

LAND USE COMMISSION
MEETING MINUTES

March 16, 2012

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

COMMISSIONERS PRESENT: Chad McDonald
Normand Lezy
Ronald Heller
Nicholas Teves, Jr.
Ernest Matsumura

COMMISSIONERS ABSENT: Jaye Napua Makua
Thomas Contrades
Lisa Judge
Kyle Chock

STAFF PRESENT: Orlando Davidson, Executive Officer
Sarah Hirakami, Deputy Attorney General
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 9:04 a.m.

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)
Elizabeth Dunne, Esq., represented Intervenor The Sierra Club
Eric Seitz, Esq. and Sarah Devine, Esq., represented Intervenor Clayton Hee

Chair Lezy reviewed the remaining witnesses that were to appear before the Commission with the Parties and confirmed that the sequence of witnesses would begin with FOM's Paul Brewbaker, The Sierra Club's Jonathan Deenik, FOM's Tom Coffman and Petitioner's Rebuttal Witness, Tom Nance. Chair Lezy also asked if Senator Hee had concluded the evidentiary portion of its case and Mr. Seitz responded that he had.

Chair Lezy then recognized and approved a request from State Senator Wil Espero to testify before the scheduled public testimony time due to his legislative responsibilities and time constraints.

PUBLIC WITNESS

1. State Senator Wil Espero

Senator Espero described his past work experience and read his submitted written testimony in support of the Petition for the Commission.

There were no questions for Senator Espero.

INTERVENOR FOM WITNESS

1. Paul Brewbaker- Economics Expert

Dr. Brewbaker described his professional background and professional affiliations and provided his perspective on the economic aspects of proposed project.

Dr. Dudley requested clarification of the function of cities and Dr. Brewbaker's perspective of how the second city concept evolved. Dr. Brewbaker described how cities were agglomerations of economic activity and how distance to cities from farther locales and natural boundaries affected this activity: and voiced his familiarity with the early Campbell Estate plans for the Ewa plain. Dr. Brewbaker described how a segregated second city had been originally envisioned and how it had deteriorated to a continuous urban zone since Honolulu and Kapolei were supposed to be two distinct cities separated by green space, not more urban development.

Dr. Dudley asked if Dr. Brewbaker thought that public policy which allowed building on prime agricultural land was appropriate. Dr. Brewbaker stated that it was more sensible to use the least desirable agricultural land first (if agricultural land had to be used); and that the rational extension of the city should respect boundaries to preserve natural resources; and consider retaining "option value" (the ability to manage uncertainty) with the land-to keep options open to adapt to rising energy costs, food security issues and other possible consequences.

Dr. Brewbaker described how the most efficient way to provide for housing needs was to consider using a commute time of one hour as a gauge and determine how the urban core could accommodate this time segment in ways that made economic sense. Dr. Brewbaker described how economies of scale, infrastructure capacity

improvements and building within existing urban boundaries could help get workers back on the job and benefit the public. Dr. Brewbaker stated that he believed that the urban boundaries had reached their maximum and that further development could impair their functionality and expected urban economic benefits.

Questions

Petitioner

Mr. Kudo requested clarification on past, present and future economic cycles and the state of construction today in Hawaii. Dr. Brewbaker described the decline in the last 3 construction cycles and how he anticipated an upward turn in the future fueled by rising real estate valuations; and how he perceived land entitlements as “call options”.

Dr. Brewbaker also described why the LUC should look beyond economics and how he envisioned 21st century urbanization with higher densities in the primary urban core.

DPP and OP had no questions.

The Sierra Club

Ms. Dunne requested clarification of how to develop more affordable homes in the urban core and whether the proposed project was necessary for urban growth. Dr. Brewbaker described how land, labor & materials, and land entitlements comprised the major costs for developing property and how the entitlements portion could be changed to lower costs and increase affordability; and why preserving prime agricultural land and seeking alternate project sites for urban growth was important.

Senator Hee-

Mr. Seitz requested clarification on how higher land costs in the urban core could be offset and how government could facilitate

matters. Dr. Brewbaker described how he expected the expediting of the permit and approval process by government agencies could reduce costs and how urban core development had garnered support from the current administration; and how his perception of affordable housing differed from how it was defined for project development proposal standards.

Mr. Seitz requested clarification on how Dr. Brewbaker perceived the accuracy of Mr. Plasch's report to the Commission. Dr. Brewbaker stated that he differed in opinion on job creation and on the argument that agricultural activity could be moved to other agricultural land and described a project should not be allowed to happen based on those factors since jobs would occur anywhere construction occurs and that housing activity can also occur on other urban land or by using lesser quality agricultural land first.

Redirect-

Dr. Dudley requested clarification on how the entitlement portion could help lower costs for urban core development. Dr. Brewbaker provided further details of how government agencies should adopt a better "gatekeeper"/planner approach in their approval and permitting processes for urban districts.

Commissioner Questions

Commissioner Heller requested clarification on how the described externalities of congestion and travel commute time would affect the proposed project and its potential residents. Dr. Brewbaker shared his perception of how his city agglomeration argument would apply under different development circumstances and why congestion needed to be well-managed as it occurred.

Commissioner Matsumura requested clarification on what the economic impact to state would be if agriculture was deemphasized.

Dr. Brewbaker described what he thought the economic loss would be

and cautioned that the irreversibility aspect of that decision needed to be strongly considered.

Chair Lezy requested clarification on the concept of driving residential development into the urban core and on what would be the motivation to cause such relocation and what the magnitude of future residential demand would be. Dr. Brewbaker voiced how he did not want the decision to be a forced choice with no options and described how historical changes in demographics, technology, urban mobility and social behavior indicated that a reversal of urban growth and a return to the urban core was occurring; and how, by estimating demographic growth and immigration rates and creating demand profiles, different compositions of housing could be provided.

The Commission went into recess at 10:35 a.m. and reconvened at 10:55 a.m.

INTERVENOR THE SIERRA CLUB

1. Jonathan Deenik- Soil Scientist

Dr. Deenik was offered and admitted as a soil fertility and quality expert and described his professional background and familiarity with the Petition Area; and provided his assessment of why the soil conditions of the Petition Area were extraordinary. Dr. Deenik stated that it would take a minimum of ten thousand years to recreate the quality of soils that existed in the Petition Area elsewhere and described why the Petition Area soils were for unsuitable urbanization building sites and why they were so valuable for farming.

There were no questions for Dr. Deenik.

Chair Lezy asked if The Sierra Club had completed the evidentiary portion of its case. Ms. Dunne replied that it had.

INTERVENOR FOM WITNESS- Tom Coffman

Please refer to LUC Transcript for more details on this matter)
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Prior to Mr. Coffman's testimony, discussion ensued on whether the slides that were part of his PowerPoint presentation had been admitted into evidence. Dr. Dudley argued that the slides had been admitted and requested a recess to confirm and organize his presentation. Chair Lezy granted the request and the Commission went into recess at 11:07 a.m. and reconvened at 11:10 a.m.

Dr. Dudley described how the admitted exhibits would be shown in the PowerPoint presentation and Chair Lezy acknowledged that their use was allowed.

2. Tom Coffman-Expert in Contemporary History of Hawaii

Mr. Coffman described his professional background and his past work relationship with the Campbell estate; and the efforts he had contributed towards marketing the second city concept. Mr. Coffman provided his perspective of how the original development plan portrayed Honolulu and Kapolei as two distinct and separate cities separated by green space with distinct boundaries and how the later versions of the plan had melded the urban areas together.

Mr. Coffman stated that he felt that the Public's trust had been violated since the original plan had changed drastically from what had gained the second city approval in the beginning, and described how the Kapolei area still had not achieved full development. Mr. Coffman also described his familiarity with why the Land Use Commission was created and what its governmental role was in determining land use designations; and why the City and County plans should be critically reviewed since the City could lose future potential tax revenue if the Petition Area remained undeveloped.

Questions

Petitioner

Mr. Kudo requested clarification on the second city presentation work Mr. Coffman had done for Campbell estate. Mr. Coffman described the nature of his work, what its content was; what it was designed to accomplish; and who its intended audience was. Mr. Kudo asserted that parts of Mr. Coffman's film work contained information from the City indicating proposed urbanization of agricultural land. Mr. Coffman

disputed the assertion and discussion ensued over what had been represented in the Campbell Estate presentations.

Mr. Kudo requested clarification on the research and considerations made for the content of the Campbell Estate presentations. Mr. Coffman described how he had focused the presentation for State and community groups and highlighted important points relative to this audience and not for City concerns and discussion ensued on what the content of the presentations consisted of.

There were no other questions.

Redirect-

There was no redirect.

Commissioner Questions

Commissioner Heller requested clarification on Mr. Coffman's remarks about the City having a pro-development bias to increase its tax revenues and whether it was possible for the City Council to increase taxes for agricultural land. Mr. Coffman described why he perceived the City with having a pro-development bias since real property taxes could be derived from the new developments and acknowledged that the City could change its ordinances and restructure its taxing methods.

Chair Lezy asked if FOM had concluded its presentation and its evidentiary portion of the case. Dr. Dudley responded that he had.

The commission went into recess at 12:02 p.m. and reconvened at 1:15 p.m.

REBUTTAL WITNESS(ES)

1. Tom Nance

Mr. Kudo stated that Mr. Nance was appearing as a rebuttal witness for Michael Lee, Dr. Giambelluca, and William Tam.

Please refer to LUC Transcript for more details on this matter)
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Regarding Michael Lee's Testimony –

Mr. Nance described his understanding of karsts and karst caves in Petition Area to rebut Mr. Lee's claim that they existed. He expressed that his exploration and findings regarding the subterranean features of the Petition Area did not indicate that karst formations as described by Mr. Lee existed. Mr. Nance also described additional findings that revealed how water in the Koolau mountain range percolated into separate windward and leeward aquifers; how drainage did not impact Mr. Lee's limu practice since runoff could not reach the shoreline; and how improved retention/detention barriers and storage basins contributed to preventing surface runoff from reaching the shoreline and helped groundwater recharge.

Regarding Testimonies of Dr. Tom Giambelluca and William Tam

Mr. Nance described the Ewa cap rock and area features that Mr. Tam had described during his testimony and provided additional details of what would happen to groundwater recharge in the Petition Area and how available resources could provide sustained yields to accommodate water demands of the area in the future.

Mr. Nance stated that his rainfall data findings were not consistent with the data that Dr. Giambelluca and Mr. Tam's concerns about rainfall reduction were based on and that his findings indicated that the Petition Area had ample water to supply its needs and that additional allocated supplies would not be necessary.

Questions

DPP and OP had no questions.

FOM-

Dr. Dudley requested clarification on the future water need calculations for the leeward area and why Dr. Nance's testimony had changed regarding aquifer supplies and reliance on desalinization for

different areas. Dr. Nance described the methodology and criteria he had used in his studies and provided additional details regarding water availability for the region and why he had suggested desalinization as a water resource alternative.

The Sierra Club

Ms. Dunne requested clarification on how past and current findings regarding water resources differed. Mr. Nance described how some of his assumptions had been made in the absence of real field data and how evidence discovered during well drilling had provided more information that allowed him to provide more current and accurate findings; and what his understanding of future plans to provide water for the region entailed.

Senator Hee-

Mr. Seitz had no questions.

Redirect

There was no redirect.

Commissioner Questions

Commissioner McDonald requested clarification on where existing wells in the Petition Area were located and to what depths they were being drilled. Mr. Nance described why the various wells had been located in different portions of the Petition Area and stated that the wells were drilled to the depths of 300-400 feet.

There were no further questions for Mr. Nance.

Mr. Kudo confirmed that he had no additional witnesses, and that Petitioner had completed the evidentiary portion of its case.

Chair Lezy announced that public testimony would be taken from those present in the order that their names were entered on the sign-up sheet till the posted start time and that public testimony would be taken up till 3:30 p.m. due to Commissioner airline travel plans and that any

remaining public testifiers would be deferred till the next hearing on this docket.

PUBLIC WITNESSES

2. Pearl Johnson-

Ms. Johnson shared her opinion of what the LUC's decision-making authority was and why the Petition should not be granted.

There were no questions for Ms. Johnson.

3. Victoria Cannon-

Ms. Cannon stated that she would be-submitting a petition with 6,661 signatures opposing the Petition and described why the effort to collect the signatures was made.

There were no questions for Ms. Cannon.

4. Charlie Reppun-

Mr. Reppun submitted written testimony and described why he opposed urbanization.

There were no questions for Mr. Reppun.

5. Arlene Webb-

Ms. Webb stated that she had taken the bus to specially appear to testify in opposition and described her concerns about granting the Petition.

There were no questions for Ms. Webb.

6. David Hulihee-Chair CEO Grace Pacific

Mr. Hulihee described why he and his company supported the Petition.

There were no questions for Mr. Hulihee.

7. Fred Lau

Mr. Lau stated that he was a farmer and described the benefits of urban farming and his aquaponics farming experience. Mr. Lau stated that he would like to work with DR Horton and supported the Petition.

There were no questions for Mr. Lau.

8. Robert Yonioka

Mr. Yonioka described why he supported the proposed project.

There were no questions for Mr. Yonioka.

9 Alice D. Fisher

Ms. Fisher described her concerns about granting the Petition and stated that she opposed the proposed project.

There were no questions for Ms. Fisher.

10 Glenn Yamasaki

Mr. Yamasaki described his concerns about food security and sustainability and voiced his opposition to the Petition.

There were no questions for Mr. Yamasaki.

11. Mark Darangchang

Mr. Darangchang read his testimony in support of the Petition.

There were no questions for Mr. Darangchang.

The Commission went into recess at 2:28 p.m. and reconvened at 2:35 p.m.

12. Leatrice Grantham

Ms. Grantham expressed her support for the proposed project.

There were no questions for Ms. Grantham.

13. Clyde Hayashi

Mr. Hayashi provided his reasons for supporting the Petition.

There were no questions for Mr. Hayashi.

14. Adam Bensley

Mr. Bensley described why he opposed the proposed project.

There were no questions for Mr. Bensley.

15. Thomas Ramos

Mr. Ramos described why he supported the second city Kapolei concept and the proposed project.

There were no questions for Mr. Ramos.

16. Jeanine Clifford

Ms. Clifford described her past experiences with working with the Petitioner on community matters and why she supported the Petition.

There were no questions for Ms. Clifford.

17. Georgette Stevens

Ms. Stevens stated that she had been a member of the Hoopili Task Force and described why she supported the Petition.

There were no questions for Ms. Stevens.

18. Matthew Stuckey

Mr. Stuckey voiced his opposition to the Petition.

There were no questions for Mr. Stuckey.

19. Phyllis Kacher

Ms. Kacher voiced her support for the Petition.

Ms. Dunne asked if Ms. Kacher was aware of pending class action law suits against the Petitioner. Ms. Kacher acknowledged that she was aware that developers incur law suits.

There were no further questions for Ms. Kacher.

20. Maeda Timson

Ms. Timson expressed her support for the Petition and displayed a cart filled with cards supporting the proposed project.

There were no questions for Ms. Timson.

21. Jeannie Vana-North Shore Farms/ Waialua Farms Co-op

Ms. Vana stated that she was a small farmer who had been looking for land and described why she opposed the petition.

There were no questions for Ms. Vana.

22. Jeannie Vana-President representing West Oahu County Farm Bureau

Ms. Vana read testimony from the West Oahu County Farm Bureau opposing the proposed project.

FOM-

Dr. Dudley requested clarification on how the organization that Ms. Vana was testifying for was structured. Ms. Vana restated that she was representing the West Oahu Farm Bureau and described how the Hawaii Farm Bureau Federation was organized and why her group had taken its position.

There were no further questions for Ms. Vana.

Chair Lezy announced that public testimony would be suspended with the remaining four witnesses being scheduled to go first at the next meeting on this docket to allow the Commission to conclude the Parties' evidentiary portion of the docket and schedule the submission of their filings.

Chair Lezy directed that each party file its proposal with the Commission and serve copies on the other parties no later than the close of business on April 13, 2012; and that all comments or objections to the parties' respective proposals shall be filed with the Commission and served upon the other parties no later than the close of business on April 27, 2012; and any responses to the objections must be filed with the Commission and service on the other parties no later than the close of business on May 7, 2012. Chair Lezy prevailed upon the parties to consult with staff early in the process to ensure that technical and non-substantive formatting protocols observed by the Commission are adhered to; and that oral arguments would be scheduled after receipt of the parties' respective filings.

Mr. Yee requested that OP be excused from filing its proposed Decision and Order on April 13, 2012, and would file its comments and objections on April 27, 2012 and waive its ability to file its response on May 7, 2012. Chair Lezy acknowledged Mr. Yee's request and asked for a motion to waive Commission submittal rules for OP. Commissioner Heller moved to waive the submittal rules and accommodate Mr. Yee's request. Commissioner McDonald seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Heller, McDonald, Teves, Matsumura, and Chair Lezy.

Nays: None

The motion passed 5-0 with 4 excused.

Chair Lezy thanked the audience for their patience and understanding for the suspension of public testimony and thanked the Parties for their efforts to close the evidentiary portion of the hearing.

There being no further business, the Commission adjourned at 3:27 p.m.

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

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