

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

County Council Room
Lihue, Kauai

January 9, 1970 - 1 p.m.

Approved
6-12-70

Commissioners Present: Wilbert Choi, Chairman
Goro Inaba, Vice-Chairman
Shelley Mark
Alexander Napier
Eddie Tangen
Leslie Wung
Tanji Yamamura
Shiro Nishimura

~~Commissioner Absent:~~ Sunao Kido

Staff Present: Ramon Duran, Executive Officer
Ah Sung Leong, Planner
Walton Hong, Legal Counsel
Jean Soma, Stenographer

Chairman Choi called the meeting to order and swore in persons wishing to testify before the Commission. Subsequently, he called for the first item on the agenda.

HEARINGS

PETITION BY WILLIAM AND GRACE MAHIKOA AND AGUIAR AND ASSOCIATES (A69-233) TO REZONE 29.43 ACRES FROM AGRICULTURAL TO URBAN AT KAPAA, KAUAI

Mr. Leong, staff planner, presented the staff report in which denial of subject petition was recommended in concurrence with the Kauai County Planning Commission's recommendation. In addition, staff recommendation that the district boundary be slightly adjusted to coincide with the newly created property boundary of parcel 101 would constitute the inclusion of said parcel in the Urban District, comprising approximately 4.42 acres. Mr. Leong also indicated the area under petition and surrounding properties on the district map of the area.

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Commissioner Nishimura questioned Mr. Leong as to the rationale of including only 6 acres of the parcels involved in this petition in the Urban District. Mr. Leong answered that this was the result of the consultants' recommendation during the recently completed five year boundary review. Commissioner Nishimura then inquired about the ingress and egress to subject site due to the fact that roadways are located way below the property. Mr. Leong responded that because these areas were considered developable, the consultants recommended that they be designated Urban.

Mr. John Texeira, realtor, represented the petitioners and refuted Mr. Leong's statement contained in the staff report that no evidence was submitted to substantiate the need for more houselots in the area. As evidenced by the article entitled "Kauai Building Sets a Record", which appeared in the December 29, 1969, edition of the Honolulu Star Bulletin, the island of Kauai experienced a record year in the construction of hotels (construction in 1969 totaled more than \$17.5 million). He stated that Mr. Tatsumi Hiramoto of the Kauai County's Building Division, "indicated the building boom for Kauai has been shifting slightly from resort hotels to areas influenced by the growth of tourism--single family homes and commercial and industrial building".

Mr. Texeira continued that between the Wailua Golf Course and the area under petition, the following hotels now exist or are in the construction stage:

1. Kauai Resort,
2. Islander,
3. Kauai Beach Boy,
4. Kapaa Sands,
5. Kauai Sands,
6. Coco Palms, and
7. Castaways.

These vast hotel developments will require employees such as managers, busboys, yardmen, waiters, waitresses, and the like to operate the resort hotels.

Being a realtor, Mr. Texeira confirmed that each day he receives phone calls from people desiring to purchase houselots. Because of the tremendous development, the County Building Department has predicted that more single-family residences and other family dwellings will be required to house the many employees in the tourist industry and others as well.

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On the aforementioned bases, the petitioners are, therefore, requesting a change in the land use district boundary from Agricultural to Urban. Furthermore, Mr. Texeira was of the opinion that allegations in the staff report (no proof of need for residences in the Kapaa area) are unfounded based on his testimony.

In recalling one of the fundamentals of ecology, Mr. Texeira stated that in the center or at the nucleus of an ecological structure are found the small business houses, service departments, etc., then the residences, and finally factories and commercial uses at the edge of said structure. Applying said fundamentals of ecology, Kapaa is the center of the development area; and, the area in question is contiguous to existing town of Kapaa. Therefore, logically, residential development should occur in the petitioned area.

A sad situation presently exists in Kapaa because of the homesteading arrangement. The only property that was available for homes was along the Kawaihau Road. This road extends for a distance of 6 miles with homes on either side--beyond that there are no homes.

Mr. Texeira questioned the land area (142 acres) which the Land Use Commission rezoned for residential development during the boundary review, saying that no developers and/or landowners petitioned the Land Use Commission for a change in district boundary.

The petitioners purchased the land (farmland) for \$5,000 per acre with the intention of building residences on the property. In view of the fact that the subject area is subject to periodic flooding, as is the Hanalei area, last month in December Hanalei experienced a flood that covered the main thoroughfare through this area. Nevertheless, people are buying properties in Hanalei despite the flood problems. Experts in the fields of technology and industrial science realize that flooding problems can be solved.

Since 1969 the petitioners have experienced no flooding in their area, and should flooding occur in the future, petitioners are willing to undertake the problem at their own expense.

Mr. Texeira disputed the staff's data that some of the land in question is steep. He continued that there is no real "steep incline" just a "slight degree of slope" in some areas. In comparison to the subject area, Wilhelmina Rise in

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Honolulu, Oahu, has a very severe incline; but, yet, the "Rise" is literally covered with residences.

Although the land is fairly suited for agricultural pursuits, there is no water available for irrigation purposes. Therefore, its only feasible use is that of houselots.

Mr. Texeira requested that the Land Use Commission favorably consider the matter at hand--permit the petitioners to develop residences on the property so that the people of Kauai may own their own dwellings and have the comforts of a 1970 civilization and not have to pay as much as \$200 per month for rent.

In response to Mr. Duran's inquiry, Mr. Texeira stated that the buyer will have the prerogative to purchase either a house and lot or a lot in the proposed subdivision development.

Mr. Duran then questioned Mr. Texeira as to whether he had arrived at an approximate sales price for each house and/or lot taking into consideration the expense involved to eliminate the flood problem. Mr. Texeira answered that such data is not available at present due to the County Engineer's unknown requirements in relation to subdivision standards. However, Mr. Texeira affirmed that the petitioners do have the capital to develop the petitioned property.

Mr. Texeira assured Chairman Choi that it would still be possible to develop all lands above the 20 percent elevation level in the event the Commission designated these lands as Urban. At the suggestion of Chairman Choi, Mr. Texeira agreed to submit a map showing the areas which are conducive to urban development. Chairman Choi also suggested that the petitioners submit a cost estimate for each house and/or lot if possible.

There being no further discussion, Chairman Choi advised Mr. Texeira he had 15 days to submit additional evidence; and, the hearing was closed.

PETITION BY JOSEPH S. BRUN (A69-235) TO REZONE 23.4 ACRES
FROM AGRICULTURAL TO RURAL AT KAPAA HOMESTEADS, KAUAI

Presentation to disapprove subject petition was delivered by the Executive Officer primarily on the basis that "not only is the property in question lacking the characteristics

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of a Rural District but such rezoning would constitute spot zoning . . ." Mr. Duran then proceeded to apprise the Commission of the location of the property under consideration, immediately surrounding properties, 20-acre reservoir abutting the property, and roadways in the area.

Mr. Morris Shinsato, attorney representing the petitioner, testified that there is a housing shortage on the island of Kauai. The two most critical areas facing a housing shortage on a state-wide basis are the islands of Oahu and Kauai. An article that appeared in a recent edition of the Garden Island stated that a home in the Molokoa area was sold for \$40,000+. Subsequently, now is the most opportune time to examine the housing problem confronting Kauai in view of the fact that the average Kauai resident cannot afford to purchase a house and lot for \$40,000. However, Mr. Shinsato was not prepared to reveal a reasonable sales price for a house and lot.

In substantiation of his statement that Kauai is facing a critical housing shortage, Mr. Shinsato stated that the State is "letting out" a 35-acre tract for a housing development in Kekaha.

In citing reasons for the approval of subject petition, Mr. Shinsato relayed the following relative to the property in question:

1. very good topography,
2. 8" water main runs through the property,
3. no flood problem, and
4. beautiful view.

The Kauai County Planning Commission based their decision to deny subject petition on the fact that the petitioner failed to submit valid supporting evidence on the "need" for change of district classification. Mr. Shinsato explained that the Planning Commission, of late, has not been notifying applicants of public hearings--"no hearing is given so how can they say there was no evidence submitted?". He was of the opinion that it would be economically unfeasible for a petitioner to have engineering studies undertaken without some sort of assurance that a favorable decision will be rendered by the governmental agencies.

Continuing with his testimony, Mr. Shinsato reported that there is a considerable amount of existing urban-zoned land; but, unfortunately, not all of these lands are available

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for urban development. Consequently, if urban lands are not available for sale (for purposes of houselots and the like), a demand for these areas will boost real estate prices.

Mr. Shinsato then questioned the Commission as to what crops they had in mind relative to the fact that agricultural lands should remain as such. He said the island of Kauai being so far removed from the "natural market" places an additional burden on the farmer because of the shipping cost involved in transporting the goods. Farmers have been discontinuing farming practices because such practice in many cases has proven to be economically unfeasible as a means of livelihood.

Mr. Shinsato concluded that 14 half-acre lots presently exist across the road from the petitioner's property. Therefore, he requested favorable consideration of Mr. Brun's petition.

In response to Commissioner Wung's inquiry, Mr. Shinsato replied that Hawaiian Fruit Packers does not provide housing for its employees. Commissioner Wung then wondered whether it would be logical to assume that in the event Hawaiian Fruit Packers discontinues its operation the employees of aforementioned establishment will look to the hotels for employment. At this time Mr. Shinsato responded that the employees will have no other alternative. In any event, this will not solve the housing situation.

Mr. Duran informed Commissioner Kido that the 14 half-acre lots within the State's Agricultural District located across the road from petitioner's property are non-conforming lots.

Commissioner Yamamura inquired as to the approximate number of these lots presently being occupied by dwellings at which time Mr. Duran reported approximately 50 percent.

There being no further discussion, Chairman Choi advised Mr. Shinsato that he had 15 days to submit additional evidence, and the hearing was closed.

PETITION BY TORU KAWAKAMI (A69-238) TO REZONE 22.19 ACRES
FROM AGRICULTURAL TO URBAN AT KALAHEO, KAUAI

In view of the fact that subject request is a logical extension of the existing Urban District, Executive Officer,

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Mr. Duran, delivered the staff report in which staff recommended approval of the petition.

Mr. Kawakami appeared before the Commission and stated that he had no further statements to make.

Since there was no further discussion on this matter, Chairman Choi advised the petitioner that he had 15 days to submit additional evidence and declared the hearing closed.

ACTION

PETITION BY WILLIAM J. AND FRANCES AKANA (A69-226) TO REZONE 2.3 ACRES FROM AGRICULTURAL TO RURAL AT KALIHIWAI, KAUAI

Mr. Leong reoriented the Commission with the property under discussion on the district map. In doing so, Mr. Leong mentioned that the property is situated to the right of Kalihiwai Bay, is approximately one mile away from the Kilauea Urban District, and that there are no Rural Districts situated in immediate vicinity of the parcel in question.

Mr. Leong dispensed with the staff report relative to Commissioner Tangen's inquiry as to whether or not a request to defer action on subject petition had been received. In acknowledging Commissioner Tangen's inquiry, Mr. Leong stated in the affirmative--such request was received by staff from Attorney Shinsato.

At this time Attorney Shinsato came forward and testified that a deferment was requested to determine whether an adequate source of water could be supplied to this area. He then refuted staff's statement that water is not the prime factor when approving a boundary change.

Chairman Choi then asked Mr. Shinsato if he would like to request that action be deferred. Mr. Shinsato was of the opinion that if staff was of the contention that water is not the prime consideration for approving subject petition, then a request for deferral would not be necessary. Mr. Duran clarified staff's standpoint by reporting that at the public hearing it was noted water was not available to the site in question or that which was available was inadequate to provide services to the property in question as well as the vacant lots which the water source was designed to service. Also, at the public hearing Mr. Shinsato had agreed to further investigate the matter with the Department of

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Water Supply in seeking a possible solution to the problem which as yet has not been accomplished. Therefore, it is staff's position that although water is available to a certain property, it is not the only criteria to be considered in determining whether rezoning should occur for urban development.

Commissioner Nishimura voiced his opinion that the petitioners should be given the benefit of the doubt as the problem of water is working a hardship on them.

Pending receipt of the information relative to the adequacy of water to the subject site from the Board of Water Supply, Mr. Shinsato informed Mr. Duran that if the Commission is willing to defer action, he would be very much interested in requesting such. Mr. Shinsato then corrected Commissioner Tangen by informing him that he did submit a request for deferment; but, if the question of supplying water to the subject site is a prime factor, then, the petitioners will bear the cost of improving the system and will satisfy the water requirement to the County's standards.

Mr. Duran informed the Commission that staff was in receipt of an official letter from Mr. Shinsato requesting an extension of time. In answer to Mr. Duran's inquiry, Mr. Shinsato replied that it will take approximately two months to receive the information from the Board of Water Supply.

January 29, 1970, is the statutory deadline by which time the Commission should act on this petition. Therefore, Mr. Leong reported that a request for extension will be required from the petitioners.

Legal Counsel, George Pai, announced that by statutes the Commission is mandated to act on this petition and any petition before the Commission by the deadline date.

March 6, 1970, is tentatively set as the next meeting date for the County of Kauai, approximately two months from the present, so that this should be ample time for the petitioners to submit further evidence obtained from the Kauai Board of Water Supply. Mr. Shinsato was agreeable to Mr. Duran's suggestion.

Commissioner Wung then moved to defer action until the March meeting on Kauai which was seconded by Commissioner Yamamura and unanimously carried.

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SPECIAL PERMIT APPLICATION BY AH YOU AND MASUE CHOW
(SP69-70) TO RELOCATE TWO SINGLE-FAMILY DWELLINGS FOR RENTAL
PURPOSES AT NIUMALU, KAUAI

Deliverance of staff report was made by Mr. Leong followed by a brief account of the area being considered.

In response to Commissioner Kido's questioning, Mr. Leong stated that the request would be an addition to two existing dwellings presently situated on the subject premise. In relation to the staff's analysis that the special permit being sought is contrary to 5 of the 7 guidelines established, Commissioner Kido asked if the particular use will substantially alter the character of the land in view of the fact that a special permit was granted to the Mizutanis for the "Motel Frances". Mr. Leong responded that such an addition as proposed by Mr. and Mrs. Chow will add to the density of the area.

Commissioner Kido concluded that by granting this special permit it is not going to change the character of the use at the present time. Mr. Duran was inclined to agree with Commissioner Kido's conclusion and added that the problem is one of proper procedure. Approval of this special permit will set a precedent encouraging others to make similar requests to construct or relocate dwelling units in the Agricultural District.

Commissioner Tangen was of the opinion that the problem would be more properly handled through the boundary change procedure. Mr. Duran asserted that this would be the more logical approach.

In reviewing the staff report wherein the Kauai County Planning Director's recommendation is contained, Commissioner Kido noted that the Planning Director recommended placing "Motel Frances" in the Urban zone. To this, Mr. Leong added that Mr. Nishimoto also recommended rezoning the Mizutani property to the Urban District.

Chairman Choi asked Kauai County Planning Director, Mr. Nishimoto, if he would like to elaborate or present additional information regarding the subject at hand. In reply, Mr. Nishimoto remarked that the Land Use Commission staff had pretty well covered his comments and recommendations. Subsequently, Chairman Choi questioned Mr. Nishimoto as to the type of use proposed for the subject area on the County's General Plan. Mr. Nishimoto expounded that the County's

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present General Plan is now under review, but the 1961 General Plan designates the area for heavy industrial use.

Regarding the inclusion of all of the developments into the Urban District, Mr. Nishimoto asserted that from the County's standpoint, heavy industrial use was proposed relative to the principle of planning since the area is in a tsunami inundation zone. However, the Planning Department has not made a final decision on the particular concept for this particular area.

In attempting to clarify the matter of the tsunami inundation area, Commissioner Nishimura stated that the first tsunami occurred in 1946. Mr. Nishimoto was unable to answer Commissioner Nishimura's question as to whether or not the tsunami occurred prior to the State's activity of dredging Niumalu Harbor. Mr. Leong explained that the study quoted in the staff report was conducted by the Department of Land and Natural Resources in 1963. In regard to this matter, Commissioner Nishimura replied that there were no flood damages in the area since the tsunami of 1946. Subsequently, the State dredged the Niumalu Harbor thereby creating a large land area; and therefore, the subject site is no longer prone to tsunamis and the problem of flooding.

Mr. Nishimoto reaffirmed his position that the Chow property and surrounding properties be placed in the Urban category.

Pursuant to Commissioner Mark's inquiry, Mr. Leong informed him that the other non-conforming use in the area is the "Motel Frances" which was the subject of a special permit request approved by the Land Use Commission in 1964. Furthermore, the Mizutanis are the owners of a 10,000 square foot parcel on which two homes are situated. Said property, the property in question (Chow property), and two smaller parcels in the center of the petitioned area are situated at approximately the same ground level in the State's Agricultural District. However, one of the applicant's parcels situated in the back of his property is swampy.

Legal Counsel, George Pai, reported to Commissioner Mark that Section 98H-8 of Act 205 provides that: "no non-conforming use of land shall be expanded or changed to another non-conforming use". Consequently, if action were taken on this special permit, such action would violate that particular section as well as the underlying idea of a special permit request.

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Immediately after being sworn in, Mr. Ah You Chow testified that he has never experienced the problem of flooding in view of the fact that he has lived on subject site for over 50 years. Three tsunamis have occurred during the time Mr. Chow has resided at the special permit site, but they never affected his property although the Mizutanis experienced some flooding. Moreover, subject property is not swampland as indicated by staff. In the past a store was located in this area, but the lot has been filled in since.

As a result from questioning the applicant, Mr. Duran ascertained that Mr. Chow intends to relocate two dwelling units onto his property on which two homes presently exist. Mr. Chow further explained that there is a deadline to relocate the two homes. In addition, the two homes are presently unoccupied and many of the household items have been stolen because the homes have been unattended. Mr. Chow reported to the Commission that he intends to rent the two dwelling units in the event he is permitted to do so. Also, the applicant was of the impression that because one hotel (Hale Niualu) and one motel (Motel Frances) presently exist in the area, he had the right to relocate two more dwelling units onto his property since subject property is located in the midst of these two establishments.

In order to aid the applicant, Mr. Duran recommended that the Commission issue a special permit to Mr. Chow for the storage of the two dwelling units and initiate a boundary change petition for the subject property and the areas recommended by the County of Kauai.

Commissioner Kido questioned the expediency of granting the special permit taking into consideration that the County feels that the general area is urban in character. Chairman Choi consulted Mr. Pai regarding this matter because approval of this special permit would only compound the problem of non-conforming uses. Mr. Pai counseled that, basically, the area is already non-conforming in character. The Commission would be expanding the situation of non-conforming uses, when eventually such uses should be abolished. Commissioner Kido then determined that the action of the Land Use Commission in 1964 was "wrong" (granting of a special permit for construction and operation of Motel Frances). Mr. Pai believed that the granting of the special permit to the Mizutanis in 1964 could be characterized as such except that in 1964 the underlying thought of what was the proper subject for a special permit had still not been clarified. Mr. Duran specified that the granting of a

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special permit for hotel use in an Agricultural District can be construed as being "unusual" and the Commission must determine that it is a "reasonable" use. However, the granting of a special permit to relocate dwelling units in an Agricultural District cannot be deemed to be an "unusual" use since dwelling units are permitted in same district.

Chairman Choi reasoned that it would be wiser for the Commission to deny this subject request but to permit the applicant to store the two houses on the property; and, in the meantime, the Land Use Commission would initiate a boundary change.

Mr. Nishimoto stated that the County of Kauai has no objections to the subject request. However, they will require that Mr. Chow obtain a moving permit from the County for storage purposes.

Commissioner Napier moved that the special permit be denied as recommended by staff, seconded by Commissioner Yamamura.

Mr. Nishimoto asked whether it would be proper for him to advise Mr. Chow of the Commission's intention to place his property in the Urban District (presently situated in Agricultural District) and that such would be initiated by the Land Use Commission. Mr. Pai stated that although the Commission would initiate the action to rezone the area in question that this, in effect, does not represent a commitment by the Commission because some unforeseen factors may arise as a result of this public hearing and also at the County level. This being so, it should be understood that there is no "guarantee" of the outcome of the Commission's action.

Commissioner Tangen called for the question. Mr. Duran polled the Commissioners, and the motion to deny the special permit was carried unanimously.

At the request of Chairman Choi, Mr. Nishimoto discussed the intent of the Commission to Mr. Chow (LUC to initiate boundary change for the area in question and also the surrounding properties from the Agricultural District to the Urban District). Mr. Nishimoto stated he also explained to Mr. Chow that in the event his property is redistricted to urban, there will be an increase in the tax assessment. Mr. Chow was in accord and had no objections to the Commission's proposal.

The Chair entertained a motion at which time Commissioner Wung moved that the Commission initiate a boundary change for the area, seconded by Commissioner Nishimura and carried unanimously.

PROPOSED LEGISLATION

The following bills for an act were discussed:

1. A Bill for an Act Amending Section 205-5, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Allow the counties to share with the Department of Land and Natural Resources the responsibility of determining appropriate land uses within the Conservation Districts, allowing for the more restrictive control to govern.);

2. A Bill for an Act Amending Section 205-4, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Consolidate the processing of petitions for land use boundary changes in groups twice a year.);

3. A Bill for an Act Amending Section 205-6, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Allow the Land Use Commission to impose protective restrictions on special permits in addition to those that may be imposed by the counties.);

4. A Bill for an Act Amending Section 205-4, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Provide for the processing of boundary change petitions of under one hundred (100) acres only between the mandated five year land use districts and regulations review.);

5. A Bill for an Act Amending Section 205-4, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Require the Land Use Commission to state in writing its findings of fact when a boundary amendment is approved and to also require a minority opinion if the final vote is not unanimous.); and

6. A Bill for an Act Amending Section 205-2, 3, 5, 6, and 8, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Eliminate the Rural District land classification.)