

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Rooms A, B & C
State Building
Lihue, Kauai

Approved

MAY 20 1980

February 26, 1980 - 9:59 a.m.

COMMISSIONERS PRESENT: Charles Duke, Chairman
Shinichi Nakagawa, Vice Chairman
Shinsei Miyasato
Mitsuo Oura
Carol Whitesell
William Yuen

COMMISSIONER ABSENT: Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Allan Kawada, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

ACTION

A79-456 - THE LIHUE PLANTATION COMPANY, LTD.

It was announced by the Chairman that action on subject petition will be taken through the proposed decision procedure.

Chairman Duke solicited petitioner's comments relevant to the presence of only 7 Commissioners today, in view of the fact that 6 votes were necessary to effect a boundary change. Mr. Shiraishi responded that he would have no objections to proceeding with the action under the stated circumstances.

All parties were afforded equal time to present his arguments in support of his position.

It was moved by Vice Chairman Nakagawa to approve Docket A79-456, The Lihue Plantation Company, Ltd., to reclassify approximately 13.683 acres of land from the Agricultural District into the Urban District at Lihue, Kauai. Commissioner Pascua seconded the motion.

Commissioner Whitesell felt that although there were several factors in favor of the petition, the question of need for the

type of housing being proposed, traffic impact of the proposed development, inadequacy of the sewer treatment facilities, water adequacy, etc., had not been sufficiently addressed.

Chairman Duke spoke in favor of the petition as he believed that most of the concerns expressed by Commissioner Whitesell would be adequately delved into at the County level.

The motion on the floor to approve the petition was carried with the following votes:

Ayes: Commissioners Oura, Yuen, Nakagawa, Pascua, Miyasato, Chairman Duke

Nay: Commissioner Whitesell

Counselor Kawada led the Commission in a discussion of the proposed findings filed by the petitioner to determine the true findings as brought out during the hearing. Objections were raised to some of the findings and appropriate deletions, additions, amendments were adopted to reflect these concerns.

Chairman Duke directed Counselor Kawada to prepare the Commission's findings of fact, conclusions of law and order as discussed today.

HEARING

A79-467 - GROVE FARM COMPANY, INC.

Pursuant to a notice published in the Garden Island and the Honolulu Advertiser on January 18, 1980 and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by Grove Farm Company, Inc. to amend the land use district boundaries for approximately 86 acres presently in the Agricultural District into the Urban District at Puhī and Lihue, Kauai, for residential subdivision and light industrial development, Docket No. A79-467.

Declaration of Conflict

Commissioner Yuen stated for the record that, although he did not believe he had sufficient interest, financial or otherwise, in the subject petition, since his law firm presently represented Grove Farm Co., Inc. in other matters, he was withdrawing from participation in the petition. Subsequently, Commissioner Yuen withdrew from the hearing room.

Intervention and Public Witnesses

It was noted that the Commission was in receipt of 3 petitions for intervention on the subject petition from the following:

1. Niumalu-Nawiliwili Tenants Association, represented by David Bettencourt, Attorney
2. 1000 Friends of Kauai, represented by Stephen A. Levine
3. Bill Kaipo Asing

Counselor Bettencourt presented his arguments in support of the petition by the Niumalu-Nawiliwili Tenants Association to participate as an intervenor in these proceedings as permitted under sub-section (c) of 6-7 of the Commission's Rules.

Mr. Levine submitted that the concerns of the Niumalu-Nawiliwili Tenants Association and 1000 Friends of Kauai were very similar and, therefore, if the former were admitted as an intervenor, the 1000 Friends of Kauai would merely ask to appear as a public witness.

Mr. Asing cited his reasons for requesting to intervene.

Mr. Shiraishi, petitioner's attorney, presented his objections to all of the intervention requests on the basis that none of the persons involved in the petitions had any interest in nor were they lawfully situated on the properties under petition.

The Commission was in recess from 12:08 p.m. to 1:30 p.m.

1:30 p.m.

Mr. Shinsato stated that the County of Kauai had no objections to the intervention requests of the Niumalu-Nawiliwili Tenants Association and Mr. Asing; however, he felt that the concerns of 1000 Friends of Kauai could be represented by the NNTA.

Miss Chock represented that the State had no objections to any of the intervention requests.

Vice Chairman Nakagawa moved that the Niumalu-Nawiliwili Tenants Association be allowed to participate in the proceedings as intervenors. The motion was seconded by Commissioner Whitesell and carried. As indicated earlier, Mr. Levine withdrew his client's petition and requested that he be admitted as a public witness.

Commissioner Pascua moved to admit Mr. Levine, representing 1000 Friends of Kauai, as a public witness, which was seconded by Commissioner Oura and approved.

Commissioner Pascua moved that Mr. Asing be admitted as an intervenor and Commissioner Oura seconded the motion. The motion was defeated as follows:

Ayes: Commissioners Oura, Pascua, Whitesell, Duke

Nays: Commissioners Miyasato and Nakagawa

Commissioner Pascua moved to admit Mr. Asing as a public witness, which was seconded by Vice Chairman Nakagawa and unanimously carried.

Appearances

Clinton Shiraishi, Attorney representing Grove Farm Company, Inc.

Morris Shinsato, County Attorney, representing the Kauai Planning Department

Annette Chock, Deputy Attorney General, representing the Department of Planning and Economic Development

David Bettencourt, Attorney representing the Niualu-Nawiliwili Tenants Association

Exhibits

Petitioner's Exhibits 1 through 9, except 7, were admitted into evidence. Exhibits 7, 10, 11 and 12 were held in abeyance pending examination of the witnesses.

County's prepared testimony was admitted as County's Exhibit 1.

DPED's Exhibits 1 and 2 were admitted into evidence.

Motion to Dismiss Petition

Mr. Bettencourt circulated a petition moving to dismiss the petition for not meeting the minimum statutory requirements, nor the minimum regulatory requirements under the rules of the Land Use Commission.

The Chairman called for a 10-minute recess to afford time to the Commission and all parties to review Mr. Bettencourt's motion.

All parties were given an opportunity to present their views regarding the foregoing motion.

At the Chairman's suggestion, Mr. Bettencourt agreed to amend his petition to a motion for defective filing rather than dismissal of the petition.

Commissioner Pascua moved that intervenor's motion for defective filing be approved, which was seconded by Commissioner Whitesell. The motion failed to pass as indicated below:

Ayes: Commissioners Oura, Pascua, Whitesell

Nays: Commissioners Miyasato, Nakagawa, Chairman Duke

The Executive Officer advised that an untimely request to appear as a public witness had been received from Ms. Elizabeth Stone; however, it was noted that Ms. Stone was not present today.

Commissioner Pascua moved that Ms. Stone's request to appear as a witness be denied, which was seconded by Commissioner Oura and unanimously carried.

All of the persons appearing today were duly sworn in, testified and were examined as set forth in the transcript on the pages noted.

The following petitioner's witnesses were taken out of turn to allow them to fulfill their prior commitments:

Walter Briant - Manager and Chief Engineer, Department of Water, Kauai

Direct examination by Mr. Shiraishi-----109 to 111

Cross examination by Mr. Shinsato-----111 to 113

Cross examination by Miss Chock-----113 to 114

Cross examination by Mr. Bettencourt-----114 to 130

Jonathan Shimada - Traffic Engineer

Direct examination by Mr. Shiraishi-----131 to 135

Cross examination by Mr. Shinsato-----136 to 141

Jonathan Shimada (cont.)

Cross examination by Miss Chock-----141 to 142

Cross examination by Mr. Bettencourt-----142 to 163

Continuation of Hearing

It was moved by Commissioner Whitesell, seconded by Commissioner Pascua, and unanimously agreed to continue the hearing. Chairman Duke announced that the hearing will continue on March 5, 1980 in Lihue, Kauai.

ADOPTION OF MINUTES

The minutes of September 29, 1979 and October 3, 1979 were adopted as circulated.

The meeting was recessed at 5:02 p.m.