

LAND USE COMMISSION
STATE OF HAWAII

Minutes of Meeting

Board Chambers

Wailuku, Maui

10:00 A.M. - January 25, 1964

Commissioners

Present:

C.E.S. Burns
James P. Ferry
Goro Inaba
Shelley Mark
Shiro Nishimura
Charles S. Ota
Robert G. Wenkam
Leslie E. L. Wung

Absent:

Myron B. Thompson

Staff

Present:

Raymond Yamashita, Executive Officer
Roy Takeyama, Legal Counsel
Richard Mar, Field Officer
Alberta L. Kai, Stenographer

The meeting was called to order by the Acting Chairman, C.E.S. Burns.

OLD BUSINESS

The Chairman asked if there were any old business which needed to be considered at this time. There was none.

NEW BUSINESS

A. Adoption of 12/6/63 Minutes

The legal counsel suggested the following corrections to the minutes:

(1) On page 2, last paragraph, 4th sentence should read:

The legal counsel stated that the end result is the same. Technically speaking to be accurate you are acting on the petitioner's request and not on the action of the local planning commission.

(2) On page 3, 5th sentence down should read:

The legal counsel stated, "I think the inquiry here is more or

less not based on legal grounds but purely based on the curiosity on the part of this Commission."

The Executive Officer made the following correction to the minutes:

- (1) On page 1, the name of C.E.S. Burns be stricken from Commissioners Present.

Commissioner Ferry moved to accept the minutes with such amendments. Commissioner Inaba seconded the motion. Motion carried.

B. Action On A Temporary District Boundary Change

The Chairman outlined the procedures to be followed on the petition pending before the Commission for action.

PETITION OF D. TOKUNAGA AND F. MUNOZ ON BEHALF OF LANDCO COMPANY (A(T)63-42), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL TO A RURAL DISTRICT CLASSIFICATION FOR LANDS IN PUKALANI, MAUI: Described as TMK 2-3-09: 5

The Executive Officer, having been sworn in, briefly outlined the request and area involved; and located the area on the map. The Executive Officer presented the following communications that were received and in favor of the petition:

1. Letter from Ben Miyahira, President of Maui County Farm Bureau, dated 12/5/63.
2. Letter from Kase Higa, Deputy County Attorney, dated 12/6/63.
3. Letter from Roger I. Knox, President of Maui Chamber of Commerce, dated 12/6/63.
4. Letter from Robert Ohata, Planning Director, Maui Planning & Traffic Commission, dated 12/13/63.
5. Letter from G.N. Toshi Enomoto, County Clerk, transmitting a resolution on behalf of the Board of Supervisors, County of Maui, dated 12/23/63.

The Executive Officer stated that in addition to receiving the above letters, a letter from Mr. Tom Ogata, dated 1/15/64, was received stating that he (Mr. Ogata) was withdrawing as counsel for the subject petition.

A summary of what had transpired during and since the hearing on the matter on 12/6/63, in Wailuku; and a summary of the petitioners' views on their request and their rebuttals against the staff's analysis and recommendation (which recommendation of the staff was for denial of the petition at this time) were made by the Executive Officer.

Mr. Donald Tokunaga who was sworn in presented a summary statement on their petition (a copy of this statement was circulated to each commissioner and a copy submitted as part of the record). He pointed out that there were no objections to their petition except by the Commission's staff; that the staff's analysis were erroneous, conclusions projected illogical and inconsistent with existing statutes as well as testimonies submitted; that the highest and best use of the land is for Rural lots; that the land is not prime agricultural land; and that granting of this petition will stimulate the economic development of Maui County.

The Executive Officer stated that subsequent to the public hearing on the instant petition, the Land Use Commission prepared proposed final district boundary maps and regulations for purposes of a public hearing. This subsequent action set forth standards for determining district boundaries and had placed subject parcel in a Rural district. This was an action which was affixed specifically to this petition. In view of this subsequent action taken by this Commission the Executive Officer stated that he would like to point out that the standards for determining the Rural district as set forth in Law and by this Commission have been applied virtually to all areas in the State in preparing the proposed final Rural district. He stated that the designation of the subject parcel as Rural is a gross exception made. The Executive Officer stated that this is an exception because it does not meet 3 of the 4 criteria set by this Land Use Commission. He questioned whether anyone would have considered this parcel for a Rural district if the petition had not stood before this Commission. The Executive Officer stated that the fact that the Rural designation of the parcel is an exception to the uniform application of the Law in itself is not adverse unless it is related to the consequences.

(All statements made by the Executive Officer at this point are being stricken from the record according to motion made by Commissioner Inaba and seconded by Commissioner Wenkam; and motion carried unanimously.) Motion was as follows:

Commissioner Inaba: "I move that we strike all statements made by the Executive Officer on profit angles from the record."

Commissioner Wenkam: "I seconded that motion." Motion carried unanimously.

The Executive Officer stated that the primary point that staff is trying to make is that primary residential uses spread over a large area is an Urban use.

Commissioner Wenkam stated that he was under the impression that the Law provided that Rural areas must almost exist according to definitions, before this Commission could declare the areas Rural.

Legal counsel stated that this Commission is empowered to create a Rural district. This creation must be applied according to Section 4 of Act 205. Staff is setting forth its standards of a Rural district according to language used in the past tense in Section 2 of Act 205 which would be questionable legally as far as analysis. He stated that this Commission has the power to create Rural districts other than those Rural uses that are in existence.

In reply to Commissioner Ferry's remarks the Executive Officer stated that his remarks were directed to this Commission to point out: (1) its responsibility; (2) the ramifications which would occur; and (3) how it would affect the perpetuating intent and purpose of the law, if an exception to the criteria as set by Law and this Commission for the establishment of a Rural district were made by this Commission.

Commissioner Wenkam who was in agreement with the Executive Officer's view points stated that though this exception would not be wrong because legal counsel has said that this exception if granted by this Commission would be in accordance with the Law and a perfectly reasonable request and perfectly legal thing to do.

Legal counsel asked permission to qualify his statements. He stated that the Section which he has used and quoted is merely for a basis for this Commission to make its final conclusion or determination of the case in question. To say that this is an exception or a privilege is stating a conclusion which can't be concluded until after the Commission makes a decision.

Mr. Tokunaga was in accord with legal counsel's thinking. He stated that it is the petitioners' opinion also that this Commission is empowered to establish the classification of a rural district.

In respond to Commissioner Ferry's remarks, Commissioner Wenkam replied that the issue before this Commission is, "Should this Commission zone a particular area Rural (and a very substantial area), it must be assumed that any other petition that come before this Commission for a similar request would be turned down." If there were no conflict in accordance with the criteria set up for a Rural district and applied equally to all islands and land owners throughout the State, there would be no exceptions if an action were taken by this Commission. He stated, however, that this question has been reasonably answered by the Legal Counsel that this Commission can create a Rural zone in an Agriculture area where the definition of a Rural district as set up in the Law does not apply but could apply in the future. So, however, this Commission grants this petition, it would be in accord to the interpretations of legal counsel.

The legal counsel stated for the record that the position of the Attorney General's Office is not for approval or disapproval of the petitioners' request. The position of the Attorney General's Office and his capacity as legal counsel to this Commission is merely to decide whether such a district (Rural) can be created by this Commission and whether it is within this Commission's powers.

Mr. Tokunaga requested permission to examine the criteria which the legal counsel has pointed out clearly that this Commission is empowered to do. He stated that the legal counsel has pointed out two criteria: (1) the land is usable and adaptable for the use it is proposed to be classified; and (2) conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable. The petitioners have shown that under:

Criteria (1) everyone is in agreement that this particular area is adaptable for the use proposed by the petitioners; and

Criteria (2) the trend that has taken place in the area at present is growing into a number of houses.

Mr. Tokunaga stated that the petitioners have covered the necessary points to prove that this particular area should be in Rural. He stated that the petitioners only interest in this venture is for development and making lands available for sale at a low price.

Commissioner Mark asked if staff's position has changed any since the time the original staff report was prepared in light of new evidences, testimonies and facts submitted? The Executive Officer replied that basically staff's final recommendation is still the same for denial, because of other reasons which have been stated and additional comments presented which are sufficient bases by itself to recommend denial.

Commissioner Mark asked legal counsel to elaborate a little more on the concept of citylike concentration being absent - whether it applies to the present situation; or the projections of the plans; what is the interpretation? Legal counsel stated that he didn't think this was a legal question because citylike concentration was more a planning concept.

Commissioner Mark directing his question to the Executive Officer stated that he was concerned whether this Commission was discussing the present situation or projection of plans. The Executive Officer stated that in this particular situation it is the conditions that are in existence now. He stated that this particular area does constitute a citylike concentration, primarily because of the expanse of facilities that are available in the area, commercial facilities, and the availability of a number of people located in that area. He added that he was referring to the Pukalani area and not the Landco property itself, but which property is part of Pukalani. He stated that in existence is an already established urban area and that petitioners area abuts and is part of this Urban area.

Commissioner Mark stated that this is in the books, in the record, but what about the ground?

Mr. Tokunaga replied that in the area there are 3 stores.

Commissioner Mark asked whether the proposed shopping center and school would be in the same area that the 3 existing stores are presently located?

Mr. Tokunaga replied that the local planning commission has suggested that

they project a planning shopping center within their development area. He stated that if this were requested of them that they would put one in whether the people were for it or against it.

Commissioner Mark remarked that this would be contrary to the definition of a Rural district.

Mr. Tokunaga replied that if the County requests a neighborhood country store area, they would put it in, but that they are not asking for it. He added that with respect to whether this area is citylike or not, the Hawaii Farm people have lands in production in that very area zoned as Urban, which illustrates whether this area is citylike or not.

Mr. Yamashita remarked that Commissioner Mark has a point in question when he asked, "What is citylike concentration and is it there now?" Mr. Yamashita stated that in reading the Law and if such things as urbanlike facilities and services do exist in the area, than the Rural district should not include these areas where there are such things in existence. Commissioner Mark replied that it would be more appropriately Urban. Mr. Yamashita replied in the affirmative, stating that the Rural district was not intended to be areas with already existing urban facilities and services. These areas are more logically urban.

Commissioner Nishimura stated that this Commission feels that this area should be Rural and not Urban. This area which is an Urban area because it does not meet the requirements of a Rural classification, is being designated as an area for Urban development by this staff. This would then mean that thereafter areas more than half an acre would be so classified, whereas it should be classified as a Rural district.

Mr. Yamashita replied that from a planner's point of view, if this area in Pukalani is Urban and this Commission feels that there are Rural potentials in Pukalani and therefore imposes a very light density of use like Agriculture or Rural upon the area, the facilities put in by the government cannot be used because the cost will be defrayed among fewer people. The intent of the land use districts is to try and perpetuate a more efficient use of facilities that are there now and which would have to be provided for a growing urban area. So from a planner's point of view it would be desirable to control the particular density where government has spent a lot of money for these services and facilities.

Commissioner Mark asked whether these citylike features were scattered throughout the proposed development or are they contiguous to the existing facilities that were mentioned?; and would it be appropriate to include parts of the proposed development into an urban area and designate the remaining part as rural?

Mr. Tokunaga replied in the affirmative, stating that he felt that in an overall planning, portions of the proposed development could be Rural and portions could be Urban. He also added that approximately 50% of the lands in the area were intermixed with small mango orchards and residences, and that there were no citylike features in the area.

The Executive Officer stated that he stands corrected that this area is strictly urban. He stated however that the point he is trying to make is he did not think that there were many planners who would say that half an acre lot with a residence on it can be considered other than primarily a residential use. While there may be mango orchards or animals on the property the question which differentiates an agricultural use from a residential use is whether or not commercial sales are made off the agricultural type of activity that may be carried on the land.

Mr. Tokunaga replied that one reason why the legislators provided for this fourth classification or Rural was for situations such as this. The legislators felt that there was a gap between the Urban and Agriculture classifications or partly Agriculture, and therefore came up with this fourth classification for a Rural district.

Commissioner Ferry stated that the Pukalani project for petition has been before this Commission and have been discussed in this Commission's proposed boundaries; the arguments have been well presented, well thought out - some for and against - and to eliminate further discussions, he moved that this Commission honor the petitioners' request and approve the zoning from Agriculture to Rural. Commissioner Wung seconded the motion.

The Executive Officer polled the Commissioners. Approval: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura, and Ferry. Disapproval: Commissioner Mark.

Motion carried.

CONTINUATION OF PUBLIC HEARING

The Chairman outlined the procedures to be followed during this hearing.

PETITION OF E. B. STEPHENSON, ET AL (A(T)63-31), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN KULA, MAUI: Described as TMK 2-3-03: 1

Mr. Mar was sworn in. Mr. Mar gave a summary of what had transpired since the last hearing on December 6, 1963 in Wailuku, Maui which matter was continued to give the petitioners an opportunity to amend their petition. Mr. Mar stated that the petitioners have submitted a letter requesting that their petition be amended for a change in the temporary district boundary from an Agricultural district classification to a Rural district classification instead of an Urban district classification. Mr. Mar then reviewed the area and request involved and located the area on the map.

The Executive Officer informed the Commissioners that although the County had submitted a prior disapproval of the original petition they have not commented on the petition as presently amended because the staff failed to submit the petitioners' request for amendment to their original request to

the County for their comments early enough. However the County will meet on January 28 and the staff hopes subsequently to have a comment before this Commission takes action.

The Chairman asked whether the clause in the law that says additional comments may be submitted within 15 days after the hearing could be applied to this situation? The legal counsel replied that this clause was applicable to those who wished to make further comments or submit protests on the matter.

The Chairman asked whether the petitioners or anyone representing the petitioners was present? There was no response. The Chairman asked if there were anyone in the audience who wished to be heard. There was no response.

The staff continued with its analysis and recommendation. The staff recommended denial of the petition because it did not meet the criteria of Act 205 for a Rural district and the proposed regulations of the Land Use Commission; that such parcel and adjoining lands are agricultural in character rather than Rural; that although subject parcel is not prime agricultural land consideration must be given to the surrounding areas if such request were to be granted.

Mr. Robert Ohata, Director of Maui Planning and Traffic Commission, was sworn in. Mr. Ohata, directing his questions to Commissioner's legal counsel, stated: "The Act says that the County shall up to 90 days submit its recommendation to the Land Use Commission, is this true?; and is this applicable to any amendment to the original petition?; what is the limitation (as to the time upon receipt of petitions, or amendments to petitions) for the local planning commission to transmit its recommendation to the Land Use Commission?; is there a limitation, or is it 15 days as your Chairman had indicated?"

The legal counsel stated that the 15 days is for petitioners or others who wished to protest or give additional information after the hearing. He stated, however, that after the petitioner files his boundary change to the Land Use Commission, upon 5 days after receipt of the petition by the Land Use Commission office, the Land Use Commission staff shall transmit to the local planning commission for comments and recommendations. The legal counsel stated that your question is, "How many days must the local planning and traffic commission submit by 90 days?" Legal Counsel stated that it is not spelled out in the Law as such. It is an administrative problem that you are faced with. It seems as though after 100 days, at least within that time you should submit it. The Act further states that after 100 but within 210 days of the receipt of the petition the Commission shall advertise the public hearing. This Commission cannot schedule a public hearing until the minimum number of days have elapsed.

The Chairman stated that the point he is raising is that this Commission has to take action on this matter within a certain prescribed period of time. He stated that it would seem, if it is possible, that your County Planning Commission take action prior to this Commission, which would be that much helpful.

Mr. Ohata replied that he was more concerned as to what the legal requirements are, and not what the procedures are or what is more appropriate. He stated that he just wanted to know what the precise length of the law is.

The Chairman requested that Mr. Ohata address his inquiry in writing to this Commission. Mr. Ohata replied that he has already submitted a letter concerning these questions and matters to the Executive Officer of this Commission.

The Chairman asked the Executive Officer whether these questions were spelled out? The Executive Officer replied that this letter was answered; to which Mr. Ohata replied that he had received this letter but that this letter was answered by the Executive Officer rather than from the Attorney General's office.

The legal counsel stated that the reason for that is the State Attorney General's office does not answer legal questions from the County. The proper procedure is for the local agencies to write to its own County attorneys. If this were done the State would be trespassing upon the domain of the County Attorney's office. If there are any legal questions to be answered it should be directed to the County Attorneys Office.

Mr. Ohata directed another question to the staff. He stated that the staff report mentions that the State General Plan shows this area as being Agriculture; what was the staff's intent in mentioning that?

The staff's reply was that it was mentioned to point out what references were used and considered as guidelines to staff's ultimate position.

Mr. Ohata asked the staff whether analysis of the State General Plan was made and considered insofar as this application was concerned? The staff's reply was in the affirmative. Mr. Ohata stated that the State General Plan provides no provision for a Rural district as such, and this is a request for a Rural district which has not been considered in the State General Plan. How can the staff use a guide that is nonexistence or does not take into consideration the point which the applicant has made.

The Executive Officer stated that the land uses that are shown on the General Plan of the State of Hawaii is intended as a guideline as to what the ultimate uses might be and while it has not set up a Rural district as such, a person by examining the general uses shown on the General Plan may have indications of narrowing down the approximate uses of these districts as indicated by the maps.

The Chairman added that there are a great number of criteria that are used and certain standards that are set down in the Act and from information that that is in the general area for better decisions to be rendered. The Chairman stated that he gathered you (Mr. Ohata) are objecting to the reference of the State General Plan. Mr. Ohata replied in the affirmative.

Commissioner Nishimura asked Mr. Ohata whether the County has sufficient water facilities in the area? Mr. Ohata replied in the affirmative, stating that they had adequate water sources to meet a Rural district and that it would be no strain on the County government.

The public hearing was closed in the matter of E.B. Stephenson, Et Al.

PETITION OF ANTHONY A. TAM (A(T)63-34), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT CLASSIFICATION FOR LAND IN KULA, MAUI: Described as TMK 2-3-2: 23

Mr. Mar summarized what had transpired since the last hearing on December 6, 1963 in Wailuku, Maui which petition was continued to give the petitioner an opportunity to amend his petition. Mr. Mar stated that the petitioner has submitted a letter requesting his petition be amended to read from an Agricultural district classification to a Rural district classification instead of Urban. Mr. Mar then reviewed the area and request involved, pointing out the location of the area on the map.

Mr. Anthony Tam introduced himself and was sworn in. He stated that he wrote a letter to this Commission stating his reasons for wanting this area to be changed from an Agricultural classification to a Rural classification. He stated that ever since he owned this property it has never been used as an Agricultural use. It has always been used for rental purposes. There is on the property at present an auto repair shop and a garage. He stated that he wanted to lease portions of this property for a service station and a new garage building. In his letter he stated that there were originally 4 dwellings on the entire piece; that these buildings have been in existence ever since he has been in ownership and that he was deriving income from renting these buildings. Ever since the State put its highway through his property and demolished one of the dwellings, he has been trying to replace the building. He stated that he has bought a couple of buildings to move upon this lot but he was forced to move the first building to another piece of property where it is not as easy to rent. He has another building that he wants to move upon this lot but the people who bought the land want him to either move it out or demolish the building. He has until the end of this month to remove the building off the property. He stated that this particular land is not suitable for agriculture because whenever there is a lot of rainfall the top soil rushes down to the lower lots. He stated that he has had several complaints from the land owners below. The lot is not entirely level, about 1/3 is very steep gulch land. He stated that the State highway took the best portion of the land for farming. He stated that in order to put this land to its best use it would need to be used for renting purposes. He did not intend to subdivide or sell any land. He stated that this location is suited for renting purposes; the dwellings and homes put up for rental purposes have been very much in demand. He stated that he is denied the privilege of replacing the buildings and getting the normal amount of income which he should from renting.

The staff proceeded with its analysis and recommendation. The staff recommended approval of the petition as amended.

Mr. Tam expressed his approval of the staff's recommendation and stated that he hopes this Commission would act favorably on his petition.

Commissioner Wung asked Mr. Tam the following questions:

"Your request is for one building?; in the future do you intend to put any more buildings on this property?; this property consists of 10 acres, so if you have two houses on this property it could still be in an agricultural zone?"

Mr. Tam's reply followed:

"Yes.; if there is a demand and if the State says it's all right, I would, but I could not proceed that far.; except that no one will be able to make a living on this; I have rented to farmers who tried to make a living, but could not."

The Executive Officer who was recognized by the Chairman interjected and stated that this petition before this Commission is to grant or not to grant the petitioner's request for a change to a Rural district. Once the decision is made, if it is granted, whatever uses the petitioner may want to make of his parcels are no particular concern unless it is contrary to law. According to law if it is a Rural district, the petitioner may put about 20 houses on this 10 acre parcel of land.

Mr. Chata requested permission to answer Commissioner Wung's questions and was recognized by the Chairman. Mr. Chata explained that the County Ordinance does not permit Mr. Tam under the agricultural zone to put another home on his lot. He is permitted one house per lot irrespective of the size. If he wants to subdivide his 10 acre lots into 2 acre agricultural subdivision than he can do so and have 5 lots and 5 homes, but he must go through a bonafide subdivision.

Commissioner Nishimura asked Mr. Ohata whether industry was permitted in the area as he noted that there were some industrial activities. Mr. Ohata stated that it is not permitted; that those industrial uses in the area are nonconforming uses.

A lengthy discussion followed on what government was responsible for this function; or what government was responsible for that function.

The Chairman instructed both petitioner and County Planning Director that the matters and problems discussed at this time are irrevelant and are not within the jurisdiction and domain of the State or this Commission.

The Chairman announced that this Commission will receive additional comments and protests within the next 15 days of this hearing and will take action on this matter 45 to 90 days from this hearing.

The public hearing was closed at 12:00 p.m.