STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing

Board of Supervisors' Board Room

Hilo, Hawaii

3:00 P.M. - January 22, 1965

Commissioners Present:	Myron B. Thompson Jim P. Ferry Charles S. Ota Goro Inaba Shiro Nishimura Robert G. Wenkam Leslie E. L. Wung
Absent:	C.E.S. Burns Shelley M. Mark
Staff Present:	Raymond S. Yamashita, Executive Officer Roy Takeyama, Legal Counsel Ah Sung Leong, Planning Draftsman

The public hearing was called to order by Chairman Thompson who said a short prayer. The procedures to be followed throughout the public hearing were outlined by the Chairman. Interested persons and staff were sworn in by the Chairman.

Before proceeding with the public hearing, Mr. Nevels requested that a copy of the staff's report be submitted a day or so before the hearing to the petitioner, or counsel to the petitioner by the Commission in future situations.

The legal counsel stated that this is a question of administration. As far as submitting the staff's recommendation to the opposing counsel or petitioner, there was no provision under the Law which prohibits this. However, this needed further study and would be taken under advisement.

PETITION OF W. H. SHIPMAN, LTD. (A64-69) FOR AMENDMENT TO THE LAND USE DISTRICT BOUNDARIES FROM AN AGRICULTURAL TO AN URBAN DISTRICT FOR VARIOUS URBAN USES FOR LAND SITUATED BETWEEN THE NEW AND OLD VOLCANO HIGHWAY IN KEAAU, PUNA, HAWAII: Described as TMK 1-6-03: 64 containing 6.897 acres

The Chairman called upon the Executive Officer to present the staff's report covering the background of the petition. (See staff report on file.) The recommendation of the staff for denial was made on the following bases:

1. There is no real proof that the area is needed for a use other than for which the district in which it is situated is classified.

2. The conditions do not satisfactorily meet the standards, as established by the Land Use Commission, for the granting of amendments to the district boundaries.

The County's recommendation for approval of the petition was granted on the following findings:

1. The parcels involved abut an urban zone district.

2. The parcels involved are reasonable and proper to be used for urban purposes.

3. The parcels are not being used for agricultural purposes nor will they be used for such in future years.

4. The parcels are being provided with urban utilities such as water system, electricity and telephone.

5. Urban facilities are available in the proximity.

6. The Master Plan of Keaau, adopted by the Planning & Traffic Commission on January 10, 1964 upon a duly held public hearing proposes the parcels involved for commercial uses.

Mr. Luman N. Nevels, counsel to the petitioner W. H. Shipman, Ltd., introduced himself to the Commission. His opening statements centered around the staff's presentation. He remarked to the Commission that this situation shows one very good reason for having access to the staff report prior to the public hearing. Mr. Nevels requested the Commission's indulgence to permit him to go beyond the allotted 20 minutes. Chairman Thompson informed Mr. Nevels that he also had 15 days following this hearing in which to submit additional written testimony. Mr. Nevels indicated he was aware of this. Unfortunately, such testimony is written and not oral, or under oath. He felt that matters such as this should be accepted under oath and heard at the time of the hearing before all the Commission members.

Mr. Nevels informed the Commission that the map, which is being referred to, is in error, and outdated. He stated that a number of things have already occurred in Keaau since this map was produced. He pointed out that there is presently a road leading right to the lands under discussion. He confirmed the fact that the land is a sliver and contiguous to existing urban use. He informed the Commission that there are no existing county zoning ordinance, zoning map, and county plan for the County of Hawaii. He stated that the County of Hawaii, with the exception of three areas, is presently operating under a two year and one month old interim zoning ordinance. He stated that the County of Hawaii has only a proposal which has not been adopted. To say this request does not comply with a zoning map or master plan, when neither of these two things exist, is a very important point. He stated that the Hawaii Planning and Traffic Commission has granted this modification which they have petitioned and, therefore, considerable weight should be given to the County's findings and recommendation inasmuch as the County is directly involved with local problems.

Mr. Nevels proceeded to analyze each of the standards for amending district boundaries as related to his petition and outlined in the staff report:

Standard (a) - The area is not like Honolulu where there are city-like structures and etc., but that in likeness it did compare to that of a city-like area.

Standard (b)(1) - If their request is granted, it would provide an additional employment facility.

Standard (b)(2) - The services are within a radius of a 1/2 mile, with the exception of sewers. 95% of the island is without sewers.

Standard (h) - The land is not highly susceptible to highly intensive cultivation by reason of shape and location to the major highway.

Standard (j) - He could not see how this could be considered as contributing towards scattered urban developments as the area was contiguous to existing urban developments.

Mr. Nevels acknowledged the fact that Keaau was a dilapidated community. He informed the Commission that Keaau is owned by one person or company, and that most of the area are leased land. He stated that the petitioner is making considerable efforts to develop and improve the dilapidated situation. He asked the Commission whether they are going to change this condition by denying the petitioner the possibility of putting forth an economic enterprise adjacent to an existing urban development. Mr. Nevels stated that by granting the petitioner his request, this would remove the present dilapidated condition in the area.

At this point, Mr. Blomberg (who was not sworn in earlier) was sworn in by the Chairman. Mr. Nevels informed the Commission that Mr. Blomberg was the interested developer for this proposed commercial building and use.

Mr. Devine then spoke for the petitioner. He stated that the particular area was a sliver of land of which a large part has been occupied. He stated that initially the area was a plantation village, the economy of which depended upon the success of the plantation. However, due to the replacement of labor by mechanization, the population and services in the area have declined. Mr. Shipman did not want to give long leases until the master plan prepared by Belt and Collins was put into effect. With the sales of the Hawaiian Paradise Park lots, the build up of the Keaau Orchard, and the proposed road leading to the National Park, there would be sufficient growth for residences in the area to make it economical to use the new complete master plan for the village. He stated that their time schedule was slow, and that things had not developed at the rate they had hoped. However, development was taking place, and that people were building on the Hawaiian Paradise Park lots. He stated that this area was formerly cane land which was abandoned because it no longer was suitable for agriculture. He stated that everyone talks about the dilapidation and poor appearance of the area. However, the question is why can't it be

put into some better use. "Should the land use be left to weeds and growth, and contribute further to the dilapidated condition of the village?" Mr. Devine informed the Commission that Mr. Blomberg came in himself to ask for this particular piece. They explored with him the possibility of going into the industrial park which was denied by this Commission. Mr. Blomberg wanted this particular piece, mainly because of the new junction that is being put in, and the Pahoa Road now joining the new Volcano Road right in this area. Along with Mr. Blomberg proposal, Mr. Devine stated that Mr. Shipman worked with the Hongwanji Mission who wanted additional areas. A farm appliance and parking area will be put in together with Mr. Blomberg's development . The whole section on the Hilo side of the Pahoa Road Junction will be really cleaned up and will look like something. It has been stated that there are lots of urban lands there. The question is where? At present, there are a lot of tenants waiting to be given longer leases. They don't want to abandon their leases. They want an extension on their leases. The land in question is a sliver area. He asked, "Why can't it be developed?" He stated that "Here is a man who is willing to spend money, willing to employ people and has plans to show for it." He informed the Commission that Mr. Shipman is not proposing an office and yard.

Mr. Blomberg informed the Commission that there will be approximately 50,000 lot owners from the mainland that will be scattered throughout the Puna district. Therefore, he chose this particular site for this proposal because of its strategic location. He stated that the idea that this is a contractor's yard is a misnomer. He stated that the contracting is being done by other contractors. He stated that they intend to have two leasing departments to assist anyone. He stated that they were not interested whether a community is there or not. He felt that this was good for the community. It would encourage people to build and develop a trend which would improve the community and dispose of the present dilapidated buildings. He stated that Keaau is in the heart of a widely scattered residential area. He stated that he was startled that the people from the mainland are so full of pioneering experience, and willing to move down here, not caring whether there is electricity or not. He stated that their attitude is positive and they like the climate in Keaau. They feel that they will eventually get the things they would like to have after they are settled. He stated that this is one of the logical and basic reasons why he wanted to build on this strategic corner. He wants to put up a dramatic building and an eye stopping building. He stated that he has the talent to do it with 45 years of experience in designing and building.

Mr. Nevels stated that there is no vacant land at the present time zoned urban in this entire complex to his knowledge. He stated that he was referring to lands the size that Mr. Blomberg's project and W.H. Shipman, Limited are talking about. He reiterated that there are no master plan and no zoning at the present, but which they hope will come pretty soon. He stated that there is no conflict between that which does not exist and that which is not proposed.

Commissioner Ferry asked Mr. Blomberg whether he intended to lease the entire acreage which is under request - the 9.7 acres. Mr. Blomberg replied in the negative, stating he would lease approximately 75,000 sq. ft. Mr. Ferry called upon the Executive Officer for the number of acreage under petition. The Executive Officer replied that 6.897 acres were in the petition.

Commissioner Wenkam, in trying to clarify some of the confusion stemming from the petitioner's stated purpose and that reported by the staff, was informed by the petitioner that the purpose was for the construction of an 80 x 112 foot commercial building for workshop, dark room, retail showroom and offices. Mr. Nevels stated that this was noted at the public hearing held by the Hawaii Planning & Traffic Commission. The Executive Officer quoted from the petition: "At least one of said lots has already been requested for a long term lease by a building contractor for use as a yard and office."

Mr. Nevels apologized for this confusion, stating that he was not sure whether there is a difference between these two statements. He had meant this statement to be very general in description. He stated that the word "yard" as used in the petition was referred to mean "parking yard." He explained that there will be no yard, only a building and a parking yard.

Mr. Wenkam requested a copy of the master plan as prepared by W. H. Shipman, Ltd. for the Keaau area.

Mr. Raymond Suefuji, having been sworn in, stated that the County of Hawaii has a Master Plan that was adopted for the area of Keaau on January 10, 1964. He stated that this Plan as adopted by the Planning Commission is final, and is the Plan for the County of Hawaii. The Plan was prepared by Belt, Collins and Associates who also worked on the Plans for Mr. Shipman's property. The area in question on the Master Plan is the black area designated as a commercial area. Mr. Suefuji stated that the application, as submitted to the County, came in for a commercial use, and the Planning Commission reviewed the application on this basis. He stated that the areas that are placed under an Urban zone will have to be reviewed by Ordinance 183 which is the County's interim ordinance. Therefore, whether it becomes an Urban area or not, it does not mean that all the uses will be permitted. It still must come to the County for a zone area. He stated in this particular case it has come before the County for a commercial use.

Mr. Nevels thanked Mr. Suefuji for his comments but stated that they were still not in agreement with portions of the comments. It was Mr. Nevels understanding that there is no effective, legally, adopted ordinance, until it is adopted by the Board of Supervisors. He recognized that one was adopted by the Hawaii Planning & Traffic Commission but felt that the ordinance is not legal until it is adopted by the Board of Supervisors.

With no additional comments or testimonies to be offered from the public or Commission, the Chairman informed the public that the Commission will receive additional written comments, testimonies, etc. within the next 15 days, and will take action 45 to 90 days from this hearing.

The public hearing was closed.

REQUEST BY THEO. H. DAVIES AND COMPANY, LTD. THAT THE LAND USE COMMISSION ACKNOWLEDGE A CLINIC AND SITE (TMK 4-5-10: PORTION OF 1, THIRD DIVISION) AS PERMISSIBLE USAGE OF LANDS WITHIN THE AGRICULTURAL DISTRICT IN WHICH IT IS LOCATED IN HONOKAA, HAWAII

Introducing himself to the Commission, Mr. Richard Fraser, Manager of Honokaa Sugar Company, stated that their request was brought to the attention of the Commission's staff through their agent, Theo. H. Davies & Company. He stated that the Honokaa area is zoned by a county ordinance. He stated that it is their understanding that the County engaged Bush and Gerakas, an engineering firm, to make an economic study of the north end of Hawaii. Their study included recommendations for changes in the zoning of Honokaa. By resolution, the Board of Supervisors accepted this report. He stated that through discussions with the State Tax Office in Hilo, it is their understanding that this report is the basis of this Commission's present determination. He asked, "Do the determinations by the Land Use Commission supersede the County zoning ordinances?" Mr. Fraser stated that he has checked with the County Attorney and have been told that they do not - that the County ordinances stand until they are changed.

The legal counsel stated that there is no doubt that this is a question of zoning powers given to the Land Use Commission with respect to the overall zoning of all the lands in the State into four categories: Agriculture, Rural, Urban and Conservation. He stated that zoning measures of the Land Use Commission zones would prevail over any other zoning measure which is in conflict. Mr. Fraser replied that the County attorney did not agree with this. He stated, however, that he brought this up for the record and for this Commission's study. He felt it well for the Commission to have this understanding before they submitted an application for this Commission's consideration, because there would be some minor conflicts which would appear later in this discussion.

Mr. Fraser informed the Commission that they were advised by the State Tax Office that 83.28 acres had been set aside for urban districting in the Haena area, and that the map showed the urban area to include 66.2 acres. He asked the Commission whether they should file a formal application to correct such an error, or just mail a map to this Commission for their appropriate attention and action. Chairman Thompson suggested that he mail just the map and that this Commission would review it.

Continuing his presentation, Mr. Fraser stated that they had attended two public hearings by this Commission's predecessors and at which time no mention was made about their overend camp or Camp 7 as being urban. He stated that they have been eradicating this camp and have done no repair work. They plan to do away with this camp and have so notified those people who are involved. He stated that they wish to return this area back to Agriculture for sugar cane and take it out of urban. He informed the Commission that it was too expensive to maintain because of its isolation, and asked how would they go about returning this area back to Agriculture. Would they have to submit a petition for such a change?

The Executive Officer replied that any time a change in the district boundaries is to be made, a petition would have to be submitted for a change. He stated, however, that there were several issues involved here. He suggested to Mr. Fraser that a simpler solution might be worked out if all the problems in the same area were examined at the same time.

Mr. Fraser replied that his concern was whether they should submit a $50.00 application for something which was in error. He stated that they have been dissolving this camp for the last three years and felt that the Land Use Commission's determination was made after their plans to shut down this camp. Mr. Fraser did not feel it was necessary to submit a $50.00 application to correct this error.

The Executive Officer stated that the best procedure would be for them to write to the Land Use Commission and explain these conditions. The Land Use Commission would then examine it and make suggestions as to what alternatives are available. He explained that these conditions might be handled administratively or they may not be. If they were not, then the Company would have to go through a formal procedure. However, if this Commission was so informed by letter of these conditions, with a map describing the area or areas, this Commission could then be of help. Mr. Fraser agreed to this.

Mr. Fraser then proceeded with the subject at hand. He stated that they were planning a new dispensary for their employees, the majority of which lands are in Agriculture. He stated that the chosen site has been classified in Agriculture by this Commission, although the Honokaa zoning carried another classification. He stated that apparently there is a misinterpretation: they interpret it one way and the Commission's executive officer interprets it another way. He raised the following question, "Can buildings built to serve agricultural needs be constructed on lands classified as Agriculture?" He stated that he assumes this Commission has received copies of their letter relating to their request, which was submitted to the Commission's staff earlier.

Mr. Ellsworth Bush, having been sworn in by the Chairman and introduced by Mr. Fraser stated that he was with Theo. H. Davies & Co., agent for three other plantations on the Hamakua Coast in addition to Honokaa. He informed the Commission that they were attempting to take the existing dispensary facilities that are presently at each one of these companies and consolidate them into one dispensary which will serve all companies. He stated that those who were familiar with the plantation know that there are doctors and a nursing staff who are employees of the hospital and have been there for a long time. He reiterated that they wanted to consolidate these dispensaries into one clinic which they propose to construct on agricultural land in the Honokaa area. He stated that this was their basic plan which they have discussed with the Commission's Executive Officer, who in turn has prepared a statement of his belief whether their practice is proper in an agricultural district.

In response to Mr. Bush's question, the Chairman requested that Mr. Bush continue with his presentation. Mr. Bush introduced Mr. Tom Peterson who would be representing them in their case.

Mr. Peterson stated that Mr. Bush had consulted him, after he had some correspondence with this Commission earlier, for his opinion concerning the various statutes and regulations relating to their particular type of use and whether it would come under the Agricultural permitted uses. In referring to the 1963 Land Use Act, he said that the Act states that agricultural districts shall include services and uses accessory to the above activities, including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, roadside stands, etc. He stated that these various points which were made in the statute itself were intended to be carried out in the regulations that way. He felt that the statute permits services and uses both, but that this is not mentioned or referred to in the Commission's regulations. The regulations seem to provide for particular agricultural uses aside from actual growing crops and raising cattle. Regulation 2.7(c) implies that in addition to the use of agricultural land, there could be a camp of some sort where people were actually living but which did not seem to have the city-like nature that you would have when you had residences, schools, stores and that sort of thing. Regulation 2.14(a) describes the uses permissible in Agricultural districts which basically apply to the sugar industry. Regulation 2.14(d), closely related to 2.14(a), indicates a sense of related use or uses rather than strictly the farm dwelling or farm building use, in addition to the basic use of the land. Regulation 2.14(m) applies directly to this situation and covers most of the points made. Mr. Peterson stated that the Statute permits "....services and uses accessory....including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities...." The regulation has added ".....maintenance facilities that are normally considered direct accessory to the above-permitted uses." Mr. Peterson stated that the concept of the word accessory as defined in Regulation 2.3(i) relates to the use of the land. He informed the Commission that the language and concept as it appears in Regulation 2.14(m) is a carry over of the 1961 Commission's interim regulations and its subsequent amendments. Mr. Peterson stated that the language as it appears in Regulation 2.14(m) was formulated by this Commission without too much reference to the changes the legislative body intended to have made in relation to permitted uses in Agricultural Districts. He stated that the original act of 1961 made no reference to accessory uses under agricultural uses. The whole language is new when it was re-enacted in 1963. The regulation appears not to have been completely coordinated. Mr. Peterson stated that there appears to be a fairly broad intention under accessory use, which this Commission does not want to become a loop hole. On the other hand, this Commission would want to include all those things specifically enumerated. In Hawaii under the intensive industrialization of Agriculture, it is obvious that anyone who lives here knows that there are a tremendous variety of uses that are accessory to the raising of sugar cane. There must be a number of facilities for the average person. Within this category the plantations in Hawaii have for many years provided medical services for their employees. It is essential here for the type of intensive agriculture needed to raise sugar. Complete medical facilities have been provided for many years by the plantation, since they were first built. The plantation now has the most progressive medical service system for employees. Mr. Peterson stated that in zoning, a garage and a swimming pool are recognized as

an accessory to a house and require no special variance. In Hawaii, the analogy holds with regard to a dispensary that is serving the plantation since a dispensary has become an essential part of the plantation, as much as a maintenance facility, storage facility, research facility which must be on a large capitalized scale. It has become an essential feature and has for many years been that way. It is customary, traditional, incidental, ancillary - all the terminology used in the statutes and regulations - and is normal to the Hawaiian situation. He stated that it is recognized that a medical service facility would not be considered as a normal agricultural use in other parts of the country. However, it is a fact that the plantation has always had medical facilities traditionally attached to its agricultural operation.

Chairman Thompson stated that the question is whether or not, under the broad word that is used by this Commission, this request is permissible. The Chairman requested that the Executive Officer proceed with his presentation. (Copies of the staff report were circulated to each commissioner.) The recommendation of the staff was for denial (see report on file).

The Executive Officer stated that the discussion as carried on by Mr. Peterson with regard to traditional roles or concept of the plantation life is particularly enlightening. He stated that he was in agreement that the plantation has played a very significant part in the development of the State. The traditional mode of operation, in which various facilities were integrated with basic plantation operations no longer hold. He stated, "As our society evolves, conditions become vastly different, primarily the degree of independence with which the plantations operate. In the past plantations operated in isolated areas, developed and used raw land and made no claim upon government in the way of facilities and services. Now there is a growing dependence, or relationships are changing. Government facilities and services now become a necessary part of plantation operations. On this basis, I don't feel that traditional relations have a bearing on this particular issue."

Mr. Fraser stated that he wished to forget the dispute concerning the word traditional and get back to the facts of the case. He stated that they were contractually bound to supply medication and clinical services to their employees. He stated that although there are government institutions, they have a very fine hospital in Honokaa for which they had donated their lands. He informed the Commission the lands donated were classified in the agricultural district by this Commission. He stated that if the dispensary is to utilize any of the governmental facilities, such as x-rays, laboratory, etc., it seems very sensible that it should be adjacent to this hospital. He stated that their actual plans called for a continuation of one drive way and compatible facilities. The statement as made by Mr. Yamashita is very updated, very modern, however, not historic.

The Chairman explained to the Commission that in view of the evidence presented, there were apparent three avenues which the Commission could approach this problem:

1. They can make a translation that the wording of the regulations is broad enough at this time to include such a use under Agriculture.

2. They can call for a declaratory ruling on this matter, and need not make a decision at this time. Or they can defer it until their next meeting, if they felt that further study is necessary; and

3. They can deny the request at this time and ask the petitioner to come in with a special permit.

Commissioner Wenkam asked, "Why didn't the petitioner come before this Commission with a special permit?" Mr. Fraser replied for a couple of reasons: (1) they had interpreted this use as accessory and proper. They felt they were in their rights to build this dispensary. (2) They felt that the Land Use Commission did not recognize that Honokaa was zoned under County ordinances, and from their interpretation and advice from the County Attorney led them to believe that within this area they would still be right. He stated, however, they wanted to clarify the meaning of this word. They have not started construction. They have not said that this is the only place it can be built. They feel that there is a misunderstanding in this term. He stated that even if they did not want to build where they do, and wanted to put it some other place, it would still have to go on Agricultural land. He stated that they just wanted to clarify the meaning of the word and this is their reason why they did not come in for a special permit.

Commissioner Wenkam stated that it does sound like a very appropriate place for the clinic. He stated, "You argue that the clinic is an accessory use for sugar adaptation. Are you arguing, therefore, that it is not an accessory use for diversified farmers? Our laws state Agriculture, without reference to the type of agricultural activity - Agriculture in general."

Mr. Fraser replied that it depends upon the diversified farmer.

Mr. Peterson stated that the word "direct" as it appears in the regulations but not in the statute is what he objected to. He said if you included the word "accessory" without the word "direct" this would be the proper way to approach this. It seems that once a function is established in a given land use that is normally associated with a particular broad category, it then fits in this catch-all accessory use. He referred to the swimming pool situation, stating that once it becomes a normal part of a type of activity it would then become accessory. He felt that when a small farmer on a few acres with no employee who says he is going to open up a clinic and wants to call it accessory to the farm, then this Commission would be in its right to say it is not an accessory use. However, if it were a large farm with an innumerable staff warranted by the size of the operation, the situation would be different. Mr. Fraser added that the clinic would be built to serve its own people only.

Mr. Thompson asked, "Are all plantations required to provide the same facilities that you have to?" Mr. Fraser replied that all plantations are essentially required to supply it with the exception of Hilo Sugar, Onomea and a few others. They contract with the Bergen clinic to handle their clinical problems. He stated that they didn't have this facility and, therefore, are required by contract to provide these clinical services.

Commissioner Nishimura asked, "Don't you have a clinical office?" Mr. Fraser replied in the affirmative, stating, "I don't think, however, it is safe to operate it any more. It has been condemned by the Board of Fire Underwriters and we were told to build a new one. So in doing this we thought it much smarter to join our four sugar companies (3 Davies and 1 Brewer) and offer combined services to give our employees broader choices in medicine."

Commissioner Nishimura asked, "Is Honokaa an Urban district?" Mr. Fraser replied that Honokaa is zoned by county ordinances. However, Bush and Gerakas came up with some recommended changes and the County accepted their recommendations by resolution. However, a resolution is only a recognition while an ordinance is Law. They have been told by the Department of Taxation that this Commission had accepted the recommendation of Bush and Gerakas rather than the original zoning by the County ordinance. He stated that they were not fighting as to where it should go. This question has come up because they had sought to get a subdivision for a clinical use. When this problem arose, they were asked to see this Commission. They asked Mr. Bush to discuss this with your staff and to see if there was any differences of opinion. They had assumed there was none. However, they found there was one, and this was their reason for bringing it to this Commission's attention.

The Executive Officer stated that the issue here is a simple one. "Is or is not the proposed clinic and site an accessory use to Agriculture? The fact that whether the clinic is needed or not is not the issue, whether there is a contract with the Union to build one is not the issue. The question is simply, 'Is it or isn't it an accessory use,' as defined by the Commission's regulations?"

Commissioner Wenkam asked, "Are the nurses and doctors in the clinic on the payroll of the plantation?" Mr. Fraser replied in the affirmative. Commissioner Wenkam stated, "So they are employees of the plantation. Are there any other accessory uses similar to this that have already been accepted as accessory uses?" Mr. Fraser stated that he could not think of any. The school was supplied by the State; the hospital, police department, etc. by the County. All they supplied were the living facilities. He stated that they were further out than some of the other places which are close to urban facilities and which rely on facilities provided by the County.

Mr. Peterson stated that most of the statutory uses were so well spelled out in the regulations at that time that they didn't need to require earlier clarification. Mr. Fraser added that the reason for their being before this Commission is simply to find out how the word accessory is interpreted.

The legal counsel stated that the petitioner's counsel is correct to say that the Commission is limited by the Statutes or Land Use Law. However, counsel should also realize that under the Law this is an Enabling Act which gives the Land Use Commission broad discretion and powers in interpreting the Statutes as to how they think it should be implemented.

The petitioner has argued that he interprets the section under Agricultural Uses as being very broad so as to include the dispensary as an accessory use. The staff, however, submits a report in rebuttal to that purely on the basis of the word as accepted as a college definition and also on the grounds that if such a use is considered a direct or accessory use, the question of drawing the line as to what other uses are to be considered accessory would then arise. Legal Counsel stated that he would have to agree with the Executive Officer. He did not think that the intent of the Law was to include a dispensary within the definition of an accessory use, because if it did, then all the other uses enumerated by the Executive Officer would naturally be included. Where do you draw the line? This is where the broad discretion should be left to the Commission - where to draw the line as to what is an accessory use.

Commissioner Thompson stated that this raises a further question as to whether or not this Commission, with the evidence submitted, wants now to take a position to clarify or broaden the interpretation of this regulation.

Commissioner Wenkam stated, "Right here is where we should decide whether we wish to establish a declaratory ruling that the clinic is an accessory use. I would like to say that - if I'm to be questioned whether this particular nature is accessory - inasmuch as it is fully staffed by employees of the plantation and that services are only for the plantation personnel, it appears to me this would make it accessory. It is not a normal accessory use; it is not a usually accepted type of accessory use; but it seems to me that in this particular case it is one."

Chairman Thompson stated, "You are prepared to make this broad interpretation at this time?" Commissioner Wenkam replied in the affirmative.

Commissioner Wung moved for a declaratory ruling on the decision. Commissioner Wenkam seconded the motion. The motion was not carried:

Approval: Commissioners Wung, Inaba, Wenkam, Ferry.
Disapproval: Commissioners Ota, Nishimura, and Chairman Thompson.

Chairman Thompson informed the petitioner that they should now submit a special permit for this particular use in this area.

Commissioner Ferry informed the petitioners that unfortunately they were at a disadvantage because the full commission is not present.

Mr. Bush informed the Commission that as noted in their diagram they propose to put this clinic on an "island." He stated that it is their understanding that this Commission is opposed to the establishment of this so-called urban island within an Agricultural district. The reason for their choice of this area was to provide an easy access for their patients to and from the clinic, and to avoid the possibility of taking away agricultural-districted lands.

Chairman Thompson explained to the petitioner that a special permit does not give the area an urban use. It allows the use within the Agricultural district. The area would still remain as Agriculture.

Mr. Bush asked how long would it take to process a special permit. The Executive Officer replied that in general it would take 3½ months to have a decision rendered. Mr. Bush stated in other words we would not be able to build on this site at all until we presented this special permit and had a ruling, and quite possibly the ruling would not be in their favor.

Mr. Fraser's question relating to the Honokaa zoning by the County and that of the Land Use Commission, and their advice from the County attorney relating to this matter was taken under advisement.

Commissioner Ota moved to reconsider his vote. The motion was seconded by Commissioner Ferry and carried as follows:

Approval: Commissioners Wung, Inaba, Ota, Wenkam, Nishimura, Ferry and Chairman Thompson.
Disapproval: None.

Commissioner Wung moved to have the Commission broaden its interpretation of the word "accessory" to include a clinic which is owned and operated by a plantation and for its employees, only. Commissioner Wenkam seconded the motion.

Discussion: The Executive Officer stated that he did not think the Commission was in the position to set contingencies.

The legal counsel stated that this was not a contingency.

The Executive Officer requested that the Commission defer action on this particular motion until their next meeting. He felt it very significant to review established criteria for land use districting which has been accomplished to date. He stated that one of the bases for determining the differences between Agricultural and Urban district boundaries was a consideration of what does constitute accessory uses to Agriculture. It is an important issue because it has been applied statewide and at present this Commission is faced with a question on a specific issue in a specific area. He stated that he felt that every decision they made must relate to what they have done throughout the State and requested a little more time to think about this and discuss this before the Commission reached a decision.

The Executive Officer polled the Commissioners as follows:

Approval: Commissioners Wung, Inaba, Wenkam, Nishimura, and Ferry.
Disapproval: Commissioners Ota and Chairman Thompson.

The motion for granting this request was carried.

The meeting adjourned at 5:30 p.m.