

LAND USE COMMISSION
MEETING MINUTES

March 15, 2012

Leiopapa A Kamehameha, Conference Room 204, 2nd Floor
235 South Beretania Street, Honolulu, Hawai`i

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Normand Lezy
Ronald Heller
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Jaye Napua Makua
Thomas Contrades
Lisa Judge
Ernest Matsumura

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Commissioner Chock moved to approve the minutes. Commissioner Heller seconded the motion. The minutes were unanimously approved by voice votes (5-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- Upcoming meetings will involve one day travel to Maui on April 4 and returning to Honolulu on April 5, 2012. The meeting is planned to require the Commission to have lunch onsite to facilitate the timely completion of docket business.

There were no questions or comments regarding the tentative meeting schedule.

Chair Lezy announced that DocketA11-793 would be deferred to a later date due to quorum issues.

CONTINUED HEARING

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., Naomi Kuwaye, Esq. and Yuko Funaki, Esq., represented Petitioner D.R. Horton-Schuler Homes, LLC

Cameron Nekota, D.R. Horton-Schuler Homes, LLC

Krishna Jayaram, 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

Elizabeth Dunne, Esq., represented Intervenor The Sierra Club

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

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

Chair Lezy updated the record, described the procedures for the proceedings, and announced that public testimony for A06-771 would be taken on March 16, 2012 at 2 p.m. and that the A11-793 Castle & Cooke Homes Hawaii Inc. docket would be deferred to a later date due to lack of quorum.

Dr. Dudley stated that his witness, Tom Coffman, would be appearing on March 16, 2012 due to minor surgery. Chair Lezy acknowledged Dr. Dudley's notice. There were no objections to the rescheduling of Mr. Coffman's appearance before the Commission. Chair Lezy announced that it was his intention to close the evidentiary portion of the A06-771 Docket on March 16, 2012.

There were no questions or comments regarding the procedures. Chair Lezy announced that there would be an additional witness from DPP to respond to questions from Intervenor Senator Hee due to correspondence between DPP and Intervenor Hee. Mr. Seitz acknowledged that the DPP witness was present and ready to testify after the regular scheduled witnesses.

INTERVENOR- SENATOR HEE WITNESSES

1. Former Governor John Waihee

Former Governor Waihee described his personal background and experience in government; and what his administration's goals and objectives were regarding the agricultural industry and protecting prime agricultural land.

Questions for Governor Waihee

Petitioner-

Mr. Kudo requested clarification on Governor Waihee's support for various developments that were approved and constructed before, during and after his term in office. Governor Waihee described how and why he

initially supported the Second City concept; how the Office of Planning was created and involved in the regional development issues; why balance needed to be restored to the land use approval process; how he perceived the Ewa master plan and affordable housing; and why housing development and protecting agricultural lands needed to be reassessed and evaluated to ensure that sustainability concerns were properly addressed.

Questions for Former Governor Waihee

DPP had no questions.

OP-

Mr. Yee requested clarification on what “Con-con” provision Former Governor Waihee was referring to in his testimony. Governor Waihee responded that he was referring to Important Agricultural Land (IAL) legislation that was initiated to protect prime agricultural land.

FOM-

Dr. Dudley requested clarification on Former Governor Waihee’s perspective of what the State’s role was in the development of the Ewa plains. Governor Waihee described his administration’s attempts to facilitate Ewa development and the second city concept by attempting to create integrated communities with business and residential features that would make it a desirable area and preserve the landscape.

Dr. Dudley also requested clarification on Governor Waihee’s perception of equal land value and affordable housing. Governor Waihee described why higher affordable housing percentage requirements had been used for proposed projects during his administration and how conditions for affordable housing requirements had changed since his time in office; and why the Commission needed to carefully consider more than land use factors during its decision-making.

The Sierra Club, Senator Hee and the Commission had no questions. Chair Lezy shared the Commission’s experience with reverting

an urban land use designation back to agriculture. Governor Waihee acknowledged that the Commission had a difficult task.

There were no further questions for Gov. Waihee.

2. Former Governor Benjamin J. Cayetano

Former Governor Cayetano described how his administration attempted to satisfy the water needs of small farmers and ensure food security and sustainability; and expressed his concerns about the need to preserve and protect prime agricultural land in the Petition Area.

There were no questions for Former Governor Cayetano.

3. Senator Clayton Hee

Senator Hee described his background and interests in agriculture and food security; and his reasons for intervening in the docket. He stated that he felt that Hawai`i/O`ahu had reached a “tipping point” and voiced why preserving the Petition Area for agriculture was so important to him. Senator Hee referred to his Exhibit 61B (the Ariyoshi paper-Hawaii-The First Fifty Years-The Next Fifty Years) and commented on why the LUC should review its role and recalled the questions that several Commissioners had been asked during their confirmation process and reminded the Commission of its duty to the State when deciding on the Petition.

There were no questions for Senator Hee.

The Commission went into recess at 10:33 a.m. and reconvened at 10:48 a.m.

Chair Lezy stated that Kathy Sokugawa of DPP was appearing as the Commission’s witness to clarify the exchange of written correspondence regarding City Council Resolution 12-23 between the Intervenors Clayton Hee and The Sierra Club, and DPP.

Commission Witness

1. Kathy Sokugawa- DPP

Ms. Sokugawa described her perspective of why she was appearing before the Commission and on how the DPP reacted and responded to Resolution No. 12-23.

Mr. Seitz requested clarification on what impact Resolution 12-23 would have on the proceedings regarding A06-771 and on the City's position on urban growth boundaries and how they related to the identification of important agricultural lands (IAL). Ms. Sokugawa shared why the Resolution would not alter DPP's current position and past testimonies regarding the Petition Area and described different City approval scenarios and possibilities that might develop if future determinations were made that were different from those currently in place for urban growth boundaries and important agricultural land identification. Ms. Sokugawa stated DPP was still at the initial stages of preparing to identify IAL and described how she perceived the IAL identification process outcomes would affect the City and County's plans.

Questions

Petitioner and DPP had no questions.

OP-

Mr. Yee requested clarification on the official decision-making process for IAL designation that DPP planned to implement. Ms. Sokugawa provided further details about how the DPP identification plan would progress through the City's agencies and stated that a consultant had been hired to help with the process.

Mr. Yee asked if meeting the stated April 1, 2012 resolution status report deadline was possible. Ms. Sokugawa responded that it was unlikely and that reviewing remaining agricultural land currently within urban growth boundaries was not a priority; and described how the Ewa Development Plan would have to be revised, altered and re-approved if changes were required to accommodate IAL designations.

FOM-

Dr. Dudley requested clarification on how Ms. Sokugawa perceived making revisions to the Ewa Development Plan; and what the purpose

and intent of Resolution No. 12-23 was and how it applied to DPP matters before the Commission. Ms. Sokugawa described her perception of the resolution's requirements; and her recollection of what transpired at the City Council committee meeting where the resolution was discussed and what actions were required of Laura Thielen by the City Council.

THE SIERRA CLUB

Ms. Dunne requested clarification on whether lands in the Petition Area could be designated IAL by DPP after the identification process. Ms. Sokugawa responded that from a planner's perspective, unless the Ewa Development Plan (EDP) were changed during the process, it would not be possible.

Ms. Dunne requested clarification on whether the EDP could still be changed since it was undergoing an update process. Ms. Sokugawa described how amendments to the EDP could be entertained by the City up until final adoption.

SENATOR HEE-

Mr. Seitz had no questions.

COMMISSIONERS

Commissioner Heller requested clarification on how the expedited process referred to in the resolution could be implemented. Ms. Sokugawa estimated that a year's time line might be necessary.

Chair Lezy asked what practical effect the DPP resolution was expected to have. Ms. Sokugawa responded that the DPP would take the resolution to heart and attempt to comply with its spirit although there may be changes to the timing involved.

There were no further questions for Ms. Sokugawa.

Chair Lezy announced that the A06-771 docket would continue at 9:00 a.m., March 16, 2012 and entertained a motion for an Executive Session.

Commissioner Chock moved and Commissioner Heller seconded the motion for Executive Session; and by voice vote (5-0) the Commission elected to enter Executive Session at 11:25 a.m.

The Commission reconvened at 11:40 a.m. and went into recess immediately thereafter.