

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room
Waikiki-Kapahulu Library
400 Kapahulu Avenue
Honolulu, Hawaii

Approved
1/20/88

December 17, 1987

COMMISSIONERS PRESENT: Teofilo Phil Tacbian, Chairman
Renton L.K. Nip
Richard Choy
Toru Suzuki
Robert Tamaye
Lawrence Chun
Everett Cuskaden

COMMISSIONERS ABSENT: Frederick P. Whittemore, Vice-Chairman
Sharon R. Himeno

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

Jean Marie McManus, Court Reporter

Chairman Tacbian called the meeting to order.

ACTION

A80-480 - MAUI 100 PARTNERS (Maui)

Chairman Tacbian announced that the Commission would take action on Petitioner's Request for release of condition of the Decision and Order, as amended, which reclassified approximately 94.541 acres from the Agricultural into the Urban District at Palehunui and Waiakoa, Kula, Makawao, Maui, for a residential subdivsion.

Appearances

Tamotsu Tanaka, Esq., Attorney for Petitioner

Clyde Murashige, Planning Department, County of Maui

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

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

Raymond Young, Staff Planner, gave a background report of the petition and also oriented the Commission to the area on the USGS and tax maps.

The County of Maui Planning Department's Position on Request for Removal of Condition was admitted into evidence by the Commission.

After hearing comments from Petitioner, County of Maui, and the State, questions were asked by the Commissioners.

After questioning, Commissioner Choy moved for an executive session to discuss legal matters with the Deputy Attorney General. The motion was seconded by Commissioner Chun and carried unanimously by voice votes.

Chairman Tacbian deferred action on the request until the Petitioner files an amended condition in the bottom half of the property and then after proof of this filing, the Commission will put their request back on the agenda for decision.

DR87-11 - CASTLE AND COOKE, INC. (Lanai)

Chairman Tacbian announced that the subject docket was a request for a declaratory ruling relating to golf course and related uses within the Rural District.

Appearances

James Funaki, Esq., Attorney for Petitioner.

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

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

The Land Use Commission allowed representatives from the State to participate in the proceeding on this petition.

Arguments were heard from Petitioner and the State.

Commissioner Chun moved to go into executive session to confer with our Deputy Attorney General regarding legal matters on this petition. The motion was seconded by Commissioner Choy and unanimously carried by voice votes.

Commissioner Tamaye moved to determine that golf courses and related uses are not permitted in the Rural District. Commissioner Cuskaden seconded the motion.

The motion was unanimously carried by the following votes:

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

A87-614 - HEMMETER - VMS KAUAI COMPANY III

Chairman Tacbian announced that the Commission would take action in the matter of the petition by Hemmeter-VMS Kauai Company III to reclassify approximately 299.79 acres of land currently in the Agricultural District into the Urban District at Kalapaki, Lihue, Kauai for resort.

Commissioner Chun had previously declared a conflict of interest, but subsequently that conflict has been removed. Chairman Tacbian allowed Commissioner Chun to be eligible to participate in this action.

It was also determined by Chairman Tacbian that all of the other Commissioners present were eligible to participate in the action on the petition.

Closing arguments were heard from Mr. Funaki, Attorney for Petitioner, and Ms. Lorna Nishimitsu, Attorney for the County of Kauai.

A lunch recess was taken at 12:10 p.m. and reconvened at 1:30 p.m.

- 1:30 p.m. -

John Anderson, Attorney for the Department of Business and Economic Development, motioned to reopen the hearing

because avigation and noise contour maps were now available from the Department of Transportation.

Chairman Tacbian denied the motion to reopen because it would be taken care of in the Decision and Order by the conditions set forth by the Commission.

Commissioner Choy moved to reconsider Chairman Tacbian's denial of DBED's motion to reopen the hearing to introduce new evidence from the Department of Transportation. The motion was seconded by Commissioner Cuskaden.

Commissioner Chun moved for an executive session to discuss legal matters with the Deputy Attorney General. The motion was seconded by Commissioner Chun and carried unanimously by voice votes.

Commissioner Choy moved to withdraw his motion to reopen. The motion was unanimously carried by voice votes.

Commissioner Nip moved to approve the property consisting of approximately 299.79 acres, being the subject of this docket A87-614 by Hemmeter, VMS Kauai Company III, situated at Kalapaki, Lihue, Island and County of Kauai, State of Hawaii, for reclassification from the Agricultural District to the Urban District subject to the following conditions:

1. As represented by Petitioner, no residential, condominium or hotel dwelling units shall be constructed on the property.

2. An avigation easement in a form prescribed by the State Department of Transportation shall be granted to the State of Hawaii by the property owner for the entire property.

3. The Petitioner shall execute appropriate documents and/or agreements with the State Department of Transportation that would indemnify and hold harmless the State of Hawaii and all of its agencies and/or employees from any injury, damages, and costs, including but not limited to reasonable attorney fees arising from any action alleging adverse impacts generated by normal airport activities at the Lihue Airport filed by any owners, subtenants, guests or other users of the property.

4. The Petitioner shall fund the design and construction of highway improvements as the State Department of

Transportation and the County of Kauai may reasonably require as conditions to the issuance of state and county permits and authorizations relating to the property.

5. Insofar as the property is affected as part of the overall Westin Kauai development, the Petitioner shall provide public access to the shoreline and improvements therefor in the manner required under Kauai County Ordinance Number PM-146-86 and as may be required under such other Kauai County permits covering the overall Westin Kauai development or any portion thereof.

6. Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial rock or coral alignments, pavings or walls be encountered during the development of the property, the Petitioner shall immediately stop work in affected areas, and contact the State Historic Preservation Office.

7. The Petitioner shall fund the construction and maintenance of sewer and drainage systems as may be required by the County of Kauai and the State Department of Health provided that said sewer and drainage improvements are rationally related to the mitigation of impacts caused by the development of the Property.

8. Should any County and/or State land become available for housing development within Lihue, Kauai, and its surrounding area within five years from the date of this Order, the Petitioner shall make available at no charge its development expertise in the County's and/or State's development of up to 200 units on such land in the manner as more particularly described in Exhibit B. (Exhibit B would be the amended condition that Mr. Funaki, Petitioner's attorney, submitted today.) The Petitioner shall submit annual reports to the Commission on the status of petitioner's compliance with this condition on or before each anniversary date of this order during the five-year period or until the housing development shall have first occurred within said period.

9. In the event that the Petitioner shall sell the subject property, notice in advance of the consummation of such sale shall be provided to the Commission.

10. In the event that the Petitioner or any successor seeks modification or relief from the conditions imposed herein, application therefore shall be made to the Land Use Commission.

The motion was seconded by Commission Cuskaden.

The motion to approve the petition subject to ten conditions was unanimously approved as follows:

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

CONTINUED HEARING

A87-609 MILILANI TOWN, INC.

Today's proceeding was a continuation of the hearing held on July 28, 1987, July 29, 1987, August 26, 1987, November 16, 1987, and November 17, 1987.

Appearances

James Funaki, Esq., Attorney for Petitioner

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

Betsy Marcinkus, Department 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

David Hulse, Land Use Division, Department of Business and Economic Development

Commissioner Nip had earlier declared conflict of interest and was excused from the proceeding.

The letter dated December 16, 1987 from Chairperson Arnold Morgado, City Council, City and County of Honolulu, and the letter dated November 14, 1987 from Elizabeth Stone was admitted into evidence by the Land Use Commission.

EXHIBITS

1. Petitioner's Exhibit No. 28 was admitted into evidence.

PETITIONER'S WITNESS (Recalled)

1. Wallace Miyahira

After hearing Mr. Miyahira's testimony, the State asked for a continuance to further study Petitioner's Exhibit No. 28 which addresses the State's concerns with regard to affordable housing.

Commissioner Choy moved for approval of this request for continuance. Having no objections from the other Commissioners, Chairman Tacbian allowed the request for continuance until January 19, 1988.

A87-610 TOM GENTRY AND GENTRY PACIFIC, INC.

Today's proceeding was a continuation of the hearing which was held on July 14, 1987, July 15, 1987, August 11, 1987, August 12, 1987, August 27, 1987, and November 16, 1987.

Commissioner Nip joined the proceeding at this time.

The letter dated November 14, 1987 from Elizabeth Ann Stone was admitted into evidence by the Land Use Commission.

At this time, State's attorney, John Anderson, requested that the Commission allow a continuance of the hearing for one month because the State and the Petitioner had not concluded their discussions and negotiations.

Having no objections from the Petitioner and the County, Chairman Tacbian granted the continuance until January 19, 1988.

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, and November 17, 1987.

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 November 14, 1987 from Elizabeth Ann Stone was admitted into evidence by the Land Use Commission.

EXHIBITS

1. Petitioner's Exhibit KK, X-11, and S-15 was admitted into evidence.

PETITIONER'S WITNESSES

1. Mark Hastert (testimony continued from Nov. 17, 1987 meeting)

2. Dale Marco

The meeting was adjourned at 4:30 p.m., to be reconvened December 18, 1987 at 9:00 a.m.