

LAND USE COMMISSION
MEETING MINUTES

June 8, 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
Ronald Heller
Ernest Matsumura (arrived at 11:18 a.m.)

COMMISSIONERS EXCUSED: None

STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General (morning)
and Sarah Hirakami, Deputy Attorney General
(afternoon)
Bert Saruwatari, Temporary Assignment as Executive
Officer/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 9:10 a.m.

ORAL ARGUMENT AND DECISION MAKING

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

Chair Lezy announced that this was Oral Argument and Decision Making 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

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

Don Kitaoka, 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

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

Chair Lezy updated the record and described the procedures for the hearing. There were no questions, comments or objections to the procedures. Chair Lezy called for Public Witnesses..

PUBLIC WITNESSES

1. David Nakamura-Mutual Housing Association of Hawaii

Mr. Nakamura described how Petitioner had assisted his organization in building rental units and expressed his support for the Petition.

Dr. Dudley asked for clarification on what Mr. Nakamura's project was and how Mr. Nakamura's project was related to the proposed project. Mr. Nakamura replied that his project was not part of the proposed project and that he was appearing to support the Petitioner.

There were no further questions for Mr. Nakamura

2. Gary Kai

Mr. Kai provided his endorsement to the character of Jim Schuler and Schuler Homes.

Dr. Dudley asked if Mr. Kai was aware that- Schuler Homes was not a local company anymore. Mr. Kai acknowledged that the company was now D.R. Horton-Schuler Homes.

Mr. Seitz asked why Mr. Kai was testifying. Mr. Kai responded that he was testifying to support Mr. Schuler and the Petitioner and had been asked to appear.

There were no further questions for Mr. Kai.

3. Karen Nakamura- Building Industry Association of Hawaii

Ms. Nakamura expressed her organization's support for the project and asked the Commission to grant the Petition.

There were no questions for Ms. Nakamura.

4. Glen Oamilda-

Mr. Oamilda voiced his reasons why the Commission should deny the petition

There were no questions for Mr. Oamilda

5. D'Angelo McIntyre

Mr. McIntyre expressed his concerns about an uncertain future, and why the Commission should deny the petition.

There were no questions for Mr. McIntyre,

6. Ralna Pacada

Ms. Pacada expressed her support for the Petition.

There were no questions for Ms. Pacada.

7. Cheryl Johnson-

Ms. Johnson described why the Petition should be granted.

There were no questions for Ms. Johnson.

8. Pearl Johnson

Ms. Johnson stated that she represented the Woman's League of voters and requested that the Commission deny Petition

There were no questions for Ms. Johnson.

9. Paul Ricky Cassiday

Mr. Cassiday provided his support for the Petition.

There were no questions for Mr. Cassiday

10. Henry Kwock

Mr. Kwock described why he supported the Petition.

There were no questions for Mr. Kwock.

11. Jason Espero

Mr. Espero expressed his support of the Petition

There were no questions for Mr. Espero.

12. Pele Yuen

Mr. Yuen described his union affiliation and described why he supported the Petition.

There were no questions for Mr. Yuen.

13. Pat Kuniyoshi

Mr. Kuniyoshi described his agricultural background and why he supported the proposed project.

Mr. Seitz requested clarification on what was currently growing in the Petition Area and whether Mr. Kuniyoshi was aware of the quality of the soil in the region. Mr. Kuniyoshi provided his perception of what the Petition Area was growing and the quality of its soils.

There were no further questions for Mr. Kuniyoshi

14. Thomas Shirai Jr.

Mr. Shirai stated that he was a North Shore agriculture specialist-and shared his background and experience in agriculture and how fertile the Petition Area land was.

There were no questions for Mr. Shirai

The Commission went into recess at 10:15 a.m. and reconvened at 10:30 a.m.

15. Midori Rumpungworn

Ms. Rumpungworn provided her philosophical advice on decision-making to the Commission.

There were no questions for Ms. Rumpungworn.

16. Thad Spreg

Mr. Spreg voiced his opinions on why the Commission should deny the Petition.

There were no questions for Mr. Spreg.

17. Philip Deng

Mr. Deng stated that he supported the Petition and described why he felt that there was a need for more housing and why the Petition should be granted.

There were no questions for Mr. Deng.

18. Dennis Egge

Mr. Egge expressed his opinion on why efforts should be made to preserve farmland, and local farms; and why the Commission should deny the Petition/

There were no questions for Mr. Egge.

19. Linda Young

Ms. Young described her support of the Petition.

There were no questions for Ms. Young.

20. Choon James

Ms. James shared her experiences and requested that the Commission deny the Petition.

There were no questions for Ms. James.

21. Dana Patria

Ms. Patria described why the Petition should be denied.

There were no questions for Mr. Patria.

22. Patricia Patterson-

Ms. Patterson provided her opinion on why the Commission should deny the Petition.

There were no questions for Ms. Patterson.

23. Kika Bukowski

Mr. Bukowski shared the reasons for his support of the Petition.

There were no questions for Mr. Bukowski.

24. Birke Dunlap

Mr. Dunlap stated that he was a farmer/landscaper and described why he supported the petition.

There were no questions for Mr. Dunlap.

There were no more public witnesses.

ORAL ARGUMENTS

Petitioner-

Mr. Kudo argued why the Petition should be granted and shared the genesis of the proposed project, and what the expected benefits of granting the Petition would be for State, County and surrounding communities.

(*Commissioner Matsumura arrived at 11:18 a.m.- 9 Commissioners now in attendance at hearing.)

The Commission went into recess at 11:33 a.m. and reconvened at 12:25 p.m.

County

Mr. Kitaoka stated that County supported the Petition and argued why it 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 why the Petition should be granted and what benefits granting the Petition would have. Mr. Yee shared OP's concerns about agriculture, traffic, and water issues and described the considerations and analyses made to arrive at its position; and restated why OP recommended granting the Petition subject to the conditions stipulated to by OP, the Petitioner, and the County.

FOM

Dr. Dudley argued why the Petition should be denied and described why the issues of traffic, and the lack of need for houses should be considered in evaluating the Petition..

Commissioner Matsumura excused himself at 12:55 p.m. and returned at 12:57 p.m.

Dr. Dudley also argued why green areas and landscape vistas should be preserved; and how they were important to tourism and the vitality of Hawaiian economy.

The Sierra Club

Ms. Dunne argued why the Petition should be denied and why the Commission should act to preserve and protect farmland and water resources and Hawaiian cultural practices; and how granting the Petition would be inconsistent with the State plan and would ignore State Constitutional issues.

Senator Hee

Mr. Seitz argued why the Petition should be denied and described why he was troubled by alleged remarks attributed to a mayoral candidate saying that the votes for this docket could already be counted; and why this matter would be taken to court. Mr. Seitz restated that the Commission should deny the petition based on evidence presented and described additional details regarding the concerns that motivated Senator Hee to intervene in this docket..

The Commission went into recess at 1:26 p.m. and reconvened at 1:37 p.m.

REBUTTAL

Mr. Kudo stated that sufficient evidence had been presented for the LUC's consideration and argued why the evidence was sufficient to meet the LUC's statutory requirements for granting the Petition; and how The Sierra Club's position was not supported by various Findings of Fact.

COMMISSIONER QUESTIONS

None

DELIBERATION

Chair Lezy asked if the Commissioners were prepared to deliberate on this docket. The Commissioners unanimously (9-0) responded that they were ready to deliberate.

Commissioner Chock moved and Commissioner Contrades seconded the motion for an Executive Session. The Commission unanimously voice voted (9-0) to enter into enter into Executive Session and exited at 1:47 p.m. and reconvened at 1:56 p.m.

Commissioner Teves thanked the Parties for their efforts and moved to grant the Petition and stated that he was open to friendly amendments.

Commissioner Heller seconded the motion and echoed Commissioner Teves acknowledgements and thanks to the Parties and the Public and expressed why he supported the motion and described the considerations that he had made in arriving at his decision; and added a friendly amendment to the motion with a requirement for a new TIAR with new data and mitigation measures specific to Condition #10 to account for the schedule of construction for the proposed rail system and any anticipated significant changes to it; and to add clarification to the stormwater runoff addressed in Condition #11 by adding requirements to the drainage plan about whether or not the Navy's consent was obtained and then submitting it to the County prior to subdivision approval or if the subdivision approval is in phases, prior to any phase that includes the West Loch drainage area. Commissioner Heller clarified that he was proposing two amendments- one to proposed Condition 10 to include a specific requirement in the TIAR as he described to address his concerns about changes to the proposed rail system schedule and another to Condition 11 to contain a modification to deal with stormwater runoff. Commissioner Teves stated that he accepted the friendly amendment as proposed.

Commissioner Makua echoed the gratitude expressed by the Commission to the Parties and the Public and described why she was not in support of the Petition.

Commissioner Contrades also echoed the comments thanking the Parties and the Public and shared his perception of the changes to island lifestyles and the need to accommodate urban growth and indicated that he would also like to add an additional friendly amendment to include the requirement that the Petitioner shall pay for and construct adequate civil defense measures serving the Petition Area as determined by the State Department of Defense and the State Civil Defense in Condition 15, and that these measures shall be operational prior to occupancy of homes or businesses. Commissioner Teves stated that he accepted the friendly amendment.

Commissioner Judge echoed the sentiments of her fellow Commissioners to thank the Parties and the Public, and described how difficult decision-making was for this docket and her disappointment with the DOT's testimony about traffic and offered a friendly amendment to include the list of Petitioner's proposed traffic mitigation and *(Please refer to LUC Transcript for more details on this matters)*

improvement measures that Mr. Kudo cited in his oral argument's opening statement. Commissioner Teves stated that he accepted the friendly amendment.

Commissioner Chock also echoed the sentiments of his fellow Commissioner to thank the Parties and the Public, and recognized the contributions of Senator Hee, Dr. Dudley, and The Sierra Club; and the House of Labor. Commissioner Chock also recognized Intervenors that had participated in past Petitions that he was familiar with and described the efforts of the Commission in designating Important Agricultural Land for perpetuity, reclassifying the Ka Iwi shoreline to conservation use; and reverting Petitions if necessary; and expressed his concern with the continued export of Hawaii's youth from the Islands due to the difficulties of dealing with the high cost of living.

Commissioner McDonald thanked the Parties and the Public and expressed how a balance between development and preservation was difficult to maintain; and how the second city vision attempted to direct growth to the Ewa plain and relieve pressure to agricultural areas. Commissioner McDonald stated that he was in support of the Petition.

Commissioner Matsumura expressed his concern about how the large tracts of land owned by the State and large land owners could be subdivided to prevent speculation and allow private citizens and farmers to thrive.

Chair Lezy requested clarification on whether or not Commissioner Teves accepted Commissioner Judge's friendly amendment. Commissioner Teves stated that he accepted the friendly amendment.

Chair Lezy also requested clarification on whether or not Commissioner Teves' motion included approving the stipulated Conditions between the Petitioner, the County, and the State. Commissioner Teves responded that his motion did include the stipulated Conditions.

Chair Lezy commented on the alleged remark that the Commission's votes were already counted and expressed his disappointment that remarks like that could be made without consideration for the efforts that the Commission put forth in executing its voluntary duties.

The Commission voted as follows:
Ayes: Commissioners Teves, Heller, McDonald, Judge, Contrades, Chock, Matsumura and Chair Lezy

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

The Motion passed 8-1

Chair Lezy thanked the Parties for their efforts and stated that further scheduling would be communicated to the Parties by LUC staff.

Commissioner Judge moved and Commissioner Heller seconded the motion to enter into Executive Session. The Commission exited for Executive Session at 2:40 p.m. and reconvened at 2:50 p.m. There being no further business, the Commission adjourned the regular meeting immediately thereafter at 2:51 p.m.