

LAND USE COMMISSION
MEETING MINUTES

November 18, 2011 – 9:00 a.m.
Leiopapa A Kamehameha Building Room 204,
235 S. Beretania Street Honolulu, HI 96813

COMMISSIONERS PRESENT: Nicholas Teves, Jr (departed at 11:42 a.m.)
Chad McDonald
Thomas Contrades
Normand Lezy
Ronald Heller (arrived at 10:30 a.m.)
Napua Makua

COMMISSIONERS EXCUSED: Kyle Chock
Lisa Judge
Ernest Matsumura

STAFF PRESENT: Orlando Davidson, Executive Officer
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Joe Hee

CALL TO ORDER

Chair Lezy called the meeting to order at 9:04 a.m. and announced that this was a continued action meeting on A06-771 D.R. HORTON – SCHULER HOMES, LLC.

APPEARANCES

Benjamin Kudo, Esq., and Naomi Kuwaye, Esq. represented Petitioner D.R. Horton-Schuler Homes LLC
Cameron Nekota, D.R. Horton-Schuler Homes LLC

Dawn Takeuchi-Apuna, Esq., Deputy Corporate Counsel, represented City and County of Honolulu, Department of Planning and Permitting (DPP)

Tim Hata, DPP

Bryan Yee, Esq., represented State Office of Planning (OP)

Mary Lou Kobayashi, OP

Dr. Kioni Dudley, represented Intervenor Friends of Makakilo (FOM)

Linda Paul, Esq. Friends of Makakilo (FOM)

Tatyana Cerullo, Esq. and Elizabeth Dunne, Esq., represented Intervenor The Sierra Club

Eric Seitz, Esq. and Sierra Devine, Esq., represented Intervenor Clayton Hee State Senator Clayton Hee

Chair Lezy stated that he would allow public testimony from a witness who had flown in from Moloka`i.

PUBLIC WITNESS

1. Curtis Crabbe

Mr. Crabbe provided his perspective of development in Hawai`i and what he felt the local population had to do to cope with urban growth.

There were no questions for Mr. Crabbe.

PETITIONER'S WITNESSES (Continued)

2. Bruce Plasch

Questions (Continued)

FOM- Dr. Dudley resumed requesting clarification on various portions of Dr. Plasch's reports and testimony. Dr. Plasch described soil conditions and water sources on O`ahu in the Petition Area and in the proposed replacement lands, other remaining available farmland for crops, type of crops that could be produced, market conditions for farming, the economic impacts of the loss of farmlands on local markets and adaptations that needed to be made by the farming community to remain viable.

Mr. Kudo objected on the ground that the questioning was repetitive and contrary to his understanding of how Intervenors were going to conduct their

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case. Chair Lezy stated that he would allow Ms. Cerullo and Mr. Seitz to complete their questioning.

Ms. Cerullo requested clarification on the availability and quality of water that could be supplied to the 30,000 acres of farmable land remaining for crop production. Dr. Plasch provided his understanding of current conditions for available farmland and the water delivery systems and quality of water that could be provided to them. Dr. Plasch also described how he had considered the Hawai`i State Plan during his research and how he thought agricultural land use had been determined while accommodating urban growth on O`ahu.

Ms. Cerullo requested clarification on the impacts of climate change, declining fossil fuel availability in the future, increased demand for local agricultural land, and how capital and energy intensive hydroponic farming could be viable. Dr. Plasch shared his perspective of the future of farming and how improved farming techniques and technology would compensate for replacing farmland lost if the Petition were granted.

(The Commission went into recess at 10:20 a.m. and reconvened at 10:34 a.m.)
(Commissioner Heller arrived at 10:30 a.m. There were now 6 Commissioners in attendance.)

Senator Hee

Mr. Seitz requested clarification on Dr. Plasch's background in agricultural issues and his awareness of the closing of plantation operations in sugar and pineapple and how the protection of the local agricultural lands, and the state's farming industry conditions had been conducted since then. Dr. Plasch provided his perception of the State's policy to support its agricultural industry; and on how Aloun farms had conducted its operations and what its future prospects for remaining in business were. Dr. Plasch also described what methods of transitioning its farming operations Aloun farms would use; and whether government support subsidies or tax incentives and alternate land crop production would be needed to continue its business.

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Mr. Kudo objected that the witness had answered similar questions from each Intervenor which was contrary to how he perceived the proceedings would be conducted. Mr. Seitz argued that he was asking questions that were necessary for his case. Chair Lezy ruled that Mr. Seitz could continue questioning Dr. Plasch.

Mr. Seitz requested further clarification on whether Dr. Plasch was aware of alternate agricultural lands that could produce crops similar to what was being grown in the Petition Area, and what was necessary to prepare the land for them. Dr. Plasch provided his understanding of what farmers could do to prepare their soils; and how the criteria for IAL matched up and could be applied to the Petition Area. Dr. Plasch also shared his opinion on whether or not the County urban plan superseded state policy regarding protection of agricultural land; a past DOA letter regarding the suitability of 159 acres set aside by Petitioner for agriculture; and how discounted rents had benefited Aloun Farms.

Redirect

Mr. Kudo requested clarification on the current farm leases and the size of the commercial farms in the Petition Area. Dr. Plasch described the expiration dates of the leases and the acreage of the commercial farms located in the Petition Area. Objections were raised by Mr. Seitz that the questioning by Petitioner was leading the witness. Chair Lezy requested that the questioning of the witness be in line with the information presented.

Mr. Kudo requested clarification on how advantageous lower rental rates and an urban growth boundary location were to Aloun Farms, and what type of relocation assistance Aloun Farms would need. Dr. Plasch described how Aloun Farms charged for its subleases and had located the bulk of its farming within the urban growth boundary; and was preparing for the future changes that would impact it.

Commissioner Questions

Commissioner Napua asked where \$1.1 million savings mentioned in the testimony came from and what specific displaced farms on the neighbor

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islands were affected. Dr. Plasch replied the savings was derived from rent paid and described how he had calculated the amount. He could not name the specific farms impacted by displacement on the neighbor islands.

Commissioner McDonald inquired how the 159 acres tied to the proposed project had been determined. Dr. Plasch described how he thought the acreage had been calculated and estimated that there were approximately 1375 acres of potentially farmable acreage in the Petition Area and opined how the acreage had been cultivated in the past.

Commissioner Heller requested clarification on the lease/sublease numbers that were presented. Dr. Plasch described how the net \$477/acre profit was split between the Petitioner and Aloun Farm in a 50/50 arrangement and did not know how it applied to per acre profitability or on the estimated net/acre.

(Commissioner Contrades excused himself at 11:33 a.m. and returned at 11:37 a.m.)

Commissioner Teves asked what the State agricultural park rental rates were and whether there was any available for the displaced farmers. Dr. Plasch replied that the average rate was \$375/acre and that there were two State agricultural parks that were being established in Kunia, but the displaced farmers were not relocating there.

Chair Lezy asked if Dr. Plasch was aware of any other residential developments that had an urban agricultural component and how feasible it was to locate a commercial farm in a residential area. Dr. Plasch described communities that had agricultural components but could not identify a planned residential development that contained such features and described when the current farming leases in the Petition Area would expire. Dr. Plasch also provided his opinion on what would happen if the Petition Area

remained in the Agriculture land use classification and how it was likely that seed crop growers would displace the current farmers.

Commissioner Teves asked if Aloun Farms was able to get land elsewhere at \$280/acre and how many acres could be acquired. Dr. Plasch estimated the acreage that could be obtained and opined why farmers were willing to pay higher rental rates in the `Ewa plain to Aloun Farms than for the Central and North Shore properties.

The Commission went into recess at 11:42 a.m. and reconvened at 12:52 p.m. (Commissioner Teves departed the meeting with the approval of the Chair- 5 Commissioners remained)

3. Tom Nance-

Mr. Nance was offered as an expert in hydrology by Ms. Kuwaye and had submitted prior written testimony and reports of his studies of the Petition Area. Mr. Nance summarized and updated the information on the Petition Area that he had provided in 2009 and described the water sources and potable and non-potable water delivery system infrastructure that was planned for the Petition Area and its phased development plan.

Questions

DPP-

Ms. Takeuchi-Apuna had no questions.

OP-

Mr. Yee requested clarification on the forecasted water use for the proposed project as it related to its sustainability plan. Mr. Nance shared how he had made his calculations and described how the water use might fluctuate.

Senator Hee-

Mr. Seitz stated that he did not recall the witness and had no questions.

Sierra Club-

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Ms. Dunne requested clarification on water sources and water service zones for the Petition Area. Mr. Nance described the water sources and their storage/distribution systems, and how the existing and proposed infrastructure was expected to operate. Mr. Nance also updated the status of the Board of Water Supply's master plan and the considerations that were being made for desalinization plants, water needs for the project not available from current water sources, Federal studies on water sustainability, and water sources to be used for the proposed project for the present and future. Mr. Nance stated that much of what would ultimately develop depended on the existing resources and decisions of the Board of Water Supply and that he could not predict with certainty what the end results would be.

FOM-

Dr. Dudley had no questions.

Redirect-

Ms. Kuwaye requested clarification on the EP 15 & 16 water source agreement between the Campbell Estate and Board of Water Supply. Mr. Nance provided his understanding of what the agreement allowed for the Petition Area and its surrounding region.

Commissioners Questions

Commissioner McDonald asked if the intent of the proposed project was to use potable and non-potable water sources and what the source for non-potable water would be. Mr. Nance stated that the proposed project would use both water sources and that the non-potable source was already owned by Petitioner and would later be made to be compatible with the BWS system.

Commissioner McDonald also inquired about the comments and concerns about the Master Plan that were submitted to the BWS in the last week. Mr. Nance described the issues that he was aware of that were addressed by the BWS.

There were no further questions for Mr. Nance.

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4. David Bills

Ms. Kuwaye stated that Mr. Bills was a wastewater treatment and drainage systems expert that had testified earlier and had been recalled at the request of The Sierra Club and the State Office of Planning.

Questions

DPP- Ms. Takeuchi-Apuna had no questions.

OP- Mr Yee asked if there were any updates on the status of the West Loch drainage system since 2009. Mr. Bills stated that no further efforts had been made to secure the approval of the Navy for access over their property and described why no discussions had been conducted. Mr. Bills also described the plans for water retention and on-site run-off/drainage systems using the Petition Area land contour features that had been developed.

Mr. Yee inquired if Mr. Bills was familiar with the "Urban/ag initiative" for the project. Mr. Bills replied that he was aware that acreage had been set aside for that use in the plan and described how the Petition Area's retention/detention basin designs accommodated those needs and how he factored the gulches and gulleys of the Petition Area in locating the proposed retention/detention and drainage facilities around the existing landscape.

Sierra Club - Ms. Dunne and Ms. Cerullo had no questions.

FOM- Dr. Dudley had no questions.

Commissioner Questions

Commissioner McDonald asked what impact the failure to achieve an agreement with the Navy would be. Mr. Bills described the additional on-site storage that would need to be built if the agreement with the Navy was not consummated. Mr. Bills stated that the plan that was submitted to the Commission as an exhibit did not illustrate this alternate plan and described how the alternate plan would differ. Commissioner McDonald noted that he was concerned about the amount of storage area required in the alternate plan.

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No further questions for Mr. Bills.

The Commission went into recess at 1:30 p.m. and reconvened at 1: 36 p.m.

5. Michael T. Jones- President D R Horton-Schuler Homes

Mr. Jones provided the background and history of Petitioner and described the status of the DOE fair share agreement; how he envisioned the proposed "Urban/ag initiative" sustainability plan component would be laid-out and used in the Petition Area; what contributions and commitments had been made by Petitioner for traffic improvements for the region; and additional details of the goals and objectives of the Ho`opili Sustainability Plan for job creation and other community benefits. Mr. Jones also described various proposed housing units and community features in the Petition Area that used sustainability and energy savings considerations in their design process.

Questions

DPP- Ms. Takeuchi-Apuna had no questions.

OP- Mr. Yee asked whether Petitioner was willing to commit to perform the mitigation measures recommended by consultants in the EIS or better than recommended. Mr. Jones described the various mitigation measures that were under consideration and stated that Petitioner would comply to recommended mitigation measures as long as the State and DPP approved them.

Mr. Yee requested clarification on whether Petitioner would agree to the mitigation measures, their equivalent, or better than recommended measures mentioned in the Ho`opili Sustainability Plan. Mr. Jones replied that Petitioner would agree and comply with conditions #1-8, and 10-20, that OP recommended in its testimony to the Commission. (Mr. Yee stated that OP condition 9 would be addressed separately.) Mr. Jones also described the concerns that he had for some of the OP conditions that Petitioner now had no objection to; and how the Petition Area's phased incremental plan would be implemented and completed; and how an existing chilling plant would be incorporated into the community development phasing.

Mr. Yee requested confirmation on various representations made to the Commission, and clarification on what the relocation status was of the current farmers in the Petition Area, and Petitioner's efforts to provide affordable housing. Mr. Jones acknowledged that Petitioner would comply with all

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representations that it had made and described the history and current status of its farmer relocation efforts and how required county approved affordable housing would be provided.

Senator Hee

Mr. Seitz requested clarification on how Petitioner perceived the issue of the protection of agricultural lands while considering State and County priorities for land use. Mr. Jones provided his understanding of why there was controversy over the proposed project and the loss of productive agricultural lands.

Mr. Seitz requested clarification on efforts made by Petitioner to resolve the issues of stormwater retention/drainage, improvements to mitigate traffic, create jobs, and to incorporate the "Urban/ag" initiative. Mr. Jones described what Petitioner had done to address these issues and also described the discussions that had been conducted to more favorably locate the proposed high school for the Petition Area.

Mr. Seitz asked if the Commission could hear testimony from the Aloun Farm lessee and review the lessee's rental terms. Mr. Jones acknowledged that the Commission could and described the relationships that Petitioner had with other farmers and the business activities that these farmers were engaged in.

Mr. Seitz requested clarification on how the Petitioner perceived the past letter from former DOA Chair-Sandra Kunimoto regarding the loss of farmlands and on what the acquisition and possible sales price would be after the entitlements were granted. Mr. Jones described his organization's position on the DOA letter and could not estimate what the sales price might be or what alternatives were considered by Petitioner in the event the Petition were not granted and stated why the Petitioner was so dedicated to the proposed project.

Mr. Seitz requested clarification on how Petitioner perceived the loss of Petition Area agricultural land would impact lease rents on the remaining farming acreage. Mr. Jones provided his understanding of what would happen in the farm land lease rent marketplace.

The Sierra Club

Ms. Cerullo asked if Mr. Jones was familiar with the Hawai'i State Plan and aware that conformance with the Hawai'i State Plan was one of the criteria the Land Use Commission used in its decision-making. Mr. Jones replied that he had read the plan a while ago and was not aware of the conformance requirement.

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Ms. Cerullo asked if Petitioner had considered scaling back on the size of the proposed development. Mr. Jones described how the initial amount of residential units had been at 16,000 units and what factors and considerations were made to reduce the amount to the current proposed levels and how important it was for the entire project to be approved as it was configured.

Friends of Makakilo

Dr. Dudley requested clarification on an area depicted on Petitioner's Exhibit 89B, page 9. Mr. Jones identified it as land that was acquired when Petitioner purchased the Petition Area and described the area characteristics for the Commission.

Dr. Dudley requested clarification on how the proposed "steward farm" concept was expected to operate and located. Mr. Jones described how the "steward farm" was a new concept that might need time to mature and how it would be included and situated in the proposed project.

Dr. Dudley asked if Petitioner could estimate the government services and infrastructure costs associated with the proposed project. Mr. Jones could not estimate the costs for government services and stated that the improvements to Farrington Highway would be Petitioner's responsibility and that ongoing discussions with DOT were being conducted and there was a possibility of "fair share" costs being involved for other improvements.

Dr. Dudley asked if Mr. Jones was familiar with the farmland conversion impact rating associated with the proposed rail system. Mr. Jones replied that he was not.

Dr. Dudley had no further questions.

Ms. Cerullo requested leave to ask a clarifying question. Chair Lezy approved her request.

Ms. Cerullo asked if Petitioner would proceed with its proposed project if there was a condition imposed to just build the transit-oriented development affordable housing, high-density portion. Mr. Jones responded that Petitioner would not.

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Redirect

Mr. Kudo referred to Petitioner's Exhibit 89B, page 9 and asked if the parcel of land that FOM had referred to during the cross-examination had previously been included in exhibit maps submitted to the Commission. Mr. Jones replied that it had been and identified the parcel on another map of the same area.

Commissioner Questions

Commissioner Heller requested clarification on how the urban farmland acreage had been calculated and how the "civic farms" would be managed. Mr. Jones described the methodology and criteria used for his calculations and stated that the community associations would be responsible for the "civic farms".

Commissioner McDonald requested clarification on the size of the parcel outside of the Petition Area that Dr. Dudley had referred to in Petitioner's Exhibit 89B, page 5. Mr. Jones stated that the parcel was designated for agriculture and contained approximately 79 acres and might serve as a detention basin if the Navy outfall approval for land use was not obtained.

Chair Lezy asked what Petitioner would do if the Petition were denied. Mr. Jones declined to speculate on what Petitioner might do and opined on how current market lease rents would be sought at the termination of existing leases.

Mr. Kudo stated that he rested his case subject to the recall of rebuttal witnesses.

There being no further business, Chair Lezy thanked the Parties for their efforts and adjourned the meeting at 3:20 p.m.