

LAND USE COMMISSION
MEETING MINUTES

January 5, 2012 – 9:30 a.m.
Leiopapa A Kamehameha Room 204,
235 South Beretania Street, Honolulu, HI 96804

COMMISSIONERS PRESENT: Normand Lezy
Ronald Heller
Lisa Judge
Nicholas Teves, Jr
Chad McDonald
Kyle Chock
Ernest Matsumura
Jaye Napua Makua

COMMISSIONERS EXCUSED: Thomas Contrades

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 9:37 a.m.

APPROVAL OF MINUTES

Chair Lezy asked if there were any corrections or additions to the December 1, 2011 minutes. There were none. Commissioner Chock moved to approve the minutes. Commissioner Matsumura seconded the motion and the minutes were unanimously approved by voice vote (8-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The first 6 months of tentative meeting schedules for 2012 was distributed in the handout material for the Commissioners and are posted on the LUC website.
- The next meeting is on January 19-20, 2012 and will be a continued hearing on A06-771.
- Any questions or concerns- please contact LUC staff.

ACTION

A06-771 D.R. HORTON-SCHULER HOMES, LLC., (O`ahu)

Chair Lezy announced that this was a continued hearing on A06-771 D.R. HORTON – SCHULER HOMES, LLC, a Delaware limited liability company, d.b.a. D.R. Horton-Schuler Division.

APPEARANCES

Benjamin Kudo, Esq., and Naomi Kuwaye, Esq. represented Petitioner D.R.

Horton-Schuler Homes LLC

Mike Jones, 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., legal advisor to FOM

Tatyana Cerullo, Esq., represented Intervenor The Sierra Club

Eric Seitz, Esq. and Sarah Devine, Esq., represented Intervenor Clayton Hee

Chair Lezy updated the record and described the procedures for the proceedings. Ms. Paul stated that the Intervenor wished to make a change in the order that they would make their presentations, with The Sierra Club starting first, followed by Friends of Makakilo and then Clayton Hee. There were no objections to the altered order of presentations.

There were no other comments or questions to the procedures for the proceedings.

Chair Lezy announced that public testimony would be taken at 2 p.m. and called for the Department of Planning and Permitting to begin its presentation.

DPP Witnesses

1. Bob Stanfield- DPP Representative for David Tanoue, Director

Mr. Stanfield stated his work experience with the DPP and described how his organization had produced, implemented and evaluated development plans to manage growth on Oahu; and provided the reasons why the DPP supported the proposed project and what the DPP would conditionally require of the Petitioner during the permitting and development process. Mr. Stanfield described how his department had reviewed the Petition to ensure that it conformed to the existing and future plans of the City and County of Honolulu for regional development and articulated what concerns and considerations were made during the review process and how his department had responded to them.

Questions for Mr. Stanfield:

Petitioner and OP had no questions for Mr. Stanfield.

Intervenor - FOM

Dr. Dudley requested clarification on how the planned rapid transit corridor evolved and was envisioned to contribute to and operate in the Petition Area and its surrounding areas; and how the DPP plan objectives for future development on Oahu were being met by the proposed project. Mr. Stanfield described how islandwide considerations for future population growth, transportation needs, and urban growth boundaries factored into how the DPP had made its determinations/decisions. Mr. Stanfield provided additional specific information relevant to the Ewa Development Plan and the urban growth boundary's history and their relationship to the Petition Area; and clarified the various modes of transportation that the rapid transit corridor provided for.

Dr. Dudley requested clarification on how DPP planned to accommodate population growth on Oahu. Mr. Stanfield described the various methodologies and strategies that DPP used to study and manage urban expansion requirements from the past to the present and into the future with its General Plan. Dr. Dudley also asked how an “at grade” rapid transit system was expected to be implemented in the region. Mr. Stanfield described why land area requirements for an “at grade” rapid transit system were used in calculating corridor space requirements and how the corridor was expected to be utilized as it was being fully developed.

Dr. Dudley requested clarification on how the urban growth boundaries were established, implemented and maintained; how the first and second city buffer zone separations factored into the DPP plans and what the critical elements were for the successful development of the second city concept. Mr. Stanfield stated the historical considerations made to determine and establish projected Oahu land use boundaries and described how the DPP envisioned the buffer zone between the first and second cities; and how development in the area was perceived to be occurring by DPP. Mr. Stanfield also described the number of jobs and the “critical mass” factors necessary to stimulate business in the core area of Kapolei and the roadway infrastructure that had been built or planned to be built for the Kapolei downtown district to facilitate economic growth in the region.

Dr. Dudley requested clarification on how the proposed rail system would affect the plans for the second city and how the proposed project supported the plans for a second city. Mr. Stanfield described how the rail system and planned residential communities and urban infrastructure meshed into the DPP plans and stated that the transportation issue would be seriously studied by the appropriate county agencies if the Petition were granted.

Dr. Dudley requested clarification on how the plans to provide adequate urban facilities/transportation systems were going to be implemented. Mr. Stanfield described how the DPP’s permitting, sub-division and zone change processes would be used to control how development would occur in the

Petition Area. Mr. Stanfield also described how DPP policy objectives for handling major peak-hour traffic congestion were anticipated to be met.

FOM had no further questions for Mr. Stanfield.

The Commission went into recess at 10:47 a.m. and reconvened at 10:59 a.m.

Intervenor -The Sierra Club

Ms. Cerullo requested clarification on Mr. Stanfield's reference to Petitioner's expert witness, Ms. Bouslog's , presentation on housing capacity and needs, and if he was aware of the State Plan and the Governor's New Day Plan. Mr. Stanfield responded that he was not aware of Ms. Bouslog's remarks, or the Governor's New Day Plan and described how the DPP worked with the State to determine how Oahu should be developed while protecting important agricultural land.

Ms. Cerullo requested clarification on how agriculture factored in the DPP's plans and whether Mr. Stanfield was aware of a survey conducted by the DPP. Mr. Stanfield stated that he was not aware of the DPP survey and described how diversified agriculture's role was perceived by the DPP and how agriculture land protection and transportation had been considered for the Oahu General Plan.

The Sierra Club had no further questions for Mr. Stanfield.

Intervenor - Clayton Hee

Mr. Seitz requested historical clarification on the development of the existing Oahu general plan and what impact past events that had transpired to "keep the country country" had upon it; and whether a conflict existed between that direction of the General Plan and the current development of the Ewa Plains and the State's Constitution and policies to protect agricultural land. Mr. Stanfield stated that he did not recall the details of the earlier DPP actions and did not see a conflict in the plans due to circumstances that had occurred since. Mr. Stanfield also described

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

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how the DPP had dealt with identifying and protecting important agricultural lands and how reviews of the DPP plans in those matters had been conducted since their inception.

Mr. Seitz requested clarification on how DPP perceived existing agricultural enterprises and their importance to the local economy and whether the DPP was supporting the proposed project since it was consistent with a DPP policy developed over 30 years ago. Mr. Stansfield acknowledged that the County had supported the proposed project based on its policy and described how DPP had evaluated, reviewed and factored sustainability and farmer's needs into its plans and provided his perception of why certain farmers were successful in the local marketplace and what the current status of sustainability and the DPP classification of important agricultural lands was.

Ms. Takeuchi-Apuna noted that she had another witness that could better answer questions regarding the designation of important agricultural lands. Discussion ensued to determine whether Mr. Stanfield should attempt to address questions on agriculture. Chair Lezy determined that Mr. Stanfield could respond if he was able to.

Mr. Seitz requested clarification on a comment Mr. Stanfield made regarding employees who might be attracted to or benefit from being able to live near and work in the Judiciary Building in Kapolei. Mr. Stanfield responded that he did not have specific information to support his remark.

Mr. Seitz had no further questions.

Redirect-

Ms. Takeuchi- Apuna requested clarification on the number of projected housing units when the Ewa Development Plan was initially drafted and what the current number was. Mr. Stanfield referred to the revised estimates for the plan and indicated that the number of estimated units had decreased substantially.

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Ms. Takeuchi-Apuna requested clarification on what the Petitioner's contribution to estimated impact fees might be. Mr. Stanfield did not have an estimate.

LUC Commissioners-

The LUC Commissioners had no questions.

The Commission went into recess at 11:27 a.m. and reconvened at 12:23 p.m. Deputy Attorney General Erickson returned at 12:27 p.m. Commissioner Heller returned at 12:47 p.m.

2. Kathy Sokugawa- Planning Chief, DPP

Ms. Sokugawa stated her work experience with the Department of Planning and Permitting and provided the reasons why the DPP supported the proposed project as related to Important Agricultural Lands legislation. Ms. Sokugawa described the current status of the IAL designation study on Oahu and cited the funding difficulties that troubled the City and County's efforts to initiate the IAL designation processing; and described why the Petition Area would not be designated IAL since it had already been designated urban in the County General Plan.

Questions for Ms. Sokugawa:

Petitioner, and OP had no questions. FOM requested to go out of order, and The Sierra Club had no questions.

Intervenor- Clayton Hee

Mr. Seitz requested clarification of Ms. Sokugawa's understanding of the classification of the lands that were the subject of this Petition. Ms. Sokugawa responded that the lands were currently under the State's Agricultural District and that she did not recall if the lands had a "prime agricultural lands" designation. Mr. Seitz offered a DOA map of "prime agricultural land" for Ms. Sokugawa to refresh her recollection of the designations for the Petition Area. Ms. Sokugawa responded that she was not familiar with the designations (Please refer to LUC Transcript for more details on this matter)

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represented on the map and did not have information to the contrary about them; and described why she believed the DPP plans were consistent with State policy, how affordable housing was a primary concern for her organization and how the plans were used when determining zoning issues with her department.

Commission Judge excused herself at 12:40 p.m. and returned at 12:42 p.m.

FOM

Dr. Dudley requested clarification on how the relocation of farms in the Petition Area was perceived by the DPP. Ms. Sokugawa described how the planning process for the region had involved many different community entities and how the concerns of preserving agriculture, providing affordable housing and managing growth were balanced by the DPP.

Dr. Dudley asked if Ms. Sokugawa could respond to his questions regarding Farmland Conversion Impact Rating. Ms. Sokugawa responded that her only awareness was what had been provided in Intervenor FOM's exhibits.

LUC Commissioners

The Commissioners had no questions.

The Commission went into recess at 12:43 p.m. and reconvened at 12:47 p.m. (Commissioner Judge returned at 12:50 p.m.)

3. Barry Usagawa- Water Resources Program Administrator, Board of Water Supply (BWS)

Mr. Usagawa described his work experience at the BWS and identified the water resources that the BWS expected would provide water for the proposed project and its surrounding areas. Mr. Usagawa referred to Petitioner's hydrologist, Tom Nance's report to describe anticipated consumption rates and how future water demand needs were expected to be met using water conservation methods, existing and future wells and a proposed desalinization plant; and described how BWS managed its approval process for water use to ensure that supply could meet demand.

Questions for Mr. Usagawa:

Petitioner

Mr. Kudo requested clarification on how BWS used Tom Nance's report in its decision-making; and on certain terms and situations that were mentioned in Mr. Usagawa's testimony. Mr. Usagawa defined what the terms "sustainable yield" and "permitted uses" meant and described how various permitted uses and implemented water conservation systems and methods were used in water supply/demand calculations for actual and "permitted" uses.

OP

Mr. Yee had no questions.

Intervenor-FOM

Chair Lezy commented that though FOM did not initially involve water related issues, he would allow limited questions.

Dr. Dudley requested clarification on the Petition Area's brackish water supply and other sources including desalinized water and how droughts and rising sea levels might impact wells and recharge capabilities for those water supplies. Mr. Usagawa provided his perspective of how future water supply sources would be impacted by rising sea levels, additional neighborhood developments and desalinization plants; and how alternative water sources would need to be developed to cope with rising demands and costs.

FOM had no further questions.

Intervenor- The Sierra Club

Ms. Cerullo requested clarification on water source availability for developments in the Ewa region and what water conservation measures were being implemented. Mr. Usagawa described how water permitting, better water conservation devices and irrigation practices, development phasing and demand for water would need to be considered before new, additional water sources were developed.

Ms. Cerullo requested clarification on whether the water issues for the proposed Castle & Cooke Homes Hawaii development at Koa Ridge matched or would parallel those for the proposed project. Mr. Usagawa stated that both (Please refer to LUC Transcript for more details on this matter)

developments were residential sub-divisions and would share the same aquifer requiring similar water conservation measures, permitting and non-potable systems if a non-potable source was identified.

Ms. Cerullo requested clarification on whether alternative farm lands had adequate water supplies. Mr. Usagawa responded that he did not know and opined that the existing irrigation systems were based on an aging infrastructure that he was not familiar with.

The Sierra Club had no further questions.

Intervenor - Clayton Hee

Mr. Seitz requested clarification on who was responsible for supplying water to the North Shore irrigation system that serviced the agricultural areas in the region. Mr. Usagawa suggested checking with the State Commission on Water Resource Management and the Department of Agriculture; and described how private water resources needed to be sought to provide for the North Shore by those agencies to adequately provide for area water needs.

There were no further questions from Mr. Seitz

Redirect

None

LUC Commissioners

Commissioner McDonald requested clarification on what effects the proposed project would have to communities on the west coast of Oahu if the Petition were granted. Mr. Usagawa replied that BWS did not expect west communities to be impacted since they shared a different water source and described how a 25,000 gallon limit moratorium had been imposed till another pump was installed in a line booster station for the area to increase that capacity.

Commissioner Heller requested clarification on whether it would be significantly easier to supply the same amount of water that would be provided to the proposed project if it were located in a different location on Oahu. Mr. Usagawa described how the BWS anticipated and prepared for the future growth in the area in expectation of the proposed projects were built.

Commissioner Heller also asked whether agricultural water needs would be similarly impacted by a change in location. Mr. Usagawa replied that he was not an agriculture expert and did not know.

Chair Lezy requested clarification on what the water demand would be for the Petition Area if it remained in agriculture or if it were classified “urban”; and what types of water quality could be expected. Mr. Usagawa described why the water demand would be approximately the same whether the land remained in agriculture or were reclassified “urban” and what types of water qualities might be found in the Petition Area.

There were no further questions for Mr. Usagawa. Ms. Takeuchi-Apuna stated that she had no more witnesses and reserved time for rebuttal.

Chair Lezy acknowledged County’s remarks and called for the State Office of Planning’s to begin its case.

OP Witnesses

1. Heide Meeker- Department of Education

Ms. Meeker described the negotiations that had been conducted with Petitioner and articulated what agreements were made regarding the Petitioner’s providing land for schools and relocating the proposed site for the high school that was planned for the Petition Area.

Questions for Ms. Meeker:

Mr. Kudo and Ms. Takeuchi-Apuna had no questions.

FOM

Dr. Dudley asked how many schools would be built in the Petition Area and whether Ms. Meeker was aware of the City’s requirements defined in the Oahu General Plan for new developments to pay for all essential community services. Ms. Meeker responded that 3 elementary, 1 middle and 1 high school were planned for the proposed project on land donated by the Petitioner, with the school structures to be built by funds appropriated by the State Legislature; and that she was not aware of the Oahu General Plan requirements.

FOM had no further questions.

Commissioner Teves excused himself at 1:39 p.m. and returned at 1:41 p.m.

Commissioner Matsumura excused himself at 1:40 p.m. and returned at 1:42 p.m.

Commissioner Judge excused herself at 1:42 p.m. and returned at 1:43 p.m.

The Sierra Club and Clayton Hee

Ms. Cerullo and Mr. Seitz had no questions.

Redirect

Mr. Yee had no redirect.

LUC Commissioners

The LUC Commissioners had no questions.

Chair Lezy declared a recess at 1:43 p.m. and reconvened the meeting at 2 p.m.

Chair Lezy announced that, as mentioned in the opening remarks, public testimony would be taken and deferred OP's presentation until completion of the public testimony.

PUBLIC WITNESSES

1. Pearl Johnson

Ms. Johnson submitted written testimony on behalf of the League of Women Voters and provided her opinion of why the Petition should not be granted.

There were no questions for Ms. Johnson.

2. Jarrean Kaikaina

Ms. Kaikaina shared her reasons for supporting the proposed project.

There were no questions for Ms. Kaikaina.

3. Mitchell Shimabukuro

Mr. Shimabukuro stated that he was a long-time area resident and expressed why he supported the proposed project.

There were no questions for Mr. Shimabukuro.

4. Donovan Lewis

Mr. Lewis provided written testimony and described why he supported the proposed project.

There were no questions for Mr. Lewis.

5. Georgette Stevens

Ms. Stevens stated that she was a member of the Hoopili Task Force and provided her reasons for supporting the proposed project.

There were no questions for Ms. Stevens.

6. Victoria Cannon

Ms. Cannon described the number of approved housing units already granted in the region and shared why she felt that the Petitioner could not mitigate any of the negative impacts that the proposed project posed.

There were no questions for Ms. Cannon.

7. Thad Spreg

Mr. Spreg shared the reasons why he opposed the Petition due to the incomplete information provided to the Commission.

There were no questions for Mr. Spreg.

There were no other public witnesses.

Chair Lezy announced the resumption of OP testimony and called for the next OP witness.

OP Witnesses (continued)

2. Russell Kokubun- Chair, Department of Agriculture.

Chair Kokubun stated that the DOA did not object to the Petition and the proposed project and described the concerns, investigations, findings, discussions and agreements to conditions that were part of the negotiation process with Petitioner to arrive at the DOA's position. Chair Kokubun also described how the proposed project's Urban Agricultural Initiative had been examined and included in the commitments the DOA had requested of the Petitioner, along with other considerations for sustaining farming operations in the area and transitioning agricultural efforts to other areas during the development of the proposed project

Questions for Chair Kokubun:

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Petitioner and DPP had no questions.

Intervenor- Clayton Hee

Mr. Seitz requested clarification of Chair Kokubun's interaction with the Parties and on various aspects of Chair Kokubun's involvement with agriculture on a personal and professional level. Chair Kokubun described the levels of contact that he had with the Parties regarding the Petition and what his personal and professional involvement with agriculture had been; and how he had been involved with Important Agricultural Land legislation and Food Sustainability issues as a legislator and government official.

Mr. Seitz requested clarification of government efforts to ensure agriculture could remain viable and that productive agricultural land would continue to be available to the farming industry on Oahu. Chair Kokubun described the various alternatives and choices that had been made by his department to foster the continuation of the agricultural industry.

Mr. Seitz requested clarification on why a letter from DOA's past Chair Sandra Kunimoto stated a different DOA position than what the current position was. Chair Kokubun described the various factors that had contributed to the change in the DOA's position since the letter from past-Chair Kunimoto was submitted; and how conflicts in the suitability of the lands to qualify for IAL designation and the overlay of City and County designations could be resolved; and how IAL legislation at various County levels was being implemented.

Mr. Seitz requested clarification on Chair Kokubun's familiarity with the Petition Area agricultural characteristics and the Urban Agricultural Initiatives planned for the proposed project. Chair Kokubun replied that he had looked at maps of the area but otherwise was not that familiar with the area and expressed his awareness of how the proposed urban agricultural features of civic farms and existing farm operations were evaluated and stipulated to by his department.

Mr. Seitz requested clarification on how food sustainability issues were addressed by the DOA. Chair Kokubun provided his perspective of how the DOA planned to handle situations where food sustainability were threatened by continuing to seek developable farm lands; and restated how the DOA supported the Petition.

Mr. Seitz had no further questions.

Intervenor-The Sierra Club had no questions.

Intervenor- FOM

Dr. Dudley requested clarification on Chair Kokubun's perspective of the Urban Agricultural Initiative and the proposed handling of soils in the area to accommodate development. Chair Kokubun responded that he was not aware of the Petition Area land features that Dr. Dudley described and how the Petitioner would provide soil to support the Urban Agricultural Initiative. Chair Kokubun also described how land dedicated for civic farms would be evaluated and replaced if necessary; and how the DOA had affirmed the representations made by the Petitioner in its agreement. Chair Kokubun remarked that he had no reason to question Petitioner's intent to fulfill its part of the agreement and provide the necessary acreage of land to meet its obligation.

Redirect:

Mr. Yee requested clarification on how Chair Kokubun had conducted the topographic map review of the Petition Area when the civic farm land areas were determined; and how IAL legislation had progressed since its approval by the Legislature. Chair Kokubun acknowledged that he and/or his staff had reviewed and assessed the proposed project plans to prepare for their meetings with Petitioner and that serious consideration should be given to provide a condition in the Petition to address the civic farm issue. Chair Kokubun also acknowledged that there was a period of time when counties were not allowed to request IAL designations after the Legislature had enacted the legislation that may have contributed to the time lag from the enactment of IAL legislation to its actual implementation.

Mr. Yee requested clarification on when and how the State had acquired the Galbraith estate for additional agricultural land. Chair Kokubun acknowledged that an agreement to acquire the Galbraith lands was done in 2008 and that the DOA is currently preparing to move forward with the purchase after securing the necessary funding.

Mr. Yee requested clarification on the phasing of the proposed project and how farm operations currently in the Petition Area could be transferred to replacement lands. Chair Kokubun acknowledged that the proposed project could span 20 years and described how the phasing of farm operations and preparation of replacement land soils would occur.

LUC Commissioner Questions:

Commissioner Heller requested clarification on the amount and availability of other agricultural land on Oahu that was not actively being farmed. Chair Kokubun responded that he did not know and could provide an “educated guess” later. Commissioner Heller noted that he thought that knowing the amount of ALISH “A” and “B” rated lands that was not actively being farmed would be useful information

Commissioner Judge requested clarification on where the Galbraith Estate was located and what the quality of its soils were. Chair Kokubun described the location and features of the estate and what other agencies were involved with its acquisition and infrastructure preparation; and responded that he believed that the soils were rated “A” and if not, then certainly “B”.

Commissioner Chock requested clarification on the total amount of agricultural land acreage in the State and how much was required for State consumption. Chair Kokubun estimated that over a million acres were designated agricultural and described how advancements in technology and farming techniques had altered the productivity potential of the lands so that deep soil areas were no longer necessary, and that these impacts had significantly changed how soil quality ratings related to productivity.

Chair Lezy requested clarification on the intent of future DOA plans for the Galbraith lands. Chair Kokubun described how DOA perceived using the land and was preparing water source and transmission infrastructure to support the area.

Chair Lezy also requested clarification on what say the DOA would have regarding the designated “civic farms” in the urban agricultural lands in the Petition Area in its agreement with Petitioner. Chair Kokubun described the scope of the existing agreement and what terms and conditions would apply.

Chair Lezy requested clarification on Ms. Kunimoto’s status. Chair Kokubun replied that she was no longer with the department and that although he had not (Please refer to LUC Transcript for more details on this matter)

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had a personal conversation with her, he had spoken to DOA staff knowledgeable of the considerations and conditions that factored in the initial DOA position letter.

Chair Lezy requested clarification on whether there were similarly farmed areas in Hawaii that existed in heavily urbanized districts. Chair Kokubun could not identify similar areas and described the unique factors that were considered during the DOA decision-making processes on the Petition Area.

Chair Lezy declared a recess at 3:22 p.m. and the meeting reconvened at 3:28 p.m.

Commissioner Judge moved for an Executive Session. Commissioner McDonald seconded the motion. By a unanimous verbal vote (8-0) the Commission elected to enter into Executive Session at 3:30 p.m.

The Commission reconvened the meeting at 4:40 p.m. and recessed for the day at 4:41 p.m.