

Approved
9/24/85

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Department of Education Board Room
4th Floor, Liliuokalani Building
Honolulu, Hawaii

July 23, 1985 - 9:00 a.m.

COMMISSIONERS PRESENT: Teofilo Tacbian, Chairman
Frederick Whittemore, Vice Chairman
William Yuen
Winona Rubin
Toru Suzuki
Lawrence Chun
Richard Choy
Robert Tamaye
Everett Cuskaden

STAFF PRESENT: Esther Ueda, Executive Officer
Ray Young, Planner
Teri Oki, Chief Clerk
Benjamin Matsubara, Special Counsel

Wendy T. Munekata, Court Reporter

ACTION

Chairman Yuen called the meeting to order.

A84-583 - MAUNA LANI RESORT, INC.

Chairman Yuen announced that the Commission will act to consider acceptance of the petitioner's Environmental Impact Statement which was prepared for the petition to reclassify approximately 654 acres of land from the Agricultural and Conservation District into the Urban District at Kalahuipa'a, Anaehoomalu and Waikoloa, South Kohala, Hawaii.

Commissioner Cuskaden moved to accept the Environmental Impact Statement prepared on behalf of Mauna Lani Resort, Inc. It was seconded by Vice Chairman Tacbian and unanimously carried by voice vote.

A84-581 - OCEANIC PROPERTIES, INC.

In the matter of the petition by Oceanic Properties, Inc. to reclassify approximately 50 acres of land from the Agricultural District into the Urban District at Wahiawa, Oahu for single and multi-family residential development, a hearing had been conducted by the Land Use Commission on March 19, 1985.

Appearances

James Funaki, attorney representing the petitioner

Annette Chock, Deputy Attorney General, representing the
Dept. of Planning & Economic Development

David Laxson, Deputy Corporation Counsel, representing the
Department of General Planning

It was determined by Chairman Yuen that all of the Commissioners present today were eligible to participate in the action on the various petitions.

Closing Arguments

By Mr. Funaki----- 5 to 9

Examination by Commissioner Cuskaden----- 9 to 12

Examination by Chairman Yuen-----12 to 13

Examination by Commissioner Whittemore-----14

By Mr. Laxson-----14 to 15

Examination by Commissioner Cuskaden-----15

By Ms. Chock-----15 to 16

Commissioner Whittemore moved to reclassify approximately 50 acres of land currently in the Agricultural District into the Urban District of Wahiawa, Oahu, for single and multi-family residential development, with the following condition:

1. Petitioner (or in the event Petitioner does not exercise its option and acquire the property, then Petitioner's fee owner Castle and Cooke, In.) shall provide housing opportunities for low, moderate and gap-income Hawaii

residents prior to assigning or transferring its interest in the subject property by offering for sale to Hawaii residents of gap group family income as determined from time to time by the Hawaii Housing Authority and/or City and County of Honolulu at least 300 single family or multi-family housing units at prices affordable to such gap group income purchasers and on a preferential basis on its own or in cooperation with either or both the Hawaii Housing Authority and the City and County of Honolulu at least ten percent (10%) of such residential units either to be developed on the subject property or in the alternative off the subject property to residents of the State of Hawaii low or moderate family income as determined by standards promulgated by the Hawaii Housing Authority and City and County of Honolulu from time to time. The preferential residential units shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain State-assisted financing (e.g. Act 105 or Hula Mae) or Federally-insured or assisted financing (e.g. FHA Section 245 Program) intended to encourage home ownership by low and moderate income families. The preferential residential units shall either be developed on the subject property or on other land to be acquired by the Petitioner.

Commissioner Chun moved to go into executive session to ask counsel for legal opinion. It was seconded by Vice Chairman Tacbian and unanimously passed by voice vote.

Commissioner Whittemore asked to amend his motion by deleting the last sentence and adding a second condition as follows: "This condition may be fully or partially released by the Commission as to all or any portion of the subject property upon timely motion and provision of adequate assurance of satisfaction of this condition by the Petitioner."

Commissioner Whittemore's motion, as amended, was seconded by Commissioner Tamaye. The motion, as amended, was unanimously carried as follows:

Ayes: Commissioners Tacbian, Rubin, Suzuki, Chun, Whittemore, Cuskaden, Tamaye, Choy, Yuen

A84-582 - THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES
CAMPBELL, DECEASED

Appearances

Ben Tsukazaki, Attorney representing the petitioner

David Laxson, Deputy Corporation Counsel, representing
the Department of General Planning

Annette Chock, Deputy Attorney General, representing the
Dept. of Planning & Economic Development

Closing Arguments

By Mr. Tsukazaki-----28 to 33

By Mr. Laxson-----33

By Ms. Chock-----33 to 35

Commissioner Choy moved to approve Petition A84-582, Trustees Under the Will and of the Estate of James Campbell, Deceased, Oahu, to reclassify approximately 29.543 acres of land currently in the Agricultural District into the Urban District at Honouliuli, Ewa, Oahu, for a shopping center, subject to the following conditions:

1. Petitioner shall coordinate construction plans for the proposed development with the State Department of Health and the Board of Water Supply to minimize the possibility of pollution of the potable water well, Makakilo #1, located at the intersection of the H-1 Freeway and Makakilo Drive from business activities at the shopping center such as the proposed service station.
2. Petitioner shall coordinate plans for highway improvements such as the off-ramp for the eastbound lanes of the H-1 Freeway, and improvements to the Makakilo Drive eastbound on-ramp to the H-1 Freeway with the State Department of Transportation.
3. This condition may be fully or partially released by the Commission as to all or any portion of the subject property upon timely motion and provision of adequate assurance of satisfaction of this condition by the Petitioner.

The motion was seconded by Commissioner Whittemore.

The motion was carried with the following votes:

Ayes: Commissioners Tamaye, Tachian, Suzuki, Choy, Cuskaden,
Rubin, Whittemore, Chun, Yuen

A83-562 - WEST BEACH ESTATES

Appearances

Kerry Komatsubara)
David Arakawa) Co-counsel representing the petitioner
Rodney Fujiyama)

Jane Howell, Deputy Corporation Counsel, representing the
Department of General Planning

Annette Chock, Deputy Attorney General, representing the
Dept. of Planning & Economic Development

Alan Murakami, Attorney representing Intervenors

Vice Chairman Tacbian conducted this portion of the
proceedings.

Closing Arguments

By Mr. Fujiyama-----39 to 43

Examination by Commissioner Cuskaden-----43 to 45

Examination by Commissioner Rubin-----45 to 46

Examination by Chairman Yuen-----46 to 47

By Ms. Howell-----47 to 50

By Ms. Chock-----50 to 53

Examination by Commissioner Cuskaden-----54 to 55

By Mr. Murakami-----55 to 70

Examination by Commissioner Cuskaden-----70 to 71

Examination by Commissioner Choy-----72

Examination by Chairman Yuen-----72 to 74

Examination by Commissioner Rubin-----75 to 77

Reexamination by Commissioner Cuskaden-----78 to 83

Rebuttal

By Mr. Fujiyama-----84 to 86

Examination by Commissioner Cuskaden-----86 to 87

Commissioner Yuen moved that the Commission go into executive session to take advice from its counsel regarding some of the points made during the oral argument. A lunch recess was called between 12:10 p.m. and 2:15 p.m.

2:15 p.m.

Vice Chairman Tacbian called for a motion regarding the petition of West Beach Estates.

Chairman Yuen moved to accept as Findings of Fact the following findings: First, Petitioner's Finding No. 2, Petitioner's Finding No. 3, as to be modified by the Commission, Petitioner's Finding No. 4, 6, as modified. Petitioner's Findings 81 and 82. Petitioner's No. 10, 11, 13, as modified by the Commission.

Petitioner's 12, 14, 16, 18, 19, 20, 21, 22, 33, 39, 41, 42, 43, 44, 45, 52, 56, 57, 59, 75, 60, 62, 63, 64, 65, 67, 68, 70, 72, 76, 77, 78, 79, 80, 83, 84, 32, 24, 25, 26, 27, 28, 29, 30, 31, Findings to be modified from Petitioner's Findings regarding need and regarding the development, City and County of Honolulu developments plans.

Petitioner's 103, 105, 106, 108, 99, 113 and specific finding by the Commission that the Commission rejects the Intervenor's contention that urbanization of the West Beach area will have significant adverse impact on the existing life styles of Waianae residents and that the evidence adduced does not substantiate a contention that the proposed development would in and of itself create adverse impacts on the Hawaiian life style of Waianae residents.

Petitioner's 122, 123, 124. Intervenor's 4, 5, 19 and 16. Petitioner's 146, 148, 149. Finding regarding Dr. Andrew Berger's objections. Petitioner's 157, 158, 159, 164, 165, 167, 166, 169, 170, 172, 140, 141 and 142.

Petitioner's 177, 178, 179, 182, 183, 186, 188, 191, 192, 194, 197, 205, 209, 210, 212, 213, 176, 220, 224, 225, 227, 229, 230, 233, 175, 234, 231, 238, 242, 241, 246, 248, 249, 207, 208, 250, 251, 253, 254, 266, 267, 268, 269, 270, 277, 275, 276, 279, 280, 281, 282, 283, 284, and 272.

Chairman Yuen moved to adopt as a Conclusion of Law that the Commission finds upon a preponderance of the evidence that the reclassification of the property which is the subject of the petition in this docket number A83-562 conforms to the standards established in the State Land Use District Regulations and to propose that the entire property of 642 acres situate at Honouliuli, Ewa, Oahu, Hawaii, more particularly identified as Oahu tax map key numbers 9-1-14: Portion of Parcel 2, 9-1-15: 3, 6, 7, 10, Portion of Parcel 4, 9-2-03: 3, 7, Portion of 2 be reclassified from the Agricultural District to the Urban District subject to the following conditions:

1. The Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring its fee simple interest to be acquired in the subject property by offering for sale on a preferential basis, on its own or in cooperation with either or both the Hawaii Housing Authority and the City and County of Honolulu, ten percent (10%) of the residential units, plus a number of residential units not less than ten percent (10%) of the number of resort residential condominium units not operated as full service hotel facilities to be developed on the subject property, or in the alternative on other lands to be acquired by the Petitioner, to residents of the State of Hawaii of low or moderate family income as determined by standards promulgated by the Hawaii Housing Authority and/or the City and County of Honolulu from time to time. The preferential residential units shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain State-assisted financing, (e.g. Act 105 or Hula Mae) or federally-assured or assisted financing (e.g. FHA Section 245 Program) intended to encourage home ownership for low and moderate income families.
2. Petitioner shall, in coordination with the fee owner, Estate of James Campbell, the other lessee of the Estate of James Campbell and other developers in the Ewa region and appropriate State and County agencies, develop and implement an overall Ewa water master plan to assure that potable and non-potable water will be available to the property in a timely and coordinated manner. This overall Ewa water master plan shall include provisions for accommodating residential and agricultural water needs of Waianae coast farmers and other residents in order that the City and County of Honolulu Board of Water Supply Class III designation can be removed for Waianae.
3. Petitioner shall at its expense construct all offsite infrastructural improvements as may be required by the appropriate State and County agencies.

4. Petitioner shall dedicate to the City and County of Honolulu public easements for shoreline access to the beach and lagoon areas to be developed on the property from all internal roadways, and easements for recreational purposes for the use of such beach and lagoon areas and shall improve and dedicate areas for public parking stalls. The City and County of Honolulu Department of Land Utilization shall determine the location of the easements and the number of parking stalls.
5. The Petitioner shall preserve a Fishing Shrine (Site 1433) located in the park area on the northern portion of the property.
6. Petitioner shall test pit fifty percent (50%) of all sinkholes found on the Property larger than a meter in diameter and shall fully excavate all sinkholes in which fossil bird bones are found. Petitioner shall loan the fossil remains to an appropriate historical, educational, or archaeological institution for investigation and/or preservation.
7. Petitioner shall submit its completed archaeological findings to the State Historic Preservation Office for review and comment before commencing with the proposed development of the property. Petitioner shall comply with the State Historic Preservation Office recommendations in implementing Petitioner's archaeological plan.
8. Petitioner shall construct or cause to be constructed at least 4,000 hotel rooms and resort hotel condominium apartment units on the Property. Petitioner shall operate or cause to be operated at least fifty percent (50%) in number of such hotel rooms and condominium apartment units and full service hotel facilities.
9. Petitioner shall apply or cause to be applied sound attenuation on all residential units that are subject to aircraft noise contours greater than 60 Ldn. Petitioner shall include in all conveyances of apartments, townhouses, or single family lots, in areas subject to aircraft noise contours greater than 60 Ldn, appropriate noise covenants approved by the State Department of Transportation.

10. With respect to areas cross hatched on Petitioner's Exhibit 29, identified as areas where construction of buildings may not be started within five years from the date of this approval, and more particularly identified on the map to be attached to the Decision and Order, Petitioner shall develop said lands only to the extent of mass grading and construction and installation of infrastructure improvements. Upon substantial completion of construction on the remainder of the Property, being the areas outside of the cross hatched areas on said Exhibit 29, Petitioner shall file a motion with the Commission to request the Commission's release of a restriction of building on cross hatched areas. Upon satisfactorily demonstrating to the Commission that Petitioner can substantially complete development of the remaining area, the Commission shall allow construction on the cross hatched areas and release the building restriction.
11. Petitioner shall submit annual progress reports to the Land Use Commission, the Department of Planning and Economic Development, and the Department of General Planning of its progress in the development of the subject property and in satisfying the above conditions.
12. Petitioner shall petition the Land Use Commission to reclassify the lands actually developed for the marina waterways to the Conservation District within two years of completion of construction of the marina.
13. The Commission may fully or partially release these conditions as to all or any portion of the subject property upon timely motion and provision of adequate assurance of satisfaction of these conditions by Petitioner.

The motion was seconded by Commissioner Cuskaden. As a seconder of the motion, Commissioner Cuskaden questioned whether or not he would have the authority to propose amendments to the motion. After receiving approval, he proposed two amendments to the conditions.

The first is that the developer take out or subscribe to a performance bond of a face value of \$1 million to be used for ocean repair to restore as much as possible the ocean environment in the West Beach area to its preconstruction condition with the clean-up efforts of this project to be coordinated by appropriate State and County agencies.

The second condition is that the developer establish a trust fund in the amount of \$250,000, and it could be by way of an annuity also, to establish a community resource center, again to be administered by the appropriate State and County agency, with input in staffing if possible from local Waianae and surrounding area residents, to provide for job training and family counseling and assist in services to the local residents of the Waianae region and if at all possible the farmers and all others who are directly affected or who may be directly affected by the construction and development of this project.

The motion to add two conditions to the original motion was seconded by Commissioner Rubin.

The commissioners were polled as follows on the above amendments. Condition #1 Ayes: Commissioners Cuskaden, Rubin

Nays: Commissioners Choy, Tamaye, Suzuki, Whittemore, Yuen, Chun, Tacbian

Condition #2 Ayes: Commissioners Yuen, Rubin, Cuskaden, Chun

Nays: Commissioners Choy, Tamaye, Tacbian, Suzuki, Whittemore

Both of the motions were defeated.

After comments in support of the petition by the Commissioners, the original motion to approve the reclassification of 642 acres of land from the Agricultural to the Urban District was unanimously carried as follows:

Ayes: Commissioners Yuen, Whittemore, Chun, Tamaye, Suzuki, Cuskaden, Choy, Rubin, Tacbian

MISCELLANEOUS

Lawrence Chun nominated Phil Tacbian and Everett Cuskaden nominated Richard Choy as Chairman of the Commission. Chairman

Yuen moved that the nominations be closed. It was seconded by Commissioner Chun. After counting the ballots, Executive Officer Esther Ueda announced that Phil Tacbian had been elected as chairman. Commissioner Yuen nominated Fred Whittemore as Vice Chairman of the Commission. Commissioner Tamaye moved that the nomination be closed and Fred Whittemore was unanimously elected as Vice Chairman of the Commission.

HEARING

A85-591 - DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Pursuant to a notice published in the Honolulu Star Bulletin on June 14, 1985 and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by the Department of Planning and Economic Development, Docket No. A85-591, to reclassify approximately 25.02 acres of land currently in the Urban District into the Agricultural District; 7.35 acres of land currently in the Agricultural District into the Urban District; and 3.49 acres of land currently in the Conservation District into the Agricultural District, at Waiahole, Koolaupoko, Oahu, for agricultural and residential development.

Appearances

Everett Kaneshige - Deputy Attorney General) - representing
Abe Mitsuda - Planner, Land Use Division) DPED

Winston Wong - Deputy Corporation Counsel and
Betsy Marcinkus - representing the Dept. of General Planning

Mary Anne Magnier - Attorney representing Intervenors

Chairman Tacbian reported that the Commission was in receipt of one timely request for intervention from Mary Anne Magnier, Native Hawaiian Legal Corporation, representing Robert Ah Chi. The Commission also received two timely requests to appear as public witnesses from David Chinen, President of the Waiahole Waikane Community Association, and State Representative Bob Nakata; and one untimely request from Charlene Hoe. All parties were advised of the procedure the Commission will follow during the hearings.

Intervention Requests

It was moved by Commissioner Yuen and seconded by Commissioner Cuskaden that the request for intervention by Mary Anne Magnier, Native Hawaiian Legal Corporation, be denied. The motion was lost by voice vote.

It was moved by Commissioner Rubin and seconded by Commissioner Chun that intervention be allowed for this proceeding. The motion was carried by voice vote.

All of the persons who appeared today, having been duly sworn in, testified and were examined as set forth in the transcript.

PUBLIC WITNESSES

David Chinen - President of Waiahole Waikane Community Association

Oral testimony-----128 to 131

Examination by Commissioner Choy-----131

Examination by Commissioner Yuen-----131 to 133

Kaloria Waiola - representing Charlene Hoe

Oral testimony-----134 to 135

Examination by Mr. Kaneshige-----135

Examination by Commissioner Choy-----136

Staff Planner, Ray Young, oriented the Commission to the area being requested for reclassification on the USGS and tax maps.

The following witness was taken out of order since there were no objections from any of the parties.

STATE

Frank S. Scott, Jr. - Agriculture Economist

Direct examination by Mr. Kaneshige-----139 to 145

Examination by Commissioner Whittemore-----145

Examination by Commissioner Cuskaden-----145

The hearing was adjourned at 4:15 p.m., with the announcement that the Commission will reconvene tomorrow at 9:30 a.m.