

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Public Hearing

LUC Hearing Room

Honolulu, Hawaii

7:00 P. M. - February 28, 1964

Commissioners

Present:

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

Absent:

Myron B. Thompson  
C.E.S. Burns  
Goro Inaba

Staff

Present:

Raymond Yamashita, Executive Officer  
Roy Takeyama, Legal Counsel  
Richard Mar, Field Officer  
Amy Namihira, Stenographer

The public hearing was called to order by Commissioner Ota, Chairman Pro Tempore. The hearing was opened with a short prayer, followed by an introduction of the commissioners and staff members. The procedures to be followed throughout the public hearing were then outlined. All persons who were entering testimonies in this hearing were sworn in.

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PETITION OF HAWAIIAN HOMES COMMISSION (A(T)63-54), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS CONSISTING OF 215.7 ACRES SITUATED AT WAIMANALO, KOOLAUPOKO, OAHU: Described as TMK 4-1-08: 1, 2, 3 & 4

The Field Officer presented the background on the petition and located the area on a map. There being no comments from the petitioner at this point, the Executive Officer proceeded with the staff's analysis and recommendation. The recommendation was for approval of the petition for urban districting of a portion of the subject area, specifically TMK 4-1-8:1, consisting of 121.39 acres on the bases that: (1) in considering the legislative limitations affecting the activities of the Hawaiian Homes Commission, there is reasonable proof that the land is required for urban use; (2) the subject parcel is suitable and adaptable for urban use; (3) although the fringe of prime agricultural lands does extend into the subject parcel, the urban use of this portion of prime agricultural lands does promote a

more efficient overall use of the adjacent lands; (4) the urban use of the subject parcel does not promote scatteration; and (5) the proposed use is in conformance to the Department of Land and Natural Resources' plan for Waimanalo Valley and is also in accordance with the City and County's plan for that area.

Mr. James Clark, representing the Hawaiian Homes Commission, acknowledged that 121 acres more or less would be sufficient, at present, to accommodate their present layout of approximately 450 lots. He confirmed that the Hawaiian Homes Commission would take about 10 years before they would be able to develop the quarry site for houselots (Coral Hill). He stated that they have plans drawn up for development of half of this quarry area on a 5 year basis. He indicated that because they do not have funds at the moment, they could not proceed with the development of the whole area. He stated that the Hawaiian Homes Commission matched \$200,000 from the Legislature \$200,000 and there is now \$400,000 allocated for a houselot development. Mr. Clark anticipated that the present 950 applications on file would double as soon as they start developing this subdivision.

The Executive Officer informed Mr. Clark that because the Coral Hill area is a 10 year planned program for eventual use and utilization, and this Commission is obliged to make a study of the district boundaries every five years, this additional area, should it be needed at that time, could be reviewed and considered then.

Commissioner Ferry inquired whether the Coral Hill area or quarry could qualify as an agricultural operation, or would the Hawaiian Homes Commission need to apply for a special permit?

The Executive Officer replied that a quarry operation was a permitted use in an agricultural district, and therefore it would not be necessary for the Hawaiian Homes Commission to obtain a special permit. This was confirmed by the legal counsel.

The Executive Officer informed the public that this Commission will receive additional testimonies and protests in writing within the next 15 days from this hearing and that this Commission will be taking action on the petition between 45 to 90 days from this hearing.

The public hearing was closed.

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PETITION OF KULA DEVELOPMENT CORPORATION FOR AMENDMENT TO URBAN DISTRICT BOUNDARY OF "JAMESTOWN" OMAOPIO, KULA, ISLAND AND COUNTY OF MAUI, STATE OF HAWAII

Chairman Ota informed the Commissioners that the purpose of considering the petition by Kula Development Corporation was to decide whether or not this petition should be accepted for a public hearing.

The legal counsel stated that the petitioner wishes to amend the interim boundaries by keeping his particular area in Urban and putting those areas other than his own

in a rural classification. The legal question being raised is, "Can petitioner, who is not lessee nor owner in fee, petition lands not his own for another use?" Legal counsel stated that the Law states that any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent. Legal counsel stated that in his opinion the petition by Kula Development is invalid because the petitioner is not the property owner or lessee of some of the lands in question.

Mr. William Ellis, representing Kula Development Corporation, was not in agreement with legal counsel's interpretation. He stated that this Commission should be impartial and objective and should consider the petitioner's interpretation of the law as well as legal counsel's. He stated that legal counsel gives only his opinion and is not a ruling which bind this Commission. Mr. Ellis based his right to petition lands other than his own for a boundary change on Section 98H-4 of Act 205.

Commissioner Ferry asked Mr. Ellis if he felt that a group of laymen (like this Commission) who may not be attorneys, could find any valid argument to doubt the advice given by their legal counsel? Mr. Ellis replied in the affirmative.

Commissioner Wenkam stated that the issue is whether or not a person who does not have full ownership of a land can present a petition to this Commission. The law says he must be a property owner or lessee. Therefore the question is: "Are the lands being petitioned by Mr. Ellis in his ownership or not?"

Mr. Ellis replied that the majority of the lands were. He explained, however, that should this Commission insist that his petition be for just his particular lands, his petition has already indicated that this alternative be so.

Commissioner Ferry requested a clarification of this petition.

Legal counsel stated that the petitioner is requesting that lands other than his own, which are adjacent to his, be put in a rural classification while his own lands be put in urban. If a portion of the petition is not acceptable to this Commission, the petition has an alternative request that only those lands under petitioner's ownership be reclassified to urban. Legal counsel explained, however, that these particular lands were already classified under the interim boundaries as urban.

Mr. Ellis stated that he was submitting his petition at this time because of: (1) the long waiting period one must go through before his petition is heard and action is taken by this commission; (2) the possibility that the adopted final boundaries may not be in his favor; and (3) the right an individual has to withdraw his petition in the event the adopted final boundaries were in his favor.

It was explained to Mr. Ellis that this Commission had already set a precedence when it had denied similar petition of this nature on grounds that they were not in accordance with the Law.

Legal counsel stated that he believed there may have been some misinterpretation of the communications that went between the Executive Officer and Mr. Ellis. He explained to Mr. Ellis that the Executive Officer upon legal counsel's advice

ruled that his petition was invalid.

Mr. Ellis requested the reason why his petition, which was ruled invalid twice, was then accepted the third time by the Executive Officer?

The Executive Officer explained that he was called before the Chairmen of the House Judiciary and Land Committees concerning this matter. As a consequence, he concluded that only the Commission had the prerogative to decide on the validity of a petition. He therefore accepted the petition and requested permission from the Chairman to add it to the agenda for this Commission to make the decision.

Commissioner Ferry then made the following motion:

"I move that inasmuch as the petitioner has included lands in his petition which he does not own and have any interest, either as a lessor or lessee, that we deny the petition as submitted."

Commissioner Nishimura seconded the motion.

The Executive Officer polled the Commissioners. The vote was as follows:

Approval: Commissioners Wung, Wenkam, Nishimura, Ferry, Mark and Chairman Ota.

Disapproval: None.

The motion was carried.

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PETITION OF DEPARTMENT OF LAND AND NATURAL RESOURCES (A(T)63-33), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN LALAMILO, HAWAII: Described as TMK 6-6-01: Por. 2; 6-6-01: Por. 10; 6-6-01: 11, 15, 29, 40 and 6-6-04: 6

A background summary of the petition was given by the Field Officer. A public hearing on this petition was held on December 7, 1963 in the Hilo Electric Light Company Auditorium, Hilo, Hawaii. Action on this petition was deferred by the Commission at its meeting on February 1, 1964 in Hilo, Hawaii because of insufficient evidence to arrive at a conclusion. The recommendation of the staff was for granting a portion of the redistricting request so that the first increment of the houselot subdivision alone would be redistricted at this time. The Hawaii County Planning and Traffic Commission recommended rezoning in order to allow expansion of the proposed development by the State.

Commissioner Nishimura moved to accept the staff's recommendation, which was seconded by Commissioner Wung. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioners Wung, Wenkam, Nishimura, Mark, Ferry and Chairman Ota.

Disapproval: None.

The motion was carried.

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PETITION OF CENTEX TROUSDALE COMPANY BY H.W.B. WHITE (A(T)62-29), FOR CHANGE OF TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION OF ABOUT 800 ACRES OF KAWAINUI SWAMP FOR PURPOSE OF RESIDENTIAL AND PARK DEVELOPMENT: Described as TMK 4-2-16: 01 and 4-2-13: 22

Discussion on the above petition was deferred to tomorrow's meeting, February 29, 1964, at which time the Chairman, Myron Thompson, would be present.

SCHEDULE OF ACTIVITIES

The proposed schedule of activities worked up by the staff was accepted by the Land Use Commission members up to April 25, 1964.

The meeting adjourned at 9:00 p.m.