

LAND USE COMMISSION
MEETING MINUTES
January 24, 2019 – 9:30 a.m.
Airport Conference Center, Meeting Room IIT#2
400 Rodgers Boulevard, Suite 700,
Honolulu, HI 96819

COMMISSIONERS PRESENT: Lee Ohigashi
Arnold Wong
Nancy Cabral
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Edmund Aczon

COMMISSIONERS EXCUSED: Dawn Chang
(There are currently 8 seated
Commissioners)

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

COURT REPORTER: Jean McManus

CALL TO RECONVENE

Chair Scheuer called the reconvened meeting to order at 9:30 a.m. and moved on to the next agenda item.

HEARING AND ACTION

Consider DR18-64 Robinson Kunia Lands LLC- Petition For Declaratory Order to designate Important Agricultural Lands for approximately 1239.20 acres at Kunia, O‘ahu, Hawai‘i identified by TMK Nos. all or portions of Tax Map Keys (1) 9-4-003-001(por) and -004, (1) 9-4-004-002(por.), -003.-004(por.), -007, -008, -010, -011, -012, -018.and -019 (por)

APPEARANCES

Stephen Mau, Esq., attorney for Petitioner Robinson Kunia Land, LLC (“RKL”)
Patricia Kehau Wall- Manager of Caroline J. Robinson LLC (a manager of RKL)
Eugene Takahashi, Second Deputy Director, City and County of Honolulu Department
of Planning and Permitting (DPP)
Dina Wong, Acting Planning Division Chief, DPP
Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)
Rodney Funakoshi, Land Use Administrator, OP
Lorene Maki, Planner, OP
Earl Yamamoto, Planner, Department of Agriculture (“DOA”)

Chair Scheuer updated the record and 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. Mau replied that Petitioner had no objections to the Commission’s policy and would comply. There were no questions or comments regarding the procedures.

Chair Scheuer declared that the documents submitted by DOA, OP, DPP and Petitioner would become part of the record. There were no objections to this action.

DISCLOSURES

Commissioners Okuda disclosed that his late father and Mr. Fee had worked together on a prior project together and that he and Ms. Wall had worked as together as co-counsels and stated that their past and current relationships would not impact his decision making and that he could remain impartial during the proceedings. .

There were no objections to Commissioner Okuda’s continued participation.

Chair Scheuer called for Public Testimony. Mr. Mau clarified that although Mr. Fee had initially identified himself as a public witness, he was in fact a witness for the Petitioner. Chair Scheuer acknowledged Mr. Mau’s comment and called for any others in the room desiring to provide Public Testimony.

PUBLIC TESTIMONY

None.

PETITIONER PRESENTATION

Mr. Mau introduced and qualified his first witness Tom Fee.

Petitioner Witnesses

1. Thomas Fee, President-HHF Planners (HHF)

Mr. Fee was qualified as an expert witness in land planning and provided a brief history and background summary on his firm’s role in preparing the Petition and used a

PowerPoint presentation to share information regarding the Petition Area and how it met IAL criteria.

County and OP had no questions for Mr. Fee. Mr. Yamamoto requested clarification on the information regarding the location of the DOA's proposed agricultural parks in the area and where they and other agricultural areas were located relative to the Petition Area.

Commissioners Okuda, Aczon, Cabral, Wong and Ohigashi requested clarification on various portions of Mr. Fee's presentation. Mr. Fee provided further details on the percentages of land area being offered for voluntary IAL designation, what types of "prejudice" RKL might suffer if the voluntary IAL designation was not granted by the LUC and the County imposed its IAL boundaries on the Petition Area; how RKL determined which of its lands would be designated IAL and non-IAL; what future uses were planned for the lands within and nearby the Petition Area; how long RKL had worked on its voluntary IAL proposal, how the effort to designate its voluntary IAL land became more active in 2017, and how RKL had decided the different acreages of the entire land holdings would be categorized.

Chair Scheuer declared a recess at 10:23 a.m. and reconvened the meeting at 10:33 a.m.

Chair Scheuer requested clarification on Mr. Fee's responses to questions from Commissioners Okuda, Aczon, and Ohigashi. Mr. Fee provided his perspective on what prejudices Petitioner might suffer, what action alternatives might be involved in different circumstances resulting from the County's actions, how Petitioner might utilize lands outside the IAL petition area, how future urbanization plans were not being actively considered, what quality of soils were involved in different areas of the Petition Area and the terms and conditions of current leases that Petitioner had in force.

Mr. Fee emphasized that he wanted the Commission to be aware that HHF had supported DPP's IAL mapping effort, but it was independent of the IAL work done for Petitioner.

There were no further questions on Mr. Fee's testimony. Mr. Mau called his second witness.

2. Patricia Kehau Wall- Manager of Caroline J. Robinson LLC (a manager of Petitioner Robinson Kunia Land LLC)

Ms. Wall shared her personal and professional background and described her role with RKL, and provided organizational information on RKL's history, community involvement and current and long-term operational plans. Ms. Wall described the

various considerations that motivated RKL to move forward with its efforts to voluntarily designate IAL land.

County, OP and DOA had no questions.

Commissioner Cabral requested clarification on Ms. Wall's property on the Big Island.

There were no further questions for Ms. Wall; and there was no redirect.

Mr. Mau concluded his presentation and summarized his request to have his Petition granted.

Chair Scheuer called for County to make its presentation.

COUNTY

Mr. Takahashi provided details of the next meeting of the County's Agricultural Development Task Force (ADTF) and provided DPP's position that the Commission defer action on this IAL matter. Mr. Takahashi confirmed that HHF had been engaged by DPP to assist with the IAL project and that this voluntary IAL action was separate and apart from DPP's research and collection of IAL data. Mr. Takahashi also described the efforts that DPP had put forth to assist the City Council in determining what lands should be designated IAL.

Mr. Mau requested clarification on Mr. Takahashi's familiarity with Chapter 205 and the voluntary IAL process and on what possible future consequences a deferral might have upon the Petition Area. Mr. Takashi responded that he was aware of Chapter 205 and the IAL process and provided his perception of what possible outcomes might result from various City Council's decisions.

Ms. Apuna requested clarification on how this voluntary IAL petition differed from past petitions. Mr. Takahashi described the progress on IAL matters that County had achieved and that stated that the position statement to request the Commission to defer action was mainly a result of timing since additional data and methods of evaluating IAL petitions had evolved in the span of time between former and the current petition.

Mr. Yamamoto had no questions.

Commissioners Cabral, Wong, Aczon, and Okuda requested clarification on Mr. Takahashi's testimony. Mr. Takahashi could not respond to questions regarding the history of the IAL law. Ms. Apuna responded that IAL originated in 2005 with later amendments in 2008. Ms. Wong responded to questions regarding details of the DPP's IAL research and data collection process, anticipated progress of the decision-making process and what information had been submitted for City Council's consideration. Mr. Takashi and Ms. Wong clarified how the IAL land identification study was done and stated that three IAL criteria had been applied- 1) that the land was in agricultural production, 2) soil quality conducive for growing, and 3) availability of water; how the findings of the IAL study had been presented to the City Council and how City Council decisions could be appealed by the property owner.

Commissioner Mahi stated that the Commission should focus on the Petition and move forward.

Commissioner Ohigashi requested clarification on the role of ADTF and Chair Scheuer noted that DPP had not identified any defects to the voluntary IAL Petition and inquired how granting the Petition might impact the acreage amount of DPP's efforts. Ms. Wong described how a Council resolution was passed and defined the mission of the ADTF and the criteria used for data collection and her calculation of the acreage amounts.

Chair Scheuer declared a recess at 11:36 a.m. and reconvened the proceedings at 11:46 a.m.

OP

Ms. Apuna described OP's reasons for recommending approval of the Petition and stated that Mr. Funakoshi would summarize OP's position.

Mr. Funakoshi described why OP supported the proposed Petition and provided the rationale for OP's position statement.

Petitioner, County and DOA had no questions for OP.

Commissioner Okuda asked if OP would like to comment on the County's Position Statement. Mr. Funakoshi deferred the question to Ms. Apuna. Ms. Apuna stated that the Commission withholding its decision on this matter would run counter to the IAL process and described why deferral was not an option for the Commission.

Chair Scheuer asked if there were any further questions OP There were none.

Chair Scheuer asked if the Department of Agriculture had any comments.

DOA

Earl Yamamoto, DOA representative, stated that DOA supported the Petition and described why it took that position and what DOA concerns would be addressed by granting the Petition.

There were no questions for Mr. Yamamoto.

FINAL COMMENTS/REMARKS

Petitioner had no final questions or comments.

The Commission had no further questions or comments.

ACTION

Commissioner Aczon moved that the Commission grant the Petition for IAL designation subject to the following conditions:

- 1) Petitioner shall comply with representations made to the Commission with respect to not claiming any credits described in HRS §205-45(h) with respect to the Petition Area.
- 2) Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

Commissioner Mahi seconded the motion.

DISCUSSION

Commissioners Cabral, Okuda, Aczon and Scheuer expressed their reasons for supporting the motion. Commissioner Okuda commented on how OP's statement about deferral of the Petition not being an option was a valid point. Chair Scheuer shared his position on this IAL matter.

There was no further discussion.

Chair Scheuer had Mr. Orodener poll the Commission.

The Commission voted unanimously in favor of the motion. (7-0-1 excused).

Commissioner Cabral excused herself at 12:02 p.m. and rejoined the meeting at 12:03 p.m.

Chair Scheuer stated that the next agenda item was to authorize the Executive Officer to Submit the amended administrative rules to the Governor and requested that Mr. Orodener to provide a summary of what needed to be acted upon. Commissioner Aczon asked if the proposed amended administrative rules had changes. Mr. Orodener responded that there had been no changes and described why the public hearings on the proposed amendment rules was necessary.

Commissioner Wong moved and Commissioner Aczon seconded the motion to authorize the Executive Officer to submit the proposed amended rules to the Governor. By voice vote, the Commissioner unanimously (7-0-1 excused) voted in favor of the motion.

There being no further business to address, Chair Scheuer adjourned the meeting at 12:05 p.m.

