

LAND USE COMMISSION
MEETING MINUTES
May 24, 2018, 9:00 a.m.
Airport Conference Center, Meeting Room IIT#2
400 Rodgers Boulevard, Suite 700,
Honolulu, HI 96819

COMMISSIONERS PRESENT: Gary Okuda
Dawn Chang
Arnold Wong
Jonathan Scheuer
Nancy Cabral
Edmund Aczon

COMMISSIONERS EXCUSED Lee Ohigashi
Aaron Mahi

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

COURT REPORTER: Phyllis Gonzaga

CALL TO ORDER

Chair Wong called the meeting to order at 9:00 a.m.

HEARING AND ACTION

DR18-61 HARTUNG BROTHERS HAWAII, LLC (A Hawai'i Limited Liability Company)

To Consider Declaratory Order to Designate Important Agricultural Lands for approximately 463 acres at Kunia, O'ahu; TMK Nos. (1) 9-2-004-006 (por.); -011; and -012 (por)

APPEARANCES

Joseph Dane, Esq., attorney for Petitioner Hartung Brothers Hawai'i LLC
(*HBH")

No representative-City and County of Honolulu Department of Planning and
Permitting ("DPP")

Dawn Takeuchi Apuna, Esq. for State Office of Planning ("OP")

Rodney Funakoshi, Land Use Administrator, OP

Lorene Maki, Planner, OP

Tomas Oberding, Planner, OP

Earl Yamamoto, Planner, Department of Agriculture (DOS)

Chair Wong described the procedures for the proceedings and asked if Petitioner had been made aware of and was agreeable with the Commission's policy on reimbursement. Mr. Dane replied that Petitioner had no objections to the Commission's policy and would comply.

Chair Wong called for Public Witnesses

PUBLIC TESTIMONY

1. Brian Miyamoto- Executive Director, Hawaii Farm Bureau

Mr. Miyamoto testified in support of the Petition.

Commissioner Okuda asked if there were any perceived negatives to the Petition. Mr. Miyamoto responded that there were none and re-stated his organization's support for the Petition.

Commissioner Cabral stated for the record that she was not related to the Randy Cabral mentioned during Mr. Miyamoto's testimony.

There were no further public witnesses.

PETITIONER PRESENTATION

Mr. Dane provided a brief history and background summary on the Petition and described how he would be making his presentation using a PowerPoint presentation and why the Declaratory Order should be granted.

UC Meeting Minutes (*Please refer to LUC transcript for more details on this matter*)

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May 24, 2018

Mr. Dane stated that he had two witnesses to offer.

Petitioner Witnesses

1. Joshua Uyehara

Mr. Uyehara shared his personal and professional background and described his role with Hartung Brothers Hawaii, LLC, and provided organization information on his company and its business mission; why the IAL designation was being sought and how the proposed IAL lands factored into Monsanto's operations.

Commissioners Chang, Aczon, Cabral, Okuda, Scheuer and Chair Wong requested clarification on Mr. Uyehara's testimony regarding crops planted for local consumption; distribution/allocation of land area for IAL and other uses, water availability, non-IAL property held by Petitioner, how water was allocated and used on the Petition Area, differences between the Petitioner's proposed IAL lands and DPP's proposed IAL plans, why a larger portion of land was not included in the Petition, how any proposed IAL conditions would apply, Mr. Uyehara's future plans with HBH, and other types of operations or business HBH was involved in.

There were no further questions for Mr. Uyehara.

Chair Wong declared a recess at 9:39 a.m. and reconvened the proceedings at 9:42 a.m. Mr. Dane called his next witness, Tom Schnell.

2. Tom Schnell- PBR Hawaii- Expert Witness- Land Use Planning

Mr. Schnell was qualified and accepted as an expert witness in the field of land use planning and described his company's work in preparing the IAL Petition for HBH.

Commissioners Cabral, Chang, Scheuer and Okuda requested clarification on Mr. Schnell's testimony regarding concerns about overspray/contamination containment, IAL legal criteria and tax benefits, appropriate LUC votes required to impose or remove IAL designation, factors involved in assessing and determining land to include in the Petition, and more details regarding the historical origins of this IAL Petition and how DPP had been advancing its IAL identification program; and what the Petitioner might do if the IAL designation

was granted. Mr. Dane provided his understanding of how analysis of what land areas to include in the Petition was done.

There were no further questions on Mr. Schnell's testimony.

Chair Wong declared a recess at 10:19 a.m. and reconvened the meeting at 10:28 a.m.

Chair Wong noted that DPP had not appeared to provide any public testimony. Commissioner Okuda inquired whether DPP had been advised. Mr. Hakoda acknowledged that a notice had been mailed to DPP a week prior to the LUC meeting.

Commissioner Chang requested that the record note DPP's absence. Chair Wong acknowledged her request.

There were no further comments regarding DPP.

Chair Wong called for OP to make its comments.

OP

Ms. Apuna deferred to Mr. Funakoshi to provide OP's statements. Mr. Funakoshi stated that OP recommended approval of the Petition in its entirety and expressed his appreciation of Petitioner's efforts to voluntarily designate IAL land.

There were no questions or comments for Mr. Funakoshi.

Chair Wong called for DOA to provide its comments.

DOA

Mr. Yamamoto stated that DOA would stand on its letter in support of Petitioner's request for IAL designation.

There were no questions or comments for Mr. Yamamoto.

Chair Wong asked if the Commissioners had any further questions. There were none.

Commissioner Scheuer moved for an Executive Session to consult with the Commission's attorney on questions and issues pertaining to the board's powers,

duties, privileges, immunities, and liabilities. Commissioner Aczon seconded the motion to enter Executive Session.

There was no discussion.

The Commission entered Executive Session at 10:35 a.m. and reconvened at 10:55 a.m.

Chair Wong asked if Petitioner had anything further to add. Mr. Dane responded that he did not.

Commissioner Aczon made a motion to grant the IAL Petition. Commissioner Chang seconded the motion.

Discussion

Commissioners Okuda and Scheuer requested clarification on whether the motion included OP's conditions; as stated in the record. Commissioner Aczon confirmed that it did.

Commissioners Scheuer, Aczon, Okuda, Cabral and Chang stated their positions on the motion and their reasons for supporting it.

Chair Wong directed Mr. Orodenker to poll the Commission.

The Commission voted unanimously 6-0-2 excused in favor of the motion.

Chair Wong declared a recess at 11:05 a.m. and reconvened the proceedings at 11:17 a.m. Chair Wong moved on to the next agenda item.

STATUS REPORT AND ACTION (IF NECESSARY)

A92-683 HALEKUA DEVELOPMENT CORPORATION (O`AHU)

APPEARANCES

David Tanoue, Representative, RP2 Ventures, LLC (Subsidiary of R. M. Towill)
("RP2")

No representative-City and County of Honolulu Department of Planning and Permitting ("DPP")

Dawn Takeuchi Apuna, Esq. for State Office of Planning ("OP")

Lorene Maki, Planner, OP

Janice Fujimoto, Department of Agriculture (DOA)

UC Meeting Minutes *(Please refer to LUC transcript for more details on this matter)*

L

May 24, 2018

Morris Atta, DOA

Chair Wong called for Public Witnesses

PUBLIC TESTIMONY

None.

DISCLOSURES

Commissioner Okuda stated that he knew Stephen Mau, attorney for one of the A92-683 property owners, through his professional practice of law, but that it would not affect his ability to remain fair and impartial during the proceedings. There were no objections to Commissioner Okuda's continued participation.

There were no other disclosures.

Chair Wong called for Petitioner RP2 to make its presentation.

RP2 Ventures, LLC

Mr. Tanoue provided background history of how his organization became involved with the Petition Area, and what RP2's intentions to provide expected infrastructure were. Mr. Tanoue described ongoing discussions that he had been involved with among entities involved with the Petition Area's development, including DOA, and shared RP2's perspective of the current state of affairs between the entities.

DISCLOSURES

Commissioner Okuda stated that based on Mr. Tanoue's testimony, he wanted to add that he did associate with James Yamamoto, an R M Towill employee, on a social basis; but that it would not affect his ability to remain fair and impartial during the proceedings.

Chair Wong disclosed that he knew Mr. Tanoue, and that he felt he could remain fair and impartial during the proceedings.

Commissioner Chang disclosed that she did some work for R M Towill that had no connection to the matter at hand; and knew Mr. Tanoue; but felt that she could remain fair and impartial as well.

There were no objections to Commissioner Okuda. Chang and Chair Wong continuing to participate in the proceedings.

Chair Wong asked if RP2 was aware of the docket conditions and that they would run with the land. Mr. Tanoue confirmed that RP2 was aware of the conditions and would abide by them.

Commissioners Okuda, Cabral, Chang, and Aczon requested clarification on Mr. Tanoue's education and professional experience, the location of the actual RP2 portion of the Petition Area, and the details of the applicable conditions in the decision and order and action being taken on them.

Commissioner Scheuer stated that his preference was to hear the responses of DOA and OP to RP2's testimony; and then being able to question each of them respectively. Chair Wong acknowledged his request.

Ms. Apuna described how OP and DOA would provide a blended presentation on the docket; and identified Ms. Fujimoto and Mr. Atta as the DOA representatives and Ms. Maki, OP representative providing comments to the Commission. Ms. Apuna described the concerns that OP/DOA had with Condition No. 19 of the decision and order and how those concerns generated a request for a status report at this hearing; and the types of actions that OP and DOA would like the Commission to take in this matter.

Ms. Apuna provided a PowerPoint presentation describing the timeline of events affecting the Petition Area that supported her request for Commission action to get RP2 to move forward on construction and agree to updated performance deadlines. Ms. Apuna stated that Ms. Fujimoto and Mr. Atta would provide DOA's perspective on the matter.

DOA

Mr. Atta and Ms. Fujimoto described the importance of developing the agricultural park, the need for infrastructure to be installed in the Petition Area to facilitate its success and obtain legislative funding; the difficulties encountered in the years after the initial decision and order was granted that prevented favorable progress on the proposed project and an update of current meetings to address concerns.

Commissioners Okuda, Chang, Scheuer, and Aczon requested clarification on what Mr. Atta's background was, what type of tenants DOA would seek for the agricultural park and how they would be qualified as "farmers"; why imposed

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UC Meeting Minutes *(Please refer to LUC transcript for more details on this matter)*

May 24, 2018

deadlines were not observed' why no "order to show cause (OSC)" was being sought, how deadlines/conditions needed to be updated and observed, and whether an OSC action was the appropriate course of action for the Commission to take.

Commissioner Chang sought further clarification from Ms. Apuna to assess how the failure to comply with condition 19 needed to be balanced against initiating an OSC. Ms. Apuna described what RP2 and OP/DOA had been attempting to resolve during their meetings and why OP/DOA felt it necessary to request certain actions by the Commission.

Chair Wong recalled Mr. Tanoue to join OP/DOA to respond to Commissioner's questions.

Ms. Fujimoto and Mr. Atta shared DOA's need to obtain a more certain timeline and performance commitments from RP2 and discussion ensued between Mr. Tanoue and OP/DOA and Commissioners Scheuer, Okuda and Aczon to determine the specifics of what the current state of the proposed project was; and what was expected of the Commission.

Ms. Apuna requested a recess. Chair Wong acknowledged her request and declared a recess at 12:24 p.m. Chair Wong reconvened the meeting at 12:33 p.m.

Chair Wong called on Ms. Apuna to describe what OP/DOA would need from RP2 going forward.

Commissioner Scheuer requested clarification on what might happen if RP2 was unable to commit to complying with OP/DOA's expectations.

Discussion ensued to determine the scope of what needed to be done in the Petition Area by what certain deadlines. Chair Wong commented that more property in the Petition Area (beyond RP2's control) might be involved; and shared his concerns of how that might impact RP2. OP and Mr. Tanoue shared how a memorandum of understanding might be used to amend Condition No. 19 to address outstanding concerns. Commissioner Aczon requested clarification on whether a March 31, 2019 completion date was feasible. Mr. Tanoue stated that it was the "best guess" for now.

Commissioner Okuda questioned whether RP2 and OP/DOA were agreeable on the dates being mentioned. Chair Wong requested that discussion on the agreements on dates be addressed between RP2 and OP/DOA later and Commissioner Okuda reserved his question.

Commissioners Scheuer, Chang and Cabral requested clarification on deadline concerns, RP2's ability to react and begin construction once permit approvals were

obtained, potential barriers to delay construction, and the feasibility of a year to complete work.

There was no further discussion.

Chair Wong directed the Parties to continue discussions and to check with LUC staff and advise them of progress.

There being no further business to address, Chair Wong adjourned the meeting at 12:46 p.m.