

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing

LUC Hearing Room

Honolulu, Hawaii

1:00 P.M. - February 19, 1965

Commissioners

Present:

Myron B. Thompson
Jim P. Ferry
Shelley M. Mark
Charles S. Ota
Goro Inaba
Shiro Nishimura
Robert G. Wenkam
Leslie E. L. Wung

Absent:

C.E.S. Burns

Staff

Present:

Raymond S. Yamashita, Executive Officer
Roy Takeyama, Legal Counsel
Gordon Soh, Associate Planner
Alberta Kai, Stenographer

Chairman Thompson called the public hearing to order and opened it with a prayer. The Chairman outlined the procedures to be followed throughout the hearing and administered the oath to those persons who would be participating or testifying during the hearing.

PETITION BY JOSEPH R. PAO FOR HAWAIIAN PACIFIC INDUSTRIES, INC. (A64-71) FOR AMENDMENT TO THE LAND USE DISTRICT BOUNDARIES TO EXTEND THE PRESENT LIMITS OF THE URBAN DISTRICT IN NIU VALLEY, OAHU TO INCORPORATE APPROXIMATELY SIXTEEN AND ONE-HALF ACRES OF PIA VALLEY CURRENTLY IN A CONSERVATION DISTRICT FOR A RESIDENTIAL SUBDIVISION: Described as Portion of 3-7-03, First Division

Mr. Gordon Soh presented the staff report (see report on file). The staff recommended that the amendment be granted only to the extent of incorporating areas of the proposed development which contain slopes of less than 20%. The City Planning Commission recommended that the boundary be amended to urban use for only that portion of land comprising approximately 5.4 acres with a slope of 20 per cent grade or less.

Mr. Joseph Pao stated that about 17 months ago, they were approached to purchase this land in Niu Valley. He had his engineer check with the State and County to investigate possibilities of putting this land into a subdivision. At that time the land use line was nowhere within the area they were purchasing. They started bulldozing and clearing the area. His engineer started developing plans for the area, and came up with a scheme for 246 lots. At this

point they closed the deal with Pflueger and Cassidy and paid a \$1,000,000 for the land. There would be 246 fee simple lots built in the area. The demand was so great that all 246 lots have been sold at this point.

Mr. Pao stated that when they started final engineering on this project, they learned that the Land Use Commission had moved the line down excluding 17 acres they had proposed to subdivide. He stated that the areas of flat land are loaded down with boulders. The 17 acres of land is just approximately in the 20% grade. They expect to take some of these fills or the slopes there, and fill soil over the rocks in the lower areas to beautify the area. The lots will be of 7,500 sq. ft. or better. They plan to put in a water reservoir, which is requested by the Board of Water Supply, and a pump station, pumping this water up to the water reservoir to take care of these lots over and above the first unit. There is a cost of \$250,000 or approximately \$1,000 a lot, just for the off-site water reservoir and pump station. Mr. Pao stated that as far as the cuts and slopes are concerned they will comply with the City ordinance, and still have suitable flat areas or living areas for these lots. The beautiful lots are in the mauka area which are placed in the Conservation classification and overlook the Niu Valley right out to the waterfront area.

Mr. Yasuo Arakaki, engineer for this development, was sworn in by the Chairman. He stated that he had their surveyor do a little "topo" work on the upper section under question. They found it to be similar to the land with little ridges coming out in the valley. Mr. Arakaki stated that the land is not too good, but still suitable for a subdivision. The upper flat lands over the 20% grade are better than those in the urban boundaries. The road planned is for the reservoir access. In order to make the best economic use of the steep areas and to utilize the road, they plan to build a few lots out of this area. He stated that though the lots are not suitable they can be developed. The lands on the lower section can be used for split level type homes. Mr. Arakaki submitted for the record, copies (2 maps) of their maps showing their development.

Commissioner Wenkam stated that in the last month there has been flooding in the area. He stated that this development has increased the run-off in the area. He wondered whether the facilities in the lower areas were adequate to handle this additional run-off which would incur from this development.

Mr. Arakaki stated that they have planned a lined ditch right in the center of the subdivision, 40 feet wide, with the drainage running into the ditch from the hillside. It is connected to the existing ditch which runs through the existing subdivision below. He stated that on this type of a terrain, whether it is developed or undeveloped, the run-off will still be the same. A development, however, tends to slow down the water. He stated that they have approved construction plans for the first unit, and will start construction in a few days.

Commissioner Wenkam requested that the petitioner submit data on the water run-off and the ability of the existing ditch to handle this additional run-off.

Mr. Pao stated that the City has required that they put in a 40 foot lined ditch for every 200 feet which drops into the stream to slow the water from rushing down the valley. He informed the Commission that Mr. Arakaki is one of the best hydraulic engineers in the islands. He stated that this has been proven by the City when the City permitted Mr. Arakaki to proceed with this development, after turning down other developers in this area.

Commissioner Ota asked how many lots are being projected in the upper portion of the subdivision. Mr. Pao replied 246 lots: 106 lots are in the first unit which have been approved by the City on which construction will start next week; over and above that are 140 lots. However, not all of the 140 lots are in Conservation.

Chairman Thompson asked, "How much are in Conservation?" Mr. Arakaki replied, "Approximately 17 acres or 60 lots."

Mr. Pao stated that in order to develop the other portions he would have to put in a reservoir and a pump station and that development cost is approximately \$250,000. The mauka lots are 7,500 sq. ft. or better. There are lots as big as 10,000, 15,000 and 18,000 sq. ft. Some are on slopes and will be cut and filled according to City ordinances. The minimum frontage of these lots will be 60 feet, and the majority of these lots are more than 60 feet. The number of lots that are being discussed are about 12 to 14 with a slope in back of 30 feet, which will be cut according to the contour of the land and nowhere like the Manoa subdivision.

Commissioner Wung asked, "What is the general grade in the Conservation area?" Mr. Arakaki replied, "A little more than 20%. The direct slope would be 30%."

Chairman Thompson asked, "You will end up with what kind of slope there?" Mr. Arakaki replied that the maximum is 13, but they are averaging about 12 to 14 and will try to keep it at a 10% slope.

The following entered testimonies against the petition for the record:

Miss Gertrude Humphries, a member of the Conservation Council and Outdoor Circle, spoke as an individual. She was interested in the cuts and fills, and the scenic aspects in the area. She stated that she has seen Pao's developments in the Manoa Valley and was prejudiced by them. He does not use good judgment about lands. To build on these very steep slopes would scar and demean the area. She stated that the use of the land was not in the best interest of the people of Hawaii. She stated that she was against building on the steep slopes.

Mrs. Kenneth Bankston, who was sworn in, stated that she lives at 5692 Kalaniana'ole Highway. She stated that she is in the original Niu Valley development and one of the first 11 homes to be built in Niu Valley on the Cassidy estate. She stated that she has lived

there for 11 years, and they had flash floods but never had they come to their house until this month. She stated that the damage of their house, in and out, amounted to \$2,360. The several people who were affected by this flood held a special meeting on this problem. She stated that they blame the Niu Valley Estates development in the upper valley areas for the cause of this flooding. She stated that Mr. Pao's engineer plans to let the water drain into the existing ditch. She stated that though they may not be engineers, they know that the ditch will never hold the water to prevent these floods. She stated that she and the people in the area object to this petition unless they can be assured there will be adequate drainage without causing any flash floods.

Mr. Ezra Wolfe, who was sworn in, stated that he lived in Niu Valley and was the president of Niu Valley Association. Mr. Wolfe stated that he was concerned with the type of homes that would be built in the area of the 30% grade. He stated that he was reminded of the houses in the Ainakoa section that are built up the side of mountains. He wondered whether some of the homes that have been built in the steep areas will be similar to that being built in Niu Valley.

Mr. Pao stated that the land there has been sold between \$15,750 and \$16,000 a lot. The builders that will buy these lots will not put cracker boxes in the area. Mr. Herbert Horita will be the builder, who is one of the foremost builders in the island. Mr. Pao stated that they don't have control of the houses in the area, and did not think that the City had that control either. He stated that he is assured from past subdivisions that he has done a wonderful job.

Mr. Pao stated that the idea is not to build on the 30% slope but rather they would cut where there won't be more than 4 or 5 feet back off the street, then go back with at least 4,500 to 5,000 sq. ft. of land, not more than 7 or 8% in grade. The back will be in slopes and will meet the City ordinances. There will not be any stilts like there are in the Ainakoa area.

Mr. Robert Brown, president of the Conservation Council for Hawaii, was sworn in. He stated that it has been mentioned that part of the soil in the area is Lualualei clay. Lualualei soil is highly hazardous for construction of houses because it has an extreme swell-shrink ratio, making it almost impossible to keep in place pipes for septic tanks or sewers. Sometimes there will be problems with water and foundations. The slopes in the area that get into the 12% or 20% (much of that area are 40 inches of soil or more over rock) would not allow you to have level houselots. He recommended that the area especially in the Conservation zone not be permitted for urban use development because of the hazards to the property owners that would be coming into the area, that it should be retained in an area that is satisfactory for the control of erosions, floods and such.

Mr. Frank Haines of the American Institute of Architects was sworn in. He stated that the pressure to build in a Conservation district is not justified. There are still many urban use areas which can support dwelling construction. He felt that it would establish a precedent to go into areas that have been set aside for conservation purposes at this time. It appeared to him that decisions as to what areas should be in conservation have been made rather sensibly and that if we start encroaching upon them, we would be defeating the plans that have been so conceived. He stated that when you have slopes that begin at 20% to 30% you would have a difficult time getting something that is not unsightly and would end up with something like Ainakoa. There would be tremendous cuts in the area which would take years to heal, and the scars will show on the hillside. Whichever approach is taken design-wise, as far as the buildings are concerned, it would be detrimental to the overall scene of the valley.

Mr. Tom Wells, Chairman of the Honolulu Chamber of Commerce Beautification Committee, was sworn in. He stated that they continually supported the Land Use Law and all matters pertaining to it. The basic issue was that the mountains, the streams and shorelines in the State were not for sale. In an area such as this, where it has been proven that lands are adequate below this slope - as determined by this Commission - and can be used, they would be unalterably opposed to this kind of subdivision. The kind of scars that are inevitable in this kind of development would take a long time to heal. He stated that just on the very standpoint of the philosophy of the Land Use Law to protect our mountainsides, a closer examination would only strengthen their point.

Mr. Lawrence Blodgett was sworn in. He spoke as a private citizen and a former property owner in Aina Haina. He invited the Commission to an actual eye view tour of the Lawilawi Street area to see how Lualualei soil clay acts in a subdivision. He stated there you will see futile attempts by property owners to improve their property, which this type of ground and type of soil is impossible to grow anything on.

Mr. Wolfe added that because the stream is low near the Bankston's residence, the stream will overflow, and that the additional run-off into this stream from this development will create a greater hazard to approximately 50 people at the mouth of the stream, just above the highway.

Mr. Pao stated that the remains from the storm are still there with 400 to 600 feet of silt which came from the adjacent subdivision. He stated that his engineer has stated that the stream is wide enough, if it is kept open, to take care all of the flood water in the area as it was designed by numerous engineers in the area. He stated that he did not think the City would have allowed this if it weren't wide enough - taking into account a projection that the whole valley would be developed some time. He recommended that this Commission have an engineer go up there and look at it. He stated that he did not want to build a subdivision that would be flooding the people

below. He is not an engineer and this is his reason for hiring engineers. His engineer has told him that it is adequate to have a little more water added provided the stream is kept opened. He informed the Commission that this fault lies with the people who live in the area - they throw their own rubbish in the stream and cause this overflow.

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

The public hearing was closed.

PETITION OF MICHAEL T. KUWAHARA (SP65-6) FOR A SPECIAL PERMIT TO CONSTRUCT A SERVICE STATION, AND AN AUTO AND FARM EQUIPMENT REPAIR SHOP IN THE PULEHU RURAL DISTRICT IN KULA, MAUI: Described as TMK 2-3-2: 23, Second Division, approximately 29,000 sq. ft.

Mr. Gordon Soh presented the staff report (see report on file). The staff recommended denial of the request because it could not determine, from the evidence presented and the guidelines set under the Commission's regulations, that the use was "unusual and reasonable."

Mr. Roy Migita, who was sworn in, spoke on behalf of his father, Mr. Robert Migita, Sr. He stated that his father had a letter on file with this Commission protesting this request. He could not understand why the County of Maui had granted this Special Permit. It seemed to him that this request was not an unusual circumstance. His father stated that since the new road was built, there was concern that new businesses would be permitted along the highway which would hinder the old businesses already established in the area. They were informed that the State would control all access on the new road. He stated that his father would not object if Mr. Kuwahara built a service station within the area where businesses are already established. He stated that if Mr. Kuwahara is granted his request, he would have a special advantage over those businesses already existing in the area. This is his father's main objection to this request. The Maui County recommended approval of this request because of the fact that a cluster of repair shops exists there.

Mr. Migita stated that his father had called him last night with additional information. Mr. Migita informed the Commission that the Tavares Motorcycle Repair Shop will be going out of business and therefore, it would not be necessary for Mr. Kuwahara to relocate. He could build right where he is right now and expand right in that area. Mr. Migita requested the Commission to defer action on this petition until he could substantiate this new information.

The Executive Officer explained to the Commission that Mr. Kuwahara wants to move his facilities in this yellow area here (pointing to colored area on map). The Tavares Motorcycle Repair Shop protrudes into the area. Should this petition be approved the motorcycle repair shop will be removed anyhow.

Commissioner Ferry inquired whether Mr. Kuwahara had a vested interest in this area. It was established by legal counsel that Mr. Kuwahara was the lessee (notarized document on file).

Commissioner Ota inquired whether the guidelines as enumerated by the staff in its report were from the Commission's regulations. The staff replied in the affirmative. Commissioner Ota stated that the staff's analysis and findings generally support the petitioner's request. However, the staff's recommendation is contrary to this.

Mr. Soh stated that he did not feel that the analysis was favorable to the petitioner. His intentions were to present two sides of the story for the Commission's consideration. He had hoped that the recommendation offered an explanation as to why it came out the way it did. He could not determine that the use was "unusual and reasonable" and in keeping with the objectives of the Land Use Law.

Commissioner Ferry stated that the best use of the land should be the basis to grant a special permit.

Legal counsel stated that a Special Permit is different from a variance. The objective of the Land Use Law is to make the highest and best use of the land, to:

- (1) prevent the shifting of prime agricultural lands into non-revenue producing residential uses, and
- (2) prevent the development of scattered subdivision with expensive, yet reduced, public services.

Commissioner Ota added, "to preserve scenic and aesthetic sites, etc."

The Executive Officer informed the Commission that the question is whether the highest and best use of the land is in the interest and welfare of the public, or in the interest of real estate.

Commissioner Ferry made the following motion:

"I move to approve on the basis that this is in keeping with the compatible use in the area and our objectives as we have set it for the land use pattern in the area. This is the real purpose of the Land Use Law. If we are going into it much deeper, and arbitrarily make decisions which would necessarily hinder development within proper and acceptable growth, I think we are not working in the best interest and welfare of our public."

The motion was seconded by Commissioner Ota and carried as follows:

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

Disapproval: None.

Absent: Commissioner S. Mark.

The following is the motion briefly stated by Chairman Thompson:

"The request is compatible to the growth of the area."

ADOPTION OF MINUTES

The minutes of 10/23/64 public hearing in Hilo, Hawaii; 11/5/64 meeting in Lihue, Kauai; and 12/18/64 meeting in Honolulu, Hawaii were accepted as circulated by the Commission.

REQUEST BY COMMISSIONER ROBERT WENKAM

A written request by Commissioner Wenkam (copies circulated to each commissioner) to attend the Ninth Biennial Conservation Wilderness Conference sponsored by the Sierra Club of California in San Francisco, April 2-4, 1965 was presented to the Commission. Commissioner Wenkam requested that the Commission pay for his round trip air plane fare of \$200 to attend this conference. He stated that he would take care of his own incidental expenses.

The consensus of the Commission was in favor of sending a commissioner and a staff member to this conference.

Commissioner Ota moved to approve that two people - one staff member and one commissioner - go to this conference, subject to **further** information that will be coming in. Commissioner Wung seconded the motion and the motion was carried.

The staff was requested to do the following:

- (1) Check this request out with the Comptroller's, Personnel, Budget and Finance, Dr. Mark and Governor's Office.
- (2) Write a letter to the Sierra Club of California and get details on who will be attending (State, County, and private agencies); and other pertinent information that may be needed to justify attendance (fee, program etc.).
- (3) Report to the Commission at its next meeting, staff's findings as related to this request.

SCHEDULE FOR HILO MEETING

The schedule for March 19, 1965 in Hilo was approved by the Commission.

STATUS OF VACANT ASSISTANT PLANNER POSITION

The Executive Officer reported to the Commission that he intends to drop the names of the two women on the eligible list for this position because of the unusual duties required of this position which would preferably require the services of a man.

The staff was requested by the Commission to make a review of the staff requirements and to report this at the Commission's next meeting, or if necessary to call a special meeting.

CIRCULATION OF STAFF REPORT

The legal counsel informed the Commission that there is no provision under the statutes or regulations preventing the Commission from circulating the staff report to the petitioner, or its counsel and/or representative before a public hearing is held. He stated that the Section under the Administrative Procedures Act, relating to this subject refers to only the body or persons who make the decision.

The Commission requested that the staff send to the petitioner two days before a public hearing or meeting the staff report with a letter informing the petitioner that this is not the final decision of the Commission, but rather the recommendation of the staff to the Commission.

Permission was given to the Executive Officer by the Commission to provide as much administrative assistance to a petitioner (but using discretion) in order that the petitioner may proceed with his request to his best advantage and favor.

COMMUNICATION BETWEEN THE DEPARTMENT OF TAXATION AND THE LAND USE COMMISSION

Commissioner Nishimura inquired whether there was any change in the tax structure relating to lands dedicated to Agriculture.

Chairman Thompson stated that this poses the question whether another meeting with the Department of Taxation is in order.

The consensus of the Commission was that an open communication between the Department of Taxation and the Land Use Commission should be initiated to keep the Commission abreast of any new changes in the Tax Department.

CONSERVATION COUNCIL OF HAWAII CONFERENCE

Commissioner Wenkam informed the Commission that there will be a conference by the Conservation Council of Hawaii on March 20, 1965, at 8:30 a.m., in the Princess Kaiulani Hotel. The topic of discussion will be the Land Use Law.

All of the Commissioners were requested to attend this conference. Arrangements to accommodate the Neighbor Island Commissioners for this conference are to be made by the staff (except for G. Inaba). Per diem is to be allowed for those Neighbor Island Commissioners attending this conference.

MATTERS DEFERRED TO NEXT MEETING

1. Matters taken under advisement at Nov. 5 meeting with the Kauai Planning and Traffic Commission, in Lihue, Kauai.
2. Problems on the Land Use Law.

The meeting adjourned at 5:30 p.m.