

LAND USE COMMISSION
MEETING MINUTES

June 7, 2012 – 9:00 a.m.

Leiopapa A Kamehameha, Conference Room 204, Second Floor
235 South Beretania Street, Honolulu, Hawai`i 96804

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Lisa Judge
Jaye Napua Makua
Chad McDonald
Nicholas Teves, Jr.
Normand Lezy

COMMISSIONERS EXCUSED: Ernest Matsumura
Ronald Heller

STAFF PRESENT: Daniel Orodener, Executive Officer
Sarah Hirakami, Deputy Attorney General
Bert Saruwatari, Staff Planner/Presiding Meeting
Officer
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 9:10 a.m.

ADOPTION OF ORDER

DR12-46, James Spencer and Pamela V. Spencer

Chair Lezy announced that this was an action meeting on Docket No. DR12-46 to approve the form of the order in this matter and updated the record.

PUBLIC WITNESSES

None

APPEARANCES

Sean Smith, Esq., represented Petitioner- James Spencer and Pamela V. Spencer
No representative for the County of Hawaii Planning Department (County) was present.

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

Chair Lezy described the procedures to be followed for the hearing. There were no questions, comments or objections to the procedures.

Commissioner Judge excused herself at 9:12 a.m. and returned at 9:14 a.m.

Chair Lezy announced that he would entertain a motion to approve the order.
Commissioner McDonald moved and Commissioner Contrades seconded the motion to approve the form of the order for DR12-46. There was no discussion.

The Commission voted as follows:

Ayes: Commissioners McDonald, Contrades, Judge, Chock, Makua, Teves, and Chair Lezy

Nays: None

The Motion passed 7-0 with 2 excused

ORAL ARGUMENT AND DECISION MAKING

A11-793 Castle & Cooke Homes Hawaii Inc. (OAHU)

Chair Lezy announced that this was Oral Argument and Decision Making on Docket No. A11-793 to amend the Agricultural Land Use District Boundary into the Urban District for approximately 767.649 acres at Waipio and Waiawa, Island of Oahu, State of Hawaii.

APPEARANCES

Benjamin Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq., represented Castle & Cooke Homes Inc.

Laura Kodama, Castle & Cooke Homes, Inc.

Don Kitaoka, Esq., represented City and County of Honolulu
Department of Planning and Permitting (DPP)

Mike Watkins, Department of Planning and Permitting

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

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

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Richard Poirier represented Intervenor-Mililani/Waipio/Melemanu Neighborhood Board No.25 (NHB#25)
Karen Loomis, Intervenor- NHB#25
Eric Seitz, Esq., and Sarah Devine, Esq., represented Intervenor-The Sierra Club and Intervenor Senator Clayton Hee

Chair Lezy updated the record and described the procedures to be followed for the hearing. There were no comments, questions or objections to the procedures. Chair Lezy stated that public testimony would be taken

PUBLIC WITNESSES

1. Adam Rensley-
Mr. Rensley expressed why he opposed the proposed project and urged the Commission to deny the Petition.

There were no questions for Mr. Rensley.

2. Dr. Kioni Dudley
Dr. Dudley shared his concerns about loss of farmlands, how the City Council might consider the Petition Area lands for Important Agricultural Land designation, and how excess housing had already been approved for Oahu.

There were no questions for Dr. Dudley.

3. Cynthia Frith
Ms. Frith described her concerns about traffic and loss of productive Farmlands and why the Petition should be denied.

There were no questions for Ms. Frith.

4. Michael Dan
Mr. Dan described why he opposed granting the Petition.

There were no questions for Mr. Dan.

5. Susan Rich
Ms. Rich described her affiliation with Wahiawa General Hospital and how her organization and the communities that it serves could benefit if the Petition was granted.

There were no questions for Ms. Rich.

6. Gary Ropert

Mr. Ropert described his affiliation with Wahiawa General Hospital and why the relocation of the facility could benefit the community and region.

There were no questions for Mr. Ropert.

7. Pearl Johnson

Ms. Johnson submitted written testimony and shared her reasons for opposing the Petition.

There were no questions for Ms. Johnson.

ORAL ARGUMENT

Petitioner-

Mr. Matsubara argued why the Petition should be granted and described how the Petitioner had addressed the various conditions required to gain LUC approval and had met the goals and criteria expected by other State and County agencies including providing community and economic benefits, replacement agricultural lands, and traffic mitigation. Mr. Matsubara also argued the Constitutionality of the LUC's role in agricultural land use preservation and other elements involved in district boundary amendments.

DPP-

Mr. Kitaoka stated that the DPP supported the Petition and argued why the Petition should be granted and described how the County had determined its position and would oversee the Petitioner to ensure that the public's interest would be protected after the Petition was granted.

OP

Mr. Yee stated that OP supported the Petition and argued how the proposed project met all the legal standards and criteria required of it; and why certain proposed findings of facts and conditions in the Petition should not be included in the final decision and order if it was granted; and why the LUC should grant the Petition subject to the amendments made by OP and agreed to by Petitioner. Mr. Yee also provided OP's analysis of the Intervenor's concerns about agriculture, traffic, water, and a finding of fact regarding the OP Director's testimony regarding the proposed Petition Area medical center; and how the

concerns factored into the crafting of OP's proposed decision and order; and why the Director's comments should not be included as a finding of fact.

Commissioner Teves excused himself at 10:07 a.m. and returned at 10:09 a.m.

The Commission went into recess at 10:17 a.m. and reconvened at 10:38 a.m.

NHB25

Mr. Poirier shared the concerns of NHB25 and described how urban growth had negatively affected their community area and argued why community concerns should be better addressed by the State and County in its plans for the future and why the concerns presented by NHB25 should be addressed in the Petition if it were granted.

THE SIERRA CLUB/SENATOR HEE

Mr. Seitz shared the concerns that The Sierra Club and Senator Hee had about water resources and preserving agricultural land; and argued why the Commission needed to take a role to fill the breach of failures that he felt that the State and County had created as urban development occurred; why a County review and reassessment of Important Agricultural Lands needed to be allowed; and why the Petition should be denied.

REBUTTAL

Mr. Matsubara stated that he had nothing further to add and thanked the Commission for hearing the Petition.

COMMISSIONER QUESTIONS

There were no further questions or comments.

DELIBERATION

Chair Lezy asked if the Commissioners were prepared to deliberate on this docket. The Commission unanimously (7-0) responded that they were ready to deliberate.

Commissioner McDonald thanked the Parties for their participation in this matter and acknowledged Petitioner's proactive efforts in IAL designations and moved to grant the Petition subject to the Commission's standard conditions and the conditions

agreed to between OP and Petitioner; and described the type of deadline that he would like to have included in Condition 11 regarding the TIAR memorandum of agreement (MOA) between the DOT and Petitioner and inquired what timeline would be acceptable to OP and Petitioner.

Discussion ensued to clarify Commissioner McDonald's proposed deadline expectations. Mr. Matsubara provided his understanding of what DOT's performance would be and when he could expect to include the desired details in the MOA. Mr. Yee described what OP's expectations were and the type of terms that it would like to have in the MOA; and indicated that the type of MOA that had been used in another recent docket case was different than what was being considered in this docket; and did not have a date that could be provided for the docket at the present time; and shared how concurrency considerations were also used in drafting an MOA. Discussion further ensued to determine the specifics and differences involved with the MOA and what it should contain and how it would pertain to Condition 11. Mr. Yee described the differences between the terms of an MOA and an agreement in principle. Mr. Matsubara described the elements contained in the letters of intent that were circulated regarding additional details that help to formulate the version of Condition 11 that was proposed.

Commissioner McDonald moved for an Executive Session. Commissioner Chock seconded the motion. By a unanimous voice vote (7-0) the Commission elected to enter into Executive Session and exited at 11:25 a.m. and reconvened at 11:45 a.m.

Chair Lezy reconvened the hearing and stated that the Commissioner McDonald had made a motion regarding granting the Petition. Commissioner McDonald restated his motion to approve the Petition subject to the LUC's standard conditions and the conditions agreed to between OP and the Petitioner and provided the details of the highway improvements that he would like to have included in the Conditions to have the Petitioner fund, construct and implement all construction improvements and measures required to mitigate impacts to State roadway facilities caused by the Project and as set forth in an MOA agreed to and executed between DOT and the Petitioner. Commissioner McDonald also added that the Petitioner shall submit to DOT prior to application for zone change, an updated TIAR and obtain acceptance of the TIAR from DOT and shall execute the MOA prior to final subdivision approval of the initial phase of the onsite development by the Petitioner.

Chair Lezy requested clarification on what Condition number that Commissioner McDonald was referring to. Commissioner McDonald replied that it was Condition 11.

Commissioner Judge seconded the motion with a friendly amendment and described her concerns about the need for concurrency during the development of the proposed project; and added that she would like to address the need for concurrency of the necessary improvements for accommodating the proposed project as it developed with her amendment to add that “The executed MOA shall contain language that ensures that identified transportation improvements will be built concurrently with the commercial and residential improvements” and to include a change to Finding of Fact 87 to the proposed Fact 87A that OP had incorporated regarding the statement of acreage needed for agricultural production. Commissioner McDonald indicated that he accepted the friendly amendments as stated by Commissioner Judge.

Commissioner Teves stated he wished to add a friendly amendment for clarification of Petitioner’s Finding of Fact 182 regarding construction of the Pineapple Interchange; and that he wanted to add language to specify that “after the 1800th residential unit is completed and/or after the 320,000th square foot of commercial floor area is completed, that the Pineapple Interchange and all on/off ramps and highway improvements be completed and operational before any further residential or commercial units are occupied.” Commissioners McDonald and Judge accepted the friendly amendment.

Chair Lezy thanked the Parties, the Public and LUC staff for their contributions to the proceedings and stated why he supported the prior and current versions of the Petition to reclassify the Petition Area; and described the balance that he felt that the Commission tries to achieve when making its decisions.

Commissioner Judge commented how the latest Petition was an improved version of the original and encouraged the participants to continue their efforts at the County level when community meetings on it are held; and described why she supported the prior and current versions of the Petition.

The Commission voted as follows:

Ayes: Commissioners McDonald, Judge, Teves, Contrades, Makua, Chock and Chair Lezy

Nays: None

The Motion passed 7-0 with 2 excused

The Commission recessed at 11:58 a.m.