STATE OF HAWAII
LAND USE COMMISSION

APPROVED
4/26/77

Minutes of Meeting

Conference Room - Hilo State Building
Hilo, Hawaii

January 20, 1977 - 10:00 a.m.

COMMISSIONERS PRESENT: Eddie Tangen, Chairman
Charles Duke
Shinsei Miyasato
Mitsuo Oura
Carol Whitesell
Edward Yanai

James Carras (afternoon session only)

COMMISSIONERS ABSENT: Stanley Sakahashi, Vice Chairman
Colette Machado

STAFF PRESENT: Gordan Furutani, Executive Officer
Michael Marsh, Deputy Attorney General
Dora Horikawa, Clerk Reporter

Doris Cordova, Court Reporter

The meeting was called to order by the Chairman.

At the request of the Executive Officer, Commissioner Whitesell moved to add to the agenda 2 extension of time requests: one from Hawaii Land Corporation, SP73-157; and one from Mauna Ziona Church, SP75-230. It was seconded by Commissioner Duke and carried.

ACTION

SP76-254 - JOSEPH FILANCIA, JR.
APPLICATION FOR A SPECIAL PERMIT TO CONSTRUCT AND OPERATE A CHURCH AT PUKALANI, MAUI

Mr. Gordan Furutani, Executive Officer, summarized the staff report prepared for the subject request and described the property on the maps.

Commissioner Whitesell commented that the County of Maui should be requested to elaborate on questions which are raised at the County hearing such as the one concerning the disposal of the storm runoff posed by the Department of Transportation. She also commented on the restrictive nature of the term "use would be limited to church activit ies". Commissioner Duke agreed that

clarification was needed from all of the counties as to the precise meaning of the term "church activities".

Commissioner Duke moved to approve the Special Permit, subject to the 6 conditions imposed by the Maui Planning Commission which was seconded by Commissioner Miyasato and unanimously carried as follows:

Ayes: Commissioners Whitesell, Oura, Duke, Miyasato, Yanai, Chairman Tangen

SP76-255 - STANLEY SHIMIZU
APPLICATION FOR A SPECIAL PERMIT TO ESTABLISH A FREEZER/STORAGE PLANT ON APPROXIMATELY 1 ACRE OF LAND SITUATED AT SOUTH KONA, HAWAII

Mr. Furutani identified the area under discussion on the maps and gave a resume of the staff report.

Much discussion evolved around the noise factor emanating from the freezer unit, especially during the quiet hours of the night. Chairman Tangen suggested that the Commission impose an additional condition that petitioner comply with the Department of Health's regulations governing noise control.

Commissioner Duke moved to approve the Special Permit, subject to the conditions imposed by the Hawaii Planning Commission and the additional condition that petitioner comply with the Department of Health's regulations governing noise control. The motion was seconded by Commissioner Oura and unanimously passed.

SP76-256 - INTERNATIONAL CHRISTIAN SCHOOLS, HAWAII
APPLICATION FOR A SPECIAL PERMIT TO ESTABLISH A PRIVATE SCHOOL AT NORTH KONA, HAWAII

Mr. Furutani reviewed the staff report and pointed to the area under discussion on the maps. In response to questions which were raised regarding the availability of water to the site, Mr. Fuke of the Hawaii Planning Department stated that the completion of the water shaft was anticipated to coincide with the opening of the school facility.

Upon motion by Commissioner Duke, seconded by Commissioner Whitesell, it was unanimously agreed to approve Special Permit SP76-256, subject to the conditions imposed by the Hawaii County Planning Commission.

HEARING - A76-419 - PARADISE HUI HANALIKE ASSOCIATION

Pursuant to a notice published in the Hawaii Tribune Herald and the Honolulu Advertiser on December 10, 1976, and notices sent to all parties, a hearing was called by the Land Use

Commission in the matter of the petition by the Paradise Hui Hanalike Association to amend the land use district boundaries for approximately 56.82 acres presently in the Conservation District into the Agricultural District at Keaau, Puna, Hawaii; Docket No. A76-419.

The area under discussion was identified by Mr. Furutani on the maps.

All those testifying before the Commission today were sworn in by the Chairman.

APPEARANCES

Mr. Clifford Lum, Corporation Counsel, representing the Hawaii Planning Department

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

Mr. George Yuda, Attorney, representing the petitioner

PETITIONER

Exhibits

All of the exhibits attached to the petition and a letter from Marion D. Durbin of Daly City, California were admitted into evidence.

It was noted by Mr. Yuda that he had been unsuccessful in locating a few of the landowners as indicated in green on the map and thus these parcels were excluded from the petition.

Mr. Yuda's oral presentation is set forth in the transcript on pages 27 through 33.

Mr. Yuda asked whether the records in the present petition could be preserved for those landowners who could not be contacted, should they petition for a land use change in the future. Mr. Marsh advised that the Land Use Commission will be able to take notice of anything that is made a part of the record in the present proceedings with respect to any future proceedings.

Examination of Mr. Yuda and Mrs. Alma Prigmore, Rezoning Chairman for the Paradise Hui Hanalike, is set forth in the transcript on---------- Pages

Cross examination by Mr. Lum---------- 34 to 38

Cross examination by Mr. Lee---------- 38

Questioned by Commissioners Whitesell & Duke------- 38 to 41

Roy Meyer - Witness

Mr. Roy Meyer, Hilo resident, 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. Yuda----------42 to 43

Mr. Yuda submitted that it would be fair and equitable to allow all of the lot owners in the petition to use their properties for the purposes for which they purchased them.

HAWAII PLANNING DEPARTMENT

Exhibits

The County's Exhibits A through S were admitted into evidence.

Sidney Fuke - Witness

Mr. Sideny Fuke, Deputy Planning Director, Hawaii Planning Department, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on----Pages

Read from prepared testimony----------46 to 50

Questioned by Commissioner Whitesell----------50 to 51

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT

The Chairman called for a short recess to permit the Commission members to review DPED's written testimony.

Esther Ueda - Witness

Mrs. Esther Ueda, Planner with DPED, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on----------Pages

Questioned by Commissioner Whitesell----------52 to 55

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Commissioner Whitesell wondered about the possibility of placing the entire subdivision within the Rural District inasmuch as an Agricultural designation of the subject lands would still place the proposed use (single-family dwellings) in the non-conforming category.

Mr. Marsh agreed that residential use of the property, unrelated to agricultural activities, would not be consistent with Chapter 205. He indicated that there may be a problem as to

the legality of the proposed use. He also felt there was a serious question as to whether the County could issue a building permit for a single-family residence on an agricultural lot where there was no agricultural activity at all. He was of the opinion that a rural category might be a more logical solution.

Chairman Tangen directed that the parties meet together to come up with a single recommendation to the Commission within 45 days.

It was Mr. Lum's recommendation that, should the petition be approved, the Land Use Commission on its own initiative seek to reclassify the 8 lots which had been excluded from the petition.

The Chair requested that the petitioner submit proposed findings of fact and conclusions of law within 30 days to the Commission and to all parties, and that the parties will have 15 days from date of service to respond.

The hearing on A76-419 was closed thereafter.

ACTION

AR&R76-6 - AMENDMENT TO THE STATE LAND USE COMMISSION RULES OF PRACTICE AND PROCEDURE

The Chair called on Mr. Benjamin Matsubara, hearing officer hired to conduct the hearings on the amendments to the Rules, to present his report.

Mr. Matsubara's summary of the hearings, responses to questions from the Commission members, and discussion, are set forth in the transcript on pages 65 to 71.

Mr. Matsubara concluded that there were no objections to the proposed amendments by the Commission (see copy on file).

Commissioner Duke moved to adopt the proposed amendments and to incorporate it into the Commission's Rules of Practice and Procedure. The motion was seconded by Commissioner Carras and passed as follows:

Ayes: Commissioners Oura, Miyasato, Carras, Duke, Whitesell, Chairman Tangen

AP75-230 - MAUNA ZIONA CHURCH
EXTENSION OF TIME REQUEST

Mr. Furutani read the letter from Mr. Norman Keanaaina, representing the Mauna Ziona Church, stating that he was not advised of the Special Permit approval of December 12, 1975 until a few days ago and therefore he was requesting a time extension of at least 6 months to allow them to proceed properly.

Mr. Furutani commented that although the records indicated that notification of the approval of the Special Permit was sent to the petitioner, it was possible that he may have not received it.

It was moved by Commissioner Oura to approve the extension request, which was seconded by Commissioner Carras and unanimously carried.

SP73-157 - HAWAII LAND CORPORATION
EXTENSION OF TIME REQUEST

It was pointed out by Mr. Furutani that, rather than the actual consideration of the extension request, a legal matter was involved here over whether the procedure to be followed regarding a denial of request for extension of time for a Special Permit by the County Planning Commission was the same as that set forth in the processing of Special Permit petitions.

Mr. Marsh expanded on the procedures to be followed involving different situations on a Special Permit; i.e. extension requests approved by the Planning Commission, failure of the petitioner to perform according to condition imposed by either the County or the LUC, revocation proceedings, and modification of a condition attached to a Special Permit.

Mr. Marsh counselled that the LUC was powerless to waive the condition that "construction shall be initiated no later than October 17, 1976" which had been imposed by the County. Moreover, rather than assuming that a Special Permit was null and void upon failure to fulfill certain conditions, it was Mr. Marsh's recommendation that the Commission take an affirmative action to revoke the Special Permit for failure to perform according to conditions.

Mr. Lum wondered whether the condition imposed by the County was not merely a recommendation to the LUC, to be considered as final only upon approval by the LUC.

Commissioner Duke observed that there seemed to be a slight disagreement on the legal interpretation concerning the procedures to be followed on the subject extension request. He, therefore, recommended that the matter be deferred until there was a consensus of the legal interpretation between the County and the State.

Mr. Furutani advised that the denial of the extension request had been received in the Commission office on January 10, 1977, and that a decision would have to be rendered within 45 days.

Commissioner Duke moved to defer action on the extension request pending a legal opinion from the Attorney General's Office. It was suggested by Mr. Lum that the AG's opinion be circulated to all county attorneys for comments. The motion was seconded by Commissioner Miyasato and unanimously passed.

A76-421 - WEST BEACH DEVELOPMENT CORPORATION
POSTPONEMENT OF HEARING

Mr. Gilbert Lee moved for postponement of the hearing on the petition by West Beach Development Corporation, A76-421. He reported that all parties to the proceeding posed no objections to a postponement.

Commissioner Duke moved that the hearing on the petition by West Beach Development Corporation be deferred to a later date. The motion was seconded by Commissioner Whitesell and Chairman Tangen determined that the matter will be postponed to a future date, and that all parties will be accorded 20 days' notice prior to the new hearing date.

Counsellor Marsh advised that the hearing must be held within the 180-day period from the filing of the petition and that the new hearing date be republished in the newspaper 30 days in advance of the hearing.

Mr. Furutani stated that a notice of the postponement of the February 2, 1977 hearing will be sent out to everyone on the mailing list.

Mr. Marsh advised that there was no requirement to have someone at the hearing site to advise the public of the postponement. He added that a posted notice would suffice.

TENTATIVE SCHEDULE

It was decided that applications for intervention, motion to reschedule hearing, etc., on several pending Oahu petitions will be considered in Honolulu early in February.

ADOPTION OF MINUTES

The minutes of November 22, 1976 were approved as circulated.

ADJOURNMENT

The meeting adjourned at 3:30 p.m.