

65

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

LUC Hearing Room

Honolulu, Hawaii

4:00 P.M. - March 12, 1965

Commissioners

Present:

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

Staff

Present:

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

A special meeting of the Land Use Commission was called to order by Chairman Thompson. Mr. A. H. Landgraf, Mr. Stanley Ooka, and Mr. George Souza of the Department of Taxation met with the Commission on this day.

Mr. Landgraf stated that the Department of Taxation has some responsibility in determining the highest and best use of lands for tax assessment purposes. He advised that the Department of Taxation has set up general guidelines for using the district boundaries as established by the Land Use Commission and the zoning of the Counties to determine what is the highest and best use for tax purposes. He advised, however, that:

1. Nonconforming uses within Agricultural and Rural Districts are taxed according to the use, although a differentiation is made between a non-conforming urban use in an Agricultural District and that of an urban use in an Urban District.
2. In Rural Districts small kuleanas of 5,000 sq. ft. to 20,000 sq. ft. or more with no improvements are taxed as residential because lots with 5,000 to 20,000 sq. ft. are considered not economical for agricultural use.
3. Agricultural land, abutting expanding Urban Districts and projected as potential Urban Districts, are taxed higher than other agricultural land. If no urban potential is foreseen, the agricultural land is taxed according to the land use classification.

- a. Projection of an Urban District is made by looking at the overall area and determining whether the area districted for agriculture has a good possibility of developing into an Urban District.
 - b. The projection is limited to no more than 10 years.
4. Dedication of land to a particular agricultural use may be beneficial and may remove any "urban influence" from agricultural lands.
- a. Dedicated agricultural lands gain lower taxation if in an Agricultural District close to an Urban District or even near the center of an Urban District. (A copy of a guide for conducting appraisals was given to each commissioner.)
 - b. Dedication of lands is assessed according to the type of agricultural use.
5. Where sufficient urban lands are made available by the Land Use Commission, no projection is made. However, if the Department of Taxation anticipates a sudden growth, the value of the lands will be increased commensurate with the growth rate. Therefore, some provision is made to take care of these "plus values."
6. Lands in agricultural use and districted as Urban by the Land Use Commission are taxed according to the actual use, if no projection for urban development is foreseen within the next 10 years.

Mr. Stanley Ooka advised that the uses within Conservation Districts, characterized primarily as conserving, protecting and preserving natural resources, are assessed purely on judgment.

Chairman Thompson stated that the Land Use Commission would write a letter to the Department of Taxation requesting the Department's projected urban growth areas throughout the State as determined by that Department.

DEFINITION OF UNUSUAL AND REASONABLE

Chairman Thompson stated that the question "What is Unusual and Reasonable" was raised by Commissioner Ota at the Commission's last meeting. The Executive Officer was asked to have a report on this subject ready for the Commission at this meeting. (A copy of this report is attached.) The Executive Officer contended that the Land Use Commission need not overly concern itself with the term "unusual and reasonable." He stated that these words are intended simply to define proper uses that may be subjected to the procedure rather than as a basis for making a decision

on the special permit procedure. He concluded that the guidelines set up in the Commission's regulations are just as good as any that can be found elsewhere.

Commissioner Ferry concurred with the Executive Officer's findings and stated that decisions of this sort are opinionated. After a lengthy discussion on this subject, it was the consensus of the Commission that they would continue operating as they have been on special permits requiring action by the Commission.

LEGISLATIONS AMENDING LAND USE LAW INTRODUCED

The following legislations, introduced in the Legislature to amend the Land Use Law, were analyzed and acted upon by the Commission. Copies of these legislations and staff's analysis were circulated and are on file.

HOUSE BILL 82 - The Commissioners oppose this Bill on the basis that retention of the variance function with the State Land Use Commission is vital to insure that, where exceptions to State zoning are made, statewide concerns and ramifications should be considered.

HOUSE BILL 84 - The Commissioners oppose this Bill because the reasons for proposing this Bill were not clear or not stated. The Commission favors the idea of adding the County Planning Directors on the Land Use Commission as ex-officio non-voting members, but concurs with the Legal Counsel that allowing the County Planning Directors to sit on the Land Use Commission would mean county determination of State affairs.

SENATE BILLS 38 AND 282 - The Commission oppose both these Bills.

SENATE BILL 315 - The Commission oppose this Bill.

SENATE BILL 262 - The Commission oppose Section 2 of this Bill because it proposes a reversal of the traditional relationship between State and County agencies by giving the County the decision making powers on a Statewide Law.

The Commission, however, was in favor of Section 1 of this Bill to allow the Counties to establish minimum lot sizes in Agricultural Districts.

The Commission was in favor of distributing these Bills and the staff's summary to all interested agencies. It was the consensus of the Commission that the distribution list would be left up to the Chairman. The suggestion

to write to the Speaker of the House for an audience with the House Policy Committee, and the House Lands Committee was favorably received by the Commission.

Dr. Mark informed the Commission that the Commission's proposed amendment to Section 98H-4, Revised Laws of Hawaii 1955, as amended, has not been submitted to the Legislature. The Administration felt that introduction at that time was not right. However, in view of all the proposals introduced, Dr. Mark stated that he would introduce this Bill immediately.

There were no further business and the meeting adjourned at 7:00 p.m.

Attachment

Land Use Commission
426 Queen Street
Honolulu, Hawaii

March 12, 1965

SPECIAL PERMIT UNDER CHAPTER 98H, RLH 1955, AS AMENDED

This Law states that the County agencies may permit certain unusual and reasonable uses within Agricultural and Rural Districts other than those for which the District is classified. Any persons, who desire to use this land in an Agricultural or Rural District other than for an agricultural or rural use as the case may be, may petition the County. The words "unusual and reasonable" imply particular, restricted uses. Unusual and reasonable are not defined. Thus, the only conclusion that can be drawn is that not any use can be subject to special permit.

However, the next sentence states that a desired use, "other than for an agricultural or rural use" may be petitioned for. This indicates no restrictions on uses that can be subjected to the special permit procedure. The conclusion is the Law is conflicting or at least vague as to what uses may be subjected to the special permit procedure. On this basis, there does not appear to be any legitimate basis for not accepting any petitions for special permit in respect to use.

The County agency may permit such desired use, "but only when such use may promote the effectiveness and objectives of this chapter." This is the only stated basis in the Law for granting special permits. No such basis is directly indicated for the Land Use Commission's decision. However, it may be assumed that the bases above would apply to the Land Use Commission also.

At this point, two questions arise. Specifically, how do you promote the effectiveness and objectives of this chapter? The second question is what are the objectives? The answers to these questions can be found in the Findings and Declaration of Purpose and in the Test to be Applied of the Land Use Commission Regulations on Special Permits. Our Rules and Regulations list virtually all the guidelines usually used for these procedures by other similar agencies. Perhaps the only omission is the statement to the fact that this procedure shall not be used to correct errors or errors in judgment in establishing the zoning. And, perhaps emphasis on "unique" uses.

The Law states the reasons and the evidences of the need for public concern and action which has resulted in this Law. The Law further declares the purpose of this Law in a generalized declaration. Unfortunately, these findings, concern, evidences, and declaration are subject to different interpretations, and moreover there can be different views as to how the purpose of the Law can be accomplished.

CONCLUSION

It is my contention that the Land Use Commission should not then be overly concern as to a more clearer definition of the term "unusual and reasonable" use. It would appear that these words are intended simply to define proper uses that may be subjected to the procedure rather than a basis for making a decision on the special permit procedure. The only basis for decision making, as stated in the Law, is that approval may be granted "only when such use would promote the effectiveness and objectives of this chapter."

After considerable thought, discussion and research, it is concluded that your staff has been defeated in its attempt to spell out more specific basis for decision making. The guidelines set up in our regulations, with perhaps very little adjustment, are just as good as any that can be found elsewhere.