

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room
9th Floor, Kamamalu Building
250 S. King Street
Honolulu, Hawaii

Approved
1/20/88

January 5, 1988

COMMISSIONERS PRESENT: Teofilo Phil Tacbian, Chairman
Renton L.K. Nip
Richard Choy
Toru Suzuki
Robert Tamaye
Lawrence Chun (Portion of Proceedings)
Everett Cuskaden (Portion of Proceedings)
Sharon R. Himeno

COMMISSIONERS ABSENT: Frederick P. Whittemore, Vice-Chairman

STAFF PRESENT: Esther Ueda, Executive Officer
Annette Chock, Esq., Deputy Attorney General
Raymond Young, Staff Planner
Darlene Kinoshita, Chief Clerk
Holly Hackett, Court Reporter

Chairman Tacbian called the meeting to order.

ACTION

SP73-159/MAKOTO NITAHARA dba NANI MAU GARDENS (Hawaii)

Chairman Tacbian announced that the Commission would take action in the matter to allow a transfer of the special permit from Makoto Nitahara dba Nani Mau Gardens, Inc. to Toyama Garden Hawaii Corporation dba Nani Mau Gardens, Inc. and to amend conditions 2 and 3 of the Commission's Decision and Order.

Appearances

Sidney Fuke, Planning Consultant

Richard Jitchaku, Island Representative

Norman Hayashi, Planner, County of Hawaii, Planning Department

Raymond Young, Staff Planner, oriented the Commission to the area being requested for reclassification on the USGS and tax maps and gave a summary report of the special use permit request by Petitioner.

After hearing comments from Petitioner's representative, Sidney Fuke, and Norman Hayashi for the County of Hawaii, questions were asked by the Commissioners.

Commissioner Tacbian moved for an executive session to confer with the Deputy Attorney General regarding legal issues. The motion was seconded by Commissioner Nip and carried unanimously by voice votes.

Commissioner Nip moved to approve SP73-159/Makoto Nitahara dba Nani Mau Gardens, Inc. by allowing a transfer of the special permit from Makoto Nitahara dba Nani Mau Gardens, Inc. to Toyama Garden Hawaii Corporation dba Nani Mau Gardens, Inc. and subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all of the conditions of approval.
2. Plans for the proposed addition, including parking, shall be submitted to the County Planning Department for Plan Approval review within one year from the effective date of this amendment.
3. Construction of the proposed addition shall commence within one year from the date of receipt of Final Plan Approval and be completed within two years thereafter.
4. A drainage system in accordance with the requirements of the County Department of Public Works shall be installed.
5. All other applicable laws, rules, regulations, and requirements, including those of the State Department of Health, shall be complied with.

6. An annual progress report shall be submitted to the State Land Use Commission, County Planning Commission, and County Planning Department prior to the anniversary date of the approval of this amendment. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

7. An extension of time for the performance of conditions within the permit may be granted by the County Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extensions would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the permit.

8. The applicant may not operate a kitchen or restaurant on the subject premises, but may operate a snack facility during the hours of operation of the commercial arboretum which is subordinate to its commercial arboretum activity provided, however, that it satisfies all applicable County and State sewage, health, drainage, water, and building requirements.

The motion was seconded by Commissioner Suzuki.

The motion to approve the special use permit subject to eight conditions was unanimously carried by the following voice votes:

Ayes: Commissioner Nip, Choy, Suzuki, Cuskaden, Himeno, Tamaye, and Chairman Tacbian

SP87-367/ALLIED HAULING, INC. (Maui)

Chairman Tacbian announced that the Commission will be taking action on this special use permit.

Appearances

Patrick Murakami, Petitioner

Max Graham, Esq., Attorney for M. Funes

Clayton Yoshida, Planner, Planning Dept., County of
Maui

Raymond Young, Staff Planner, oriented the Commission to the area being requested and gave a summary report of the special use permit request by Petitioner to allow the operation of a rock crushing plant and concrete batching plant on approximately 45.957 acres of land within the Agricultural District at Pulehunui and Waikapu, Wailuku, Maui.

After hearing comments from Petitioner, Patrick Murakami, Max Graham, and Clayton Yoshida, questions were asked by the Commissioners.

Commissioner Suzuki moved to approve SP87-367/Allied Hauling, Inc. to allow the operation of a rock crushing plant and concrete batching plant on approximately 45.957 acres of land within the Agricultural District at Pulehunui, Waikapu, Wailuku, Maui subject to the following conditions:

1. That said operation shall be limited to quarrying, rock crushing, and concrete batching and shall be valid until October 16, 1993, the time when the applicant's land license agreement with the State of Hawaii terminates. Time extensions may be granted upon timely request and favorable review by the Maui Planning Commission and the State Land use Commission.

2. That appropriate measures shall be taken to mitigate potential adverse impacts relative to soil erosion from wind and rain, ambient noise levels, and traffic disruptions.

3. That full compliance with the requirements of the Department of Public Works in their memo dated November 10, 1987 shall be rendered unless written verification be submitted to the Planning Department that the conditions have been modified or deleted.

4. That the Special Use Permit shall be valid only for the uses as approved and in accordance with plans submitted therein.

5. That the uses or structures allowable by the Special Use Permit shall not be expanded or increased in size or area or changed to another special use, unless so authorized.

6. In the event any historic, archaeological, or cultural sites, remains, artifacts, or resources are discovered, work shall stop and the State Historic Site Office, Department of Land and Natural Resources, the Office of Hawaiian Affairs, and the County Planning Department shall be duly notified to advise of appropriate action.

7. That upon termination of operations depleted and excavated areas shall be graded to blend with the surrounding natural contours and that appropriate vegetative cover consisting of trees, shrubs, and groundcover shall be established.

8. That this permit shall be non transferable (Allied Hauling holding the land license agreement and M. Funes Concrete being the Operator) unless prior approval has been obtained from the Planning Commission, the State Land Use Commission, and the Board of Land and Natural Resources.

9. In the event that any of the conditions of this permit are breached the applicant/permittee shall be served a written notice by the Planning Department or appropriate County enforcement agency and shall be required to cease all operations from and after receipt of said notice of the Planning Commission to address the breach of conditions. If no appeal is duly filed by the applicant, the Planning Commission shall revoke the subject Special Use Permit.

10. That the project shall conform to the requirements

of other Federal, State, and County statutes, ordinances, rules, and regulations or codes.

11. That the special use permit conditions by the Planning Commission be incorporated in the operating agreement with operator, M. Funes Concrete, Inc.

The motion was seconded by Commissioner Nip and unanimously carried by the following voice votes:

Ayes: Commissioner Suzuki, Tamaye, Cuskaden, Nip, Himeno, Choy, and Tacbian.

SP86-361/HEMMETER-VMS KAUAI CO.III (Kauai)

Chairman Tacbian announced that the Commission will be taking action on the motion filed by the County of Kauai, Planning Department, to correct the record of the proceedings before the Commission.

Commissioner Himeno had earlier declared a conflict of interest and was excused from the proceedings.

Appearances

James Funaki, Esq., Attorney for Petitioner

Michael Laureta, Planner, Planning Department, County of Kauai

John Anderson, Esq., Deputy Attorney General, Department of Business and Economic Development

After hearing comments from Mr. Funaki, Mr. Laureta, and Mr. Anderson, questions were asked by the Commissioners.

Commissioner Cuskaden moved for an executive session to discuss legal matters with the Deputy Attorney General. The motion was seconded by Commissioner Choy.

Chairman Tacbian ordered that the Petitioner and the County file a formal motion to correct the Decision and Order.

A87-618/ISEMOTO CONTRACTING CO., LTD., SJA PARTNERSHIP, AND
MARCH E. TAYLOR (Hawaii)

Chairman Tacbian announced that the Commission will act to determine whether the anticipated effects discussed in the Isemoto's Environmental Assessment to reclassify approximately 9.9 acres of land currently in the Conservation District into the Urban District at Honokohau, North Kona, Hawaii, for baseyard and service uses constitute a "significant effect" pursuant to Chapter 343, H.R.S.

Appearances

Sandra Pechter Schutte, Esq., Attorney for Petitioner

Norman Hayashi, Planner, Planning Department, County of Hawaii

John Anderson, Esq., Deputy Attorney General, Department of Business and Economic Development

Abe Mitsuda, Land Use Division, Department of Business and Economic Development

EXHIBIT

State's Exhibit No. 1 was admitted into evidence.

Arguments were heard from Sandra Schutte and Abe Mitsuda. After hearing arguments, questions were asked by the Commissioners.

Commissioner Nip moved that Petitioner be required to prepare an environmental impact statement. The motion was seconded by Commissioner Cuskaden.

The Commissioners were then polled as follows on the motion that Petitioner prepare an environmental impact statement:

Ayes: Commissioner Nip, Cuskaden, Himeno, Choy, and Tamaye.

Nays: Commissioner Suzuki and Chairman Tacbian.

The motion was passed and Petitioner was ordered to prepare an environmental impact statement.

A lunch recess was taken at 12:30 p.m. to reconvene at 1:45 p.m.

- 2:00 p.m. -

CONTINUED HEARING

A87-613/THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF
JAMES CAMPBELL, DECEASED

This proceeding is a continuation of the hearing which was held on September 29, 1987, September 30, 1987, November 16, 1987, November 17, 1987, December 17, 1987, and December 18, 1987.

Commissioner Cuskaden was absent from the proceeding at this time. Commissioner Chun joined the proceeding at this time and presided over the proceeding for Chairman Tacbian.

Appearances

Ivan Lui-Kwan, Esq., Attorney for Petitioner

Oswald Stender, Petitioner

David Laxson, Esq., Deputy Corporation Counsel, City and County of Honolulu

Betsy Marcinkus, Dept. of General Planning, City and County of Honolulu

John Anderson, Esq., Deputy Attorney General, Department of Business and Economic Development

Abe Mitsuda, Land Use Division, Department of Business and Economic Development

The letter dated December 15, 1987 from Elizabeth Ann Stone was admitted into evidence by the Commission.

EXHIBITS

1. Petitioner's Exhibits A-11, A-12, Addendum to A-12, Z, AA through FF, HH through KK, MM, NN, X-1 through X-15, and S-1 through S-17 were admitted into evidence.

PETITIONER'S WITNESSES

1. Iwao Miyake

Commissioner Choy and Commissioner Nip were absent from the proceeding at this time.

2. Roy Tsutsui

3. Joseph Vierra

At this time, Ivan Lui-Kwan, Attorney for Petitioner, requested a continuance because the Kapolei Task Force report and Mr. Hastert's long range master plan were not completed and Petitioner did not have any further witnesses until these reports were completed. Acting Chairman Chun continued the hearing until January 19, 1988.

MISCELLANEOUS

A85-589/ A & B PROPERTIES, INC.

Walton Hong, Esq., Attorney for Petitioner, and William Campbell, representative of Petitioner, gave the Commission a status report of the petition.

The meeting was adjourned at 4:25 p.m.