

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Rooms A & B
State Office Building
Lihue, Kauai

January 12, 1976 - 10:00 a.m.

Approved
March 4, 1976

COMMISSIONERS PRESENT:

Eddie Tangen, Chairman
Stanley Sakahashi, Vice Chairman
Charles Duke
Colette Machado
Mitsuo Oura
Carol Whitesell
Tanji Yamamura
Edward Yanai

COMMISSIONER ABSENT:

James Carras

STAFF PRESENT:

Ah Sung Leong, Acting Executive Officer
Benjamin Matsubara, Consultant
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

Pursuant to a notice published in The Garden Island and the Honolulu Star Bulletin on December 10, 1975, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the application by Lihue Plantation Company, Ltd., to amend the land use district boundaries for approximately 30 acres from the Agricultural District into the Urban District at Lihue, Kauai, for commercial and residential uses, Docket No. A75-397.

APPEARANCES

Roy Takeyama, Attorney, representing HRT, Ltd., Developer

Francis Izumi, law firm of Izumi and Tanaka, representing
co-petitioner, Lihue Plantation Co, Ltd.

Morris Shinsato, County Attorney, representing the Kauai
Planning Department

Gilbert Lee, Deputy Attorney General, representing the Department of Planning & Economic Development

The Chairman declared that all of the above were admitted as parties to the proceedings. The procedural steps to be taken were enumerated as follows:

1. Swearing in of all witnesses (other than attorneys).
2. Petitioner's presentation
3. County's presentation
4. State's presentation
5. All parties will be accorded the right to cross examine any witness

Chairman Tangen swore in all those planning to testify today.

Mr. Takeyama's motion to exclude all witnesses at this time, except when they are to make an appearance, was denied by the Chair following consultation with Commission's Consultant, Mr. Benjamin Matsubara, on the basis that this would tend to compromise the Commission's position of allowing maximum input and obtaining all possible evidence.

As requested by Mr. Takeyama, the Chairman directed that the records reflect that the petitions filed pursuant to the Rules and Regulations in force at the time of filing are proper in form and content. However, it will be incumbent on the petitioner to satisfy all of the requirements under the newly adopted Rules and Regulations at the time of the hearing.

Mr. Clinton Shiraishi was admitted as co-counsel to Mr. Roy Takeyama.

Leslie P. Milnes - Witness

Mr. Leslie P. Milnes, home planning designer and draftsman for Blackwell Construction, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on - - - - - Pages

Direct examination by Mr. Takeyama - - - - - 9 to 14

Cross examination by Mr. Shinsato - - - - - 14

Cross examination by Mr. Lee - - - - - 15

Edward W. Broadbent - Witness

Mr. Edward W. Broadbent of Amfac Communities at Kauai, having been duly sworn in, was called as a witness, read from a prepared testimony as set forth in the transcript on pages 16 to 21, examined and testified as set forth on - - - Pages

Direct examination by Mr. Takeyama - - - - - 22 to 27

Cross examination by Mr. Shinsato - - - - - 27 to 32

Cross examination by Mr. Lee - - - - - 32 to 36

Chairman Tangen called for a short recess at 11:03 a.m.

* * * * *

The meeting reconvened at 11:13 a.m.

Ms. Helen Hopkins, speaking as a lobbyist for Life of the Land, submitted that the Commission's newly adopted Rules and Regulations "was published the 5th of this month and in view of the circumstances, we wish to protest this. I believe that this is against the Administrative Procedures Act."

Edward W. Broadbent - Witness

Redirect examination by Mr. Takeyama - - - - - Page 37

Harry Weinberg - Witness

Mr. Harry Weinberg, President and Chairman of the Board of HRT, Ltd., having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on - - - - - Pages

Direct examination by Mr. Takeyama - - - - - 38 to 46

Cross examination by Mr. Shinsato - - - - - 46 to 53

Cross examination by Mr. Lee - - - - - 53 to 58

Exhibits

The following documents were marked for identification and introduced into evidence as Petitioner's (Lihue Plantation Co., Ltd. A75-397) Exhibits:

- Exhibit 1 - Map showing County and State zoned areas
- Exhibit 2 - Testimony of Edward W. Broadbent
- Exhibit 3 - Photo of Lihue Shopping Center Annex
- Exhibit 4 - Projected Development Layout
- Exhibit 5 - Letter from Clinton L. Childs, President of Clint Childs, Inc., Realtor, dated January 9, 1976, inquiring about availability of commercial space
- Exhibit 6 - HRT's financial statement marked Annual Report 1974

Exhibits

- 7A & 7B - Resolution Requesting the Land Use Commission to expand the Urban Land Use Boundary for the area between the Bowling Alley and Wilcox Hospital, Lihue, Kauai (Kauai County Council)

The meeting recessed at 11:45 a.m.

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The meeting reconvened at 1:20 p.m.

KAUAI COUNTY PLANNING DEPARTMENT

Tom Shigemoto - Witness

Mr. Tom Shigemoto, Planner with the Planning Department of County of Kauai, having been duly sworn in, was called as a witness (copy of Mr. Shigemoto's prepared testimony was distributed to all parties), examined and testified as set forth in the transcript on - - - - - Pages

Direct examination by Mr. Shinsato - - - - - 62 to 75

Cross examination by Mr. Takeyama - - - - - 77 to 92

Cross examination by Mr. Lee - - - - - 92 to 100

Redirect examination by Mr. Shinsato - - - - - -100 to 103

Recross examination by Mr. Takeyama - - - - - -107 to 110

Following examination, it was determined that Mr. Shigemoto did not in any way represent the position of any official body of the County of Kauai other than the Planning Department.

Mr. Takeyama moved to strike any reference to the Lihue Development Plan on the basis that it was a draft plan and has not been approved by the Planning Director or reviewed by the County Planning Commission, nor has it been officially approved by the administration.

The Chair called for a short recess at 2:55 p.m., and the meeting was reconvened at 3:00 p.m.

Chairman Tangen declared that Mr. Takeyama's motion was denied.

Mr. Shinsato requested the admission of pages 10 to 20 of the Lihue Development Plan into evidence.

Mr. Takeyama stated that he had a continuing objection on the admission of any testimony from the Development Plan. The Chair advised that he will reserve ruling on the objection, and also on the admissibility of the Plan.

Larry Nishikawa - Witness

Mr. Larry Nishikawa, Deputy Manager and Chief Engineer of Kauai Department of Water, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on - - - - - Pages

- Direct examination by Mr. Shinsato - - - - -111 to 114
- Cross examination by Mr. Lee - - - - -114 to 115
- Redirect examination by Mr. Shinsato - - - - -115 to 116

Kaoru Fujita - Witness

Mr. Kaoru Fujita, County Engineer of the County of Kauai, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on - - - - - Pages

- Direct examination by Mr. Shinsato - - - - -116 to 120
- Cross examination by Mr. Takeyama - - - - -120 to 128
- Cross examination by Mr. Lee - - - - -128 to 130
- Redirect examination by Mr. Shinsato - - - - -130 to 132
- Recross examination by Mr. Takeyama - - - - -132 to 134
- Recross examination by Mr. Lee - - - - -134

Exhibits

The following document was marked for identification and introduced into evidence as the Kauai County Planning Department's Exhibit:

Exhibit 1 - Testimony by Tom Shigemoto, staff planner with the Kauai County Planning Department

The following document was marked for identification only:

Lihue Development Plan - Prepared by the joint venture of EDAW Inc. & Muroda & Associates, Inc. for County of Kauai

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT

Tatsuo Fujimoto - Witness

Mr. Tatsuo Fujimoto, State Department of Planning and Economic Development, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on - - - - - Pages

Direct examination by Mr. Lee - - - - - -135 to 141

Cross examination by Mr. Shinsato - - - - - -141

Cross examination by Mr. Takeyama - - - - - -141 to 146

Exhibits

The following document was marked for identification and introduced into evidence as the Department of Planning and Economic Development's Exhibit:

Exhibit 1 - Testimony in Opposition of Petitioner by Tatsuo Fujimoto for Hideto Kono, Director, Department of Planning & Economic Development

CLOSING REMARKS

Mr. Roy Takeyama submitted the following closing arguments in support of the petitioner's request:

1. Subject lands abut an Urban area.
2. Public facilities such as fire and police protection are readily available.

3. Within the projected timetable proposed by the water and sewer departments, the proposed development can be adequately served.
4. No flooding or drainage problems will occur.
5. The project is economically feasible, based on Mr. Weinberg's financial capacity and his expertise in development of shopping centers.
6. Approximately 300 persons will be gainfully employed when the shopping center is fully developed.
7. The County General Plan and zoning indicate that a portion of property is in Commercial.
8. County of Kauai has passed a resolution stating support of the petition.
9. Both the State and County recommendations were based on information contained in the Lihue Development Plan which is only in draft stage.
10. Mr. Weinberg purchased the land at urban prices with the intent of developing a shopping center.

Mr. Shinsato argued that the petitioner had not met the requirements of 6-1 of the Commission's Regulations which were noted as follows:

1. The necessity to accommodate growth has not been shown.
2. The adequacy of water and sewer will occur within 5 years.
3. Service employment will not create wealth.
4. The Lihue Development Plan indicates that the area should be in agriculture.
5. The property is adaptable for machine culture of sugar cane in close proximity to milling facilities.

Mr. Lee supported the arguments presented by Mr. Shinsato. Moreover, he submitted that the requested amendment does not meet the requirements of the Interim Statewide Land Use Guidance Policy; that in all probability the 5-year completion date will not be met; and there is no feasibility study.

Ms. Hopkins' objection to the Commission's Rules and Regulations was noted by the Chairman.

The hearing on A75-397 was closed.

The Chair called for a short recess at 4:25 p.m., and the meeting reconvened at 4:34 p.m.

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Pursuant to a notice published in the Garden Island and the Honolulu Star Bulletin on December 10, 1975, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the application by Amfac Communities, Inc., to amend the land use district boundaries for approximately 34 acres of land from the Agricultural District into the Urban District at Lihue, Kauai for development and sale of lots for industrial use, Docket No. A75-402.

APPEARANCES:

Francis Izumi, law firm of Izumi and Tanaka, representing petitioner Lihue Plantation Company

Morris Shinsato, County Atorney, representing the Kauai Planning Department

Gilbert Lee, Deputy Attorney General, representing the Department of Planning & Economic Development

The Chairman declared that all of the above were admitted as parties to the proceedings, and swore in all those planning to testify.

Mr. Izumi submitted that the petitioner will, by a clear preponderance of evidence, indicate that the boundary amendment request is a reasonable one, that it does not violate Section 205-2 of the Hawaii Revised Statutes, and the change is consistent with the State Land Use Guidance Policy.

Mr. Shinsato submitted that the Kauai Planning Department had no objections to the request. Mr. Lee representing the Department of Planning & Economic Development maintained that the State also had no objections to the petition.

Chairman Tangen announced that the hearing on A75-402 will be continued at a later date mutually agreeable to all parties concerned.

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EXTENSION OF TIME REQUEST BY THE DEPARTMENT OF PUBLIC WORKS, COUNTY OF HAWAII ON SP70-84

The staff memo relative to the subject request was presented by Mr. Leong (see copy on file).

It was moved by Vice Chairman Sakahashi that the extension request be granted, subject to the original conditions which were imposed on SP70-84. The motion was seconded by Commissioner Duke and unanimously passed.

ADOPTION OF MINUTES

Upon motion by Vice Chairman Sakahashi, seconded by Commissioner Yamamura, the minutes of October 23, 24 and 28, 1975 were approved as circulated.

ADDITION OF ITEM TO THE AGENDA

It was moved by Commissioner Duke and seconded by Commissioner Yamamura that the matter of Kawainui Swamp be added to the agenda. The motion was unanimously passed.

DISCUSSION ON KAWAINUI SWAMP

Chairman Tangen referred to a memorandum from Deputy Attorney General Gilbert Lee to the Land Use Commission questioning the appropriateness of the Commission to actively participate as a party within the newly adopted Land Use Commission Rules of Practice and Procedure and suggesting that the Commission "defer its petition A75-398 relating to Kawainui Swamp to the Department of Planning & Economic Development for consideration as to its merits of reapplication of the subject lands to be reclassified from an Urban to a Conservation District."

Following discussion, Commissioner Yamamura moved that the Land Use Commission withdraw its petition A75-398 referring to Kawainui on Oahu, and that the matter be deferred to the Land Use Division of the Department of Planning and Economic Development. The motion was seconded by Vice Chairman Sakahashi and unanimously carried.

The meeting adjourned at 4:58 p.m.