

STATE OF HAWAII
LAND USE COMMISSION

10:00 A.M. Meeting
January 18, 1969

Honolulu, Hawaii

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CHAIRMAN:

We're having a hearing today on A68-204. Prior to this calling the hearing. Is there anybody here who wishes to testify who is not an attorney? If so, would you rise and be sworn in. Anybody who will be presenting testimony either for or against the petition. Would you rise and raise your right hand? Do you swear that the testimony you are about to give before the Land Use Commission is the truth, the whole truth and nothing but the truth, so help you God?

RESPONSE:

I do.

CHAIRMAN:

Thank you. We'll proceed with our hearing. The staff will present the report.

STAFF:

Mr. Chairman and Commissioners. This is a district map of the area. The pink represents the urban districts of Kaneohe, Kahaluu, and this is the resort designated . . . (inaudible) . . . The area of concern presently is over here and is indicated in yellow and is shown here. Kahekili Highway leads off Likelike Highway and comes to this point and from this point, the road leads to Ahuimanu. And the same road is shown here and off Ahuimanu is (inaudible) Road leading to the subject parcel. Presently, he has 8 homes in this location, and 3 of these homes are still under construction in the conservation district. This is a grading plan submitted to the City showing the cuts and the roadway leading into the subject area. The conservation line is below the homes. This is the urban

STAFF (Cont'd.)

district and this is the conservation district here. This is a cross section of the area in question, taken from this point, and as you can see, the slopes back of the property are approximately 70% (inaudible) and the real property line coincides with the top of the ridge line. This is the roadway and the homes are here and here. (The January 18, 1969 staff report to the Land Use Commission re: A68-204 - Bulldozing Services, Limited, was read verbatim.)

COMMISSIONER:

On what basis, did the City Planning Director recommend approval?

STAFF:

We have not received a formal communication from the City Planning Department on the . . .

COMMISSIONER:

I'm talking about March 21, 1968.

STAFF:

This was a subdivision approval. I believe that at that time they thought it was in the urban district. This is an assumption on my part.

COMMISSIONER:

We have no means of confirming this? Checking this?

COMMISSIONER:

In other words, it's passing the buck when you say somebody else has to rule on it.

STAFF:

Wasn't that March, 1968 approval subject to the approval of the Department of Land and Natural Resources?

STAFF:

Yes. That's what the letter said.

STAFF:

I think that tentative approval is sort of a process that every subdivision goes through and is normal fate -- tentative approval subject to everybody's approval that is affected by this.

COMMISSIONER:

I don't know whether or not that is entirely correct. You don't make a subdivision approval until construction is completed. A tentative approval as far as, say, the Planning Commission is concerned is approval of subdivision land.

STAFF:

Well, they have tentative approval and final approval.

COMMISSIONER:

But when does the final approval come?

STAFF:

After all the engineering plans have been approved by all of the various agencies involved.

COMMISSIONER:

Do you go out to the actual site on these?

STAFF:

Yes.

COMMISSIONER:

But there are already engineering plans that have been submitted.

STAFF:

Not at the tentative approval stage.

COMMISSIONER:

They cannot submit engineering plans until after the tentative approval has been received?

STAFF:

That's the procedure, yes.

COMMISSIONER:

And later on they discover there are 65% or 70% slopes, but they're willing to give tentative approval.

STAFF:

According to city ordinances, there's no slope factor that would automatically deny approval of a subdivision because, as you know, they city will permit you to make a vertical cut 20 feet high maximum, providing you have an 8 foot minimum shelf. So you could take a mountain now if you wanted to, according to city regulations.

COMMISSIONER:

This 20% slope -- is that steep' . . . ?

STAFF:

That's our regulations. That's our criteria for establishing a conservation district.

COMMISSIONER:

Because if you've seen some of those things that go up, they nearly reach the top of the ridge. The fingers nearly reach the top on some of those.

COMMISSIONER:

So at the suggestion of the consultant, you are asking that they review . . . (inaudible) . . . this entire area.

STAFF:

Some of these lots have split zoning, so instead of making just an adjustment here, consideration should begin for the entire area.

COMMISSIONER:

Why not go separate and . . . (inaudible) . . . and try to correct some of those other . . . ?

STAFF:

I'm sure they plan on doing that. Coming back to this, these fingers are actually valleys and these green areas are ridges coming down from the main ridge.

COMMISSIONER:

When was this other subdivision started? The one on this side.

STAFF:

January 13, 1964. And at that time the agricultural district boundary -- agricultural urban line -- came down here. This was in the ag district.

COMMISSIONER:

There's no definite property line on the other side? Where are the property lines on there, more or less? Is there one big parcel of land?

STAFF:

Actually, this was the original parcel of land and this area was subdivided and this was the remainder area which is under petition.

COMMISSIONER:

And this lower road was in . . .?

STAFF:

I believe this was subdivided earlier, but I don't know the date.

COMMISSIONER:

I don't see how that could have missed a thing like that.

COMMISSIONER:

I think they had prior approval before the land use law came into effect.

COMMISSIONER:

It might have had tentative approval that ran out.

CHAIRMAN:

Could it have happened under city approval and no state approval?

STAFF:

But then that would have been taken into consideration.

COMMISSIONER:

Yes, because we tried to include all those areas that were subdivided when we had the boundary change.

CHAIRMAN:

I mean there could have been a slip up.

COMMISSIONER:

Yes, well, as I say, there could have been a slip up but . . .

COMMISSIONER:

I think there's more coordination on the part of the city than the Land Use Commission on this one here.

COMMISSIONER:

Because I don't see how this kind of thing could come about, because even at that time it was in the ag district and it would have required a minimum of one acre lots. And those aren't an acre; they're just about a half acre.

COMMISSIONER:

It's really too bad when something like this happens because it makes a hardship on the people.

COMMISSIONER:

I think the point this is bringing up is that somehow the city has really passed on to us a problem that they created. For example, these building permits were issued after the land use laws permit boundaries were established, and they were actually in fact issuing dwelling permits in a conservation district.

COMMISSIONER:

It seems like they were even issuing these permits after they even referred this matter to the Land Use Commission.

COMMISSIONER:

That's right.

COMMISSIONER:

It appears to be a similar case like the one on Kauai where Kauai County gave Knutson a permit to build his buildings.

COMMISSIONER:

Well, they thought it was a permissive use . . . (inaudible) . . . It's not that bad when you have a lot of open spaces.

STAFF:

Actually, the prior owner is the one that started the construction on the buildings. It wasn't until after January, 1966 that Bulldozing Services acquired the property, so he actually bought a full pack of problems.

STAFF:

I believe the city recommended placing in the urban district all these lots up to this line right here.

COMMISSIONER:

Was that a city recommendation?

STAFF:

Yes. I was present at the hearing held by the city but not much discussion was carried on about this petition.

STAFF:

You mean at the hearing for this petition, not at the boundary review stage.

STAFF:

Yes, that's what I mean.

COMMISSIONER:

Is this hill a small hill?

STAFF:

You'll see it today. We have a field trip scheduled after this meeting.

COMMISSIONER:

It's a large hill visible from many miles away?

STAFF:

Pretty much, yes.

COMMISSIONER:

If we follow the staff recommendation, what happens to these buildings that are under construction now?

STAFF:

I think construction has been stopped.

COMMISSIONER:

Then you have already houses in the conservation district?

COMMISSIONER:

And what about the houses already there? Will they be allowed to be left there?

STAFF:

Well, I think what would happen is . . . There is a penalty provision, but I don't think at this stage it would be up to me to say we would require them to move the construction. That would be a tremendous imposition, I think, of not only Bulldozing Services but the present occupants of the homes. So I guess what I'm trying to say is the buildings will

STAFF (Cont'd.)

probably remain.

STAFF:

At least until this is resolved.

CHAIRMAN:

You mean you would adjust the boundary? Would that give lot sizes . . . would that make them large enough to conform to city regulations?

STAFF:

It wouldn't require city condonement. The only thing you have is split zoning.

CHAIRMAN:

I see. Resident . . (inaudible) . . for boundary change?

STAFF:

No. If you were to draw the line . . . this urban land . . . like this. All you're doing is split zoning.

COMMISSIONER:

I don't know if it would involve the minimum area allowable because this area . . . (inaudible) . . .

CHAIRMAN:

What I'm getting at is that in the event we could draw a line and try to preserve . . .

STAFF:

I recognize what you're saying, but it would already conform to subdivision regulations. All you're doing is drawing the line in and the result of that is the split zoning, see?

COMMISSIONER:

I think we should draw the property lines.

COMMISSIONER:

I think that's the question we're coming to . . . is to try to change the boundary and have it conforming rather than have it non-conforming.

STAFF:

Well, we have a lot of occasions where it's conservation and urban . . . in the Kaneohe - Kailua area.

CHAIRMAN:

That is an existing problem. How would the staff people on that basis . . . ?

STAFF:

Well, I think we had in mind that this would be it somewhere along here.

CHAIRMAN:

I think we'll still be informed for the trouble. We're still going to go on the field trip.

STAFF:

And that's the reason the staff recommended that this be taken up at one time, so this thing would be resolved.

CHAIRMAN:

And it's your recommendation that we go through the overall study by the consultant before we take action? Right. Any questions? Would the petitioner come forward then?

PETITIONER:

Yes. I'm John Robinson, attorney for Alan Higa. I'd like to indicate one thing. I feel that moving our boundary up to the top of the ridge would be creating no problem for yourself in that we're actually doing a favor to the future planners. In the subject area, the silt, as you can

PETITIONER (Cont'd.)

see by the profile, is rather too steep to build on, nature taking it over and beginning to end up in growth there which will prevent further erosion in the future. As one can see, the lead ins here result in a cul de sac here and a cul de sac there. The completion of this project will allow a controlled planning concept of the circular traffic through here. This is now serviced by a private road created by Bulldozing Services Ltd. which runs between the existing houses which were built previously in reliance on the city and county approval which were obtained for them. I don't see anything wrong in the concept of completing this as a total residential project. The report of the staff indicates that we have failed to show any need for residential housing. In that respect, I'd like to point out just one thing, and that's that this isn't a very excess type of project. It's not one where there will be very elaborate homes calling for a lot of money. The concept here by the builder was to create low cost housing. These houses are made available for possible sale at prices from \$15,500 to \$17,500. Now it's almost impossible to buy a home with surrounding land in that price range. So it's designed for a low cost small development. The use of the land would be completed with this one project. There is no intention of going up that slope, and I think if you take a field trip and look at it, you'll see that it would be impractical to build up behind those houses anyway. So we're asking that the Land Use Commission assist in this problem by moving the boundary line back, I would say preferably to the top of the ridge, although your suggestion of going half way up that big lot would be probably alright. I just feel that going along the top of the ridge would make a better pattern. If you go out there and look at the land, you'll see what I mean.

There was one other thing. On this question of the petitioner being

PETITIONER (Cont'd.)

cited for the violation, I believe this partly is a result of our efforts to come in to the Department of Land and Natural Resources, asking for some assistance -- some way we could resolve this problem -- after it had come to life. You see, Bulldozing Services had been obtaining the building permits from the city and county and reliance on that had gone ahead with the building. Here we have the citizen caught in some kind of a huki between the state and the city and county, and there's been some speculation this morning as to why, and I've been unable to find out why myself. I don't believe the Board here knows exactly why the city did issue these. So we've been speculating. I think it's because at the time this project was begun, the concept of the Land Use Commission was at its very, very minor infancy. It was just being born -- just getting into it. And I don't believe we all understood what it was all about at that time. So I would ask for favorable consideration of the petitioner's request to move the boundary line to the top of the ridge, and we will give assurance to the Land Use Commission that we would not use up -- would not build up the banks if that were required. Or in a minimum, to readjust the boundary so that these existing houses come within the residential area.

I have no brief here for these houses in this area because I do not represent these people. I represent only the owners of land in this subject area here. But I think it would be beneficial to all to build this total residential complex in there. Thank you.

CHAIRMAN:

Would any of the Commissioners like to question?

COMMISSIONER:

At the time the deed to the property was acquired from the realty, was there any information on the status of the property from the various government

COMMISSIONER (Cont'd.)

agencies as to what additional permits would be required for the additional approval that was needed?

PETITIONER:

I don't know. I can't answer that. I wasn't on the problem at that time.

COMMISSIONER:

Was it represented as something that was all ready to go?

PETITIONER:

Well, I think it was the buyer's assumption that since the project was already in process that it was alright.

COMMISSIONER:

. . . that the approval had been received.

CHAIRMAN:

Normally when you buy a piece of property, don't you have a zoning (inaudible).

PETITIONER:

No, it wouldn't show. You'd have to go make your inquiries of the city planning. The buyer would have to make some effort to go ask.

COMMISSIONER:

And not assume. You see, most of these buyers or the realty companies may represent the buyers, and it's up to them to check on the zoning.

COMMISSIONER:

The realty company should know or should find out.

COMMISSIONER:

Yes, they know that.

PETITIONER:

This is true. Perhaps he should have known or should have checked

PETITIONER (Cont'd.)

into it, but I think that the fact that he did make application for the building permits which was favorably acted upon by the city and county reasonably led him to believe that he was alright.

COMMISSIONER:

When was the building permit issued for those buildings.

COMMISSIONER:

(Inaudible.)

PETITIONER:

Approximately.

STAFF:

Our records show September, 1964.

COMMISSIONER:

At the time that the building permit was issued, was the area under agriculture?

STAFF:

September, 1964. It was under conservation.

COMMISSIONER:

It was under conservation? And yet there was no application for subdivision. His application for subdivision came substantially after the issuance of the building permit?

PETITIONER:

It's possible.

COMMISSIONER:

You know, under city regulations, you can have a building permit for several lots and several houses on the lots without subdividing it so long as you don't exceed the density of the district. If, for example, you have a 30,000 square foot lot and a 10,000 square foot zone, you can put three

COMMISSIONER (Cont'd.)

houses on it. And come in later on for a subdivision, if you want.

COMMISSIONER:

In our future relationships with the City Planning Department, we ought to remind them that they should adhere not only to the letter of the law but also regard the spirit of it. And they have certainly conformed with the letter of the law. They ought to know it; they're professional people.

STAFF:

I think, Mr. Chairman, that the experience of the Planning Department over the past few years . . . I think the experience has proven that it's important that we do communicate and the policy has been as of recently that before they approve any subdivision or any building permits that are in question, they do contact our office.

COMMISSIONER:

Perhaps at the right time, if you arrange, maybe that Mr. Way (?), assuming that he is confirmed to be available for a meeting or an informal exchange of views with this Commission.

STAFF:

There would be no problem at all.

COMMISSIONER:

You know, we always talk to the city, and they were taking these land use laws so lightly in 1963 and 1964, so I think there's quite a problem here now, considering that these permits were issued in 1964.

COMMISSIONER:

Mr. Chairman, what's the status of the houses under construction?
Are these all construction?

PETITIONER:

We've stopped construction at this point. One of the purposes . . . once we realized there was this huge problem involved, construction was discontinued; we came in to the Department of Land and Natural Resources to see how we could resolve it. Back up and start over here, if we have to, and get this thing straightened out.

COMMISSIONER:

Mr. Robinson, you realize that what we're talking about in terms of this boundary review is that, you know, every five years we have to re-establish our district boundaries. And this is the fifth year so that by August of 1969 we will have re-established all of our district boundaries in the state. And what the staff is talking about is that we will have a chance to look at that adjacent property, the one in question and any others in this area where these non-conforming subdivisions exist and then re-establish appropriate district boundaries, whereas action by this Commission wouldn't be for another three months anyway, and our feeling is that another couple of months wouldn't make that much difference at this point in time. This is why we are suggesting that we not take action on this petition within the required time limitation but to do a comprehensive review of the district boundaries. I wanted to make that clear when we say review this issue when we establish the district boundaries, but there is a time limitation on that review and it will be this year -- about the middle of the year, July or somewhere.

PETITIONER:

Naturally, like every landowner, Bulldozing Services is impatient to complete what it's done there because, especially in time of rain, it looks like a mudhole and they'd like to get it cleaned up and looking nice. So

PETITIONER (Cont'd.)

naturally the petitioner would prefer faster action than waiting for the general redistricting.

COMMISSIONER:

Things coincide so closely that they might be well over this particular area well before that . . .

STAFF:

I think so, too. Our consultants may review this area before the actual boundaries are established, and the Commission could very well take action on it within the time period with their recommendations benefiting us. I'm only saying the absolute time limitation would be somewhere around . . . (inaudible) . .

CHAIRMAN:

You have 15 more days to submit new evidence, then the Commission will have to act within 45 days to 90 days, if we adhere to our (inaudible) and we're hoping, as our executive officer stated, that the consultants may be able to study this boundary very soon or within the 90 day period. I think if possible we could stay within the 90 day period, if beneficial for everybody, and I think it would be.

PETITIONER:

Thank you very much.

STAFF:

The hearing is closed.

CHAIRMAN:

Are there any more questions?

STAFF:

Yes, Mr. Chairman. We ran up against a problem yesterday when our

STAFF (Cont'd.)

consultants were with us at which time they passed out reports to us for our review. Now on our contract, it stipulated that as they make these progress reports to us that we receive them for our Commission and office. So we do receive 12 copies. And yesterday as these reports were passed out, one of the reporters picked one up, and I think that we're going to have to set up a policy regarding these consultant's reports, because we haven't seen them, nobody has read them -- only the consultants. They are working for us. And there is a provision in our contract that if we so stipulate, all their material may be confidential or any part that we want will be confidential on their part. So I think at this time, we perhaps should talk on policy of the distribution of this material.

CHAIRMAN:

The reporter took one copy, so in other words, we're short one copy then?

STAFF:

No. We were able to get it right back, but it took a lot of talking and when you're dealing with the press . . .

COMMISSIONER:

It's my personal feeling that we've got to preserve a certain amount of confidentiality, especially if you're working . . .

CHAIRMAN:

Would you like that in a motion?

STAFF:

No. I don't think that's really necessary, as long as we're in agreement as to . . .

COMMISSIONER:

How did the reporter get ahold of that copy? Physically, how did he get ahold of it?

STAFF:

We gave a copy to Bill Goss and he was sitting right next to the reporter and . . .

COMMISSIONER:

You'll find that any time something is distributed at a public meeting that the reporters will try to get a copy of it.

COMMISSIONER:

Maybe we should find a different method of distribution . . . either mail it to the people or . . . instead of at a public meeting when things are distributed, they think they ought to have them.

COMMISSIONER:

Or you could put them in a folder and mark it confidential. A lot of papers can be distributed at a meeting.

COMMISSIONER:

What is the legal situation here?

LEGAL COUNSEL:

I was just trying to review in my mind the public records section; I think it's chapter 7. And I would think that under the provisions, these would be considered public records. This is just kind of an off-hand reaction from the discussion. We would probably have to make it available for scrutiny the same as all other public records, though I don't think you'd have to give out copies. But I do think the method of distribution suggested here will obviate the problem of getting copies.

CHAIRMAN:

Alright. Maybe you should mail the copies to us from now on.

COMMISSIONER:

This is only a preliminary study that you're making. Do you think the press has a right to . . . ?

STAFF:

Maybe the importance in it of itself is a public document, but when we're talking about a worksheet, it's not as true that it's a public document.

COMMISSIONER:

Something like staff memorandums -- whether these are considered . . . (inaudible) . . . they can't be considered confidential until such time as the final product comes up.

COMMISSIONER:

I think it would put the staff in an awful position if they were working on a worksheet and a guy could walk in and . . .

CHAIRMAN:

Anyway, I think we should have the copies before we come to that meeting so we could look them over.

COMMISSIONER:

Well, time is of the essence and as soon as they're done printing it, they're giving it to us, so it's kind of impossible to ask them to mail it.

CHAIRMAN:

On the other hand, you don't want to aggravate the reporters. O.K. We have that understanding. I think we can take care of it; as long as we know this problem, then we can be careful.

STAFF:

Then another thing is taking it a step further; when we begin discussing this at our meetings, can we go into executive sessions? This was another thing that the reporters asked.

CHAIRMAN:

I believe we decided that we would go into recess rather than executive session. Isn't that what we decided? That we would call it a recess rather than an executive session.

STAFF:

Well, I think on an executive session . . . you know, you are entitled to exclude members of the public. They do become a part of the background of the Commission's deliberation. To me, that's the difference of a recess entirely.

CHAIRMAN:

But I think we just decided that if no records would be kept of this that it would be a recess.

STAFF:

Yes. Very informal.

CHAIRMAN:

Right. And the decision is made in the regular meeting.

COMMISSIONER:

It's my feeling that we should try not to enter into executive sessions. I feel that as much of our meetings as possible should be public, unless it's really a matter of concern with some of the Commissioners. Otherwise, I would prefer to have everything above board and have regular public meetings.

STAFF:

Would you want the public to be there when you're discussing policy matters with regard to renewal of the land use laws?

COMMISSIONER:

See, we're having a meeting February 1st, and the point is that should

COMMISSIONER (Cont'd.)

it be a public meeting or is that . . .

STAFF:

It's a workshop . . . a work session. Would you want the public to be there while we go through these . . . ?

COMMISSIONER:

When we first started, we didn't have any members of the press. It was just us, huh?

COMMISSIONER:

No, but we didn't go into executive sessions either though. The only thing is the meeting was known to us only, but it was not a closed meeting.

COMMISSIONER:

We did have minutes though.

COMMISSIONER:

Oh, yes. They were regular meetings.

COMMISSIONER:

I think one thing is important. Even if the meetings are to be kept open and the public comes in and sits down and listens to our discourse, I think that they should not be allowed to participate because it involves land use policies. There will be a time later on for public participation but this . . .

STAFF:

There is another approach in regard to the press. Some of them might be invited to come in on an off-the-record basis to get the background so that when we get on the record, then they don't need the background as to how certain decisions were arrived at. That can be a very delicate matter. If you can have an understanding with the press . . .

CHAIRMAN:

On these regular sessions that we're going to have, we will be having public hearings, so there's ample time for the public to know what's going on.

COMMISSIONER:

It's nice that we have an audience.

COMMISSIONER:

Yes, but nobody's going to come . . . besides the press, you know.

COMMISSIONER:

What if we didn't publicize, and it was going to be like a deliberation session. Is that going to be an executive session in nature? Suppose John Doe walks in here and sees all of us discussing, is it alright for him to come in here?

CHAIRMAN:

Oh, yes.

COMMISSIONER:

Well, we usually close the door, too.

STAFF:

I think we should have some sort of firm presentation or format on the part of the consultant. He seemed to be rather nonchalant about how the thing takes place.

STAFF:

Well, yesterday's meeting was to be strictly comments from the Commission as a result of the reports before.

CHAIRMAN:

I read the whole thing, but I didn't know where to begin.

STAFF:

So that from now on, as we review these reports, just write in your

STAFF (Cont'd.)

report itself and make little notes on . . .

There's just a reminder again. February 1st we'll have a meeting here and we'll make sure that you have copies of all these reports. Then the other thing is that I have some pictures here that I would like to show of a violation of the conservation district and ask you what we should do about this.

(According to tape, meeting ended at this point.)

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