

LAND USE COMMISSION
MEETING MINUTES

September 14 2012 – 9:00 a.m.

Ihilani Hotel- Lurline Room
92-1001 Olani Street
Ko`Olina, Hawai`i

COMMISSIONERS PRESENT: Ernest Matsumura
Chad McDonald
Kyle Chock
Lance Inouye
Ronald Heller
Nicholas Teves, Jr.
Sheldon Biga

COMMISSIONERS EXCUSED: Napua Makua
Thomas Contrades

STAFF PRESENT: Daniel Orodener, Executive Officer
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Sarah Hiramami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Chock called the meeting to order at 9:06 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the September 6-7, 2012 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner Heller seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The October 4-5, and Nov. 1-2, 2012 meetings will involve travel to Maui and the October 18-19, 2012 meeting will involve travel to the Big Island, Hawaii.
- Any questions or concerns- please contact LUC staff

ACTION

A99-718 Housing and Community Development Corporation of Hawaii (O`ahu)
Department of Hawaiian Home Lands

Chair Chock announced that this was an action meeting on A99-728 Housing and Community Development Corporation of Hawaii ("HCDCH") to consider Petitioner, The State of Hawaii Department of Hawaiian Home Lands' ("DHHL") Motion for Order amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated September 8, 1999 to:

- 1) Recognize DHHL's standing to seek and obtain the relief requested by Petition
- 2) Re-designate a new docket (A99-728 (c)), covering that portion of the Petition Area identified as Tax Map Key No. (1) 9-1-016:142 comprising approximately 67.184 acres of land (Petition Area "C" or the Subject Property) separate and apart from the remaining 715 acres reclassified under Docket No. A99-728
- 3) Release the Petition Area "C" from the conditions of the 1999 Decision and Order and
- 4) Issue a new Findings of Fact, Conclusions of Law, and Decision and Order for the subject property.

APPEARANCES

Craig Iha, Esq., represented DHHL
Matthew Dvonch, Esq. represented DHHL
Jobie Masagatani, Director, DHHL
Don Kitaoka, Esq., represented City and County of Honolulu
Department of Planning and Permitting

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

Randy Hara, Department of Planning and Permitting
Bryan Yee, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, OP
Sandra Ching, Esq. represented HCDCH
David Austin, Esq., represented Haseko (Ewa) Inc.

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

PUBLIC WITNESSES

1. Victoria Cannon
Ms. Cannon expressed her opposition to the proposed project.
There were no questions for Ms. Cannon.
2. Glenn Oamilda
Mr. Oamilda shared his reasons for opposing the proposed project.
There were no questions for Mr. Oamilda.
3. Georgette Stevens
Ms. Stevens expressed her support for the Petition
There were no questions for Ms. Stevens.
4. Dr. Kioni Dudley
Dr. Dudley expressed his concerns about the proposed project's location and shared why it should be located in downtown Kapolei.
There were no questions for Dr. Dudley.
5. Homelani Shaedel
Ms. Shaedel stated that she represented a homeowners association and described why her organization supported the proposed project in its current location.
There were no questions for Ms. Shaedel.
6. John Bond
Mr. Bond shared his concerns about the location of the proposed project and described why the entire Petition should be reconsidered.
There were no questions for Mr. Bond.

There were no further public witnesses.

Chair Chock inquired if there were any exhibits that the Parties wished to submit. Petitioner, OP, and Haseko had no exhibits to offer. Mr. Kitaoka stated that he had no exhibits but would be offering a witness during his presentation.

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

PRESENTATIONS

Petitioner

Mr. Iha described the negotiations that had occurred among the Parties regarding the proposed project and provided the Commission with details regarding his perspective of Conditions 9-(Traffic Impact), 16 (Open Space Plan) and 17 (Urban Design Plan) of the proposed Decision and Order which still needed to be resolved; and argued why the Hawaiian Homes Commission's proposed Conditions should prevail over the City's in the final decision and order. Mr. Iha reserved the right to call rebuttal witnesses if necessary after the City made its presentation.

County

Mr. Kitaoka called his witness Kathy Sokugawa to testify.

1. Kathy Sokugawa, Department of Planning and Permitting (DPP)

Ms. Sokugawa described her planning background and experience; and what the duties and responsibilities of her department were; and how DPP assessed the Petitioner's proposed conditions. Ms. Sokugawa stated that DPP supported the separation of the various decision and order conditions to address the different issues for future permitting but expressed her concerns about how not having DPP involved could delay the proposed projects as it attempted to obtain permits, and ensuring that it was a good "fit" for the surrounding area and the Ewa Development Plan. Ms. Sokugawa also indicated that she was appearing to advocate and remind the Commission that there is a County planning process and there is content in those plans that DPP believes all buildings need to comply with and to ease downstream monitoring of permits due to the many details involved with different segments of the proposed project that could incur unforeseen delays if not properly addressed early on. Ms. Sokugawa provided specific details on how the term "if applicable" contained in the conditions of the decision and order could be misinterpreted and why DPP's involvement at various stages of the development process could be helpful.

Questions for Ms. Sokugawa

Petitioner had no questions

OP

Mr. Yee requested clarification on what recommendations the City had for the conditions proposed by DHHL. Ms. Sokugawa stated that she believed they

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

were embedded in the City's July 2, 2012 transmittal and described how the City had proposed re-writing conditions 16 and 17.

Mr. Yee requested clarification on how a better definition of the term "if applicable" and its use in the conditions of the decision and order would help.

Ms. Sokugawa provided examples of situations where a better understanding of "if applicable" would be useful and described how downstream monitoring would be made easier as well.

Mr. Yee requested clarification on Ms. Sokugawa's perception of the City's "input" authority when determining the proposed project's compliance to the urban design plan requirements. Ms. Sokugawa responded that the City had many hours of cordial discussions on urban design issues with the Petitioners and described why the City preferred to have approval authority to ensure that urban design requirements were met.

Haseko

Mr. Austin had no comments.

Redirect

Mr. Kitaoka requested clarification on DPP's position on Condition 9 Traffic Impact Analysis Report (TIAR). Ms. Sokugawa shared her understanding of how the City's roadway infrastructure interests would be affected by the proposed project's TIAR and how early collaborative efforts between the City and the State could improve efficiencies as development occurred.

Commissioner Questions

Commissioner McDonald requested clarification of what happened during the site development plan approval process for the proposed project by the City. Ms. Sokugawa described the various sections of DPP that performed the urban design compliance review and how they performed their duties when approving different segments of the proposed project.

Commissioner Heller asked what specifics DPP would want for Condition 9 as was currently proposed. Mr. Kitaoka clarified how the DPP's proposal in its July 2nd transmittal had described how the City had asked for the acceptance of the TIAR from the City and the DOT prior to the execution of a memorandum of agreement.

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

Commissioner Inouye requested further clarification on what the City's proposed conditions were attempting to achieve and how they might be better worded to be acceptable to the Parties. Mr. Kitaoka described how the proposed terms in conditions 9, 16 and 17 in City's July 2nd transmittal were included to better define the City's expectations. Discussion ensued over the various conditions and how the TIAR was accepted by the City and DOT, and how the open space and the urban design plans were reviewed and approved. Mr. Kitaoka shared how DPP had included the term "if applicable" in other proposed conditions and what the criteria for its use were; and argued why the proposals included in the July 2nd transmittal were preferred by the City.

There were no further questions for the City.

The Commission went into recess at 10:20 a.m. and reconvened at 10:38 a.m.

OP

Mr. Yee expressed OP's appreciation for DHHL's cooperation and participation in the proceedings and described the activity that had occurred prior to OP's signing of the stipulated decision and order and how the term "if applicable" was determined to apply in case of a change in ownership and how the concerns raised by the Public Witnesses before the Commission had been considered and addressed during OP's assessment and evaluation of the Petition. Mr. Yee also shared OP's perspective on the differences that DHHL and the City had and stated that OP had no objection to DHHL's proposed conditions had and would not take sides in the dispute between DHHL and the City on the final form of the order and would defer to the Commission on the matter. Mr. Yee stated that he wished to address the use of the term "acceptance" in Condition 9 and described why its use was necessary as opposed to "approval" to meet DOT expectations; and that OP had no position on Condition 9 and had no objections to the Commission's use of "comments" or "approvals" for the City in its version of conditions.

Haseko/HCDCH had no presentation.

Rebuttal

Mr. Iha argued how Petitioner's Condition 9 clearly addressed County concerns and should be allowed to "as proposed"; and how "if applicable" could be clarified in Condition 16 to reflect DHHL's fee ownership; and why DPP's proposed Condition 17 would turn ministerial permits into discretionary permits. Mr. Iha reemphasized

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

DHHL's control of its land and described how DHHL opposed DPP's proposed conditions; and how DHHL would be using its own resources in vetting the proposed project.

Commissioner Questions

Commissioner Inouye asked the Parties for their perception of the Commission's imposing conditions in an area under DHHL jurisdiction.

City

Mr. Kitaoka stated that the City's expectation was that the Commission should impose conditions that were reasonable and prudent to assure compatibility with adjacent land uses and argued his reasons why the City's proposed conditions be adopted.

DHHL

Mr. Iha argued how the characterization of DHHL's conditions by the City was incorrect and voiced his reasons how DHHL's interests would be compromised by having to seek City's approval.

OP

Mr. Yee shared his perspective on what authority the Commission had to impose conditions on DHHL land that the City did not. Mr. Yee recognized how DHHL was submitting itself to the Commission to the standards and criteria that the LUC generally imposed on developers and how OP appreciated how DHHL had conducted itself during discussions on their project and how this established relationship should be fostered for continued involvement in future projects.

Commissioner McDonald requested clarification on DHHL's plans for dedicating portions of its infrastructure to the County. Mr. Iha described the complexities involved with performing such dedications and how alternative methods needed to be considered such as easement or license.

Commissioner McDonald also requested clarification on Condition 13's specifications for runoff and questioned whether the figures used needed to be adjusted for the improved surface area of the proposed project. Commissioner McDonald suggested that more appropriate language be used to address the runoff calculations that seemed to be incorrect. Discussion ensued to determine what type of specifications needed to be considered to better express runoff discharge limits for the Petition Area.

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

Chair Chock offered to take a recess to allow Petitioner time to study the matter. Mr. Iha agreed to the offer.

The Commission went into recess at 11:03 a.m. and reconvened at 11:08 a.m.

Mr. Iha offered his amended condition for consideration by the Parties and the Commission. Discussion ensued on what would be acceptable and various formats were offered and considered by the Parties. Commissioner McDonald stated that he was agreeable to deleting the entire first sentence and expressed his concerns with not making the appropriate corrections to the proposed condition.

Commissioner Heller requested clarification on how the term “if applicable” should be defined and applied in the proposed conditions; and noted that the use of “and successors and assigns” in the proposed conditions appeared to be inconsistent. Mr. Iha replied that the inconsistent use of “and successors and assigns” was probably an oversight. Discussion ensued over Mr. Kitaoka’s concerns that the succeeding owner might not be entitled to the same exemptions/privileges as DHHL. The Parties suggested and agreed upon the various situations for when “if applicable” should be used in the proposed conditions to specify DHHL’s ownership interests.

Commissioner Inouye voiced his concerns about the wording of Conditions 9, 16 and 17 and asked the Parties for their input to craft wording that would be more acceptable to them. Mr. Kitaoka shared his opinion that the use of “the City shall have input” in Condition 9 and that DHHL “shall consider the City’s comments” was acceptable to him. The Parties did not object to this suggestion.

Commissioner Inouye provided additional details for what he was expecting for Conditions 16 and 17. Discussion ensued on what would be acceptable wording for the condition and Mr. Kitaoka clarified what would be acceptable to DPP. Mr. Iha voiced his concerns with the wording for Condition 17 and why the DHHL proposal should be adopted; and the type of input from the City that would be sought for it. Mr. Yee expressed his version of how fee ownership could be addressed. Commissioner Inouye suggested a brief recess to allow the Parties to agree upon acceptable language for the proposed conditions. Chair Chock acknowledged Commissioner Inouye’s suggestion.

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

The Commission went into recess at 11:23 a.m. and reconvened at 11:25 a.m.

Chair Chock stated that the Commission would recess on A99-728 temporarily to dispose of agenda item SP09-403, and would resume discussions thereafter.

The Commission went into recess at 11:25 a.m. and reconvened at 11:28 a.m.

**DELIBERATION AND DISCUSSION ON PROCEDURAL ISSUES AND ACTION
(IF NECESSARY)**

SP09-403 Department of Environmental Services (Waimanalo Gulch)

Chair Chock announced that this was a meeting to deliberate and discuss procedural issues and action if necessary regarding Civil No. 09-1-2719-11 Special Use Permit SP09-403.

APPEARANCES

Dana Viola, Esq., represented City and County of Honolulu, Department of Environmental Services (“City”)

Brian Black Esq. represented City

Don Kitaoka, Esq., represented DPP

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

Rodney Funakoshi, OP

Richard Wurdeman, Esq., represented Congressional Representative Colleen Hanabusa, Esq.

Calvert Chipchase, Esq. and Christopher Goodwin Esq., represented Intervenors-the Ko Olina Community Association and Senator Maile Shimabukuro

Chair Chock updated the record and described the procedures to be followed for the hearing. There were no questions, comments or questions regarding the procedures.

Commissioners Teves and Heller disclosed their personal interactions or perceived interactions with the Ko`Olina Community Association and stated that they did not feel their interactions would bias or prejudice their judgment and participation

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

in matters. There were no comments, questions or objections to both Commissioners' continued participation by the Parties.

PUBLIC WITNESSES

1. Cynthia Rezentes

Ms. Rezentes shared her reasons why she favored of the LUC remanding the issue to the City Planning Commission.

There were no questions for Ms. Rezentes.

2. Beverly Munson

Ms. Munson described why she supported remanding the consideration of the permit to the City Planning Commission.

There were no questions for Ms. Munson.

3. Kirk Fritz

Mr. Fritz stated his relationship to Ko`Olina and why he felt the issue should be remanded.

There were no questions for Mr. Fritz.

4. Kamaki Kanahele

Mr. Kanahele cited his community roles and expressed why he felt the issue should be remanded.

There were no questions for Mr. Kanahele.

5. Maile Shimabukuro

Ms. Shimabukuro shared her reasons for opposing the landfill and described why the issue should be remanded.

There were no questions for Ms. Shimabukuro.

6. Joseph Imaoka

Mr. Imaoka read his prepared statement which recommended remanding the issue to the City Planning Commission.

There were no questions for Mr. Imaoka.

There were no further public witnesses.

Chair Chock described the time constraints that the Commission was operating under and stated the procedures that would be followed when proceedings resumed on this matter after the pending Executive Session. There were no questions or comments regarding the proposed procedures.

Commissioner McDonald made a motion for an Executive Session and Commissioner Inouye seconded it. By unanimous voice vote (7-0) the Commission went into Executive Session at 11:52 a.m. and reconvened at 12:32 p.m.

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

PRESENTATIONS

City

Ms. Viola described the issues that the City had with the procedural matters under consideration by the Commission and argued the reasons why the Commission should not remand the Petition and make a decision based on the information that it had already considered.

OP

Mr. Yee stated that OP supported remanding the proceedings to the Planning Commission and argued why this course of action would be the best alternative for the Commission to consider.

Intervenor Representative Hanabusa

Mr. Wurdeman stated that he had submitted written material on the case and described his perspective of what the Supreme Court decision meant to him and argued why he disagreed with the City's position on the treatment of the record and why there was no need to remand the issue and that the Commission should deny the Petition.

Intervenor Ko Olina Community Association and Senator Shimabukuro

Mr. Chipchase described the activity that had occurred regarding the docket at the City and County level and argued why the LUC should remand the proceedings with instructions to the Planning Commission to consolidate the record for a better and more complete product for the LUC to review.

City Rebuttal

Ms. Viola argued that the Commission had the complete record of the 2011 case; that the City was not afraid of the record since it would bolster the argument it made in the 2009 proceedings and that the Planning Commission was clear in why it sent the record to the LUC since it had already made a decision based on the files in the 2009 proceedings and had made no request to modify the Planning Commission's order. Ms. Viola further argued why the Supreme Court's decision did not support a remand or consolidation of the case by the Commission to make a decision.

Commissioner McDonald moved to remand the 2008 application to the City Planning Commission for consolidation with the 2011 application for the purpose of providing the LUC the Findings of Fact, Conclusions of Law and Decision and Order as a consolidated case. Commissioner Heller seconded the motion.

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

Discussion

Commissioner Heller described why he felt the remand would be beneficial since it would consolidate the two existing cases and their associated records into one package for the LUC to consider.

Commissioner Inouye described the difficulties that he had making a decision on this issue and stated that he agreed with Commissioner McDonald's motion.

The Commission voted as follows:

Ayes: Commissioners McDonald, Heller, Inouye, Teves, Biga, Matsumura and Chair Chock

Nays: None

The Motion passed 7-0 with 2 excused.

Chair Chock announced that the SP09-403 had been concluded and that the Commission would resume the A99-728 proceedings.

There were no further questions, comments or objections.

The Commission went into recess at 1:05 p.m. and reconvened at 1:10 p.m.

ACTION (continued from earlier in the day)

A99-718 Housing and Community Development Corporation of Hawaii (O`ahu)
Department of Hawaiian Home Lands

Chair Chock asked the Parties if all the issues between them had been resolved.

Mr. Iha stated that the Parties had addressed the various conditions and described the proposed wording changes for Conditions 9, 16, and 17 that had been agreed to.

Chair Chock asked the Parties if they concurred with the changes stated by Mr. Iha. Mr. Kitaoka stated that the City agreed that the proposed language expressed the position of Commissioner Inouye, but the City still requested the language that was proposed in its July 2, 2012 submittal and objected to the language being proposed, but did agree that the language accurately reflected the intentions of Commissioner Inouye; and that the City would stipulate to Condition 14 and 15 of the proposed Conditions as stated. DHHL, OP, HHFDC, and Haseko had no objections.

Commissioner Heller moved to accept the amendment to the Findings of Fact, Conclusions of Law, and Decision and Order in the form as had been stipulated to with the changes that had just been stated on the record by Mr. Iha. Commissioner

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

Matsumura seconded the motion.

Discussion

Commissioner Teves made a friendly amendment to Condition 10 to include that “Civil Defense” measures shall be operational prior to occupancy of any residence or business. Commissioners Heller and Matsumura accepted the friendly amendment.

Commissioner McDonald asked the Parties if Condition 13 (d) had been addressed. Mr. Iha described how the first paragraph would be deleted. Commissioner McDonald acknowledged the change to Condition 13. Commissioner Heller stated that if Commissioner McDonald’s change was a friendly amendment to the motion, he would accept it. Commissioner Matsumura concurred.

There were no further comments, questions or discussion.

The Commission voted as follows:

Ayes: Commissioners Heller, Matsumura, McDonald, Inouye, Teves, Biga, and Chair Chock

Nays: None

The Motion passed 7-0 with 2 excused.

Chair Chock announced that there were no further business to discuss and adjourned the meeting at 1:20 p.m.

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