

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room 322 (B&C)
New State Building
Honolulu, Hawaii

March 7, 1978 - 9:00 a.m.

Approved
JUN 14 1978

COMMISSIONERS PRESENT: Charles Duke, Acting Chairman
James Carras
Shinsei Miyasato
Shinichi Nakagawa
Mitsuo Oura
Carol Whitesell
Edward Yanai

COMMISSIONERS ABSENT: Colette Machado
Stanley Sakahashi

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Allan Kawada, Deputy Attorney General
Dora Horikawa, Clerk Reporter
Ray Russell, Court Reporter

ACTION

Chairman Duke announced minor re-arrangements in the order of the agenda.

SP78-288 - KILAUEA AGRONOMICS, INC.
SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF AN AGRICULTURAL PROCESSING PLANT FOR DIVERSIFIED CROPS AT MOKUHONUA, SOUTH HILO, HAWAII

Mr. Daniel Yasui apprised the Commission of the existing facilities on the property and the intended use for the structures being requested under the Special Permit. A resume of the prepared staff report, including the County's conditions, was also presented.

Some of the concerns expressed regarding the subject request were the dust that may be generated by the movement of the trucks, and the location of the area where the crops to be processed are grown.

Commissioner Carras moved to approve the Special Permit, subject to the conditions imposed by the Hawaii County Planning Commission. The motion was seconded by Commissioner Nakagawa and unanimously passed.

A77-432 - COUNTY OF KAUAI

In the matter of the boundary amendment petition by the County of Kauai, Docket A77-432, on which a hearing was held by the Hearing Officer on January 9, 1978, Mr. Matsubara presented a comprehensive report of his findings and recommendations.

A discussion followed regarding the egress and ingress into the property, adequate traffic circulation, potential dust problems, compliance with the requirements of the Farmers Home Administration, etc.

Mr. Matsubara submitted that no contrary findings were filed by either the County or DPED relative to his proposed findings and conclusions. Thus, he advised that according to Rule 5-5 (1) of the Commission's Rules, "in the event no statement of exceptions is filed as herein provided, the Commission may proceed to review, modify or adopt the recommendations of the Hearing Officer."

It was brought out that the concerns expressed by the Department of Health could be appropriately addressed at the time of final subdivision approval at the County level. However, it was agreed to include this finding to indicate that the matter was considered and discussed.

Commissioner Whitesell moved to accept the Hearing Officer's report, as amended, and approve the reclassification of the 1.35 acres from Agricultural to Urban. Commissioner Nakagawa seconded the motion and it was approved as per the following votes:

Ayes: Commissioners Oura, Miyasato, Nakagawa, Whitesell, Yanai, Carras, Chairman Duke

SP78-290 - MAUI ZENDO OF THE DIAMOND SANGHA, INC. DBA PEAHI
NURSERY SCHOOL

SPECIAL PERMIT TO ALLOW THE OPERATION OF A PRE-SCHOOL AND A
LOWER ELEMENTARY SCHOOL PROGRAM AT PEAHU, MAUI

Mr. Yasui identified the subject parcel on the map and summarized the pertinent data contained in the staff report.

Chairman Duke noted that the Special Permit had expired in March of 1977 and that petitioner was operating illegally within an Agricultural District. He posed the question of the

responsibility for monitoring the conditions imposed in approving a Special Permit. The Executive Officer advised that heretofore the Counties have been monitoring conditions imposed on Special Permits.

It was emphasized by Chairman Duke that as long as conditions are imposed, the responsibility for monitoring compliance with these conditions should be clearly established.

Mr. Sidney Fuke of the Hawaii Planning Department staff submitted that they maintained a suspense file to assure that conditions were complied with. Mr. Belles of Kauai County stated that Kauai did not have such a system.

Mr. Furutani suggested that this matter could be discussed when the Commission continues with its workshop on Special Permits with the counties and other governmental agencies.

Mr. Matsubara advised that a delineation of the roles of the County Planning Commissions and the Land Use Commission with respect to Special Permit procedures was presently a matter under litigation in the courts. He added that the question of who has the primary role and responsibility for conducting the quasi-judicial hearing may be decided during this particular judicial proceeding.

Since the original subject Special Permit had expired on March 1, 1977, it was agreed that the 3-year period for the continued operation of the nursery school commence on March 1, 1977 to cover the interim period.

The Chair directed that the County's condition relative to holding harmless the County from any loss or liability also include the words "and the State of Hawaii".

Commissioner Nakagawa moved to approve Special Permit SP78-290, subject to the conditions imposed by the Maui County Planning Commission and as amended by the Land Use Commission. The motion was seconded by Commissioner Miyasato and unanimously carried.

SP78-292 - GARY'S AUTOMOTIVE SERVICE, INC.
SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF AN AUTO BODY
REPAIR SHOP, TRUCK REPAIR & VEHICLE STORAGE AT WAIKOLOA, SOUTH
KOHALA, HAWAII

The area under petition was located on the maps by the Planner who also presented a resume of the staff report.

Concern was expressed as to the precise delineation of the 4-acres requested for the proposed operation on the 10-acre portion of the property. The danger or undermining the County's

General Plan in allowing an industrial use under a Special Permit in an Agricultural District was also brought up.

Commissioner Carras strongly felt that any installation in the area should be aesthetically pleasing inasmuch as it was situated along the route to and from the airport.

Commissioner Oura moved to approve the Special Permit, subject to the conditions imposed by the Hawaii County Planning Commission, which was seconded by Commissioner Miyasato.

Commissioner Carras spoke against the motion based on his feeling that there was not sufficient controls to assure that this would not eventually turn into a junk yard and thereby create a blight on the scenery.

Commissioner Whitesell suggested adding a condition setting a time limit for requiring removal of any shells or parts of the cars.

Commissioner Whitesell moved to amend the motion by adding a condition that this Special Permit run for a period of 5 years--this would allow the Commission leverage to reassess the suitability of the proposed operation at this particular site.

Commissioner Carras moved to further amend the motion by reducing the storage area from 1½ acres to a more realistic figure of a quarter of an acre. Commissioner Oura, maker of the motion submitted that he had no objections to these proposed amendments.

The Chair called for a vote on the second amendment to the motion made by Commissioner Carras by a show of hands. The motion did not carry.

The Chair called for a vote on the first amendment to the motion made by Commissioner Whitesell by a show of hands. The motion was carried.

The Chair called on the Executive Officer to poll the Commissioners on the original motion with the approved amendment. The motion was carried with the following votes:

Ayes: Commissioners Oura, Miyasato, Carras, Nakagawa,
Yanai, Whitesell, Chairman Duke

Executive Session

Upon motion by Commissioner Carras, seconded by Commissioner Whitesell, it was unanimously agreed to to into Executive Session to discuss with legal counsel the ramifications of Act 199 in relation to the proposed use being requested under Special Permit SP78-289, Norman Greenwell/Roman Catholic Diocese of Honolulu. The Commission was in session from 11:40 a.m. to 12:28 p.m.

12:28 p.m.

Chairman Duke called on Deputy Attorney General Allan Kawada to report on the discussion which had taken place during the Executive Session.

Mr. Kawada counseled that Act 199 restricts uses on Class A and B agricultural lands to 11 particular uses relating to agriculture, and in reviewing subject petition, he was not able to resolve in his mind that the proposed use related to any agricultural use. Even under the provision of the Special Permit section of the Rules of allowing "unusual and reasonable use", he was not able to justify that a subdivision for the purpose of establishing a religious school in the Agricultural District qualified under this criteria. He therefore expressed his opinion that a Special Permit was an inappropriate vehicle for the purposes stated within the permit. He agreed with the Chairman's observation that the crux of the problem here involved the subdivision of Class A and B agricultural lands.

Commissioner Whitesell moved to accept the Deputy Attorney General's opinion and to deny the Special Permit request, not on its merits but on the basis of the legal advice. Commissioner Nakagawa seconded the motion and it was unanimously carried.

Chairman Duke commented that if the petitioner desired to pursue the proposed use, he could come in for a boundary amendment petition and the Commission will consider it on its merits.

A lunch recess was called at 12:41 p.m. and the meeting reconvened at 2:00 p.m.

2:00 p.m.

A77-431 - BLACKWELL CONSTRUCTION, INC.

Commissioner Oura was excused from the discussion since he was not present during the hearing.

In the matter of the boundary amendment petition by Blackwell Construction, Inc., Docket A77-431, on which a hearing was held on October 6, 1977, the Commission discussed the following documents which had been previously distributed to the Commission members, prior to taking action on the petition:

1. (Proposed) Petitioner's Findings of Fact, Conclusions of Law and Decision and Order
2. DPED's Exceptions to Petitioner's (Proposed) Findings of Fact, Conclusions of Law and Decision and Order
3. Kauai County's Response to Petitioner's (Proposed) Findings of Fact, Conclusions of Law and Decision and Exceptions Thereto by the DPED

Mr. Maurice Kato, Deputy Attorney General, representing DPED, submitted that in order to resolve the differences, petitioner had agreed to amend his proposed Findings to incorporate most of the suggested changes in the language and to delete those portions objected to by DPED.

The Chair recommended that the Commission proceed with the adoption of the findings and, where necessary, interject stipulations made among the parties for the record.

At Chairman Duke's request, Mr. Kato pointed out by page, paragraph and number reference those exceptions made by DPED to the petitioner's findings on which a stipulation had been reached by all parties.

Mr. Nakea represented orally on record that petitioner accepts all of the exceptions raised by DPED and concurred to by the County of Kauai.

Commissioner Whitesell moved to adopt the findings of fact as corrected, which was seconded by Commissioner Carras and unanimously carried.

Commissioner Whitesell emphasized that there should be a statement in the document stating affirmatively that the interim guidelines have been met; e.g. that the proposed amendment was reasonably necessary to accommodate growth and development, water services were available, existing services and facilities will be used, etc.

Commissioner Whitesell moved that the petition of Blackwell Construction, Inc., Docket A77-431, be approved. The motion was seconded by Commissioner Nakagawa and carried with the following votes:

Ayes: Commissioners Miyasato, Nakagawa, Carras, Whitesell, Machado, Chairman Duke

ADOPTION OF MINUTES

Upon motion by Commissioner Machado, seconded by Commissioner Whitesell, the minutes of November 3, 1977 and November 14, 1977 were adopted as circulated.

MEETING SCHEDULE

It was announced that the next meeting of the Commission will be held on April 13, 1978.

CONSULTANT'S CONTRACT

Upon the recommendation of the Executive Officer, Commissioner Miyasato moved, seconded by Commissioner Carras, to continue with the services of Mr. Benjamin Matsubara as consultant to the Land Use Commission. The motion was unanimously carried.