

STATE OF HAWAII
LAND USE COMMISSION

2:00 P.M. Meeting
February 28, 1969

Lihue, Kauai

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CHAIRMAN:

Meeting of the Land Use Commission is now in order. All those who wish to testify that are not attorneys, would you rise and be sworn in? All those that wish to testify at today's hearing. Raise your right hand. Do you swear that the testimony you are about to give to the Commission is the truth, the whole truth and nothing but the truth, so help you God?

RESPONSE:

I do.

CHAIRMAN:

We'll begin with the hearing on A68-206.

STAFF:

Mr. Chairman and gentlemen of the Commission. (The February 28, 1969 staff report re: A68-206 - Chiaki Akazawa, et al, was read verbatim.)

CHAIRMAN:

Any questions?

What is above that area?

STAFF:

The particular area in question?

CHAIRMAN:

No. Above.

STAFF:

Up above here? Well, there's a bit of a draw right down through this area here. This general area right in here though is developable. These are individual lots in here. Again, it shows a street pattern in here but it's only on paper; there's nothing constructed on the land. Although

STAFF (Cont'd.)

these are lots back here, they're inaccessible actually. And this road provides frontage for all of the housing in here.

CHAIRMAN:

Any other questions? If not, would . . (inaudible) . .

STAFF:

Let me add one more thing.

COMMISSIONER:

May I ask a question. They . . (inaudible) . . only two ownerships. Right in here and this one here. They're not developing that area, so there is a shortage of land in the urban district.

CHAIRMAN:

You mean there's only two . . . ?

COMMISSIONER:

There's only two owners that actually have land in this area, but they are not doing anything with this land. One is a widow . . . in fact, both of them are widows, so . . (inaudible) . .

STAFF:

We wondered whether or not the sugar company would be interested in cultivating this land for sugar cane since it abutted the sugar company's operation plus the fact that it did have a drainage ditch through the area. And, of course, their reply was that most of this parcel was not economically useable for growing sugar cane simply because the land below the stream would be but not above because it would cost so much to provide the pumping facilities to get the water up on the upper area. And so the (inaudible) people pointed out that land below their ditch -- here and then here -- is useable for growing cane but not the other. We just received that today so we were unable to put that in our report.

CHAIRMAN:

What is our consultant's recommendation?

STAFF:

They haven't made any recommendation on this at the time. I think they'll probably have a recommendation for us by the time action is taken on this request.

This area here is mostly grazing area. Right behind this red line, it drops off into this Lawai Street area. It's very rugged land. This is the street.

CHAIRMAN:

Any other questions? Thank you.

Would the petitioner like to come forward?

PETITIONER:

Thank you, Mr. Chairman. My name is (inaudible) Sato, and I represent the applicants of the petition.

Commenting on this staff report in sequence, starting from the possibility of other agricultural products. First, one of the crops mentioned was guava, and when I read the word guava, it kind of shocked me because people in Kauai are trying to get rid of guava and here's someone proposing that you grow guava as a crop. However, I think it makes good sense. I understand there are two commercial guava orchards on Oahu, so I thought this might be a feasible project, and I accordingly went over to the extension service for some information. And I have the latest costs and returns for guava and according to the report, you have a deficit operation until the sixth year and after that, you gain maybe over \$1,000 per acre if you have 24,000 pounds production. I don't think that this is the type of return you will insist that a landowner put his land to. As for macadamia

PETITIONER (Cont'd.)

nuts, the second crop mentioned in the staff report, there are only two . . . I believe there are only two places still raising macadamia nuts on Kauai. More people have given up macadamia growing than those who retain the business. In fact, right in the area I think Dr. (inaudible) had quite an acreage in macadamia which he gave up. If you were so inclined, I think not too long ago, orchard owners were willing to go and help you pick up all the nuts you wanted free of charge, and even at that nobody was interested. This I think is a crop that you must talk of big acreage like Castle & Cooke or Honokaa Plantation. And I have a statistic on that, too. The Hawaii macadamia nut proceedings annual meeting, 1963, and interestingly they say that you forget the cost of your labor, and you can expect a return of \$974 per acre per year and would expect 400 man hours labor a year to do so. Again, I don't think this is economically feasible. Now as to cattle, I think a rule of thumb is on good pasturage, one head per acre, and according to the figures I got also from the extension service, you can expect 400 pounds per year on one acre. If this 400 pounds were all dress weight, you'd have 40¢ a pound or \$160 per acre per year. And I'm sure you're not going to insist that an old man ranch a 12-acre parcel just to be economical.

Mr. Fujimura, a lifetime farmer, gave up this passionfruit business simply because he couldn't sustain a family in growing passionfruit. Unfortunately, the passionfruit was like the present naval jacket -- all the (inaudible) at one time. We have recurring fads like this. At one time it was Kona coffee. I think there are still some places in Kauai's neighborhood still waiting for the right time to plant the proper plant. The last plant we had was macadamia nuts. That, too, was given up by most

PETITIONER (Cont'd.)

of them because of unprofitability. Then passionfruit was the latest craze and there is no better testimony than the fact that Mr. Fujimura, after trying this land, gave up. I know quite a few people got enthusiastic about growing passionfruit and then the market folded up, and this, too, is an uneconomical crop. So much for agricultural economics. I think it is just not feasible to request a man to put 12 acres of land into any kind of productive, sustaining use to agriculture.

As to the amenities, some comment was made that you don't have the amenities nearby, but on actual physical measurement on the ground, from the corner of Hailima and Aka Road which intersects the corner of the property in issue, to Kalaheo School it's only 3.1 miles away -- 7 minutes travel time you're talking about. And as for shopping, from the same corner to Kalaheo town, it's 2.9 of a mile or 5 minutes travelling time. Going the other way to Koloa School, the distance is 3.4 miles and to Koloa town, 3.1 miles. But to contrast, the state opened a recent subdivision in Wiliwili and from the town-most point of Wiliwili to Koloa School is $2\frac{1}{2}$ miles, $4\frac{1}{2}$ minutes traveling, and to Koloa County, 3 miles or say 5 minutes, so we're not talking about big distances and extensive travel time. We think this is more desirable than not perhaps to keep somewhat away from the business area itself.

As to the availability of other land, the report mentions 51 acres, but not all of 51 acres are available. I don't think even within the 51 acres anyone can buy a 10,000 square foot lot. As an illustration, I ran over to the tax department and secured the areas of the lot abutting opposite Aka Road and the smallest size lot is 19,800 square feet. So a person who wants a 10,000 square foot lot will have to hunt high and low

PETITIONER (Cont'd.)

to find this lot and may not find it even then. This I think will be supported by some people who may wish to speak later. They mentioned say 51 acres but I would venture to say that Kauai has the smallest acreage zoned for urban use of any county in the State of Hawaii. We might say 51 acres available but it's kind of in an academic sense because you can't get it to a useable lot at a price an average homeowner would be willing to pay. The applicants have in mind 10,000 square foot lots selling at about 70¢ per square foot. So much for the staff report. What about the positive factors that will induce you to grant this variance?

I might venture to say that this is a real good residential area for both the living and the dead. There's a cemetery to the south of this lot. And also, if you'll look at the map, I would say that this is a very logical place for any urban designation. To the side of this lot is the McBride sugar lands, and as your director stated, on the cemetery site, the property becomes exceedingly unsuitable for residential development.

The weather is very cool which makes it very desirable, especially for people from the Mainland. And to indicate that there is considerable demand for the lots, I have here a list of 67 persons who are interested in securing a lot, if available. I wish to state that we are aware of the law that says you're not supposed to offer to sell until a subdivision is proposed, but these are not offers -- these are merely people who have expressed a willingness to consider purchasing lots in the area. Incidentally, there are 67 names on the list and only a little more than 30 lots will be available. We think that you would not in any way do violence to your land use standards if you were to designate this area as an urban area. Thank you.

COMMISSIONER:

When you speak about travelling time, what speed are you travelling at?

PETITIONER:

Oh, 30 miles per hour.

COMMISSIONER:

Thirty miles per hour. At 30 miles per hour, how long would it take to get from one end of the island to the other end?

PETITIONER:

From one end of the island to the other?

COMMISSIONER:

Yes.

PETITIONER:

I don't know what the total distance is. I have no idea.

COMMISSIONER:

About 100 miles.

COMMISSIONER:

One hundred miles? Both ways?

COMMISSIONER:

One way. So about 3 hours.

STAFF:

Mr. Chairman, I wonder if he could elaborate on the land not being available. I mean, you do agree that there's an awful lot of land that's in the urban area, right? It's vacant but you say it's not available. Why isn't it available.

PETITIONER:

Well, it's not subdivided into sizes that are available to our present interest in housing.

STAFF:

It could be subdivided though.

PETITIONER:

Yes, it could be, but then what would be the price when these people put these lots on the market?

STAFF:

What would be the difference in the subdivision costs for your land as opposed to the lands in the urban area?

PETITIONER:

It's not that kind of difference that I'm talking about. I'm talking about the difference that the present owners are asking for the land.

STAFF:

So it's really the price they're asking for it which makes the lands not available.

PETITIONER:

That's my question on this. I'm not a real estate man and we haven't testified to the point.

STAFF:

These 67 names on the list, are they Hawaii residents?

PETITIONER:

Most of them are, and I'll leave that for you so that you may verify them if you wish to do so.

CHAIRMAN:

Thank you. Any other questions?

COMMISSIONER:

One thing. It sounds as if the agriculture isn't very much good for the whole island.

PETITIONER:

I think this is very much true because we've had a study made not too long ago and they ended up with a report saying that agriculture for the small farm was feasible only because this was a family thing and they were using family labor.

COMMISSIONER:

I kind of agree with you, too, but the thing is . . . maybe we should put all the small land holdings in urban.

PETITIONER:

No, not that, because they are able to consolidate and pick up that much more farm acreage, I think. I think this is what the recent . . . (inaudible) . . . association indicated to me. You can't play it on a back yard basis.

CHAIRMAN:

Is there anybody else that would like to testify? Would you come forward please? State your name please.

PETITIONER:

Robert (inaudible). I would probably want to reiterate what Mr. (?) said, that it's very important. It's all very well and good to talk about 51 acres, but he brings up the point in the first place that the people who hold these . . . you have a tremendous thing in that they don't want to sell. I'm in the real estate business and I know this situation. Now to sit here with 51 acres that are not marketable doesn't help the small property owner. Secondly, the ones who do, when you come and approach them, . . . they have the half acre parcel or even a three quarter acre . . . they have stars in their eyes. There is no realistic evaluation of this. From what I can gather . . . and as you can see, they haven't

PETITIONER (Cont'd.)

already sold -- I'm not grinding a real estate man's ax here . . . but from what I can gather, these will be coming out at a realistic price and definitely the need and the demand is there for the poor person.

CHAIRMAN:

Thank you. Anybody else?

UNIDENTIFIED:

Mr. Chairman. I am not particularly interested in this piece of land, but I do believe that there is a need for more urban house lots on the west side of Kauai.

CHAIRMAN:

Excuse me. Would you state your name please?

UNIDENTIFIED:

I'm sorry. My name is Roy Jones. I'm the site manager for Kentron at Barking Sands.

I say that there's a need for more urban lots, and I want to stress two points in doing this. One is that I know for a fact that many of our employees and many of our friends in that area would like to buy a lot and build a house. The other point is that there is still a terrific housing shortage that is hurting dozens of companies right now in the people that are working for them. I have the results of a survey that you very likely have seen. It was made by Mr. (?) and this is a little over a year old now, but I think the results are still valid. This was circulated among about 300 people at Barking Sands and Kokee. We had a 58% response which is a very good sample, and some of the results indicated that among 300 people, only 23% now own their homes. Seventy-three per cent would like to own their homes and 43% said they do plan to build in 5 years. These people have to have a place to build, and like I first stated, there are not many

MR. JONES (Cont'd.)

suitable lots on the west side that can be purchased at that stage at a reasonable price. Thank you.

CHAIRMAN:

Ron, what is the status of that Kekaha government parcel that was rezoned urban?

Wouldn't that be much closer to you at Kentron?

MR. JONES:

Yes, and many of our people would prefer to live there; many of them would prefer (inaudible). It is closer to work and yet there are many other factors involved in choosing a homesite, particularly where the person is wanting to build his own home. If I'm not mistaken, the present plans for that involve primarily an apartment project, and I don't personally know what the status of this is at this time.

CHAIRMAN:

Do you know, Ron?

STAFF:

No, I don't know what the status of it is at this time, although there will be single family dwellings in the area. I believe they're negotiating with a developer.

COMMISSIONER:

Mr. Jones, are you anticipating a vast migration of (inaudible)? I understand there's going to be about 3,000 . . (inaudible) . .

MR. JONES:

I would hesitate to even guess, but all I can say for sure is that there is no doubt in my mind but what it will grow. I just can't conceive of getting smaller. I'm sure that we'll grow. And if I had to make an

MR. JONES (Cont'd.)

estimate, I would make a conservative estimate of 5 and 10% steady growth per year, barring any big new developments that I don't know about at this time. It's true that much of this growth will be military personnel and we will have some transient personnel, but along with this, we'll also have a growth in what you might call new residents or even in relocating island people to go to work there. Incidentally, I might mention that approximately 70% of our people are local residents. Now some of the persons making surveys in the past said well, you only have 30% new people who would be eligible for houses and many of those won't stay. Well, this is not true because as many of the people who are residents there . . . there are young people growing up and they want to build homes, or there are people who are not satisfied with their present homes, and they'll want to build homes also.

CHAIRMAN:

Mr. Jones, what is the distance from your place of business to the specific parcel of land.

MR. JONES:

I'm not certain. I know that the distance from where I work to my home in Eleele is, I believe, 18 miles and it's 25 minutes driving time within the speed limit. The end of the street on the front of this parcel of property, there are two Kentron employees who own property at the end of that street, and both of them consider it a very desirable place to live.

MR. CHAIRMAN:

And your place is before or after this parcel?

MR. JONES:

My place is before this parcel.

MR. CHAIRMAN:

So it would probably be about 20 miles then?

MR. JONES:

Yes, or roughly.

COMMISSIONER:

I am wondering if this area would meet the desire of the employees.

MR. CHAIRMAN:

I think so. I think that is indicated, yes.

COMMISSIONER:

I think, Mr. Jones, you can give the Commission more or less an idea how many people from that area . . (inaudible) . .

MR. JONES:

I can tell you what it is at the present but this is . . .

MR. CHAIRMAN:

That's a rough question.

MR. JONES:

Here's an indication. Well . . . I'll read it anyway because it's available. But as to those who indicated that they would rather live elsewhere than where they are now living . . . where would you rather live, 27% said Hanapepe, 48% said Waimea or Kekaha, and then Kalaheo, Koloa, and Eleele . . . there were 19%; all other areas, 6%.

STAFF:

From that statement, Mr. Jones, you're not here in support of this specific area to meet the needs of the people that you're . . . ?

MR. JONES:

No, sir. I'm just saying that we need more land in general . . . more land available for general house lots. And I do think that this is a very desirable area. Kentron has a contract with the government to

MR. JONES (Cont'd.)

buy the services.

COMMISSIONER:

How long is this contract?

MR. JONES:

Now we have two on the island actually. We have one with the Navy at Barking Sands, and we have one with (NAS ?) at Kokee. I'm associated with the one at Barking Sands. Our contract was a 3-year contract which expires next month with a 2-year option which is being negotiated now. We might lose the contract at any time, of course, or it will be bid at the end of two more years. We feel quite confident in keeping it. We've been there since 1959 with the same customer. Even if we should lose it, there would be another contract.

COMMISSIONER:

How many people do you employ at Kentron in both of these facilities?

MR. JONES:

We have 245, I believe, at Barking Sands and I believe about 120 at Kokee. In addition to these, there are a number of civil service personnel at Barking Sands, also.

COMMISSIONER:

Of which 70% are local people.

CHAIRMAN:

Any other questions? If not, thank you, Mr. Jones.

UNIDENTIFIED:

My name is Burt Uchida (?); I'm the director of the Office of Economic Development for the County of Kauai. I'm here to speak, as Mr. Jones did, on the tremendous need of housing for the west end of Kauai.

MR. UCHIDA (Cont'd.)

The economy of Kauai has grown in the last few years to a point where there are more people for whom to supply housing. I point again to the survey that Mr. Jones quoted where in answer to a direct question, at the time the survey was taken, some 34% of the Kentron employees at Kokee and Barking Sands were living at Kekaha. However, that leaves some 66% that were living elsewhere. Waimea, the next community down the road, had 21% of it, and there were some 45% of the 300 employees living east of that area.

In asking the question about whether they would like to relocate to another area, it's surprising that Hanapepe, which is considerably a ways down the road, ranked as the highest community with 27%; and Kalaheo and Lawai, 13%. So that is an indication that distance does not really matter most to the people. The biggest point that I would like to bring up, however, is that we in the County government have been trying to encourage the opening of land for residential construction on the west side of Kauai. We've had meetings with the Barking Sands sources and also with private developers on the island. However, in meeting with the State Department of Land and Natural Resources, one of the recurring comments is that Kauai shouldn't encourage the development of private lands prior to the opening of the public lands at auction for these purposes. So I view the intent of the present developers as an encouraging sign, and I'm sure that the Department of Land and Natural Resources would also view it the same way. Thank you.

CHAIRMAN:

Any questions to Mr. Uchida? Before we go any further, the question

CHAIRMAN (Cont'd.)

was brought up . . . What is the status on that Kekaha land that had the boundary change? When will you be . . .?

STAFF:

. . . (inaudible) . . . and we're waiting for the description.

CHAIRMAN:

Do you have to wait for this Legislature to appropriate money?

STAFF:

No.

CHAIRMAN:

Or do you have the funds to do it?

COMMISSIONER:

Do you have the developer?

STAFF:

No. It will be auctioned. Are you talking about the balance of the land?

CHAIRMAN:

No. Just the urban area.

STAFF:

You see, originally the . . (inaudible) . . was approximately 70 acres zoned urban, in which approximately 15 acres are being devoted to commercial or . . (inaudible due to banging in the background) . . These two lots are to be auctioned off very shortly. As I said, we're awaiting the survey and description. As far as the urban lots, we will be going to the Legislature to develop by way of private developers.

UNIDENTIFIED:

I represent (inaudible), builder, and I would like to say that, in my

UNIDENTIFIED: (Cont'd.)

opinion, I think there is a need for urban lots in this area. It's close enough to Koloa to attract people that are employees in the resort development area and indulge both . . (inaudible) . . McBryde has general plans for extensive development in their more or less fringe lands and pasture lands area, and so does the state have some plans for development there. All of this land in this area is a little bit too expensive for the employees of the hotel, and I get requests from managers of the hotel; they say, can't you find some reasonable place for our people to rent or buy, and they don't have any. So something in this particular area would be . . . what is Koloa, 3 miles or so?

CHAIRMAN:

Yes.

UNIDENTIFIED:

It's easy to get transportation for these particular areas and furthermore, I've had tons of calls from Kentron and the people don't care where they are as long as it isn't on the east side. They would like to have some place there to rent. Now I would think that this would encourage some of our local people to buy lots and build homes for renting, and that's . . (inaudible) . . the economy of the island and the tax and zoning . . (inaudible) . . of the land. And I do know for a fact which I'll bring out in my statements later that no one, absolutely no one, that I've talked with from the Mainland or local wants anything more than a 10,000 square foot lot. So I would certainly be in support for this subdivision of the land.

CHAIRMAN:

Thank you. Any questions? Would anybody else like to come forward and speak for or against this petition?

CHAIRMAN: (Cont'd.)

O.K. The hearing is closed, and the petitioner has 15 days to submit additional evidence, and the Commission will have to act within 45 to 90 days.

We'll go on to action 68-207, Charles Hancock.

STAFF:

Mr. Chairman, gentlemen of the Commission. (The February 28, 1969 staff report re: A68-207 - Charles A. Hancock, et al, was read verbatim.)

Let me call your attention to our district map. Again, the green area represents the existing conservation district. This is the ocean. This is Waialua River. The marina is located here; the new resort development here in the urban district. The urban again is represented by the pink color, and the Waialua residential urban district shown also in the pink here. The rural areas are represented by the brown shading on the map. All of the white is existing agriculture. And we have indicated a pattern in here which also involves some of the urban and rural lands shown in blue as those lands that have been dedicated for agricultural tax purposes. To call your attention now to the large map. The red area defines the existing urban area, so that all of this land in between here is in the urban district. This orange line represents the existing rural district and the surrounding land is the agriculture. This is the north fork of the Waialua River. Shown in the light green shade are pineapple lands. As you can see, this is a large chop of land in the urban district; again, here is another parcel and another parcel. As a matter of fact, these 3 property owners petitioned for their land to be dedicated to agricultural purposes for the next 10 years. This also was petitioned and approved and is also in the agricultural reserve. The white area represents vacant land, and we do have a spotting of houses in the area which is indicated

STAFF (Cont'd.)

by these black dots. This is a subdivision that is being developed at this time. There are some houses in there and some under construction. The property in question is this yellow area and abuts the existing urban district but within the rural district. There's a house located up here and up here. Again, looking at the surrounding areas, the blue areas are all shown as having been dedicated for 10 years to ag purposes.

Are there any questions, gentlemen?

CHAIRMAN:

If not, would the petitioner come forward?

PETITIONER:

Mr. Chairman and gentlemen of the Commission. I represent the owner of the property, Mr. Charles Hancock, as well as the present owners who have purchased the land under an agreement of sale from Mr. Hancock. There's Mr. Herbert and 3 other prominent businessmen from Colorado. And they have purchased another parcel of land on the (inaudible) which is in the rural zoning. This particular parcel of land has 2 existing homes on it. One is on a part of the 2.8 acres . . . both homes are on that particular parcel. Mr. Hancock had tried various times during his ownership to sell the one home and have it subdivided off as a half-acre parcel since it conformed with the rural zoning. However, he was never able to interest anyone in acquiring that much land with the present home, and if they could not utilize the other part of the land for another home, there was no point in paying for it since it would have no immediate use. And this happened also when they subdivided the lower part of the property into one-half acre lots. People would have been very interested if they had been 10,000, 8,000, 9,000 square foot lots, but to buy a half an acre of land upon which

PETITIONER (Cont'd.)

they could build only one house was neither profitable nor desireable. Since that time, the land has lain with just pasture and scrub brush on it, and a few horses have been pastured in it. As to your statement here, it reiterates there is no desireable agricultural purpose of the land. It is too steep for pineapple, too steep for anything . . . on one side, for agriculture. However, it does afford an excellent view lots, and this is very desireable because all of the surrounding land is mostly flat or slight hills, so these lots become very choice lots. Anything with a view, of course, demands and brings a higher price. And since the lot is in a zoning for urban use, there would be a great demand for these specific lots. And I refer to the ones that are on the, shall I say, hairpin turn of the lot. May I just borrow you . . . (inaudible) . . . for a moment? On this side of the lot where there are 3 lots right in here next to here, that do have a drop-off of from 2 to 4 feet approximately. These would make most desireable home sites. In fact, I have brought a gentleman here today who I would like to introduce, if I may, who is very interested in this for a specific purpose of building a 2-level or tri-level home. This is Captain Kenneth Webb, our new harbormaster for Port Allen and (inaudible).

CHAIRMAN:

You're only interested in a 10,000 square foot lot?

PETITIONER:

Right.

MR. WEBB:

Very much so. I wouldn't want anything any larger.

PETITIONER:

Preferably smaller.

MR. WEBB:

And if I could have found anything smaller, I would have gone into that. I was most interested in the view afforded by those lots. This particular parcel answered every one of my requirements very beautifully.

PETITIONER:

Now as I mentioned before, there are 3 lots here that would qualify as view lots, then 2 more parcels here -- one on the border of the present urban pineapple field here has been just recently purchased from a local person who bought it from Mr. Hancock, at a very low price, I might add, because he was really desperate to make some use of the land. And he had resold to this Mainland company who bought it with the idea that they would like to subdivide. And I have the former owner here and his statement that he, too, would like to subdivide his lot. It would be more saleable and he could have made a more equitable price and profit on it had he been permitted to do so. The people who bought it from the Mainland are looking forward to building a retirement home there -- a home for retirement -- and they would like to introduce a friend to the other half of it, provided they could subdivide it. This would bring two more people from the Mainland who would make their permanent home here. Then on this side, the land is just practically level with just enough slope to insure drainage. This particular point out here, the present owners do not intend to subdivide. There are 4 people in there and there is approximately three quarters to an acre on this beautiful point out here with a panoramic view from the mountain side, down this range, and down on this side and to the ocean from this vantage point here. They plan to build a larger home and possibly a guest cottage and the 4 owners will take turns using it. And this is what they plan to do with this particular parcel. I thought I'd

PETITIONER (Cont'd.)

just explain that, so that there would not be any question because this particular part right here does drop off into a little ravine and would, of course, come under the classification of steep land. I do not consider these 3 lots to come under the classification of steep land because it affords a view, and it definitely is not going to be graded and become a problem in trying to make it flat and make it a ground problem. Now supposedly, the 3 lots on this side, or 4 lots, could be subdivided and there could be egress and ingress on this (inaudible) road. However, it is not practical to do that because the owner plans to put a roadway down the center in order to make use of these other lots. So access to all of the property would be from that center road, which according to the present plan, would be a 30 foot roadway with appropriate paving on it. Water . . . a specific water line goes along here, and electricity and everything is available. Of course, the developer would bring water and electricity in at the time the road was put in. Therefore, on this particular hazard, as it was pointed out, would seem nonexistent because of the fact that access would be from this road. We could, however, pre-sell these lots here to people who are interested who would like to build in 2 or 3 years, as one person has indicated from the Mainland. They could have a view lot in here. The road would then be put in and they could use the center road. Therefore, I don't see any possibility of them tying up any of the traffic or becoming hazardous to the traffic on that particular point.

Now we will take this resume' here . . . There is a great need for urban lands in this area. The present owners of land in there who have . . . well, for instance, the Santez' 37 acres in there is in pastureland . . . and they have always had cattle grazing; that's their business.

PETITIONER (Cont'd.)

Naturally, they would not want to at this time go to the expense probably of developing land because as everyone knows, the present day costs of developing are rapidly increasing to the extent that it almost makes it prohibitive. And furthermore, in the pineapple lands in there, there are other owners who likewise would not go to the expense of putting in a development. And it would bring the price up to beyond the, say, point of justification. These lots that we propose in there would go for \$1.00 a square foot probably, and the view lots possibly a little bit more than that because they are choice lots. And there is a need for this price of lots in there as was proved by the sell-out of the urban development across the road. There are 44 lots and all of them are sold and 10 homes are contracted for, I believe, and 2 are under construction by private contractors. And the enormous development, as it shows on your general map here, of the resort areas certainly indicates that we are going to have hundreds of people coming in here for employment in these development areas. The extensive development by Mr. Blackfield, for instance; where are those people going to live? They're going to want to make their home here and where are they going to buy property. I agree that the 198 acres that was indicated that could be in urban, if you put all that on the market at once, it would flood the market, but there isn't any possibility of that happening. And I feel that we're fortunate to have a developer -- an owner of land -- who is willing to go to the expense of developing an area where there would be desirable homes to sell at a reasonable price. And these other areas in there, I'm sure, will come along rapidly as the resort development area grows. And our local people who are going to work in these

PETITIONER (Cont'd.)

places, too, will want homes of their own as their income increases and they can afford to buy and build a home.

So, therefore, I feel that there is definitely a need in this and when there is one presented, I think that the County should take advantage of it and especially since it's Mainland money that's coming in here that's going to create this expert economic development. Then on the area for rural types, there is no room for rural type of development in my estimation within this range of area. It simply is not compatible. Therefore, it should be either agriculture or urban. There should not be any in-between. I've covered this where it says the traffic hazards and requires substantial sums of County money to correct the situation there because the road in the center would take care of that properly.

And I'd just like to go over a few points in a letter that I wrote to Mr. Duran after I had received his report. Just to touch on it briefly . . . I think I've covered the (inaudible) of it. There are only 3 lots that could possibly qualify for that and they are not really steep lots; they're just choice lots with a view. This is a map I have sketched out here, if you'd like to pass that around to the members, of just approximately how the land would be subdivided. I think I've just about covered it and I don't want to take any more of your time unnecessarily. I've just about covered it and I would be open to questions by any of the Commissioners.

CHAIRMAN:

Ron, weren't you questioning the ingress and egress to the subdivision from the main road rather than within the subdivision itself, as a traffic hazard?

STAFF:

Well, the lots that were in front on the existing road there, that's where your traffic problem is.

CHAIRMAN:

Otherwise, there's no problem getting into this particular site?

STAFF:

No.

CHAIRMAN:

If not, thank you. And do you have anybody else who wishes to . . . ?

COMMISSIONER:

Again, with all of this vacant land, why isn't it being used at this time? Apparently, there is a demand for it but it's being used for agricultural purposes.

PETITIONER:

Well, as I pointed out in my letter, to the best of my knowledge, they're making a better income without spending anything for development costs.

COMMISSIONER:

In agriculture?

PETITIONER:

Yes. In agriculture, and especially in pineapple.

COMMISSIONER:

This land is subdivided.

PETITIONER:

There are 2 subdivisions in there; one of them which sold at a very modest price about 2 years ago, as I recall the time element on it, and there are many of those people that I have talked with, especially people from the Mainland, that said they just were not interested in buying it

PETITIONER (Cont'd.)

because they didn't want that much land.

COMMISSIONER:

The half acre lots?

PETITIONER:

The half acre lots or more. At 50¢ a square foot, even that was too much. And with the other being in the area there where there is pastureland, surely some day that will be subdivided. But if the owners are not going to do anything with it for the next 5 or 10 years, and this group of owners is willing to go ahead with it right now, I think it's sort of up to the County to encourage this. We might even get another developer that would pick up one of the pasturelands and develop that to provide more. I think one encourages the other.

CHAIRMAN:

Any other questions? Thank you.

PETITIONER:

Thank you, Mr. Chairman.

CHAIRMAN:

Is there anybody else that would like to come forward and speak for or against this petition?

(Appeared to be discussion between two Commissioners but they were speaking too softly for the comments to be picked up by the tape recorder.)

COMMISSIONER:

I'd like to ask Miss (?) a question. You mentioned that your client also purchased some additional land in this area. Is it on the map?

PETITIONER:

Yes, it is. It's here - Berbert. It was formerly under Foster. It's just beyond the curve there. It's a 12-acre parcel. This is it, right in

PETITIONER (Cont'd.)

here. As I sketched on that map, we're going to . . (inaudible) . . in here to cut off that curve. In fact, we could bring it right around this way all the way over to there. There's no problem in doing that. And as to the center roadway, I don't recall exactly what the limitation is, but I think it's 670 feet . . (inaudible) . .

COMMISSIONER:

Is it also the intention of Mr. Hancock to subdivide that other . . (inaudible) . . parcel, too?

PETITIONER:

Mr. Hancock doesn't have anything to do with this. Mr. Hancock is the owner of this by agreement of sale to Mr. Berbert and the other . . .

COMMISSIONER:

Well, if Mr. Berbert now owns the property, does he intend to subdivide that area also?

PETITIONER:

I don't know his intent in here. In fact, I don't think there are any plans at all as yet. At present there is an arrangement for someone to graze cattle on there. Possibly, if something in the future up here . . . I think it's just that he was so taken with Kauai that he just bought the land as a future . . (inaudible) . .

CHAIRMAN:

Any questions? Any other further testimony? If not, the hearing is closed. Miss (?), you have an additional 15 days to present further testimony, and we will take action within 45 to 90 days.

PETITIONER:

May I ask if you have a field trip up there, would I be permitted to

PETITIONER (Cont'd.)

go with you?

CHAIRMAN:

Will you check with Mr. Duran?

PETITIONER:

Yes.

CHAIRMAN:

Thank you.

We have an action, but we don't have enough Commissioners here at present to take action.

COMMISSIONER:

Could we go ahead with the petition and probably we could act on it tomorrow?

(Quick exchange of comments on this suggestion from various Commissioners, with several speaking at one time, so that it was impossible to distinguish exactly what was being said by each.)

CHAIRMAN:

George, is it proper to have a hearing on this particular case where action is not to be taken?

LEGAL COUNSEL:

I see no real reason why not. You mean to allow the petitioners to present further views?

CHAIRMAN:

Yes.

LEGAL COUNSEL:

Because of the inconvenience to . . (inaudible) . . quorum?

CHAIRMAN:

Well, we don't have a quorum to take action today.

LEGAL COUNSEL:

Oh, I see.

CHAIRMAN:

And we know we're not going to take action, so is it proper . . . ?

LEGAL COUNSEL:

Well, in the first instance, Mr. Chairman, I think the law does allow just one hearing . . (inaudible) . . initially, so I see no basic legal objection to allowing the petitioner, except for the evidence that he does have, and then take the action tomorrow.

CHAIRMAN:

O.K. Who is the petitioner?

UNIDENTIFIED:

They're not here, Mr. Choy, and actually, I don't want to delay the hearing, but only on the point about this being a flood area and that drainage must be provided. I want to say that the County is insistent that proper drainage is . . .

CHAIRMAN:

Would you like to make a statement on this particular case?

COMMISSIONER:

Frank, would you explain the general plan of the County, how they work the plans on that map, to the Commissioners so that they have a good idea how your . . (inaudible) . . is determined.

UNIDENTIFIED:

You have here before you a copy of the general plan created in 1961 . . . (inaudible) . . . (The speaker explained the general colored areas shown on the map and indicated their meanings, but the majority of his comments were inaudible.)

CHAIRMAN:

Where is this land in question?

UNIDENTIFIED:

(Again, the speaker's comments were inaudible.)

STAFF:

Mr. Chairman, while Brian's up here, could I ask him a question?

CHAIRMAN:

Yes.

STAFF:

This is now the official general plan for the County for this area, right? And you know that when they drew these boundaries -- and some of them, I imagine, are on a 20-year projection -- whether or not they took into consideration the flood effects on these 2 rivers in defining these lines or did they leave it as a physical boundary . . (inaudible) . .

UNIDENTIFIED:

I could not find the physical criteria on how they arrived at these lines. Whether they considered the . . (inaudible) . . on the river, I'm not certain of this. As a general rule, I think they should have considered . . (inaudible) . .

STAFF:

Yes. Then one other question for the record. Is this plan presently being reviewed with the intent of adopting a new plan for the County? Is this being updated?

UNIDENTIFIED:

That is correct.

STAFF:

When do you anticipate that project being completed?

UNIDENTIFIED:

That would be October of this year, 1969. (Additional comments were inaudible.)

CHAIRMAN:

Any other questions?

COMMISSIONER:

Suppose a developer disagrees with any engineering requirements that you impose, can they appeal your . . . ?

UNIDENTIFIED:

You mean a lesser projection? Then I think . . (inaudible) . .

COMMISSIONER:

Legally, is he bound by your criteria or can he appeal it to the courts?

UNIDENTIFIED:

I don't know how the (inaudible) laws are written here in Hawaii, but everybody must come to a certain criteria -- a certain standard -- and we feel that if it's good for the economy, then it will be good for the people. I don't see imposing a much higher restriction than what we . . (inaudible) . . ourselves.

STAFF:

Thank you. My only point in bringing this out, Mr. Chairman, is that the County -- the City and County of Honolulu -- by ordinance establishes their criteria. I mean, you shall meet this minimum standard, period. And from what I understand, it's more of a policy here than a law. My other point is that Honolulu has used for many, many years a 20-year storm as a criteria for designing drainage structures consistently, until the last 3 years and because of certain flood results, they've now increased that to

STAFF (Cont'd.)

50-year storms. I'm kind of surprised that they're using 10-years here. But I agree with the engineer that you can design this area so that it would be out of the flood line.

CHAIRMAN:

Any other testimony.

UNIDENTIFIED:

I'm (name inaudible), Mr. Chairman, and I'm testifying as the vice president from Kauai, member of the Hawaii Association of Conservation Districts, and of course, as such, we are opposed to taking land out of agricultural uses, particularly where there's such a questionable use of its value as urban land. And we talked about changing topography to protect this property from being inundated, they're going to range the bank and, of course, divert that water to somebody else's property. And unfortunately, here on Kauai we have no way of protecting ourselves from each other, so that in the case of something like that, we're to plan for a 20-year or a 30-year storm by razing his land, he would be just inundating that much additional land someplace else. So I want to go on record as being opposed to this change.

CHAIRMAN:

Is there anybody else for or against? If not, the petitioner is to understand that we have only 5 Commissioners here today. If we have a meeting tomorrow, we may take that up. Is that alright with you?

PETITIONER:

Yes, sir.

CHAIRMAN:

That closes the action portion. Will somebody make a motion to adopt the meeting?

COMMISSIONER:

(One question was raised before the motion was made, but there was continuous paper rustling during his comments and this made his speech totally inaudible. Had something to do with a correction of previous minutes.)

CHAIRMAN:

Any other corrections? Or any comments?

STAFF:

Yes, we have in your folder a tentative schedule for our activities with regard to our boundary review. Now you'll note that I've asterisked some of these which means that there will be meetings involving the Commissioners, so tomorrow, for example, March 1st, the Commission will meet and we will discuss rules and district boundaries, and there will be a presentation on the Kealahou plan in the morning at 9 o'clock. Now on the 7th the consultants and myself and we hope that the Commissioners of each island or at least on the island where we will be meeting with the Planning Commission, will meet with us and discuss the proposed boundaries of the respective counties. And in case of March 7th, we're going to talk to the Kauai County Planning Commission so it will be the consultants and hopefully Sully (?) and myself. Then we'll have a chance to review their suggestions in the field and then come back to the Commission again and finalize the district boundaries in time for the notice of public hearing. On March 12th, for example, there will be an all staff meeting involving County Commissioners, DLNR, DPED and the tax office. On the 14th we will have another public hearing in Honolulu and again review some of the district boundaries. On the 28th and 29th we'll be on Maui and will take action on some petitions and also review some district boundaries. Possibly Saturday we could make a couple of field checks if there are any questions regarding the proposed boundaries. On April 11th, will be the first public hearing regarding our

STAFF (Cont'd.)

district boundaries and that will be here on Kauai. Again, on the 18th on Hawaii we'll have a public hearing on the rezoning requests plus review some more district boundaries. The Commission again will meet on the 25th of April. This will be the second public hearing on the district boundaries. That will be in Kona and on the following day, Saturday, we'll go over to Hilo and hold another public hearing on the district boundaries for the County of Hawaii. Then on the 9th we'll go to Maui for public hearings on the Maui district boundaries; the 10th go over to Molokai and hold a public hearing on Lanai and Molokai district boundaries. Then May 23rd in Honolulu. If necessary, we can continue it on the 24th. We'll cover Oahu district boundaries there. Then I've set up a tentative schedule for action on these various islands, and I don't know whether the Commission wants to go to the various islands to take the action or do it in Honolulu. I've suggested Honolulu here, but I think it's something that the Commission should decide. Should we go to Kauai, for example, and take the final action on Kauai? Should we go to Maui, Hawaii, etc.? We could discuss this tomorrow, I think.

COMMISSIONER:

(Comments were inaudible due to distance of speaker from tape recorder.)

STAFF:

O.K. Rather than March 7th, we're going to meet on March 10th.

CHAIRMAN:

Is that between . . . ?

STAFF:

Kauai County Commissioners and the staff, consultants and you.

CHAIRMAN:

That's on the 10th, huh, Frank?

COMMISSIONER:

(Comments again inaudible due to reasons as stated previously.)

STAFF:

One-thirty?

COMMISSIONER:

Yes. And place?

STAFF:

Any place. Where do you want to meet?

COMMISSIONER:

Is this room loud enough for that?

COMMISSIONER:

We could have it in the Planning Commission room.

STAFF:

But the question came up as to whether or not, when the Commission rezoned Boise Cascade's . . . (inaudible) . . . from conservation to urban, and the same is true of Brown's property from conservation to urban, whether you in fact intended to zone those fish pond areas. Because as you know, all waters in this state under mean high water mark, the low mean high water mark, is automatically in the conservation district unless indicated in some other district by the Commission. And I got the impression that the Commission's intent, based on what the petitioners presented, that is to preserve all of the fish ponds. That we weren't zoning them into conservation. So I think if this is true, we should put it into the records so that we know where we stand on that. All of their plans indicated that they were saving the fish ponds, and it never even came up as an issue, but I wondered if they'd shown to the Commission they were going to fill all those ponds and whether you'd agreed with that or not.

COMMISSIONER:

I never thought of it that . . . Leaving those ponds in the conservation area were near the boundary change. All that's within that area is . . .

STAFF:

This is what we need a clarification on.

COMMISSIONER:

Most of our fish ponds were put in agriculture because it is an agriculture . . .

STAFF:

Conservation.

COMMISSIONER:

Yes. Conservation.

STAFF:

All of the ponds on Molokai are in the conservation district. The only pond that you specifically designated in another district was the Koapa pond, Kaiser's development. Remember he presented plans on how he was going to develop the pond and so you designated that pond urban. But all the rest of the ponds in the area were implied by the regulations that they were in conservation.

COMMISSIONER:

I think we'd be smart to stipulate . . .

COMMISSIONER:

If they're actually in conservation, then you have control over changing the shoreline.

STAFF:

Yes.

COMMISSIONER:

Well, probably at the time that we did, we didn't dream of . . .

STAFF:

We never discussed it. And that's why I think it ought to be clarified now before they start committing themselves one way or the other.

COMMISSIONER:

We discussed this at some of the Land Use committee meetings, didn't we, Goro?

COMMISSIONER:

Yes.

STAFF:

Yes, but since you two aren't going to be at the meeting tomorrow, I thought we ought to discuss this. And then tomorrow with the other Commissioners and then get it into the record as to what the intent of the Commission was in rezoning that.

COMMISSIONER:

What petition was this now? You mentioned that one was Brown and the other one was who?

STAFF:

Boise Cascade.

COMMISSIONER:

What was the petition for? If it didn't say for conservation, you know, I think that you do have a little basic conflict. If it said from ag to urban . . .

STAFF:

In Brown's . . . on Boise Cascade properties, they were for conservation to urban, so this is a real problem.

COMMISSIONER:

So we have to go back and clarify it. In that boundary change, all the ponds were to be left in the conservation district?

COMMISSIONER:

(Comments regarding urban and conservation designations were inaudible due to speaker's soft tone of voice.)

STAFF:

Actually, what we intend to do in our boundary review is to designate all these areas so there won't be any question in the future. We won't have this problem again. But for the time being, I think that we ought to clarify this one action of the Commission.

COMMISSIONER:

If you're polling, I would say that we should leave it in conservation.

COMMISSIONER:

Oh, yes. Definitely.

COMMISSIONER:

Do you remember the salt pond on Oahu?

COMMISSIONER:

Salt Lake.

COMMISSIONER:

Salt Lake.

STAFF:

That was conservation?

COMMISSIONER:

That was conservation.

COMMISSIONER:

A portion of it was designated urban because they intended to build just part of it. Just the rim.

CHAIRMAN:

Who's watching that development? I mean it seems like they're putting streams way out where there was supposed to be golf course.

COMMISSIONER:

Well, I think as far as the Salt Lake is concerned, that's a little different type of (inaudible). To me it's not a fish pond.

CHAIRMAN:

But still, they can't go in and put urban use in that conservation . . .

COMMISSIONER:

Well, a golf course is permitted . . (inaudible) . . and on this basis, the board approved this particular use.

CHAIRMAN:

But they cannot come in now and take this area they're building and put in streets and subdivide that into lots. So somebody should be watching it because I think they're going in way beyond their (inaudible). It would be fun to have your surveyors just go out and check it.

(It appeared at this juncture in the tape that this particular meeting was pau.)

* * *

(There were no introductory remarks to this portion of the tape, but it appeared to be the beginning of the meeting scheduled for the following day.)

STAFF:

Mr. Chairman.

CONSULTANT:

Well, we're back over from examining our thoughts on the island of Kauai, and there have been some revisions on these sheets that you saw on these (inaudible). And I think that first off, there was an open question on urban expansion areas. I think first, that we should expound on these 3 areas that we have been able to foresee urban expansion over and above these urban areas.

Let's begin with the Lihue area. The existing boundaries are shown in solid colors -- the urban in yellow and the conservation in blue and the ag is the (inaudible) color. In examining the existing conditions. . . it's a bit difficult to explain because of the scale but simply the black areas or those areas that were urbanized in 1961 which is the best data I was able to find. The red areas are those areas that have been urbanized as of 1968. The green areas are in ag useage within the existing urban zone and the yellow areas are vacant and also some areas have been subdivided but aren't filled in. In going through the figures for the number of people that reside in this area, it is difficult based on the data that exists to project the exact urban growth that is going to occur. However, on all the proposals that we've examined, this area -- Kaaawa on (inaudible) Point -- is proposed as the existing growth force which is within the ag district this year. And the owners contend or would like to expand the existing golf course into an 18-hole facility which would expand it out in this area here and additionally add a resort area and a residential development here. They are also willing to give up 2 areas that are presently in cane that are in the existing urban district. It is felt their feelings toward developing a residential area here which also is in cane but is within the existing urban zone. And an extension of the resort area

CONSULTANT (Cont'd.)

just east of the Kauai Surf which is here and examining the problem for which entailed the alignments and expansion of the airport, the best data available is that we find it is going to stay as it is; a 500 foot extension south and all other extension in terms of the paved surfaces would bring it out to here. So our major concern for expansion in this area concerned the wide path pattern and as it is, if it stays in this alignment, this area would fall into an industrial trap, and the rural area would be well out of the existing wide path which is about like so. The only other thing I'm concerned about here is that the (inaudible) side conceivably could fall at that point but until that area is resolved, we don't propose any additional urban expansion south of town.

COMMISSIONER:

Suppose the land called for a 10,000 foot runway from that lighthouse.

CONSULTANT:

Yes. The airport engineer assured us that a (inaudible) wouldn't be acceptable at this time and that for considering that, they would consider shifting the airport to some other spot.

COMMISSIONER:

Another spot?

CONSULTANT:

Yes.

COMMISSIONER:

And where is that?

CONSULTANT:

Well, that was their point. Until it is decided, to add the additional facilities. Their feeling is that it is going to stay here but to

CONSULTANT (Cont'd.)

extend it to about 6,500 feet which is only adding the paving here and over on top.

COMMISSIONER:

Now, the jumbo jets coming in by the end of this year, 1969.

CONSULTANT:

Yes.

COMMISSIONER:

Now it's only a matter of time until they're having direct flights.

COMMISSIONER:

To Kauai?

COMMISSIONER:

No, I'm not talking about Kauai, but there is that possibility of the other jets coming to Kauai.

CONSULTANT:

Their CIP program proposal is to improve all island airports to 6,500 feet of surface, and that's all. And in 2 instances they didn't feel that the extension in realignment in the airport here would satisfy the service for this island and he said that if that is going to occur that they would have to consider moving the airport to some other spot because of the danger of the property here.

COMMISSIONER:

Well, that's why they're proposing the other alignment.

CONSULTANT:

Well, again, as I said last . . .

COMMISSIONER:

We have a unique situation in Lihue. I'm quite sure that even these

COMMISSIONER (Cont'd.)

urban areas are all (inaudible).

CONSULTANT:

It is a resort area here, industrial here, and the golf course which is here.

COMMISSIONER:

O.K. There is no back up line for fee simple land. Everything is under lease. Now, all of this is all valleys, you know that. And all of this is urban. (Some comments inaudible) We have a lot of urban areas here but not built. Now this here they want to take out of here. Alright? But there is no what they call a back-up area that you can buy land. There is this but it's not available. That's the problem we're running into. They don't want to urbanize that kind of areas for (inaudible); they want to urbanize for resort, see?

COMMISSIONER:

So urbanize another area so the people may want to move to another area.

COMMISSIONER:

So what do you think about that? These people aren't going to open up this area.

COMMISSIONER:

So open up the other urban areas where the people may want to move to.

CHAIRMAN:

So on Hawaii we have plenty left, but on Kauai, that's just it -- you don't have any land. What are you going to do?

COMMISSIONER:

Shall we take time out for lunch?

COMMISSIONER:

No, no. What do you think about that? You know, just because these people are not going to open up . . .

COMMISSIONER:

Well, open up the other urban areas.

CONSULTANT:

There are 2 other areas for urban expansion that are in fee ownership.

COMMISSIONER:

The only place is Waialua and Palaheo-Lawai area because that's where the only lands are available.

CONSULTANT:

Here and here.

COMMISSIONER:

Yes.

COMMISSIONER:

So we build at Palaheo.

COMMISSIONER:

They want to take out some of the urban areas and put them more in a lease type . . . you know.

STAFF:

Is that Amfac property that they want to take out?

COMMISSIONER:

It is, yes.

CONSULTANT:

They aren't taking out any fee ownership. The only areas are . . (inaudible) . .

COMMISSIONER:

My question is, why take it out?

STAFF:

Howard, do I understand your proposal that you're recommending the urban district be expanded to include the (inaudible) area.

CONSULTANT:

Yes. And of that, the existing golf course is here and the extension of that golf course would take up an area about like so. And the resort area proposed here with the residential area on this lot.

STAFF:

And the blue represents the conservation district?

CONSULTANT:

This is proposed.

COMMISSIONER:

But you're . . . right around the edge there . . . the natural shore is in conservation.

CONSULTANT:

I'll just point out that in talking to Amfac, they responded without saying yes or no, but they did express the idea of the shore going into the sea.

COMMISSIONER:

What was that again?

CONSULTANT:

The shoreline as shown in this (inaudible) is proposed to go into the conservation district which is at the edge of the existing free line.

COMMISSIONER:

You say they didn't express any opinion one way or the other.

CONSULTANT:

They said they would consider it. Their only (inaudible) was for the

CONSULTANT (Cont'd.)

resort area, what type of problems that would incur in terms of the shore access.

STAFF:

Mr. Napier, that land along there shown for addition to conservation is not in cane right now; it's all keawe or ironwood trees and steep . . .

COMMISSIONER:

The fish pond?

STAFF:

No. I'm speaking of north of the point there.

COMMISSIONER:

Oh.

COMMISSIONER:

Isn't that some cliffs, too? Yes, partly cliffs.

CONSULTANT:

There is some grazing here and the Coast Guard facility is out on the point.

Grant, would you explain the conditions in the (inaudible) here for us?

(It sounded as though consultant were facing in another direction, as none of his comments were audible.)

STAFF:

Well, you know, we hope to come to an agreement on what boundaries we are ready to consider at a public hearing at this time and then following our session today, we'll go to the County Planning Commission today and review what you have reviewed. And then we will accept their comments, probably do some field work, if necessary, and come back again to the Commission to finalize these problems.

CONSULTANT:

The County is on March 10th.

STAFF:

That's when we'll get together with the County, but what we decide today, we'll take to them on the 10th, so when you say we ought to decide later . . . I think now's the time to make the decision.

COMMISSIONER:

Of these two areas that we've got to . . (inaudible) . . , are they in urban right now?

STAFF:

Yes.

CONSULTANT:

They are but they're mostly in cane and the reason for it going out is that Amfac will be filling in this area here first, and they don't foresee any expansion in these other areas until this area is filled in and the resort and golf course is added.

COMMISSIONER:

Let's cover that conservation area.

COMMISSIONER:

This is presently the Rice ownership.

COMMISSIONER:

That's Waterhouse, not Rice.

COMMISSIONER:

Oh, that's right.

COMMISSIONER:

Now, that other one that Alex pointed out.

COMMISSIONER:

Here?

COMMISSIONER:

Yes. I think we should leave it as such because that's another ownership that they do a lot of . . (inaudible) . .

COMMISSIONER:

I should try to draw your attention to the land above -- the grazing area where it gets real steep.

COMMISSIONER:

What about this area here?

COMMISSIONER:

Over there? Maybe.

STAFF:

Let me remind you, this was a proposal made in the original HBA report for the conservation district.

COMMISSIONER:

It's owned by (inaudible). You'll have to check with them. What was their reaction to that?

STAFF:

Haven't discussed it with them.

COMMISSIONER:

What happens in an area where, like for instance, if we change it without the request of the owner.

COMMISSIONER:

We can do that.

STAFF:

I don't know who owns this land.

COMMISSIONER:

That is owned by (inaudible). One thousand four hundred acres right in that . . .

STAFF:

I understand it's on the market for sale right now.

COMMISSIONER:

That's right. That whole blue over there . . . right there.

COMMISSIONER:

My question is, what are the possibilities of it being urban?

CONSULTANT:

Well, the major point that is being asked over there and the expense of building the bridge over that existing stream is . . . (inaudible) . . .

COMMISSIONER:

Supposing the developer is willing to construct the facility across there.

CONSULTANT:

There is also the question of servicing . . . of finding adequate water over there. There's an existing 12 inch main here but just for example, the sewage plant is here and it's the developers intent to tie into it with all of the development here. But you jump over. It would be very difficult.

COMMISSIONER:

What I'm saying is that assuming the developer is willing to provide all of the utilities, facilities, etc. should it be urbanized . . .

COMMISSIONER:

I think I go along with Duran's point there. There should be an area, say, that at the request of the owner, it should be urbanized.

COMMISSIONER:

Well, he knew when he bought the land, Alex. This land has always been in conservation. He bought it for nothing, O.K.? So he wants to urbanize, come to see me. I'd tell him, you bought it with your eyes open,

COMMISSIONER (Cont'd.)

it was in conservation . . .

CONSULTANT:

Well, at this point, the developer is supplying all the services . . .

COMMISSIONER:

I don't think we should be worried about that now.

CONSULTANT:

No, but just considering the existing services and facilities to serve any additional areas seem to fall over on the other side. The zoning for the resort area is here, but they moved the existing hotel rooms over on this side, and there's a problem of supplying adequate service even in the existing area.

COMMISSIONER:

Howard, did you have a flood plane also?

COMMISSIONER:

No. No, there's no flood plane. It's an open bid.

COMMISSIONER:

Why don't we go on to the regulations?

COMMISSIONER:

Go ahead.

COMMISSIONER:

Well, I was going to say a few words before we start, but since you want to go ahead with the regulations, I . . . Why don't we go ahead with the regulations.

STAFF:

Just a couple of things. Going back on what we talked about last time, we have introduced a new regulation that dealt with performance time, and we still have some question as to whether this is strictly legal or lawful.

STAFF (Cont'd.)

George feels that there might be some question, so we'd better review it again.

COMMISSIONER:

What do you mean about the . . . ?

STAFF:

Well, putting a time condition on development after you grant a zoning change.

COMMISSIONER:

Anything can be legal if you can get the Legislature to pass it if it's not unconstitutional.

COMMISSIONER:

Yes.

COMMISSIONER:

This is not an unconstitutional approach, is it?

COMMISSIONER:

No.

STAFF:

This thing could not be passed . . . (inaudible) . . .

COMMISSIONER:

Well, if there's provision made for it, it could. And if it is illegal, then we're going to have to strike it, or it will have to be amended.

COMMISSIONER:

We'll need the legislation otherwise.

STAFF:

Well, I just wanted to bring it up that it's still hanging is the point. We still have it in here and we have to pursue it.

COMMISSIONER:

If we're going to pursue it, we have to do it sooner, and we have to decide on a course of action sooner.

COMMISSIONER:

We have to do it right away.

STAFF:

Now the other one on zoning and (inaudible), we've got a good idea, I think, from Ron about a little rewording which I'll read to you to see if this sounds good. "The finding of the Commission in favor of initial boundary change or any subsequent incremental change shall be considered a commitment to future boundary changes except when the performance of the petitioner and the scope of the initial investment vary from the proposed schedule of incremental development. In such instances, the Commission shall consider the past performance of the petitioner in analyzing subsequent petitions." What this did was change this phrase from saying that a finding in favor of the initial boundary change was not a commitment. It says it was a commitment but then attaches these conditions and yet it performs in accordance with the initial proposal, etc., etc., etc. Any feelings about that? It really says the same thing; it just . . . (inaudible) . . . I think the impact of it would be that instead of saying that by its initial action the Commission does not commit itself, it says that it does but then specifies under what circumstances. And those circumstances were not in there before. So by specifying the circumstances that the guy has to perform the way he said he was going to to get it out into the open.

COMMISSIONER:

I think the sentiment would be in this direction publicly. There's some desire . . . there's some anxiety about this. I don't think we'd run

COMMISSIONER (Cont'd.)

across any major objections if we were to pursue this plan.

STAFF:

And there's still, I think, plenty of leeway in here that if a guy does change his performance and the Commission agrees with his changes, he still has their sympathy. But I think it really is better.

CHAIRMAN:

Anybody else got anything to say?

STAFF:

The next one was with regard to special permits and this is another point that Ron suggested. Now what we originally had written was: "The County Planning Commission shall establish a reasonable time limit suited to establishing the particular use which time limit shall be a condition of the special permit. If the permitted use is not satisfactorily established in the opinion of the County Planning Commission within the specific time, it shall revoke the permit and say that the County Planning Commission extend the time limit if it deems that unusual circumstances exist." Ron's idea was that it might be a good idea for the Land Use Commission to have a veto power over the Counties' continual extension of these, so we would insert the words "with Land Use Commission concurrence."

COMMISSIONER:

What was that provision again now on the special permits?

STAFF:

Well, if the permitted use is not satisfactorily established in the opinion of the County Planning Commission within the specific time, it shall revoke the permit and say that the County Planning Commission may extend the time limit if it deems that unusual circumstances exist. This now the way the Land Use Commission stands, and the idea was to insert

STAFF (Cont'd.)

"with Land Use Commission concurrence."

COMMISSIONER:

I see.

COMMISSIONER:

Maybe I was just bothered with the language to begin with in that it said "established." You know, not satisfactorily established. It shall . . . it seems like it's mandatory that he revoke it, where I'm not too sure that legally we can do this, you know? Supposing a guy, instead of completing the thing on time, is half way through it. I mean, do you want to mandate somebody to revoke, see. This kind of possibility does arise under the language that we had there. I think if you say "may revoke" or something like that, but . . .

CHAIRMAN:

On this subject, you know we always had that problem about the people under special permit, people wanted to deed the land to their children and stuff like that. Can something be justified for them in some kind of language?

STAFF:

Well, we've tried every session . . .

COMMISSIONER:

What was that question again?

CHAIRMAN:

Well, we've always had this problem about the minimum is one acre and they only have maybe an acre or two acres, and they have maybe three kids and they want to divide their land between the kids. We've come across this problem several times. Maybe now with the consultant and what

CHAIRMAN (Cont'd.)

not, maybe they could look into the problem and come up with some kind of solution or see if there's a way of . . .

COMMISSIONER:

Are we sure that it can't be done privately? You know, like for instance, if I was your brother and our dad owned let's say a 25-acre parcel . . . or say a 50-acre parcel in a 50-acre minimum ag district, you know? Couldn't we by some sort of agreement bind all our areas that I would use this half of it and you'd always have the use of the other half. You know. And pass it on.

COMMISSIONER:

He's talking about the one acre plus. One acre plus in the agricultural district. The kulianas.

COMMISSIONER:

And these people don't want to sell, you know. They just want to hang on to this piece of land.

COMMISSIONER:

That land couldn't be divided unless it was urbanized.

COMMISSIONER:

That's right.

COMMISSIONER:

But if you urbanize, you're creating a spot zone. The only other means is . . . (inaudible) . . .

COMMISSIONER:

This is one thing we can't do a damn thing about.

COMMISSIONER:

Well, you know, the big basic problem, it seems to me is, if you try to solve a problem so that you can do it, then it kind of destroys the

COMMISSIONER (Cont'd.)

whole purpose of the land use law. You see, too, that's the basic reason that nobody wants to do anything about it. That's what makes the problem very difficult to solve . . . and unsolveable, really. Because no one wants to take that step and say that the number of children a guy has will decide the minimum size lots in agricultural districts.

STAFF:

At the last meeting, we took out of the A districts, you know, a section that is permitted public, private, public utility lines, etc., etc., etc. And also we took out a section that permitted churches and temples, and this was on your recommendation, George, that we (inaudible) by what's in the statute and these things are not in there. But Ron feels that both of these things should be left in and I tend to . . .

COMMISSIONER:

Agree?

STAFF:

Well, I'm not sure. I just wondered if we wouldn't get into a lot of detail administrative kind of hassles over utility lines, for instance, because they are in there. And storm sewers and other utilities.

COMMISSIONER:

I know what. We had these public schools being built on an agricultural zone. They built one chicken coop and before you know it, the farmers . . .

STAFF:

But we proposed that that be deleted which is fine.

COMMISSIONERS:

This is specifically about utilities.

COMMISSIONER:

Oh, I see.

STAFF:

Water lines, power lines, etc. They just criss cross agricultural areas all over the place and conservation zones, too.

COMMISSIONER:

Well, I think that's permitted by statute anyhow, huh? What does your statute say on these ag uses, you know. You have to have them. Accessory, you know . . .

COMMISSIONER:

No, they're not mentioned.

COMMISSIONER:

Oh, they're not?

COMMISSIONER:

There's always the option for these to occur under a special permit, and I see some advantage to that with respect to public utilities.

COMMISSIONER:

Right.

COMMISSIONER:

It always gives you . . . you know, some of the conditional requirements that we would like to see in the rates that are not possible, you always have the option of applying those restrictions under a special permit.

COMMISSIONER:

This could apply to location and . . .

COMMISSIONER:

I just wonder if this is the kind of zoning controls that were intended

COMMISSIONER (Cont'd.)

to be placed in this Commission, you know.

COMMISSIONER:

I don't think so.

COMMISSIONER:

I don't either.

STAFF:

The conditions that the Commission has applied are usually the recommendations of the County with respect to special permits.

COMMISSIONER:

No, I just wonder whether on a broad brush scale whether this Commission is just deciding whether it should go agricultural, urban or what . . . whether you guys want to focus the Commission's attention on where utility lines are supposed to go and you know, all the myriad of details that go with it.

COMMISSIONER:

I don't know. I don't feel that it's appropriate to . . . This type of use goes . . . I mean, without saying, I just think that if the statute omitted it that everybody would agree that utility lines are a necessary thing, you know. They must have intended it.

COMMISSIONER:

So you think they ought to be in there?

COMMISSIONER:

Well, I think it will be in whether you mention it or not.

STAFF:

Do the utility companies regulating under the CUC have the authority to . . . ? They have power of eminent domain, don't they?

COMMISSIONER:

Yes. Sure.

COMMISSIONER:

I mean, I just wondered if we could keep them out if we . . (inaudible)

. .

COMMISSIONER:

The idea of getting rid of them is not to keep them out. It's just a simple . . (inaudible) . . and just reflect what the statutes say.

COMMISSIONER:

But this would mean that they would have to come to us for a special permit every time they run a power line or a water line or . . .

COMMISSIONER:

I don't think so. Certain unusual and . . . you know, that's within the definition of a special permit, and I just don't think that this would be such unusual use that they would have to have a special permit.

COMMISSIONER:

Well, you couldn't say that it was accessory to agriculture either.

STAFF:

But assuming that we do permit it, I think then that we need to define it because some of the problems that I've faced were determining whether a telephone substation, which is a structure on the land and usually not on minimum lot size that's required by the County regulations, treatment plants as a part of the sewer system, and the necessary pump stations that go with sewer and water lines, storage tanks, reservoirs, any . . .

COMMISSIONER:

You see, Ron, the statutes read like this: agricultural uses shall include activities or uses as characterized by, and any certain specific

COMMISSIONER: (Cont'd.)

agricultural uses . . . and it ends up with uses . . . Oh, wait a minute now. Accessory to . . . I see.

STAFF:

There would be no doubt in my mind. It is my feeling that corporations should be allowed use in conjunction with any utilities . . .

COMMISSIONER:

Should be?

STAFF:

Should not be. . . approved under special permit. But when we get to power lines or (inaudible), I think that's something that we should attempt to issue special permits to. Now in the case of a treatment plant, I think maybe that would warrant a special permit.

COMMISSIONER:

Ron, I think the basic reason I recommended leaving them out was the basic idea that except as otherwise provided that the County should have jurisdiction over these things. You know, like the power lines and this kind of thing.

STAFF:

But if we set up regulations specifying the specific uses, only if the County's regulations are more restrictive do they apply.

COMMISSIONER:

Well, I just wonder whether the Commission has jurisdiction. We have a statute that says, except as provided in here, the Counties are to go ahead. You know, I think that this is the basic underlying philosophy of the statutes. In other words, give the Commission here broad powers, but the rest of it should be under the County (inaudible).

STAFF:

Well, I still don't understand because, let's take schools, for example. Suppose the Commission decides that schools should not be permitted into the ag district, as a matter of right, and the County says that in their ag district, schools are permitted. Which law prevails?

COMMISSIONER:

Well, you have some uses specified in this statute which are clearly agricultural.

COMMISSIONER:

If we went through all this, we'd come out that we had to get certain permitted uses in the agricultural districts.

COMMISSIONER:

You're saying that they are permitted if they're unusual; that is to say that they're not permitted by right, through the special permit procedure. But to permit an airport to go in the middle of a canefield . . . it would probably be a couple hundred acres . . . that was not the intent of the land use law to preserve (inaudible) land. But . . . under our regulations, we permit it. All government uses are permitted as a matter of right.

COMMISSIONER:

No.

STAFF:

Oh, yes.

COMMISSIONER:

What's the next one?

STAFF:

Well, I'm still not too clear on this one that I talked to George on.

COMMISSIONER:

Well, do we want to prohibit utilities or . . . ?

COMMISSIONER:

That's just the point. I don't think we can prohibit them. You see?

COMMISSIONER:

So then we should include it if we want to serve the exception?

STAFF:

Ron recommended leaving in another one that we had removed, and this was in rural districts. Parcels of land consisting of small farms need not be included in this district if it will alter the general characteristics of the area. As he explained it, . . . well, you can explain it better than I can, but there's many cases where there might be a small group of buildings and it's not zoned rural. And it's a good idea that it not be because we'd just end up with these spots all over the place.

STAFF:

The way the regulations draft is that all these small lots now be included in the rural district.

COMMISSIONER:

What small lots?

STAFF:

Well, any cluster of small lots around the half acre to five acres qualify for rural zoning. If we did zone and they requested it, we'd really have no alternative but to accept it by virtue of the fact that (inaudible). And then we'd end up with rural spots all over. So I thought that we should have our standard set-up so that they could be included in the agricultural district.

STAFF:

I forgot to mention the churches and temples, and I think what Ron

STAFF (Cont'd.)

was saying about . . (inaudible) . .

COMMISSIONER:

Stay out of it. They're religious (inaudible).

STAFF:

Yes, right.

COMMISSIONER:

You mean you'd allow that . . (inaudible) . . in an agricultural district?

STAFF:

Recommending that it be deleted.

COMMISSIONER:

Deleted?

STAFF:

Not permitted.

COMMISSIONER:

They could get a special permit?

STAFF:

Well, I think that it ought to be permitted. Do we want to wrestle with the church groups?

COMMISSIONER:

No.

COMMISSIONER:

They have within them the potential, maybe not in the same degree but the same way schools do, to generate activity around them. This is my concern.

COMMISSIONER:

I've never seen a developer come in and propose that he build a

COMMISSIONER (Cont'd.)

subdivision around a church; I've seen many of them that would build it around a school or a campus.

STAFF:

I've got another one here. We're back on country clubs and golf courses. And the regulation is under (inaudible) uses in ag districts. The way it now reads: Public and private types of recreational uses in urban parks, playgrounds, country clubs, golf courses, . . . We recommended at one time taking it out. George said we should leave it in and let them space use like a country club or golf course or . . .

COMMISSIONER:

Permitted by statute. Yes.

STAFF:

Well, Ron has a page and a half here on recommendations, so we're back again on whether to use this or not. I'll read you what Ron says: I still believe that golf courses should be omitted from this paragraph and possibly country clubs, since they tend to be one and the same. Checking over the golf courses in the state, of the 28 private and public golf course, excluding military courses, 19 are in the urban district, 3 are in conservation and 6 are in the agriculture district. Three of those in the ag district are partially in the urban district. Checking the tax rates on the different ones, the 14 golf courses on Oahu seem to have very low tax rates whether they're in urban, agricultural or conservation, compared to the surrounding land values. For example, Chinn Ho's golf course at Makaha is valued at \$350 per acre in the urban district and the surrounding urban lands are valued at \$7,000 per acre. The abutting agricultural lands are \$210 per acre. At the Kaneohe golf course, the urban district is valued at \$3,500 per acre and the abutting residences are in excess of \$32,000

STAFF (Cont'd.)

per acre. Pacific Country Club golf course lands in the urban district vary from \$175 to \$525 per acre, although the club house site is valued at \$15,000 per acre. The adjacent agricultural lands are assessed at \$70 to \$210 per acre. In view of the fact that we can still permit these uses under special permit in the agricultural and rural districts to me assures that cane lands and other prime agricultural lands will not be plowed under for a golf course as a matter of right.

COMMISSIONER:

My thinking is it gives policy reasons for not permitting it outright in a golf course, but to me the argument should be directed at the Legislature. They should change the law. To me, they have already said permit golf courses in your ag districts.

STAFF:

But the primary intent of the Legislature is more specific in that it says protect (inaudible due to noise in room). I guess you could say they have contradicted themselves if you want to make this loose interpretation. I think that one outweighs the other and we haven't lost a thing if somebody wanted to take us to court on it.

COMMISSIONER:

I don't mind the extra work if I think I'm right, see. But if a guy pushes me into a corner, I'd say I'd give in. I think you're right. To me, that would be the prime test. If a guy has a right and a court would go for his right, why fight it? I agree that policy wise, it makes a lot of sense not to make it a matter of right in the ag district. But at the same time the way I see this statute as permitting, you know, uses including open area recreational facilities.

COMMISSIONER:

I think they're talking about hunting.

COMMISSIONER:

Yes. Maybe hunting and fishing.

STAFF:

I don't see that we have a stronger case to preserve any land.

COMMISSIONER:

Shall we test it through a public hearing?

STAFF:

Did you mention the historic sites in the agricultural district? You didn't want to? Well, there's one thing, if we delete this, it won't allow for restoration of an historic building in the ag district.

COMMISSIONER:

Of course it will.

COMMISSIONER:

All they'll have to do is get a permit. They'll have to get a special permit to rennovate the building.

STAFF:

See, this is only permitting the restoration or rehabilitation or improvements, so I don't see why this has to be deleted. It just complicates everything.

COMMISSIONER:

Is that in the conservation district?

STAFF:

No. That's like old churches in the ag district.

COMMISSIONER:

We went all through this at the last meeting and struck five items, including this one, that were not specifically in our (inaudible). And I

COMMISSIONER (Cont'd.)

think we can either go that route or we can put them all back again.

CHAIRMAN:

Shall we get back on the municipal . . . ?

STAFF:

Let me see if there's anything else. I don't think there's anything else really.

COMMISSIONER:

Did you solve this problem on the (inaudible).

STAFF:

We're going to delete it and go to public hearings again.

COMMISSIONER:

Is this the consensus?

CHAIRMAN:

Yes.

STAFF:

Excuse me. There's one more I'd like to bring up if I can. There is a present regulation in agricultural districts which says that land in intensive agricultural useage shall not be taken out of this district if it will significantly impair economical agricultural production. And Ron . . (inaudible) . .

COMMISSIONER:

It is the existing regulation and not our proposal, right?

COMMISSIONER:

Right.

COMMISSIONER:

Under the circumstances, it might be valuable some day to have it in there.

COMMISSIONER:

Yes.

STAFF:

Well, I thought that you might have had something specific in mind.

COMMISSIONER:

Well, that was it.

COMMISSIONER:

Well, if an urban development annexed a piece of agricultural land and then forced it out of production, we'd have a case for preventing such urbanization.

STAFF:

But how can you prove it economically impaired that activity? It does on that particular piece of property, but to the total community, state-wide, community-wide?

COMMISSIONER:

Well, you can chisel away at a plantation 50 or 100 acres at a time and it's not going to impair the economic operation totally of the plantation for quite a while. And yet that's not what we want.

STAFF:

Right. I'm just trying to figure out if there's another way of phrasing it so it's more meaningful.

COMMISSIONER:

Maybe we could brace it.

COMMISSIONER:

Just put at the end, I really mean this.

CHAIRMAN:

Any more?

COMMISSIONER:

Mr. Chairman, I've been wrestling with a problem on these regulations. It's a very serious problem as to how the whole process of these Commission boundaries are processed. And over the next several weeks . . . At any rate, I'm trying to focus in on this regulations problem which I consider to be important. Just by way of background, the law says when you adopt a rule, you do it by certain steps. You know, one is public hearings and this type of thing. And eventually, you're supposed to get the Governor's approval of these rules and then put them on file at the Lieutenant Governor's office, and now the Land Use statute kind of differs in many respects from the procedures spelled out in this administrative procedures act, and there is considerable doubt in my mind as to whether our land use boundary petitions should take the route as specified by the administrative procedures act, including approval by the Governor.

Well, anyhow, you catch the significance of this. Your own rules say that as far as boundary petitions are concerned, this would be considered rule making. Now my thought is why not just cut out all these references to the idea that this is rule making under the administrative procedures act and leave it to the eventual . . . either legislative or judicial interpretation as to whether, what we call, the APA applies. If it does, then the Governor has the authority to veto the power over the Land Use Commission determinations. Up til now, because of the ambiguous nature of this thing, I haven't urged Ron to go ahead and take that route on these boundary petitions, so they have not been going to the Governor's office for approval and eventual filing with the Lieutenant Governor's office. Now, to my knowledge, the only time that this was ever done was in the initial adoption of your temporary and permanent district boundary

COMMISSIONER (Cont'd.)

maps. These were then approved by the Governor and filed in the Lieutenant Governor's office. I don't think there has been a single petition subsequently that's been filed, so it's a pretty serious problem of interpretation. It has a lot of side effects, too, as to whether the administrative procedures act applies. Like, for instance, on Maui the party indicated that this was a contested case under the administrative procedures act and, therefore, he had the right to cross examine Ron. And he's right if that's true and yet he's wrong if it isn't. So you have these little side effects that could affect your procedures. So I just wanted to mention at this stage the possibility that we may advise a revision of the (inaudible) that would pull out any inference but that by the Commission's own volition that the administrative procedures act does apply.

COMMISSIONER:

In other words, all the decisions that we have made have never been filed with the Governor and it would be thrown out?

CHAIRMAN:

Could he veto?

COMMISSIONER:

Well, that's one interpretation.

COMMISSIONER:

I mean could somebody prove it invalid?

COMMISSIONER:

Oh, I don't think any objections would be that serious because if it is just an oversight, you can cure it by just going ahead and filing.

COMMISSIONER:

Would this be only in those instances where areas have been added?

COMMISSIONER:

Where any boundary change is made. Any boundary change.

CONSULTANT:

But the appeals say if someone is challenging, it seems as if it would occur as though that guy had been turned down, you see.

COMMISSIONER:

Well, normally this would be the case if that guy had been turned down.

STAFF:

Well, he couldn't challenge the procedure. Does a denial of the Commission go to the Governor's office?

COMMISSIONER:

No. It would only be an approval.

CONSULTANT:

Exactly.

COMMISSIONER:

On the other hand, George, say a petitioner came in and you had a bunch of objections to this petition. Let's say we granted the petition. Could he take us to court and say that we did not follow the right procedures on it.

COMMISSIONER:

No, I say there is a big question mark here. Now your administrative procedures act was passed the same year in the same session as the land use laws. Now the administrative procedures act actually went to the legislative mill first, and the land use law came later. In other words, there doesn't seem to have been any coordination . . . any intent by the Legislature that the administrative procedures act applied to the land

COMMISSIONER (Cont'd.)

use law. Like, for instance, the administrative procedures act requires only one notice of publication in a newspaper of statewide circulation whereas our land use act is a lot more restricted. They say you publish in each County and you hold public hearings in each County. So the procedure seems to be very divergent as far as that goes. And then in 1965 you had a clean up act that went to some 98 or some odd chapters -- about 100 chapters of revised laws -- and said the administrative procedures act applies to this and applies to that and everything else, and yet they skipped over the land use chapter, implying again that they didn't intend to apply the administrative procedures act to the land use law. So there is real considerable doubt as to whether you are required to go ahead and file and follow that procedure. Now, in the light of this kind of doubt, and the fact that Howard brought up, that you would rarely get a challenge anyhow when you granted a change, you haven't forced an issue. As a matter of fact, we prefer to wait until a real direction can be gotten. Now I picked this Gillette petition to run this through the judicial mill. In other words, the kind of answer I'm afraid will kind of force the issue and get a judicial interpretation, which we could take on upstairs, if necessary, to get a definitive interpretation on it. So, among other things, I say that this isn't a rule that he was challenging as he had alleged in his complaint. So there are things being done to precipitate the thing definitely, but without either legislative or judicial interpretation, you always have a doubt as to what it is, one way or another. But yet, I wouldn't advise the Commission to precipitate things by taking one route which is extremely burdensome and which, in effect, gives a veto power to the Governor which he may not even want. Actually, I believe his

COMMISSIONER (Cont'd.)

telephone rings, too.

COMMISSIONER:

What are you trying to suggest that we do?

COMMISSIONER:

No. I'm not suggesting anything except to mention a problem on which we may come in with a recommendation in the very near future on the boundary regulation change. I'm just raising the problem at this time without suggesting a solution.

COMMISSIONER:

But I think what you're hinting at is that we should plan on after approving or adopting some district boundaries a regulation that we . . .
(inaudible) . . .

COMMISSIONER:

Oh, you don't do this as the petition's coming through . . . it's not on an individual basis. As the petition is coming through, then you re-file . . .

COMMISSIONER:

It depends on the position you take on the problem I just presented. If you take the stand that this is an administrative procedures act problem, and that act requires you to get the Governor's approval and file it with the Lieutenant Governor, then that's the action we must take if you make that interpretation. If you don't, then the procedure is final with the action of this Commission.

COMMISSIONER:

By the way, do we have to file these new regs and maps with the Lieutenant Governor again? After we get through, I mean.

COMMISSIONER:

That's why I say I should be making some fairly intensive efforts over the next couple of weeks before we begin to go out for public hearings on this thing.

COMMISSIONER:

Let me ask this. Do you mean we are going through this land boundary review and you are not going to file this?

STAFF:

Oh, I don't know, because then you have been remiss in all of the actions over the past 5 years.

COMMISSIONER:

Isn't it required that we do this again?

COMMISSIONER:

No.

COMMISSIONER:

Not the land use statute. It just says take final action and this kind of thing. It's another statute which apparently says every governmental agency is subject to it.

COMMISSIONER:

How come we first filed it in the very beginning then? Wasn't that stated?

COMMISSIONER:

Well, somebody took an interpretation and, like I say, these 2 acts came out in the same session, so somebody was aware of the existence of this other administrative procedures act and said, let's be safe and follow it.

COMMISSIONER:

Alec, why don't we . . . (inaudible) . . . Let's get back to . . .

CHAIRMAN CHOY:

Yes, I agree. That's my feeling, too.

COMMISSIONER:

Now we have to make the final boundaries when? On the 10th, huh?

COMMISSIONER:

No.

MR. DURAN:

We're just going to discuss them with the County at that time and then we'll go to a public hearing on April 11th on Kauai. And then we take action in June . . . June 6th. So June 6th would be the day we take final action on the district boundaries.

(General discussion with several parties speaking at the same time.)

MR. ALTMAN:

What about your reaction to zoning the existing rural area urban?

Because it is of the same character, the same services . . .

COMMISSIONER:

Alright, let's put it this way. How many people can afford . . .

MR. ALTMAN:

Half acre sites.

COMMISSIONER:

Yes.

COMMISSIONER:

Are they all half acre out there?

MR. ALTMAN:

In the rural area.

COMMISSIONER:

How about putting the urban into rural?

MR. ALTMAN:

This area.

COMMISSIONER:

I say no because you have all the urban . . (inaudible) . .

MR. ALTMAN:

Well, no, because this area is developing faster than the existing urban area.

COMMISSIONER:

But it will not open up because the price is not right. That's what I'm telling you.

COMMISSIONER:

Well, my concern is still that you have urban and rural districts adjacent to each other, they're receiving identical county services, and yet you're differentiating in districts.

COMMISSIONER:

We're talking about a rural district surrounding this urban area?

MR. ALTMAN:

Yes.

COMMISSIONER:

Now, when you get down to County level, it's always politics. It's not . . (inaudible) . .

STAFF:

That request that we had a public hearing on yesterday is a good example. It's already cut up into rural lots.

COMMISSIONER:

It's a rural lot and he wants smaller lots on it. I'm not a planner but . . .

MR. ALTMAN:

So what's you're saying is, if this is shifted to urban, then these type areas that are half acre sites under the existing . . .

COMMISSIONER:

Some Mainland guy is going to come in and he's going to tell you, I cannot . . (inaudible) . . on this property so may I cut this into half and . . (inaudible) . .

MR. ALTMAN:

The thinking is that rural areas as we envision them are separate areas by themselves, but if they are adjacent to existing urban areas, it is the feeling that rural areas are to abide by those areas in the absence of urban services. So in this instance the services are exactly the same and in fact, there isn't any . . (inaudible) . . it could be more of a consistent boundary.

COMMISSIONER:

Another thing I would like to bring up is this. If you ruralize this area and have it cut into . . (inaudible) . . the land prices are much lower.

MR. DURAN:

Let me ask Howard a question. You talk about similarity in character. Does this area have city-like utilities and services?

MR. ALTMAN:

In the existing urban area. Everything except sewer.

MR. DURAN:

So basically, the urban services in that area are not any different than Kapaa or Wailua?

MR. ALTMAN:

That's right.

MR. DURAN:

That's fine, because the character of that area is more rural with the exception of those two small subdivisions in there.

COMMISSIONER:

I would rather see this whole thing in rural than in urban. Now you take this area here . . . this is a rural area here; it's all big lots.

MR. WUNG:

I would like to recommend that you go in to the Counties with that.

COMMISSIONER:

Well, since we've had this discussion and you're in agreement that you want these changes . . . Now am I in order? Would the Board go along with some of these proposed changes? Or are you going to make one proposal and we're going to make another? Are you going to go along with the wishes of the Commission?

MR. DURAN:

We have to decide what the boundaries will be when we go to the public hearing. They are . . .

COMMISSIONER:

Alright, but are we . . . let's say we'll go along with the Commission; we'll go along with what's proposed and present it to a public hearing?

CHAIRMAN CHOY:

We have two proposals now. The consultant's proposal and (inaudible) proposal, so we'll present the two proposals to the . . .

COMMISSIONER:

Don't we have one more crack at it after the hearing?

MR. DURAN:

Mr. Chairman, the way our schedule is set up, we're discussing the boundaries today, hoping to come up with a decision on a temporary basis.

MR. DURAN (Cont'd.)

Then on the 10th, next Monday, we'll go to the Counties, talk to them, and then come back again to the Commission on the 14th and say, well, this is the result of the discussion, finalize your boundaries to go to the public hearing on. And then you'll still be revising it after that.

COMMISSIONER:

What I was trying to get at, Mr. Duran, is that wouldn't it be better if we were in agreement? I mean, the consultants and the Commission.

MR. DURAN:

For Monday, yes.

COMMISSIONER:

Would you go along with salvage changes and present that?

COMMISSIONER:

You have to present it the way it is now.

COMMISSIONER:

Why are we arguing about this if we have to rehash it again?

COMMISSIONER:

I say let's . . . Unless there's something technically wrong with the way it's presented . . . let's go with it.

COMMISSIONER:

Howard, we do want to thank you for your great presentation.

MR. ALTMAN:

There's just one more point, and that is the feeling and the concurrence about the entire (inaudible) of being considered in the sea district.

COMMISSIONER:

We're going to have a lot of argument about that, too, because you are talking in some places about 100 feet (inaudible).

MR. ALTMAN:

(Almost totally inaudible) . . . I know there are (inaudible) and
keawe trees . . .

COMMISSIONER:

And you have to talk to the land owner now.

COMMISSIONER:

. . (inaudible) . . argument, the land owners in these cases. I'm
curious.

COMMISSIONER:

Well, I'll tell you. These arguments that you're going to get will
be from the small land owners that own property along the beach. You're
going to be arguing with Robinson and McKee. And you're going to come to
American Factors now. You're arguing with them . . .

COMMISSIONER:

What I'm after is what is their argument going to be? It's now in
ag, huh?

COMMISSIONER:

I like to be prepared.

COMMISSIONER:

Alright, what say you have a rezone area that they have already
planned, say 2 or 3 years ago?

COMMISSIONER:

Well, we'll cross that bridge when we come to it.

COMMISSIONER:

Yes. I won't argue with you on that point because I can't tell you
what the land owner thinks about some of the . . . you know, the backup.

COMMISSIONER:

We'll hear from them at the hearings.

(Several Commissioners speaking at one time.)

COMMISSIONER:

I think there's a lack of flexibility. The fact that there is . . .

COMMISSIONER:

Is it more restrictive than any . . . ?

COMMISSIONER:

Conservation? Very much so.

CHAIRMAN CHOY:

O.K. We're through with Kauai already and also the consultants.

Thank you very much, gentlemen.

Where do we go from here?

MR. DURAN:

Well, on March 4th we'll be back here in Honolulu at the City County Planning Commission for a meeting at 2 o'clock. Oh, March 14, right. At which time we will finalize the district boundaries for the public hearing. Of Kauai. Also, I just want to repeat that the action taken earlier by the Commission that the fish ponds on (inaudible) property and Brown's property was intended to be in the conservation district.

COMMISSIONER:

. . (inaudible) . . conservation district in that particular case, it means that they can't fill their fishponds.

MR. DURAN:

Well, no, it just puts it under the control of the landlord. If the landlord says they can do it, they can do it.

Then one other question. We kicked this around yesterday, but some of the Commissioners were missing. What is your feeling on action on the

MR. DURAN (Cont'd.)

district boundaries? Shall we go to the Counties and take the action in the respective Counties or shall we propose all of the action take place here in Honolulu?

CHAIRMAN CHOY:

What action are you talking about?

MR. DURAN:

District boundaries. You'll note on the agenda that I noted it as Honolulu only on the basis that that's what you did last year . . or five years ago. But yesterday's consensus, I think, was to go to the different Counties when you're taking final action.

COMMISSIONER:

No, wasn't there a kind of parting sort of final understanding that it would depend on the reactions you received on your first go-around? I don't know. That's my vague recollection.

MR. DURAN:

O.K. We'll play it that way.

CHAIRMAN CHOY:

Play it by ear.

CHAIRMAN CHOY:

Any further business.

COMMISSIONER:

What about the vote?

MR. DURAN:

Well, you can't take the vote because we don't have a quorum. Yesterday's . . (inaudible) . .

(Several Commissioners speaking at one time.)

COMMISSIONER:

We had 6 this morning.

COMMISSIONER:

So you're going to defer it until when?

MR. DURAN:

The next meeting. Probably the 14th.

COMMISSIONER:

Do we need a motion?

MR. DURAN:

No. Huh uh.

CHAIRMAN CHOY:

Do we need a motion to adjourn?

(Tape ended at this point.)

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