Cure the Deficiency of Its First Amended Petition would be heard first, followed by Petitioner's Motion for Determination that Its Second Amended Petition to Cure the Deficiency of Its First Amended Petition and Is Ready For Processing.

Chair Devens asked Dr. Dudley if he had any objection to the Motion to Consolidate. Dr. Dudley replied that he did not.

Chair Devens inquired if any of the Commissioners had any comments regarding the Motion to Consolidate. The Commissioners had no comments.

Chair Devens moved to consolidate the motions for hearing purposes. Commissioner Matsumura seconded the motion.

There was no discussion.

The Commission was polled as follows:

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

Nays: None

The motion passed 9-0.

The Commission went into recess at 10:52 a.m. and reconvened at 11:12 a.m.

Commissioner Judge moved to enter Executive Session. Commissioner Contrades seconded the motion. By a unanimous voice vote, the Commission voted 9-0 to enter Executive Session and exited at 11:13 a.m. and reconvened at 11:28 a.m.

Chair Devens introduced Chad McDonald to the audience as the new LUC commissioner, effective July1, 2011.

Chair Devens requested clarification on the procedural intent of Mr. Kudo's filings. Discussion ensued to clarify why the filings were done in the order that they were.

PETITIONER'S MOTION FOR LEAVE TO FILE ITS SECOND AMENDED
PETITION TO CURE THE DEFICIENCY OF ITS FIRST AMENDED PETITION

PETITIONER

Mr. Kudo commented that documents were being prepared for The Sierra Club but had been delayed due to the amount of information that needed to be processed. He then argued why the Commission should grant Petitioner's Motion for Leave. Mr. Kudo recapped the history of the Petition and argued why there were no procedural defects in how Petitioner's motions were filed, and that the motions were filed in an attempt to be efficient and reduce the number of hearings necessary for this docket.

DPP

Ms. Takeuchi-Apuna stated that the City took no position on the motion.

OP

Mr. Yee expressed his understanding of what was being heard by the Commission. Chair Devens replied that the current motion being heard was the Motion for Leave. Mr. Yee stated that OP had no objection.

FOM

Dr. Dudley requested clarification on the appropriate time to present his arguments on his motion. Chair Devens replied that arguments were currently being taken on the Petitioner's motion.

Dr. Dudley stated that FOM opposed the Motion for Leave, provided his historical perspective of the docket; and argued the reasons why the motion should be denied. Dr. Dudley described deficiencies that he felt that the Petitioner had failed to cure.

Dr. Dudley further argued that there was no good cause for Petitioner's motion. Discussion ensued regarding whether the Commission was being asked to waive its rules. Mr. Kudo confirmed that Petitioner was not asking for any rules to be waived.

There were no questions by the Commission or the Parties.

PETITIONER REBUTTAL

Mr. Kudo argued what the Petitioner was trying to accomplish with its motion.

Chair Devens asked the Parties if there were any additional comments that they wished to make. DPP, OP, and FOM had no further comments.

Chair Devens moved to grant the Petitioner's Motion for Leave to File Its Second Amended Petition to Cure the Deficiency of Its First Amended Petition based on a finding of good cause and provided his reasoning for making his motion and confirmed that he was approving the motion as Chair as required by the rules. Commissioner Chock seconded the motion.

There was no discussion. Chair Devens commented that based on the Commission's subsequent finding that there was a deficiency after first finding otherwise, the Petitioner had been placed in a time constraint beyond its control and that was part of the good cause for his motion.

The Commission was polled as follows:

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

Nays: None

The motion passed 9-0.

PETITIONER'S MOTION FOR DETERMINATION THAT ITS SECOND AMENDED PETITION TO CURE THE DEFICIENCY OF ITS FIRST AMENDED PETITION AND IS READY FOR PROCESSING

Chair Devens noted for the audience that the Motion for Leave being granted did not mean that any deficiencies had been cured and that the current motion would be addressing that matter.

PETITIONER

Mr. Kudo argued that Petitioner's additional submitted exhibits 20 -Ho`opili phased development map and 21- Map for development phasing addresses and responded to the Commission's request for further details on the proposed project and attempted to cure a procedural defect.

Chair Devens inquired how the timing of the proceedings might be affected by the re-filing of the second amended petition. Mr. Kudo responded that it might take a couple of months depending on the Commission's scheduling and that he had no procedural concerns at this time.

DPP

Ms. Takeuchi-Apuna stated that DPP had no position on the motion.

OP

Mr. Yee stated OP had no objection to the motion and reserved the right to analyze, critique and respond to the plan during the decision-making process of this case.

Chair Devens asked Petitioner to confirm that this motion was limited to addressing a procedural issue only. Mr. Kudo responded that it was a procedural matter alone and that the substantive issues would be addressed later during the decision-making process.

FOM

Chair Devens asked if FOM had any argument on this motion. Dr. Dudley requested clarification on what was procedurally occurring. Chair Devens responded that a procedural deficiency was attempting to be resolved and described how proceedings could advance if the deficiency was cured. Discussion ensued to clarify the purpose of fulfilling a procedural requirement for the Commission. Mr. Kudo described how the level of detail of information that had been submitted to the Commission attempted to satisfy the existing deficiency and that subsequent hearings would determine whether or not the information did or did not satisfy the Petitioner's burden of proof.

Dr. Dudley argued that misrepresentations and errors on maps that he had submitted to the Commission supported his argument that Petitioner had failed to cure the deficiencies from the first amended petition. Dr. Dudley described other shortcomings in the second amended petition that he perceived needed to be remedied. Dr. Dudley argued that the second amended petition was lacking, inconsistent and did not provide material which could be perceived as providing a cure to the first amended petition.

Chair Devens asked the Commission if there were any further questions. There were none.

PETITIONER REBUTTAL

Mr. Kudo stated that he had no further argument.

Chair Devens inquired if the Parties had anything further to add.

Ms. Takeuchi-Apuna and Dr. Dudley had nothing further to add.

Mr. Yee clarified that OP had considered the completeness of the proposed plan under Hawai'i's State Administrative Rules and did not include deciding whether or not the Petition and its incremental development plan were sufficient to justify reclassification and would be reserving comment on that matter.

Chair Devens moved to grant Petitioner's Motion for Determination that Its Second Amended Petition Cures the Deficiency of Its First Amended Petition and Is Ready For Processing since the subsequent filings appeared to satisfy the deficiency that was noted previously by the Commission. Commissioner Chock seconded the motion.

There was no discussion.

The Commission was polled as follows:

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

Nays: None

The motion passed 9-0.

INTERVENOR THE FRIENDS OF MAKAKILO'S MOTION TO CLOSE THE CASE OF THE PETITION OF D.R. HORTON-SCHULER HOMES LLC WITHOUT FURTHER CONSIDERATION; OR IN THE ALTERNATIVE TO REJECT THEIR SECOND AMENDED PETITION AS A CURE FOR THE DEFICIENCIES IN THEIR FIRST PETITION; AND THAT THE PETITION PROPERTY BE REMOVED FROM REDISTRICTING AVAILABILITY UNTIL 2061

Mr. Kudo stated that all the arguments contained in FOM's motion appeared to pertain to the case in chief and suggested that it would be more proper to take up these arguments during the hearing rather than at this point.

Dr. Dudley stated that he believed that the first two portions of his motion were moot and that the remaining one—"that the Petition Property be removed from Redistricting Availability Until 2061" still needed to be considered. Chair Devens asked if there was a legal authority that Dr. Dudley could cite that empowered the Commission to take that action. Dr. Dudley replied that he did

not have any legal reference and provided the reasoning that he had used to construct his motion.

Chair Devens asked if Dr. Dudley would like to consult with his attorneys on this matter and return at another time. Dr. Dudley responded that he would like to proceed.

Chair Devens asked the Parties if there were any objections. Discussion ensued to determine how to procedurally handle the motion. Dr. Dudley stated that he would like to defer the matter to another time or perhaps withdraw this portion of his motion. Mr. Kudo argued that it would be more efficient to withdraw the motion to avoid repeating it again when the case in chief was being considered. Chair Devens asked if Dr. Dudley would like to withdraw the motion. Dr. Dudley decided to do so, but then stated that he had been advised to request a continuance on the motion instead by a member of the audience who was an attorney (Rosey Goo). Mr. Kudo objected to Dr. Dudley's request for a continuance on his motion, and argued why the Commission should hear argument on the motion now.

Commissioner Teves excused himself at 12:16 p.m. and returned at 12:20 p.m.

Chair Devens asked if DPP had a position on the continuance. Ms. Takeuchi-Apuna replied that DPP agreed with Petitioner that the argument should be heard at this meeting.

Mr. Yee stated that OP had no position on this issue. Chair Devens requested that Dr. Dudley proceed with his argument. Dr. Dudley responded that he would withdraw his motion and re-enter it again later.

Chair Devens clarified that public testimony would be taken after the lunch recess, but that the Commission had decided all of the issues that were before it in the motions that were heard and that there would be additional opportunities for the public to provide public testimony on this matter in the future.

The Commission went into recess at 12:24 p.m. and reconvened at 1:50 p.m. (Commissioner Chock returned at 1:53 p.m.)

Chair Devens called for members of the audience who wished to provide public testimony on the docket.

PUBLIC TESTIMONY

1. Rosey Goo

Ms. Goo shared her concerns about the impacts that rezoning agricultural land would have.

There were no questions for Ms. Goo.

2. Victoria Cannon

Ms. Cannon expressed her reasons for opposing the proposed project.

There were no questions for Ms. Cannon.

3. Denise Snyder

Ms. Snyder voiced her concerns about food security and why agricultural lands needed to be protected.

There were no questions for Ms. Snyder.

4. Harmony Bentosino

Ms. Bentosino submitted written testimony and expressed her concerns about disappearing agricultural land.

There were no questions for Ms. Bentosino.

5. Rick Stanley

Mr. Stanley shared his reasons for opposing the proposed project.

There were no questions for Mr. Stanley.

6. Roger Wickenden

Mr. Wickenden expressed his concerns and reasons for opposing the proposed project.

There were no questions for Mr. Wickenden.

7. Alii Tasei-Ponder

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

There were no questions for Ms. Ponder.

8. Charles Carroll

Mr. Carroll described why he opposed the proposed project.

There were no questions for Mr. Carroll.

9. Ursala Retherford

Ms. Retherford submitted written testimony and shared her concerns and reasons for opposing the proposed project.

There were no questions for Ms. Retherford.

10. Thad Spreg

Mr. Spreg expressed his reasons for opposing the proposed project.

There were no questions for Mr. Spreg.

11. Phyllis Ketcher

Ms. Ketcher represented that she was a past community association president and expressed her support for the D.R. Horton-Schuler Homes, LLC company and its projects.

There were no questions for Ms. Ketcher.

12. Kent Fonoimoana

Mr. Fonoimoana shared his vision for the future of Hawai`i.

There were no questions for Mr. Fonoimoana.

13. Ben Schafer

Mr. Schafer provided his opinion on why agricultural land should be preserved.

There were no questions for Mr. Schafer.

There were no further public witnesses.

There being no further business to discuss, the meeting was adjourned at 2:25 p.m.